

**THE USE OF INFORMATION TECHNOLOGY IN DISPENSATION  
OF JUSTICE IN TANZANIA: A CASE STUDY OF DAR ES SALAAM**

**BY**

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**LLB/20066/82/DF**


**A RESEARCH SUBMITTED IN PARTIAL FULFILMENT OF THE  
REQUIREMENTS FOR THE BACHELORS DEGREE OF  
LAWS AT KAMPALA INTERNATIONAL  
UNIVERSITY**

**JUNE, 2010**

*Awarded 78% (Seventy Eight)  
me  
14/6/2020*

## APPROVAL

I clarify that this work submitted by this candidate was under my supervision; her work is ready for submission to be evaluated for the award of Bachelor of Laws (LLB) of Kampala International University.



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11/6/2010

## **ACKNOWLEDGMENTS**

The success of this work has, to a greater extent depended on efforts, support, contributions and encouragement from number of individuals. Without them this work would not have been possible to accomplish. Indeed, I am grateful to all of them. It would have been a good idea to mention all of them, but due to the shortage of space, I will only mention a few.

First and foremost I would like to express my special gratitude to my supervisor, Mr. Muhamud Sewaya for his constructive criticisms, comments and suggestions. His encouragement and guidance have contributed to the final production of this work.

Special gratitude goes to Mr. Zakayo Lukumay, the Chief Training, Research and Statistics Officer of The Judiciary of Tanzania, Mr. Mukono advocate Brotherhood Law chamber for providing me with some very crucial material relevant to the completion of my LL.B Research report.

I am also grateful to Mrs. Kakamba DM, Monica Ms, Lukio E. Mrutu and so many other members of staff at the High Court of Tanzania (Dar es salaam registry) for extending their cooperation during the entire period of my field research conducted at the High Court of Tanzania.

Thanks to my friends, to mention few, Augustine Sekeyian, Kahabe William B, for being there to provide good environment during the times in need of Academic support and courage. To all I hereby say MAY GOD ALMIGHTY BLESS YOU ALL.

## TABLE OF CONTENTS

APPROVAL .....	i
ACKNOWLEDGMENTS .....	ii
TABLE OF CONTENTS .....	iii
LIST OF ABBREVIATIONS .....	v
LIST OF CASES .....	vi
TABLE OF STATUTES .....	vii
 CHAPTER ONE .....	 1
GENERAL INTRODUCTION .....	1
<i>Background of the Problem</i> .....	1
1.2 Statement of the Problem .....	4
1.3 Justification for the study .....	6
<i>Hypothesis</i> .....	6
1.5 Objective of the Study .....	6
1.6 Literature Review .....	7
1.7 Scope of the Research .....	10
1.8 Research Methodology .....	10
1.9 Chapterisation .....	11
Chapter Two .....	11
Chapter Three .....	11
Chapter Four .....	11
Chapter Five .....	12
2.0 Conclusion .....	12
 CHAPTER TWO .....	 13
HISTORY OF LEGAL DEVELOPMENTS AND ICT .....	13
2.1 Introduction .....	13
2.2 History of legal developments and ICT in the United States of America .....	13
2.3 History in the United Kingdom (UK) .....	17
2.1 Legal history of ICT development in Tanzania .....	20
2.3.1. The Government Builds National ICT Policy .....	22
2.3.1 Conclusion .....	24
 CHAPTER THREE .....	 25
THE LAW AND USE OF ICT IN THE TANZANIA JUDICIARY .....	25
3. 1 Introduction .....	25
<i>The State of the Tanzanian Judiciary</i> .....	25
<i>The Civil Process</i> .....	25
3.2 History of Application of ICT in Tanzania Judiciary .....	29
3.3 Current Situation .....	30
3.3.1 ICT Infrastructure .....	31
3.4.2 Software .....	32
3.4 Conclusion .....	33

<b>CHAPTER FOUR.....</b>	<b>34</b>
<b>PROSPECTS FOR USE OF ICT IN THE TANZANIAN JUDICIARY .....</b>	<b>34</b>
4.1 Introduction.....	34
4.1.2 Automation of Court Records.....	34
4.1.3 Video Conferencing .....	35
4.1.4 E-Library.....	35
4.2 Proposed Case File Monitoring System.....	36
4.3 Challenges.....	38
4.4 Conclusion .....	40
 <b>CHAPTER FIVE.....</b>	 <b>41</b>
<b>CONCLUSION AND RECOMMENDATIONS.....</b>	<b>41</b>
5.1 Conclusion.....	41
5.2 Recommendation.....	42
5.2.1 Enacting laws.....	42
5.2.2 Amending existing law .....	43
5.2.3 Training of Judicial Personnel.....	44
5.2.4 Setting up websites.....	45
5.2.5 Extensions to lower courts.....	45
5.2.6. Improved payment System.....	45
5.2.6. Compulsory ICT courses at Law school.....	46
5.3 Way forward.....	46
<b>BIBLIOGRAPHY .....</b>	<b>47</b>
Thesis .....	48
Journals and Articles .....	48
Vision and Reports.....	49
_ Websites.....	49

## LIST OF ABBREVIATIONS

NICTP	-	National Information and Communication Technology Policy
TDV	-	Tanzania Development Vision
Courtdb	-	Court Data base
ICT	-	Information and Communication Technology
RM	-	Resident Magistrate
Testdb	-	Test Database
USAID	-	United States Agency International Development
LAN	-	Local Area Network
TLR	-	Tanzania Law Report
ATM	-	Automated Teller Machine.
ADR	-	Alternative Dispute Resolution
HC	-	High Court
CA	-	Court of Appeal
NGOs	-	Non Governmental Organizations
AG	-	Attorney General
USA	-	United States of America

## LIST OF CASES

*Trust Bank of Tanzania Ltd. vs. Le Marsh Enterprises Ltd. and Others.* H.C (Com. Div.)

at DSM, CC. No. 4 o 2000, (Unreported)

*Lorraine v. Markel American Ins. Co.*, 241 FRD 534 (D. Md. 2007)

*R. vs. Professor Costa Ricky Mahalu and Grace Martin*, High Court of Tanzania  
Criminal Application Number, 2 of 2009(Unreported)

*EMI Electroler v. Patricia* [1989] ECR 79

## TABLE OF STATUTES

### **Tanzanian statutes**

Civil Procedure Code, 1966 CAP 33:[RE 2002]

Commission for Mediation and Arbitration Rules, 2005 (Tanzania)

Employment and Labour Relations Act, 2004 (Tanzania)

Government Paperwork Elimination Act, 2007 (USA)

Labour Institutions Act, 2004 (Tanzania)

National ICT Policy of Tanzania, 2002

The United Republic of Tanzania Constitution, 1977.

Tanzania Communication Commission Act 1993

Tanzania Law of Evidence Act, 1967. CAP. 6

### **American statutes**

Copyright Act of 1790, (USA)

Digital Millennium Copyright Act, 1998 (USA)

International Copyright, Act of 1891(USA)

The United States of America Constitution, 1787

The Sonny Bono Copyright Term Extension Act.1998 (USA)

The Telecommunication Act 1996, (USA)

The Assistive Technology Act 1998, (USA)

The Uniform Electronic Transactions Act, Cal. Civil code No. 1633 (USA)

The Video Protection Act, 1998 (USA)

The Cable Television Consumer Protection and Competition Act, 1992 (USA)

Washington Electronic Authentication Act, 1998 (USA)

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Background of the Problem

Information and Communication Technology, (ICT) has now gained a very important place in the Tanzania economy. It has revolutionized the way businesses operate, replacing traditional modes of doing business, resulting in what is being called the “*New Internet Economy*”. Converging technologies such as the Internet, personal computers and wireless telephony have turned the globe into an increasingly interconnected network of individuals, firms, schools and governments communicating and interacting with each other through a variety of channels.

Electronic commerce and related applications of ICT have become tremendous engines for economic growth and productivity, and are changing the shape of the world in which mankind live. Businessmen and consumers are increasingly using computers to create, transmit and store information in the electronic format rapidly.<sup>1</sup> Computers change the quality and quantity of available information because they provide more data or other capabilities of dealing with, but more importantly they modify the context in which the information is used.

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<sup>1</sup> Malik, V., Cyber Law: “A Comparative Study for the Legal Framework for E-Commerce in India and the United States”, *The Southern Law Journal* xii, Fall 2000 pg.124.

On the justice system, the challenge is how to identify the possibilities and opportunities that these developments might bring. Information technology is currently influencing the social meaning and practices of law<sup>2</sup> giving rise to electronic justice which is a new information structure for the judiciary. It is the automation of bureaucratic procedures supporting judicial activities, the aim being to reduce backlog and improve case flow management.

Within Tanzania justice system, mainly being the court and other actors or players such as police, prisons, private law firms, Attorney General Chamber, Non Governmental organizations and individuals, there has been several attempts made to trounce the problem of civil cases delays.

These attempts to reform the civil justice system have been presented through different reforms propositions over periods of time and consequently put into action, some of these reforms are here under examined it's on its effectiveness in delivering justice; To begin with the recent attempt which took place in 1994 through establishment and incorporation of the Alternative Dispute Resolution, being Mediation and Arbitration in Tanzania legislations governing the civil proceedings; this was through the amendment of the *Civil Procedure Code Act*<sup>3</sup>, which incorporated the methods of alternative dispute resolution as mandatory process before the commencement of the main adversarial civil litigation.

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<sup>2</sup> David Altheide, "The Place of Law in Cyberspace." presented at the Symposium, "Law in a Wired Society: The Information Revolution and the Evolution of the Law," at the University of Dayton, in Dayton, Ohio, 22-23 March, 2001.pg 5.

<sup>3</sup> The *Civil Procedure Code Act*, Order viii A,B,C, [CAP 33;RE 2002].

Labour laws such as the *Labour Institutions Act*<sup>4</sup> and the *Employment and Labour Relations Act* were introduced containing ADR.

Another attempt was the establishment of the specialized divisions of the High Court, such as the Commercial court, the Land court and Labour court. These established courts deals with specific disputes, this aims at reducing congestion of cases under one roof the High Court of Tanzania.

The establishment of several special tribunals to litigate different civil disputes under specific laws and Institutions within Tanzania mainland also meant to reduce the backlog of cases and hence speedup the trend of civil cases in courts of law. Few examples can be mentioned herein; the District Land and Housing Tribunal established under the *Land Act*<sup>6</sup>, the Tax Revenue Appeals Tribunal for tax disputes appeals established under the *Tax Revenue Appeals Act*<sup>7</sup> etc, all of which aimed at reducing backlog of cases in courts of law.

The recent action of establishing several High Court Zonal registries such as Mbeya, Arusha, Mwanza, came in order to reduce the possibilities of justice delays by reason of long distance, travel expenses to parties and court.

Another attempt is that of finding to place legal recognition and admissibility of electronic evidence in Tanzania courts of law, this is one of the ways the court made

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<sup>4</sup> The *Labour Institution Act*, CAP. 7 of 2004 of the Laws of Tanzania.

<sup>5</sup> 2004, Tanzania.

<sup>6</sup> S. 167, the *Land Act* [CAP 113 R.E. 2002].

<sup>7</sup> S.4, the *Tax Revenue Appeals Act* [CAP. 408 R.E. 2006].

intervention so as to keep pace with technological changes in the society so as to hasten the trend of civil proceedings in Tanzania.

Having traced several reformation attempts made within the justice system in Tanzania which aimed at having an efficient and speed justice system, the researcher observes that there still is experience of justice delays within Tanzania justice system being in contradiction to the provisions of the *Constitution of the United Republic of Tanzania*<sup>8</sup> which sets clearly principles of civil justice in Tanzania, one being delivery of justice on a timely manner or without undue delay. This tends to necessitate conduct of this research.

## 1.2 Statement of the Problem

Article 107A (2),(b), of the *Constitution of the United Republic of Tanzania* sets principles of civil justice in Tanzania, *inter alia* being delivery of justice on a timely manner or without undue delay<sup>9</sup>. In observing this, several legislations which guide the justice delivery trend seek to incorporate different provisions providing for measures to keep pace with the Constitutional mandate. The Labour laws such as *Labour Institutions Act*<sup>10</sup> which establishes the Commission for Mediation and Arbitration and its rules, governing *inter alia* service<sup>11</sup> do provide for electronic means such as e-mail and fax as speedier means of filing pleadings and documents to the commission, these rules are inadequate and quite uncertain on proof of service. *The Civil Procedure Code Act*<sup>12</sup> observe silence on the issue of applying Information and Communication Technology in

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<sup>8</sup> Article 107A (2) (b) of the *United Republic of Tanzania Constitution*, 1977.

<sup>9</sup> *ibid*

<sup>10</sup> Section 12, the *Labour Institutions Act*, CAP. 7 of 2004.

<sup>11</sup> Section 6(1),(c), S. 8(1), (c), *The Labour Institutions (Mediation and Arbitration) Rules*, 2007.

<sup>12</sup> *The Civil Procedure Code Act*, CAP. 33(RE 2002).

justice dispensation procedures such as filing pleadings, service of summons, and other relevant documents to the court of law. The Tanzania policy on ICT does promise to establish and maintain an enabling legal regulatory framework, aligned with Tanzania's constitutional provisions, legislative and regulatory environment and consistence with regional and global best practices<sup>13</sup>.

Though there is some progress on the application of ICT in Tanzania justice system, still the observed use can be rated insignificant. There is still a very minimal deployment of ICT in daily justice dispensation processes; examples can be drawn from the High Court of Tanzania- Dar es Salaam registry where there are poor infrastructures such as small number of computers, printing machines, fax machines, absence of website, and inadequate number of ICT personnel and low knowledge of ICT among judiciary personnel<sup>14</sup>. In the High Court of Dar es Salaam, Commercial division the only ICT system introduced is the display of the cause list on screens found in the court premises which can't be accessed online away from the court premises.<sup>15</sup> Most of private law firms are found to be much equipped with ICT such as computerized office firm networks and internet facilities, other have developed their own websites and infrastructures such as electronic payment systems hence much of the manual work have been replaced by ICT<sup>16</sup>.

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<sup>13</sup> Tanzania ICT policy, 2002.

<sup>14</sup> See pg. 30; *Department of ICT, High Court of Tanzania*, as accessed in August, 2008.

<sup>15</sup> High Court of Tanzania-Dsm registry Department records as to August 2008.

<sup>16</sup> *Position Paper on the Review of the Civil Justice System*, Ministry of Justice and Constitutional Affairs, Dec. 2006.

The provisions of the Constitution of the United Republic of Tanzania, providing for timely manner of justice dispensation one being use means such as ICT is not enough reflected by the laws guiding judiciary activities. The present state of ICT use is still insignificant to meet justice delays within the justice system of Tanzania. The silence of the laws providing for civil justice procedures do hereby necessitate this research and pose of arguments which will reveal the significance of ICT in solving the problem of justice delays within the players of justice system.

### **1.3 Justification for the study**

Karl Marx<sup>17</sup> is oft quoted as having said that history repeats itself, first as tragedy, second as farce. This statement holds insightful significance to the researcher, and particularly, recommendations, proposals to be deployed of ICT in daily justice dispensation processes in Tanzania. Early periods were characterized by inefficiency in the legal justice system. Lack of a well organized ICT system in Tanzania is evident by a backlog of cases and delayed court hearings. The demand for speedy trials could simply not be met by establishing other zonal courts across the country. What is needed is an efficient judiciary. It is with this in mind that I embark on writing this dissertation. It is imperative that reasonable and practical recommendations be made towards the resolution of the problems associated with inadequate use of ICT in the justice system

#### *Hypothesis*

The inadequate use of ICT amongst actors in justice administration in Tanzania has led to delay in justice administration in Tanzania.

### **1.5 Objective of the Study**

The objective of this study is to find out whether the inadequate application of ICT in justice dispensation in Tanzania is of any relation to the ongoing problem of justice delay.

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<sup>17</sup> Marxist school of thought.

## 1.6 Literature Review

Susskind, R<sup>18</sup> in his book titled; *the Future of Law, Facing the Challenges of Information Technology*; identifies present and future roles of ICT in the justice system, in that, despite of many other dimensions such as strategy, planning, management, training and technical infrastructure, addition of four other roles which explain Information and Technology (IT) and law relationship are discussed by the author.

First, legal information processing task (legal task), these are the things that lawyers do in the daily law practice in whatsoever their fields of expertise. The second is enabling techniques such as hypertext and telecommunications which can be used to undertake the tasks. Away from enabling, the third role is applications, which are the major uses to which lawyers put information and telecommunication. Litigation support systems are the best examples which enable the lawyers to conduct litigation. The last role is Packages.

The author by portraying usefulness of IT in law practice, do contribute much to the foundation of this research paper. The researcher finds justifications as to problems of justice delays existing in Tanzania justice system and extent to which ICT is of much effect towards solving the problem. The research will reveal how adoption of IT best practice in other jurisdictions such as United Kingdom can foster changes in Tanzania justice system.

Chissick, M<sup>19</sup> in his book titled, *Electronic Commerce: Law and Practice*, go on to discuss how Information and Technology is of great impact to different law practicing

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<sup>18</sup> Sussikind, R, *the Future of Law, Facing the Challenges of Information Technology*, 1998.

<sup>19</sup> *Electronic and Commerce: Law and Practice*, 2000.

categories. The author explore the use of IT in fields such as Competition law, online contracts, enforcement, jurisdiction (forum), choice of law, laws on Intellectual Property being; copyright, trademarks and Confidential information. He goes further to discuss about electronic evidence and security and the issue of IT in Taxation through online means. The author gives a wider coverage on material on how IT can facilitate the development and accessibility of several law subjects as seen herein above.

However Chissick, M., never give knowledge on the application of IT in furthering judicial proceedings, police investigations, prison management, and other fields which associate the justice system.

Lukumay Z <sup>20</sup>, argues that the societies having no way to put aside technological developments dominance in all sectors of life, our judicial system should try to keep pace with this fast going change. He bases much on the need of the court system to recognize and accept the admissibility of electronic evidence, the argument being that the society fast change economically, socially, politically, culturally, technologically necessitates further interaction in the term of globalization hence the need to adopt ICT technology and its admissibility in courts of law. Though the author covers much on the relevance of ICT on the rules of evidence do not give much on how the same can hasten the delivery of justice in our court systems.

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<sup>20</sup> *The Use of ICT in Tanzania judiciary: Potential and prospects, 2007.*

well  
cor  
Lederman E., and Shapira R.<sup>21</sup> their work on the application of ICT in the process of justice delivery is influential and very useful, exploring how ICT if properly deployed in judiciary can successfully influence economic development in the specific country and its community at large. Though the authors extensively cover the issue on the aspect of economic gain, do not advance knowledge on how the same can have social influence to the community.

Shelton D E<sup>22</sup>, observes that even within the workings of the court system itself, many judges are not only reluctant but even hostile to the use of the computer technology that is common place throughout the rest of the society.

Waleed, H.M., that Lack of knowledge of senior policy makers and judges on the importance of ICT and their commitment to modernize. Benefits and opportunities available with ICT to improve business processes and core judicial operations are not well articulated. Efforts to improve access to justice, citizen participation and communications that can be "leveraged" through the introduction of technologies, have generally not been targeted to appropriate levels of decision makers. Too many of the initiatives are handled at low levels that have functional rather than decision-making authority and clout. This has at times resulted in funding cut-offs and shelved projects. Managerial turnover, and communications problems across cultures and languages also have impaired the pace and success of the projects in most underdeveloped countries<sup>23</sup>.

This is also a major problem in Tanzania judicial system, in that most of the project initiated to restructure and develop the justice system either paralyze or end up dormant.

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<sup>21</sup> Law, Information and Information law, 2001.

<sup>22</sup> Shelton DE, "All Aboard: Electronic Filing and the Digital Divide," *Judges' Journal* 40, no. 3.

<sup>23</sup> Waleed H.M., *the World Bank, E-justice Towards a Strategic Use of ICT in Judicial Reform, Marrakech Conference Strategies for the Modernization of Justice in Arab Countries Organized by Pogar, Morocco, 2002*

This is because many commercial ICT initiatives are not viable in Tanzania at present for reasons that include out of date institutional frameworks, poor transport infrastructure, ineffective national payments system, inadequate postal services, lack of street names for home delivery, absence of credit infrastructure, etc.

Again, Shelton E<sup>24</sup>, in his book, *A Close Look to Technology*, observes that prosecutors may use advantages of modern science and technology as a tool to meet their burden of proving guilty beyond reasonable doubt. In USA or example, the response of judicial system so far has been predictable. There has been small and increasing, but for the most part begrudging, acceptance of the use of technology in the mechanism of the courts. This is insignificantly observed in Tanzania justice system due to low level of technology incepted in it. The author therefore, has much revealed the practice of most developed country justice system (USA), it is thus this research paper to have a view on the Tanzania justice system extent of ICT usage and pose some useful recommendations.

Jim Yonazi of the The Institute of Finance Management in Dar es Salaam- in his book “challenges on the ICT policy in Tanzania” identifies three categories of success factors have contributed to facilitating ICT in Tanzania, namely the affordability, availability, and adoption of ICTs; supportive social infrastructure (levels of literacy and Kiswahili as the national language); and presence of government will.

### **1.7 Scope of the Research**

This study will be limited to the use of the information and communication technology, and all other issues necessarily relevant thereto. The research will not be limited to Tanzania, Dar es salaam though by its very nature, the research necessitates perusal into certain aspects of the international justice system and also to other jurisdictions, especially developed countries on the adoption of IT best practice in other jurisdictions and how they foster changes in Tanzania justice system.

### **1.8 Research Methodology**

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<sup>24</sup> Supra No.22

The study of legal problem entailed in this research involved both primary (field research) and secondary (Library) data collection methods ,the primary data is derived from libraries while secondary data is derived from publications of eminent scholars on the relevant field. Also consulted were policy documents and other reports touching on issue pertinent to this dissertation. Given the dynamic nature of the area of research, the internet, newspaper articles and journals are also relied as an indispensable source of information in the writing of the dissertation.

The internet being the most useful source of information in this research helped to form a critical comparison as to other countries progress and extent of application of the ICT in justice dispensation. The research will not be constrained with regard to time.

## **1.9 Chapterlisation**

The content of the report is summarized as stated below.

### **Chapter Two**

Contained herein will be History of legal development and ICT in the USA, in the United Kingdom, Tanzania, and a thorough discussion of The Tanzanian ICT National Policy.

### **Chapter Three**

Here, I will explore the History of Application of ICT in Tanzania Judiciary and, further examine the Current Situation , ICT infrastructure, Software, Prospects for use of ICT, Automation of Court Records, Video Conferencing, E-Library, Proposed Case File Monitoring System Also included are Challenges there to.

### **Chapter Four**

Contained herein will be a review of the prospects for use of ICT ,the automation of court records, video conferencing and E-Library.

## **Chapter Five**

Contained herein will be my Conclusion, Recommendations and Bibliography.

### **2.0 Conclusion**

My conclusion is that ICT is the lifeblood of business and support institutions including the government. Courts as crucial business support institution cannot afford to be left behind. It is unfortunate that the legal sector reforms came a little bit late in the reform process in Tanzania. This notwithstanding, we have to complete the circle and the circle cannot be completed without implementing the recommendations suggested herein. And in order to succeed in the crusade, continuous training is a vital tool.

## **CHAPTER TWO**

### **HISTORY OF LEGAL DEVELOPMENTS AND ICT**

#### **2.1 Introduction**

Information technology began in the early 1970's where most work was characterized by back office applications of IT, especially word processing and accounting systems. This then was back office automation, the computerization of existing functions and processes, with a view to greater efficiency and the control or reduction of costs by replacing administrative staff with machines and by executing back office tasks more quickly. However, this system remained metaphorically and literally in the back of the office, requiring purpose –built, dedicated terminals which were generally located in the legal libraries.

#### **2.2 History of legal developments and ICT in the United States of America**

United States of America being one of the most developed countries in the world has undergone much development in the legal sector or system, this is to great extent due to the high commitments, availability of funds for facilities, legal experts and research conducts, high legal expertise<sup>25</sup>, and to the concern of this research the fact that USA has gone far in terms of information and communication technology and its fruitful application in economic social, political and cultural spheres.

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<sup>25</sup> Visit; <http://www.uscourts.gov/rules/privacy2.html>.

The legal developments and ICT in USA can be traced in different perspectives such as the case management systems and practice (Electronic Case Files), data protection, admissibility of electronic evidence, Intellectual property and soft copy protection as follows;

CM/ECF is the federal courts' case management and electronic case files system. It provides courts enhanced and updated docket management. It allows courts to maintain case documents in electronic form. And it gives each court the option of permitting case documents - pleadings, motions, petitions - to be filed with the court over the Internet<sup>26</sup>.

The Federal Judiciary's Case Management/Electronic Case Files (CM/ECF) project revolutionized the way in which the federal courts manage their cases and documents. This easy to use system allows attorneys to file documents directly with the court over the Internet and courts to file, store, and manage their case files in an easy to access, transparent way.

The CM/ECF system uses standard computer hardware, an Internet connection and a browser, and accepts documents in Portable Document Format (PDF). The system is easy to use – filers prepare a document using conventional word processing software, then save it as a PDF file. After logging onto the court's web site with a court-issued password, the filer enters basic information relating to the case and document being filed, attaches the document, and submits it to the court. There are no added fees for filing

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<sup>26</sup> USA department of justice accessed by; [www.usdoj.gov](http://www.usdoj.gov).

documents over the Internet using CM/ECF. A notice verifying court receipt of the filing is generated automatically and e-mailed to the parties in the case<sup>27</sup>.

CM/ECF provides courts the ability to make their documents available to the public over the Internet. Electronic access to court data is available through the Public Access to Court Electronic Records (PACER) program. Litigants receive one free copy of documents filed electronically in their cases, which they can save or print for their files. Additional copies are available to attorneys and the general public for viewing or downloading at eight cents per page, with a maximum cost per document of \$2.40. Copies of court opinions, as designated by the authoring judge, are available at no charge. Neither the free copy nor the maximum cost per document applies to transcripts filed with the court. Directed by Congress to fund electronic access through user fees, the judiciary has set the fee at the lowest possible level sufficient to recoup program costs.<sup>28</sup>

Amendments to the Federal Appellate, Bankruptcy, Civil, and Criminal Rules of Procedure address issues relating to privacy and public access to electronic case files. The Rules require that filers redact certain "personal identifier" information, such as Social Security numbers, from their filing<sup>29</sup>.

The national roll-out of the CM/ECF system for bankruptcy courts started in early 2001. The CM/ECF system for district courts began to roll out nationally in May 2002. Implementation of the CM/ECF system for appellate courts began in 2005. Over 34 million cases are on CM/ECF systems, and more than 400,000 attorneys and others have

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Visit; <http://www.uscourts.gov/rules/privacy2.html>.

filed documents over the Internet<sup>30</sup>.

In terms of data protection, United States of America federal government has adopted number of legislations to assure such protection, examples can be: the *Video Protection Act*<sup>31</sup>, the *Cable Television Consumer Protection and Competition Act*<sup>32</sup> and the *Fair Credit Reporting Act*<sup>33</sup>.

The issue of electronic evidence admissibility has been given importance through inception in the laws governing evidence admissibility, that evidence embedded in electronic form shall be admissible<sup>34</sup> and through case law rulings such as in the case of *Lorraine v. Markel American Ins. Co.*<sup>35</sup>

Same development has been met in the field of intellectual property laws, where by the federal government has adopted legislations to cover the issue of Intellectual property, this intent over strict protection of intellectual rights is evidenced even in the *United States Constitution*.<sup>36</sup>

Also there are legislations to cover software copyright, the relatively recent extension of copyright law to machine-readable software. It is used by proprietary software companies to prevent the unauthorized copying of their software. It is also used by proponents of open source software to encourage the disclosure of improvements to source code.<sup>37</sup>

Other legislations covering intellectual property rights are such as TRIPS Agreement,

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<sup>30</sup> Accessed by: <http://www.pacer.psc.uscourts.gov>.

<sup>31</sup> The Video Protection Act, (18 U.S.C. 2710), 1998

<sup>32</sup> The Cable Television Consumer Protection and Competition Act, 1992, accessed through: <http://en.wikisource.org>

<sup>33</sup> The Fair Credit Reporting Act, 15 U.S.C. § 1681

<sup>34</sup> USA Federal Rules of Evidence [ LII 2006 Ed.]

<sup>35</sup> 241 FRD 534 (D. Md. 2007)

<sup>36</sup> [1]Article I, Section 8, Clause 8 aka Copyright Clause of the United States of America Constitution, 1787

<sup>37</sup> 17 U.S.C. § 117 of the United States Copyright Act, 1976

which came into effect on 1 January 1995, *Copyright Act of 1993*, *International Copyright, Act of 1996*, *Digital Millennium Copyright Act*, and the *Sonny Bono Copyright Term Extension Act*.

Other laws covering on ICT are such as, the *Telecommunication Act 1996*, the *Rehabilitation Act 1998*, the *Assistive Technology Act 1998*, the *Uniform Electronic Transactions Act*<sup>38</sup>, *Washington Electronic Authentication Act*<sup>39</sup>, *Government Paperwork Elimination Act*<sup>40</sup> all of which provide for the authentication of the electronic signature.

### **2.3 History in the United Kingdom (UK)**

Widespread investment in Information technology for legal profession in the United Kingdom began in the early 1970's. And in the period that followed, the emphasis was overwhelming the law office rather than automating the lawyer.

The 1970's and the 1980's were characterized by back office applications of IT, especially word processing and accounting systems. Similarly, in the court system, the leading applications were administrative in nature and very rarely extended into court room for use by the judges.<sup>41</sup>

This then was back office automation, the computerization of existing functions and processes, with a view to greater efficiency and the control or reduction of costs by replacing administrative staff with machines and by executing back office tasks more quickly.

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<sup>38</sup> The *Uniform Electronic Transaction Act*, Cal. Civil code No. 1633.

<sup>39</sup> The *Washington Electronic Authentication Act*, CAP 19.34RWC, 1998.

<sup>40</sup> The *Government Paperwork Elimination Act*, Pub.L.105-277.

<sup>41</sup> Ibid.

Until the late 1980's, a terminal or personal computer (PC) on a lawyers desk was a rarity in the UK. The main applications of IT for lawyers themselves, for legal research purpose, were legal information retrieval systems and, most notably, LEXIS<sup>42</sup>. Again however, this system remained metaphorically and literally in the back of the office, requiring purpose –built, dedicated terminals which were generally located in the legal libraries- although a tool for legal research, this physical placement of LEXIS terminals was symbolic of the back office role most lawyers allocated to IT.

From 1990 onwards, however, all branches of a legal profession seemed to awake from their slumber and, with the advent of ever more powerful and networked personal computers, began to take the technology from the back office to the front office, from the IT cupboard in the basement, and from secretaries' desks, into the rooms of lawyers themselves. While some machines were no more than expensive paper weighs, many lawyers-solicitors, barristers and judges began to use IT themselves. At first this was again dominated by automation (as opposed to innovation) and especially word processing; and many legal practitioners and judges became adept at drafting directly on their own machines<sup>43</sup>. In the early 1990's considerable interest was also shown in litigation support technology through which documents loads could be handled more effectively in the context of resolving disputes. At the same time, legal publishers began to explore electronic publishing and gradually sought to make useful legal sources

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

available electronically, most commonly on CD- compact disk. But the emphasis still was on automation, albeit in the front office<sup>44</sup>.

Portability of machines was fast recognized in the early 1990's as holding great potential and this, together with internal local area networks and external electronic communications, led a small number of more inspired enthusiasts to recognize that it was possible to innovate through IT and to bring about radical change in the working practices.

Electronic communication between lawyers and their clients emerged as a key illustration on the way in which there could be substantial change in relationships between lawyers and those they advised. In the UK, 1995 was the year in which electronic communications for lawyers began to takeoff, bolstered largely by the general hype about information superhighways and the internet; as well as by the introduction of the legal electronic network known as link<sup>45</sup>.

Thus, the technology within twenty five years had moved from the back office through the front office and reached into the client office itself.

At conferences and exhibitions, as well as in relevant trade magazines, there was growing conviction in 1995 that IT would indeed exert considerable influence on lawyers' working lives. Back office applications, of course, became ever more sophisticated; especially practice management systems complete with marketing and personnel

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<sup>44</sup> Sussikind R, *supra*.

<sup>45</sup> *Ibid*.

databases. However in forums such as the society for computers and law and ITAC (Information Technology and Courts Committee set up by the Lord Chancellor in 1985) there had been this quite definite movement towards applications of IT for lawyers themselves. Market studies showed an upsurge in investment in front-office and client office systems, while a pilot project on IT for judges (JUDITH- Judicial IT help) was held to have been a success and led to commitment by the Lord Chancellor's department providing portable computers and a suite of applications to 300 judges by the end of 1995<sup>46</sup>.

Comprehensive support and endorsement for IT was also expressed by Lord Woolf in 1995, in his Interim Report (Access to Justice) to the Lord Chancellor concerning the streamlining of the civil justice system generally.<sup>47</sup> IT was there to be a vital enabler for the more general changes being advocated- for instance, in areas such as judicial case management and providing guidance to citizens on legal matters.

## **2.1 Legal history of ICT development in Tanzania**

In 1974 the Tanzanian government banned computers with an aim to avoid dumping and reducing electronic waste in the country. The organizations shipping the used computers are being paid to get them out of those countries, but are disguising themselves as donors assisting Tanzania. After the ban, several initiatives have been made that enable relaxation of that order. Although the order was effective for Tanzania by then a member of the East African Community could not affect the activities of the EAC, since most of their functions were computerized<sup>48</sup>.

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<sup>46</sup> See Susskind R, *supra*.

<sup>47</sup> Lord Woolf (MR), *Interim Final Report on Access to Civil Justice*, 1995(UK).

<sup>48</sup> Sheya and Koda, (1987), *Culture of Maintenance for Sustainable Development in Tanzania*, pg. 4 .

The EAC ran all Railways, posts and Communications, Civil aviation directorates, harbors and an airline for the entire member states. Several of these organizations had computerized their operations. When the EAC broke up in 1977, each country had to setup its own organizations so as to take over the services that had been carried out by the EAC. For example, the Court of Appeal for East Africa had to pass its appellate powers as the final court of appeal for the three countries to each individual state's court of Appeal. For most organization formed in Tanzania including court system, there were problems because they were taking over systems that had been previously computerized during the EAC existence and were now reverting to manual operations.<sup>49</sup>

The government was therefore under pressure to buy computers for these new organizations. The organizations had the necessary Tanzanian experts who had worked with the EAC. The government therefore allowed Tanzania Harbors Authority, Tanzania Posts and Telecommunications, Air Tanzania and Tanzania Railways to install computers.<sup>50</sup>

The 1974, was so effective that practically no public organization managed to import a computer until the end of the decade. In the late 1970's organizations were still using computers bought in the 1960's. These were already obsolete and frequently broke down; users were being told by vendors that it was very difficult to acquire spares for the old computers. One of the users of these computers was the Ministry of Justice which was later given chance to replace their old computers by the Ministry of Finance.<sup>51</sup>

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<sup>49</sup> Mhayaya, S.G.,(2004) A study of the Potential Usage of ICT (E-Gov) in Improving Efficiency and Effectiveness of "Executive Functions", pg. 16.

<sup>50</sup> *ibid.*

<sup>51</sup> *Op. cit.*5.

As in many parts of the world, small firms and individuals can easily afford microcomputers. Microcomputers are also very small in size compared with the second generation computers, which were still in use up to the early 1980's.

In Tanzania many private companies and some individuals started to import computers using their own funds, although the government continued to monitor the importation, it was soon overwhelmed as the number of units being imported in the country grew, importers of computers being required to obtain a permit before importation. However, application for import license for microcomputers began to be submitted after the computers had been installed. The government became even laxer than before because, in the case of microcomputers imported by private organizations and individuals, it was not financially involved.<sup>52</sup>

### **2.3.1. The Government Builds National ICT Policy**

As nations dash to be part of the information age, Tanzania has instantaneously realized that it is policy and not charity that will ultimately determine whether it can positively capitalize on the digital revolution and exploit its fruitful opportunities for national development. In this regard, the government has commissioned a team of experts under the stewardship of the communications ministry to develop the national policy for information and communication technology (ICT) that will steer the country through the e-age<sup>53</sup>. Considerable assignment has been covered and vital aspects of scheme put in place where some government department and other groupings have already performed

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<sup>52</sup> *ibid*

<sup>53</sup> *Opp. cit.* page 18

significant amount of work on ICT development initiatives, for example; E-think Tank and the secretariat with collaboration with UN development program under the leadership of the Ministry of Communication and Transport. Task force have complied a frame work of the national ICT policy.<sup>54</sup> Three categories of success factors have contributed to facilitating ICT policy in Tanzania, namely the affordability, availability, and adoption of ICTs; supportive social infrastructure (levels of literacy and Kiswahili as the national language); and presence of government will. At the same time, four categories of issues were identified to challenge the successful uptake of ICT4D in Tanzania, namely an unsupportive ICT connectivity and supporting infrastructure; inadequate quality of ICT content; unsupportive organizational issues and people-related challenges.

In reflect to the Tanzania Development Vision 2025, five main attributes have been mentioned *inter alia* is, peace, stability and unity, pointing specifically to strategic ICT leadership and legal & regulatory frame work.<sup>55</sup>

On the part of the civil justice system, a progress has been made in terms of several researches and released reports such the Mark Bomani Legal Task Force of 1993-1996. In 2006, the Ministry of Justice and Constitutional Affairs published a report prepared by the Law Reform Commission of Tanzania under the BEST PROGRAMME, titled;

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<sup>54</sup> Mhayaya, S.G., 2004.

<sup>55</sup> Tanzania Development Vision 2025.

*Position Paper on the Review of the Civil Justice System*, which reviewed the weaknesses of the Tanzania civil justice system giving several recommendations<sup>56</sup>.

Another progress which has been made in the civil justice system in relation to the use of ICT in justice dispensation is on the part the labour laws such as *Labour Institutions Act*<sup>57</sup> which establishes the Commission for Mediation and Arbitration and its Rules, governing the commission service of pleadings<sup>58</sup>, do provide for electronic means such as e-mail and fax as speedier means of filing pleadings and documents to the commission, though to comment, these rules are inadequate and quite uncertain on proof of service. *The Civil Procedure Code Act*<sup>59</sup> being the main legislation guiding civil proceedings in Tanzania observe silence on the issue of applying Information and Communication Technology in justice dispensation procedures such as filing pleadings, service of summons, and other relevant documents to the court of law.

### 2.31 Conclusion

It is important to note that the first computer in Tanzania was installed in the Ministry of Finance in 1965. The introduction of computers was beset by problems in almost all installations. These was due to the Lack of Qualified Indigenous Personnel and Uncoordinated Planning , however the situation became better when the government intervened and banned importation of computers when it came under great criticism from members of parliament and the general public after the failure to computerize the government accounting system and the consequent heavy financial loss

<sup>56</sup> Ministry of Constitutional and Legal Affairs: *The Position Paper on the Review of the Civil Justice System of Tanzania*, December, 2006.

<sup>57</sup> *Supra*, The Labour Institutions Act, CAP. 7 of 2004.

<sup>58</sup> Section 6(1),(c), S. 8(1),(c), The Labour Institutions (Mediation and Arbitration) Rules, 2007.

<sup>59</sup> The Civil Procedure Code Act, CAP. 33(RE 2002).

## CHAPTER THREE

### THE LAW AND USE OF ICT IN THE TANZANIA JUDICIARY

#### 3.1 Introduction

This research was conducted in between July and August, 2008 specifically premised at the High Court of Tanzania- Dar es salaam. The aim of this research was to find out whether the issue of ICT has anything to do with the ongoing backlog of cases in the judiciary. To a large extent field observation was relied upon so as to ensure accuracy of the collected data for the success of this piece of work, interviews were conducted with those court personnel directly responsible for the flow of cases in the judiciary, these included registry section, registrar.

#### *The State of the Tanzanian Judiciary*

It is sad that the government is so reluctant to even recommend that the judiciary should be involved in the ICT process, court records are still stored in files which many times are prone to theft, some of the staff i.e. court clerks and court process servers are not even sufficiently trained on areas of ICT applications. Judges and magistrates in the judiciary are equally running a risk of being redundant in the future if they remain with their traditional approach. Traditional approach here is that of orality and paper based application of every matter in legal environment.

#### *The Civil Process*

It is observed that the case filed in the High Court, goes through a chain of processes until disposal. The process commences by a party filing a plaint. The Registry clerk receives the plaint, determines fees and gives it back to the party for him or her to go to the cashier

to pay filing fees. The party returns the plaint to the clerk with an exchequer receipt evidencing payment<sup>60</sup>.

The clerk opens a case file and assigns it a number normally determined by the general register. The file then is physically transmitted to the Judge or Magistrate in Charge for assignment. The assigned Judge or Magistrate then issues an order for service to the Defendant.

The case file is returned to the Registry for preparation of summons which is normally signed by the Registrar in case of the High Court or a Resident Magistrate in case of a Resident Magistrate's or District Court. The process server has to affect service physically to the Defendant, who is supposed to file a written statement of defense within 21 days of receipt of the plaint<sup>61</sup>.

Thereafter, it is followed by the pre-trial settlement and Scheduling Conference<sup>62</sup>, where, all parties and their advocates are called before the court so as to determine whether; all pleadings are complete, all documents intended to be relied by the parties are present, time which the dispute is intended to consume and whether the pleadings disclose any Preliminary Objections. Once this process is over the court will fix the date for mediation process unless there arise any preliminary objections.

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<sup>60</sup> Zakayo Lukumay, The Chief Training, Research and Statistics Officer of the Judiciary of Tanzania.

<sup>61</sup> Ibid, *Use of ICT in Tanzania Judiciary: Zakayo Lukumay, Potential and Prospects*. Paper presented on African Judges and Legal Practitioners Conference in Sept 2007-Arusha, Tanzania.

<sup>62</sup> Order viii A, Rule 1, Civil Procedure Code Act, [CAP. 33, 1966].

Mediation <sup>63</sup>being mandatory process before jumping to the conventional litigation, its failure means the main suit beginning while its success means the dispute amicable end is attained, this was introduced in 1994 so as to cut short the prolongation of civil disputes and find amicable resolution of the same<sup>64</sup>.

Having completed the process of mediation but failure to resolve the dispute, the file is placed before a presiding Judge for fixing a hearing date. In between the trial process there might be, depending on the nature of the case, a number of interlocutory applications. Parties have to appear before a judge even when a case is scheduled for mention. There are some occasions for one reason or another, when a case is fixed for hearing to hear it being mentioned. In many occasions parties and their advocates may not have prior information of what is going to take place when she/he goes to appear before a trial Judge or magistrate. A party may travel or fly hundreds of miles just to file documents in Court. The expenses should always be borne by a litigant.

The entire herein above explained civil process is extensively elaborated through a sketch to be found on the next page.

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<sup>63</sup> Mediation and Arbitration Rules under section 15(1)(e) of the Labour Institutions Act No. 7 of 2007.

<sup>64</sup> Tanzania Government Notice No. 422 of 1994.

### Sketch showing the civil process in a High court

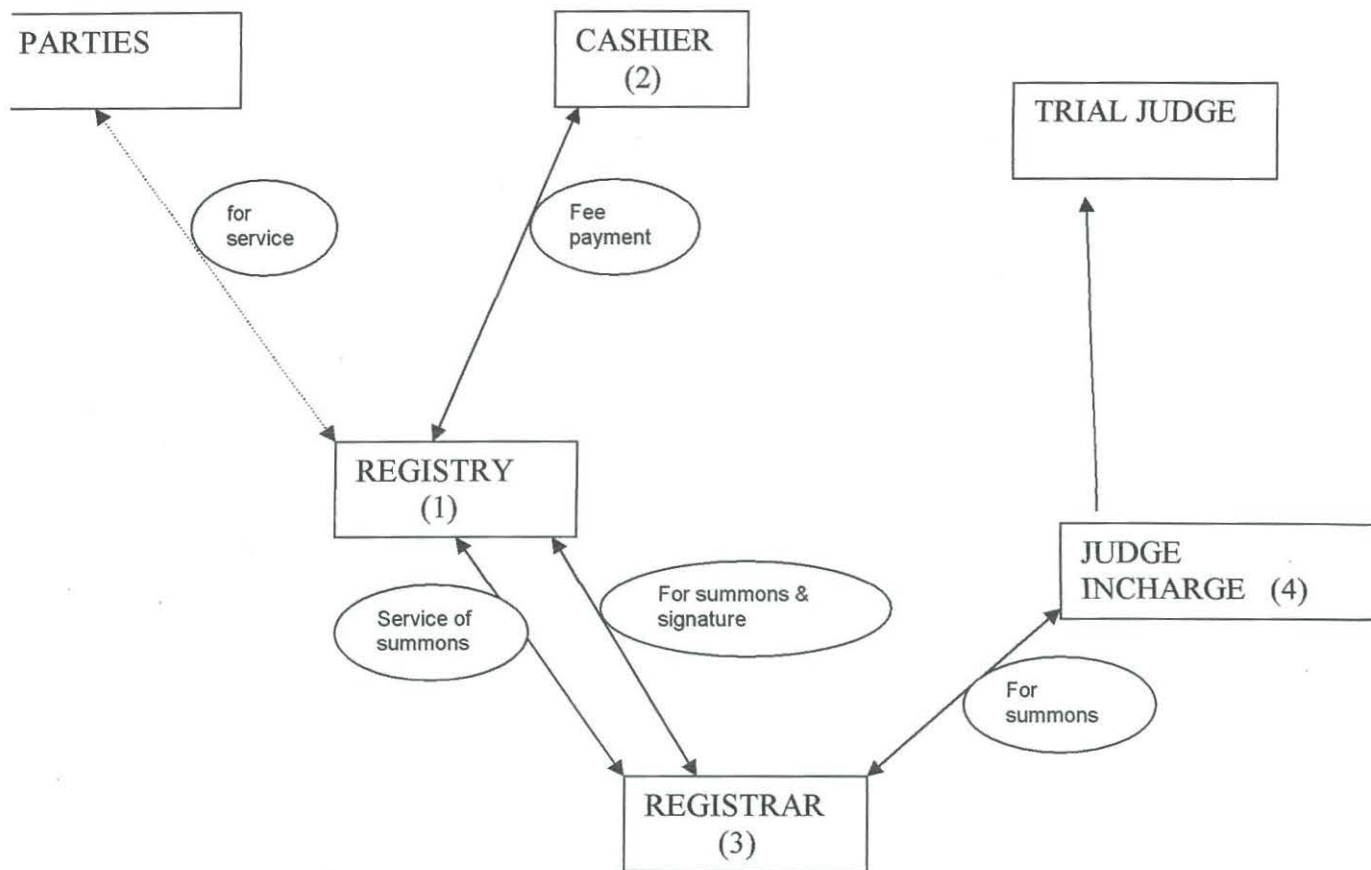


Figure 1; sketch by Jim Yonazi.<sup>65</sup>

The process above is normally estimated to take about a week or two. However, the process seem to take this long (one to two weeks), because there is little applications of ICT in this process such as documentation, photocopying, typing, scanning and normal communication facilities such as telephones and internet use. The only modern system thought to be modern is found in the Commercial High Court Division in Dar es salaam,

<sup>65</sup> "Challenges on the ICT policy in Tanzania" Hand book pg 34.

where cause list can be posted on screens found within the court premises and not online to be viewed anywhere through internet access.

It is herein argued that ICT if properly employed can reduce the number of days taken before a file is placed before a trial judge or magistrate. ICT can also be used in recording of proceedings in court, which is also another handicap to a speedy trial<sup>66</sup>.

### **3.2 History of Application of ICT in Tanzania Judiciary**

The application of information technology in the judiciary began in 1990, with installation of case management system at Kisumu RM's Court and the High Court, Dar es Salaam Zone, under the financial support of the United States Agency International Development (USAID)<sup>67</sup>.

Two databases were installed. The first one was called Testdb and the second was called Courtdb. Testdb was for tracking ADR cases while Courtdb was for case management. The Local Area Network interconnecting four computers was established. While the Kisumu server lasted for four years only, the High Court LAN continued to survive but the Case Management Database could not last long. The problem with courtdb was lack of local technical support, as the software was not available in the country<sup>68</sup>.

These initiatives to computerize the Judiciary did not have any impact to the administration of justice due to a number of reasons. First, there was no clear strategy for introduction of ICT. The management hardly knew what was going on. Second, the move

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<sup>66</sup> *Supra*, Lukumay N.Z pg 87.

<sup>67</sup> *Ibid*.

<sup>68</sup> *Supra*, Department of ICT, the High Court of Tanzania, as accessed in August, 2008.

did not address the real density of the problems of the Judiciary one being delay of justice. Experts involved did not have in mind the exact requirements in relation to ICT.

Third, the early computerization projects made use of foreign experts mostly from USA. The system could only work in presence of these experts and when they left, the whole system collapsed. The Judiciary at that time did not have any qualified personnel. Fourth, high costs of computers and accessories made the management reluctant to put ICT in the top priority. Fifth, there was lack of knowledge on senior policy makers and judges on the importance of ICT and their commitment to computerize the Judiciary. The experts did not make clear to users the benefits and opportunities available with ICT to improve core judicial operations<sup>69</sup>.

### **3.3 Current Situation**

Despite the fact that initiatives to computerize the Judiciary of Tanzania began in the 1990's, ICT usage is still under the infancy stage. There has been effort to modernize the court with ICT, these are such as the establishment of the cause list system at the High Court Commercial Division- Dares salaam where by parties' names, schedule for hearing and the presiding judge are displayed, and hence it makes necessary for the parties to go around court premises to observe.

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<sup>69</sup> Supra, Lukumay Z.N pg. 95

### 3.3.1 ICT Infrastructure

Information and Communication Technologies, properly defined, refer not so much to pieces of equipment, as the way they are put together, functionally deployed and utilized to further simplify to, exchange and share relevant information.<sup>70</sup> The infrastructure required for e-Justice is personal computers, laptops and tables, remote access (secure, video and audio recording, wireless and bi-metric security. The nature of existing ICT infrastructure in the Judiciary of Tanzania does not yet allow transmission of information as many computers are stand alone and only used for word processing<sup>71</sup>.

The statistics of computers and other ICT facilities available in the Judiciary is as follows:

Name of Court	No. of Computers	No. of Printers	No. of Photocopiers & scanners	Voice Recorders	Projectors & video cameras
Court of Appeal Building	37	30	9 & 3	-	2
High Court Building	62	35	1 scanner	Court recording system	2
Commercial Court Division of the High Court	20	20	1	Voice recording system	
High Court Zones	56	35			
Subordinate Courts	7	5			

Figure 2; 1998, the Tanzania Country Program; Justice ministry

Also 25 laptops are said to be disbursed to judges, registrars and other senior officials of the High Court- Dar es Salaam registry<sup>72</sup>.

<sup>70</sup> <http://www.google.com/search?hl=en&q=status+of+ICT+&btnG> Google+Search.

<sup>71</sup> Supra, Lukumay Z.N pg. 95, *The Position Paper on the Review of the Civil Justice System*, 2006.

<sup>72</sup> Department of ICT, High Court of Tanzania, as accessed in August, 2008.

The Court of Appeal and High Court buildings are joined together and have a network of computers and the internet is the only resource that is shared.

#### **3.4.2 Software**

As mentioned above, case management software has been installed at the High Court but it is still on trial basis since 2005. One wonders why such a long trial period. It is also doubtful whether progress of data entry is monitored by anybody. The usage of information entered in this software is apparently minimal. Currently, it is used to query case status. It is expected that the software will be installed for use in the Court of Appeal, High Court and subordinate courts all over the country<sup>73</sup>.

It is suggested here that the management should make all possible efforts to install the database in zones and regions all over the country. Before doing this, the software, given the name of CMSPro 3.1, needs to be reviewed for the purpose of rectifying some anomalies including the language used. The software was prepared by non-lawyers, hence lacks legal language.<sup>74</sup>

The Commercial Division of the High Court installed similar software in 2000. The software enables availability of case reports including a daily and weekly cause list which is displayed on video screens available within the court premises. These records are expected to be available online when the website is launched. There are also facilities for recording of proceedings in the Commercial Division of the High Court. The system,

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<sup>73</sup> Department of ICT, High Court of Tanzania, as accessed in August, 2008.

<sup>74</sup> *Supra*, Lukumay N.Z.

being analogue in nature is a bit slow and it is not connected to the server. Efforts are ongoing to secure a digital recording system<sup>75</sup>.

Some law reports are also available on CDs. These are Tanzania Law reports (1983 - 1997), All England Reports (1936 – to date), Encyclopedia Forms and Precedents and Tanzania Laws<sup>76</sup>.

### **3.4 Conclusion**

Notwithstanding availability of ICT facilities in the judiciary, attainment of speedy trials is still a myth, this is because the personnel in the judiciary are not sufficiently trained to adapt to the new system, more over the slow attitude of the court staff due to overworking is becoming a hindrance too. Finally the lawyers, judges and magistrate who go through the same Law School syllabus to offer IT Law or Legal Informatics at least as an Introductory course. It will be a strike of generosity to incorporate legal informatics in the Law School Syllabus. This being Information Age we cannot ran away from the fact that Information will affect legal profession especially in electronic form.

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<sup>75</sup> Supra, Department of ICT, High Court of Tanzania, as accessed in August, 2008.

<sup>76</sup> *ibid* .

## **CHAPTER FOUR**

### **PROSPECTS FOR USE OF ICT IN THE TANZANIAN JUDICIARY**

#### **4.1 Introduction**

The constitutional mandate of the Judiciary of Tanzania is to dispense justice fairly, effectively and with reasonable speed<sup>77</sup>. ICT if properly deployed can bring a big impact in the improvement of justice delivery. Automation of court records, video conferencing, legal networking, online library, computerized recording systems are a few examples to be covered here in after.

##### **4.1.2 Automation of Court Records**

It is argued here that the use of information technology in the administration of justice is vital for improvements in efficiency, accessibility and speed to reduce backlog and delays of cases in courts. As said above, to-date, case records are not computerized and made accessible to the public. Had such records been automated, a litigant or advocates could, anywhere in the country be able to enquire and obtain information on the status of a case filed in any court in the country. Pleadings can also be filed on-line, hence dispensing the need for physical presence in court registries.

With automation of court records, the Presiding Judge or Magistrate can track the progress of cases before him. An Officer in charge - Judge in charge, Magistrate in

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<sup>77</sup> Article 107A, *United Republic of Tanzania Constitution*, 1977.

charge, the Principal Judge or even the Chief Justice may have an immediate access to information on flow of cases in the country right in their desks.<sup>78</sup>

#### **4.1.3 Video Conferencing**

With the availability of groupware, intranet, video conferencing and telecommunications generally, it is no longer necessary for judges to be physically co-located at all times for them to work together on the same case. These technologies can bring judges, advocates, litigants under one virtual roof, enabling effective practical collaboration amongst themselves despite being hundreds or thousands of miles apart. There is also no need to ferry remandees and prisoners to courts for mere plea taking or advocates physically attending to courts for mention or simple orders. Vivid example can be taken from the ongoing case of *R. v. Professor Costa Ricky Mahalu and Grace Martin*<sup>79</sup>, where by the court was necessitated to shift temporarily to the Institute of Finance Management (IFM) for the purpose of accessing and hearing live testimonial through video conferencing from the witness residing in Italy. The shift of the court though temporally could be avoided if the courts were sufficiently equipped with video conferencing technology.

#### **4.1.4 E-Library**

On legal libraries, digital technology has made it possible for massive amounts of legal materials to be available on CDs and on the Internet. Digital conversion of library materials has advanced rapidly in the past few years.<sup>80</sup> Many libraries have now digitized

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<sup>78</sup> Lukumay Z., *supra*.

<sup>79</sup> *R. V. Professor Costa Ricky Mahalu and Grace Martin*, High Court of Tanzania, Criminal Application Number; 2 of 2009(Unreported).

<sup>80</sup> Smith, A., *Why Digitize*, An Article accessed at <http://www.irmt.org/evidence/wbediscussion.html>. on 26/08/2008.

various information from maps to manuscripts, and moving images to musical recordings. This has given rise to what is referred to as “the virtual library” which has no walls.<sup>81</sup> These collections are not only vast in scope but are sophisticated facilities to guide users quickly and easily to all but only the materials they would need at any point in time. These facilities can be available to Judges and Magistrates.

On precedents, the widespread of computers and their use for processing judgments, it is easy for these decisions to be available on the Internet immediately they are delivered. This will reduce costs and it saves time. As of now, decisions of various courts are available on-line. The good example is the decisions of the House of Lords in the UK and the Uganda High Court decisions accessed at: *www.highcourtuganda.co.ug* which are available on-line. This process could make law reports available across the legal profession instantly and far more effectively within the Judiciary as well. The advantage is that differences in decision making will be reduced. More importantly, judicial officers will be able to decide cases efficiently with availability of digital materials in their desktops.

#### **4.2 Proposed Case File Monitoring System**

The computerization of courts envisages a centralized civil registry for streamlining the entire activity of filing process. As soon as a case is filed at the filing counter, the computer decides the assignment of the case to a judge based on the existing procedure. It will automatically register the case and produce a receipt to the litigant / advocate. At the end of each day the computer will generate a list of cases filed on that day in a format

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<sup>81</sup> Ibid.

similar to the one maintained in a Register, as is the practice<sup>82</sup>. For avoiding the litigants dealing with a multitude of sections for finding out their case status, a query counter should be opened at the Civil Registry. The preliminary details entered in the computer system will be made available immediately wherever a computer terminal is available. The judge can have a list of cases automatically assigned to him by the computer program.

During hearing, orders issued by a judge can easily be transmitted through the system within a short time. A copy of the order printed at using a printer attached to any of the computer terminals. The duty of the staff attached to a judge is to update the system by filling the relevant part of judgment on the system. The aim here is to reduce the number of days spent for processing judgments, orders or decrees.

The staff has also to make sure that all events in a case are fed into the computer for the case to appear in the cause list automatically generated by the system. This is the only way that can make a case to be available before the judge on a scheduled date. Advocates and litigants can also view the progress of their cases online wherever they are. In case a notice is required to be served, the computer system will automatically generate the same and also immediately make it available at the counter terminal<sup>83</sup>.

The current practice of writing and signing notices is a strenuous and time consuming exercise. The system can make this exercise easy by having a template of notices prepared and saved into the system. Each time a notice is required the staff responsible can go to any computer terminal and generate it. This is made simple due to the fact that

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<sup>82</sup> See, Lukumay Z, presentation paper.

<sup>83</sup> US States District Court or the district of New Mexico, accessed through [www.google.com/search](http://www.google.com/search).

addresses of parties have previously been entered into the system. The signature of the signing officer can be scanned and appended into the template, hence dispensing a need to have notices signed every time they are needed. Parties can also be served online, provided some procedures are put in place<sup>84</sup>. Tanzania being the first country in East Africa to put in places a blue print to guide the adoption and development of ICT in March 2003 through the National Information and Communications Technologies Policy. The vision statement of the policy is for "Tanzania to become a hub of ICT infrastructure and ICT solutions that enhance sustainable socio-economic development and accelerated poverty reduction both nationally and globally but legislations to address video conferencing have not been established, though e-library is allowed for people to access but the government has also failed in enacting cyber laws which will protect the country and its people against criminal activities on the internet which is now a crucial problem.

#### **4.3 Challenges**

There are a number of challenges observed encountering different players in the justice dispensation process; these include the government and the judiciary in general as can be observed hereunder;

First, there are still doubts whether the most top decision makers have grasped how fundamentally and rapidly the administration of justice might be transformed through the use of ICT in Tanzania judiciary. This can be evidenced by the manifested slow implementation of the number of proposals and researches presented before the government of the United Republic of Tanzania to mention a few, the December 2006,

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<sup>84</sup> Ibid.

position Paper prepared by the Law Reform Commission under the BEST programme<sup>85</sup>, the February 2002 ICT Policy of Tanzania having several promises to improve ICT situation in the civil sector of Tanzania<sup>86</sup> etc.

The second challenge is how the traditional system, so commonly used can, be replaced by the modern technologies taking example of the present poor infrastructures where ICT is to be installed, poor buildings in most subordinate courts. There are sometimes doubts whether the system is sustainable and what happens in case the system fails.<sup>87</sup>

The third challenge is the costs of ICT which is exorbitantly high and requires significant investments in infrastructure– both physical and technological. It is hard to justify the major technology such investment in view of the number of top priorities and the ceiling imposed by the Government on the judiciary budget<sup>88</sup>.

The forth challenge is how all organs in the justice system collaborate to make ICT a reality. For instance, the prison officers should be able to know right from their desks a number of inmates or remandees committed to their facilities. The investigators should be able to track the flow of cases in court for them to know in advance the nature of evidence required in a particular case. Examples of the benefits the collaboration may bring are numerous<sup>89</sup>.

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<sup>85</sup> Supra, *Position Paper on the Review of the Civil Justice System-Tanzania*.

<sup>86</sup> Supra, *Tanzania ICT Policy, 2002*.

<sup>87</sup> Lukumay Z, Supra

<sup>88</sup> Supra, *Position Paper on the Review of the Civil Justice System-Tanzania*.

<sup>89</sup> Lukumay Z.,supra

The last challenge is variation of requirements among the judicial officers. Some judges may not be willing to make use of the new technology. It is not a good idea to force them as it may be detrimental to the whole move to computerize the Judiciary.

#### 4.4 Conclusion

To conclude, it is out of these challenges that there exist a need to allocate massive investment in the judiciary sector being the partial institution to ensure peace and justice in the country subject to the constitution of the United Republic of Tanzania.<sup>90</sup> Future of e-content depends on the level and reach of ICT and its effective use. Realizing the promise of ICT in an economy like Tanzania requires not simply its adoption, but also its usage in relevant and appropriate ways. The government, and specifically the Ministry of Communications, has made progressive reforms in telecoms and ICT deployment, but still has a long way to go in incorporating the private sector in prioritizing investments. Though few firms and government institutions have adopted and integrated ICT into their business strategies, the benefits of e-content and ICT will be realized by improving competitiveness in the productive sectors in Tanzania. This will require firms, institutions and sectors to develop complex strategies that are not easily imitable. ICT penetration and usage in the private sector will help firms that implement these strategies grow.

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<sup>90</sup> Article 4, the court is vested power to be the ultimate organ to ensure justice. The United Republic of Tanzania Constitution, 1977.

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 5.1 Conclusion

In this research paper, the issue raised in relation to the problem was whether the nonuse or inadequate application of Information and Communication Technology amongst actors of justice administration in Tanzania has contributed to the ongoing massive failure and delay of justice administration contrary to the Constitutional mandate<sup>91</sup>.

Regardless of several reformation attempts introduced in the Tanzania justice sector *inter alia* the 1994, Alternative Dispute Resolution mechanisms such as mediation<sup>92</sup>, the establishment of specialized divisions of the High Court such as the Commercial division, land division, and labour division, establishment of zonal high courts such as Mbeya, Arusha and Mwanza and Dar es salaam, all of which aimed at minimizing civil proceedings delays, still has not proved expected improvement as to the problem of justice delays.

The procedures adopted by the Commission for Mediation and Arbitration Rules<sup>93</sup>, which provide *inter alia* for electronic ways of documents and pleadings service such as fax and e-mail is a good practice if at all continuously practiced, encouraged and adopted to other laws providing for court procedures such as The Civil Procedure Code Act<sup>94</sup>.

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<sup>91</sup> Article 107A (2) (b), *United Republic of Tanzania Constitution*, 1977.

<sup>92</sup> *Supra*, GN 422/1994, Order viii A, B, C of the *Civil Procedure Code Act* of 1966.

<sup>93</sup> Section 21, Appendix A, *Rules for Mediation and Arbitration*, 2007.

<sup>94</sup> *Supra*, CAP 33 of 1966, the Laws of Tanzania.

There still exist the necessity to adopt a new and specific piece of legislation to guarantee for the ICT application in different judiciary procedures such as filing pleadings and other documents necessary to the court in civil proceedings through electronic means such as email and fax, electronic summons issuance, evidence recording and admissibility, data storage and protection, crime investigations, communications within the judiciary and other players of justice such as police, prisons private law firms and the Attorney General chamber. However there are countries that have legislated laws to guarantee ICT application such as Ethiopia's draft national ICT Policy document which was adopted by the Council of Ministers in Ethiopia and the first implementation plan for the period 2003-2008 was prepared. The Government has set up a national ICT coordination office to manage the implementation, monitoring and evaluation of the plan. Another example is Mozambique where the Government has adopted the national ICT policy in December 2000 and legislated law on ICT priority areas: education; human resources development; health; universal access; infrastructure and governance.

## **5.2 Recommendations**

The author proposes the following recommendations.

### **5.2.1 Enacting laws**

The need to put in place new piece of legislation specifically providing or guidelines and simpler procedures in the entire justice system, these procedures should seem to embrace usage of ICT in justice dispensation. Up to present the only law containing elements of information technology are the Commission of Mediation Authority Rules<sup>95</sup>, which provides for electronic filing methods such as fax and e-mail. To comment, this is not

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<sup>95</sup> Commission for Mediation and Arbitration Rules, 2007

enough to tell the significance of ICT in justice dispensation system, hence there is a need to adopt a separate legislation to provide or ICT usage in courts rather than awaiting for judiciary intervention as noted by Nsekela J., in *Trust Bank Trust Bank of Tanzania Ltd. vs. Le Marsh Enterprises Ltd. and Others*.<sup>96</sup> that

*...The important point to note is that, the law must keep abreast of technological changes as they affect the way of doing business...It would however have been much better if the position were clarified beyond all doubt by legislation rather than by judicial intervention... ”<sup>97</sup>*

### 5.2.2 Amending existing law

The existing laws providing for civil proceedings procedures such as filing, summons servicing, evidence recording and admissibility etc, falls short in terms of ICT usage in this aspect so as to hasten justice trend. These laws as such as the *law of Evidence Act*<sup>98</sup>, *the Civil Procedure Code Act*<sup>99</sup> attract amendments so as to accommodate ICT usage in several court procedures. Examples can be drawn from the new formulated *UK- Civil Proceedings Rules*, which emanated from the Lord Woolf's report termed; *Access to Civil Justice*<sup>100</sup>.

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<sup>96</sup> H.C (Com. Div.) at DSM, CC. No. 4 o 2000, (Unreported).

<sup>97</sup> Supra (2000) H.C(Com. Div) at DSM. No 4.

<sup>98</sup> [CAP. 7 R.E. 2002].

<sup>99</sup> Supra,[CAP. 33 R.E 2002].

<sup>100</sup> Supra, Lord Woolf's Report, 1995.

### **5.2.3 Training of Judicial Personnel.**

Trainings of judicial personnel at all levels is of most importance so as to keep pace with ongoing technological development in the society.

To start with those expected to practice law, being at University level, college and Law School of Tanzania level. The relationship between justice and ICT and its benefits need to be intensively taught to those expecting to practice legal profession in Tanzania. This can be done through adopting related subjects to the existing curriculum in law teaching universities and further intensified at the level of Law School of Tanzania(TLS), where by lawyers should be given knowledge and skills on ICT and law.

In my opinion, Judges and justice personnel need to be imparted with the knowledge concerning ICT usage and merits to their legal profession. Through this not only will increase their courage on intervention on different disputes having elements of ICT, but also accelerate their speed and number of cases to be attempted annually.

It is of importance that highly skilled ICT experts are enrolled permanently to serve the judiciary and not on temporary basis as it is currently practiced at the high court of Tanzania. The current practice that ICT experts are accessed through temporary contractual basis from certain private ICT firms upon any occurrence of technological problem is not constructive to the present available and future ICT facilities sustainability. This practice does not ensure guaranteed and smooth operation of the daily

court activities especially those involving registration of new cases, typing and internet use.

#### **5.2.4 Setting up websites**

There is a need to construct and establish a judiciary, police and police websites. On the part of judiciary, it is surprising to find out that the high court of Tanzania has no websites where different courts' programs and daily activities schedule may be posted and accessed worldwide. Also the progress of ongoing cases, allocation of presiding Magistrates and Judges, judgments, summons, Law Reports, and other court activities can be accessed by the general public and world over.

On the part of police, ICT usage should be strengthened in order to cover for issues such as records keeping and easy retrieval of information concerning criminals and recidivists, recognition of offenders, traffic records and control system.

#### **5.2.5 Extensions to lower courts**

The ongoing improvements of courts in terms of ICT should much focus on subordinate courts rather than only on superior courts of law, due to the fact that, it is within subordinate courts where many cases are initiated and high concentration of proceedings lie before appeals are referred to the superior courts of law.

#### **5.2.6. Improved payment System**

In examining and shortening the process involved in the civil process of filing the case it is suggested that, the fee payment process; labeled 1-2 (refer page 30: the civil process

drawing); this can be done through electronic money transfer, in that a court fee payer undertake to deposit cash through court's available Account Number, and submit receipt evidence verifying payment made.

Also service of summons process labeled 1-3-4; can be done through email and fax. The same process i.e.; email and fax, can be adopted on serving summon to the parties and their advocates to appear for pre-trial conference before the court.

#### **5.2.6. Compulsory ICT courses at Law school**

A policy should be made that the Law Faculties in the country should start revisiting their curricula to fit in IT Law otherwise the so called Digital divide, many Law Faculties in the country offering the so called ICT for Lawyers basically such course according to my experience has nothing at all to do with IT Law. The best it does is to deal much with Computer application, which is a misleading approach in as far as lawyers are concerned.

### **5.3 Way forward**

There should be consultative formulation process in the implementation of the ICT as part of Tanzania's overall reform process it is necessary for stakeholders to engage together in addressing the challenges posed by globalization and the new economy, while actively seeking the opportunities that are increasingly available in deploying ICTs for development. In summary: the Government should to establish an environment within which new technology can spread throughout its operations, to its citizenry, and in enabling cooperation among all components of civil society. There will be particular focus on the private sector, non-profit organizations, and local communities, Reforms in the judicial system will be attained after all the stake holders are involved.

## BIBLIOGRAPHY

### Books

Chissick, M., *Electronic and Commerce: Law and Practice*: Sweet and Maxwell  
London, 2000.

Lederman E., & Shapira R., *Law, Information and Information Law*, Kluwer Law  
International, 2001.

Michael A & Shannon M, *Law and Popular Culture*, Peter Lang Publishing, New York  
2004.

Mollet A., & Lukumay, Z, *Electronic Transactions and Law of Evidence in Tanzania*,  
IUC, UDSM, 2007

Richard Silbergliitt, et al, *the Global Technology Revolution 2020*, Santa Monica, CA:  
Rand Corporation, 2006.

Robert, P., *Computer and Law: Introductory Handbook* (2<sup>nd</sup> Ed), 1969 Oxford University  
Press, London, 1998

Sheya and Koda , 1997, *Culture of Maintenance for Sustainable Development in  
Tanzania*, ITM, Dar es Salaam.

Sherwin KR, *When Law Goes Pop: the Vanishing Line between Law and Popular  
Culture* Chicago: University of Chicago Press, 2000.

Susskind, Richard, *The Future of Law; Facing the Challenges of Information  
Technology*, Oxford University Press, London, 1998

## Thesis

Kakolaki, Edwin., *Delay in Trials and its Effect in Administration of Justice*, LL.B dissertation UDSM, 2000.

Komba, Dora, *Justice Delayed is Justice Denied, Delays in the Disposal of Criminal Cases*, LL.B Dissertation, UDSM, 2003.

Kyaruzi, Suzanne L., *An Empirical Study of The Utilization and Successful Application of ICT in the Service Sector Organization in Tanzania*, MBA Thesis- UDSM, 2004

Lukumay Z, *Impact of Information and Communication Technology on Rules of Evidence in Tanzania*, LL.M Dissertation, UDSM, 2006

Mhayaya, S.G., *A Study of the Potential Usage of ICT (E-government) in Improving Efficiency And Effectiveness of Executive Functions of the Government Including Delivery of Public Service: A Case Study of Dar es Salaam*, MA Engineering Thesis- UDSM, 2003

## Journals and Articles

David Altheide, "The Place of Law in Cyberspace." presented at the Symposium, "Law in a Wired Society: The Information Revolution and the Evolution of the Law," at the University of Dayton, in Dayton, Ohio, 22-23 March 2001.

Katsh E, Rifkin J, and Gaitenby A, "E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of 'eBay Law,'" *Ohio State Journal on Dispute Resolution* 15, no. 3 (2000).

Malik, V., *Cyber Law: A Comparative Study for the Legal Framework for E-Commerce in India and the United States*, *The Southern Law Journal* xii, Fall 2000.

Michael D, "Unlike the Industrial Revolution, which has run its course, the Information Revolution is still growing.", *The Unfinished Revolution: Human-Centered Computers and What They Can Do for Us* New York: Harper Collins, 2001.

Shelton DE, "Teaching Technology to Judges," *Judges' Journal* 40, no. 1 (Winter 2001).

Shelton DE, "All Aboard: Electronic Filing and the Digital Divide," *Judges' Journal* 40, no. 3, 2000.

Smith, A., *Why Digitize*, An Article accessed at

<http://www.irmt.org/evidence/wbediscussion.html>, On 26/08/2008

Waleed H.M, The World Bank, *E-Justice: Towards a strategy Use of ICT In Judicial Reforms; Marrakech Conference Strategies for the Modernization of Justice in Arab Countries Organized by Pogar, morocco*, 2002

### **Vision and Reports**

Lord Woolf's (MR) Final Report on the Access to Civil Justice, 1995(UK)

*Tanzania Development Vision 2025.*

Ministry of Constitutional and Legal Affairs: *Position Paper on the Review of the Civil Justice System of Tanzania*, LRC and BEST Programme, 2006.

### **Websites**

Google search engine: <http://www.google.com/> search

<http://www.irmt.org>

[http:// www.tcc.go.tz](http://www.tcc.go.tz)

[http:// www.ethinktanz.org](http://www.ethinktanz.org)

[http:// www.bungetz.org](http://www.bungetz.org)

<http://www.uscourts.gov>

<http://www.highcourtuganda.co.ug>

Lectic Law Library, [http:// www.lectlaw.com](http://www.lectlaw.com)