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The management of Magistrate court records: A case of Middledrift Magistrate Court, Eastern Cape.

By

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A thesis submitted in fulfillment of the requirements for the degree of Master in Library and Information Science (M. LIS) in the Faculty of Social Sciences and Humanities.

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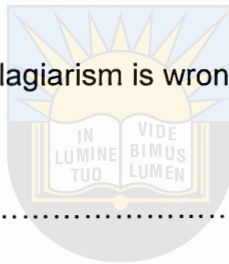
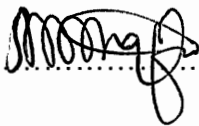
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DEDICATION

I dedicate this to my family.



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Acknowledgements

I would like to thank Almighty God to give me strength, courage and wisdom to complete this study.

I wish to express my gratitude to my Supervisor, Mr Kayundi FE for his guidance and encouragement. Without his guidance the dissertation would never have materialized. Special thanks to GMRDC for financial assistance.

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Abstract

This study investigates the role of records management in the functioning of Magistrates courts in the Eastern Cape using Middledrift Magistrate court as a case study. The objectives were to determine types of records created, received and used at MMC, to describe the available infrastructure, security and preservation for the management of court records in MMC and to identify the obstacles encountered in management of court records at MMC.

Forty respondents selected randomly and purposively were interviewed. The research findings showed that MMC creates, receives and maintains many court records, MMC is aware of the importance of managing court records from their creation to disposal, there are storages for semi- current and non-current records although there is lack infrastructure for managing court records.

The study also revealed that there were occasional misplacement of court records, there was no case file tracking system and the security of records was satisfactory. This study recommends that MCC must have adequate storage space, training for the personnel and security systems to protect court records.

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List Of Acronyms And Abbreviations

ACARM:	Association of Commonwealth Archivists and Records Manager
CAS:	Crime administration System
DCRS:	Digital Court Recording System
DOJ& CD:	Department of Justice and Constitutional Development
EFS:	Electronic Filing System
ERMS:	Electronic Records Management Systems
ICMS:	Integrated Case Management System
IO:	Investigating Officers
IRMT:	International Records Management Trust
ISO:	International Organization for Standardization
JCC:	Judicial Council of California
MMC:	Middledrift Magistrate Court
NARA:	National Archives and Records Administration
NARS:	National Archives and Records Services
PSC:	Public Service Commission
SA:	South Africa
SAPS:	South African Police Services
SPSS:	Statistical Package for Social Sciences
UK:	United Kingdom
USA:	United of States of America

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CHAPTER ONE: INTRODUCTION AND BACKGROUND

1.1 Introduction

This study aims to discuss the management of Magistrate court records in the Eastern Cape Province, South Africa, using Middledrift Magistrate Court as a case study. According to International Records Management Trust (2002), magistrate courts are the courts at the lowest level of the judiciary system and they have a jurisdiction over all offences except serious cases. Decisions from the magistrate courts can be appealed to high and supreme courts. Constitutional framework of many countries provide for an independent judiciary with separation of powers. The separation of powers provides an added impetus for record managers to ensure all records are accurate and authentic. The IRMT (2002) further indicates that the parliament, the legislature and the judiciary are legally separate so that each of them will not have the opportunity to exceed its mandate.

The IRMT (1999) states that law institutions perform essential functions in society and these include; dispute prevention and resolution as well ensuring that the breaching of law is minimized. It also forward that the records produced by courts are among the most valuable and vital public records of any country. They are of value to the courts themselves, the parties to cases heard in the courts, to researchers and historians. The trustworthiness of legal institutions depends on the good care of their records.

Motsaathebe and Mnjama (2007) opine that records are fundamental to the efficient and effective operation of the legal system of a country and even more crucial to the administration of law than to any other function of the public sector. They argue that, within the legal context, records provide evidence of every course of actions and

enhance accountability in governments as well as in organizations. Motsaathebe and Mnjama (2007) further indicated that if legal records are not created, maintained and made accessible, citizens may have difficulties when enquiring their cases. In addition, the judiciary system may also fail to bring justice in criminal and civil actions if evidence is not presented in a reliable, authentic and timely manner. IRMT (1999) point out that well managed court records are essential to efficient and effective legal systems. Delays in registering cases, locating records and filing documentation all have direct impact on the citizens as well as affecting the functioning of the courts (IRMT, 1999). Many scholars argue that many countries around the world follow the Common law system in their judiciary systems. They also state that in Common law systems, judges and magistrates base decisions on decisions taken in earlier cases on similar topics, known as precedents. Thus courts need to manage their records effectively so that records can be available when they are needed. Thus, it is in this regard that this study seeks to explore the management of Magistrate court records in the Eastern Cape Province, South Africa, using Middledrift Magistrate Court as a case study.

1.2 MANAGEMENT OF COURT RECORDS

According to the Judicial Council of California (2011), managing court records is a specialized field for court administration in determining how records are organized, categorized and stored in good format. For the administration of justice to run smoothly, the effectiveness of records management is essential. Judicial Council of California (2011) defined a court record as any document or other material that is received or maintained by the court to or in connection with judicial proceedings.

According to Ropper and Millar (1999) court records may include records generated specifically from the legal processes, the police, and public prosecutors. The main

function of the court is to resolve dispute among the individuals or parties. More so, for the court to function effectively, it depends on the availability of reliable, accurate and authentic information.

Motsaathebe and Mnjama (2007) and IRMT (2011) point out that, courts deal with several cases which leads to the creation of records. They state that courts create criminal, civil and miscellaneous case records. According to Judicial Council of California (2011) court records need to be created, maintained, protected and secured so that they can be available when they are needed. The authors argue that the provision of a complete, accurate and accessible court records in a timely manner fulfills the judiciary's basic mandates.

According to Motsaathebe and Mnjama (2009), the availability, completeness and accuracy of court records play a crucial role in the administration of justice. They argue that in order for a case to proceed, the initiating document which include the summons should be available. Failure to provide or to locate such documents means that the case cannot proceed, hence the delays will be encountered in determining the case. Thurston (2005) mentions that lack of evidence in the form of records can lead to failure of the judiciary system to bring justice to the citizens and this leads to loss of faith in the administration of justice. Thurston (2005) further argue that accurate and readily accessible records of judicial rulings reduce the potential for the illicit manipulation of records which lead to corruption.

Ropper and Millar (1999) argue that, not only current records are useful in the daily use for legal reasons, but records of previous actions are also retrieved and used by a range of legal agencies. For example, if a police officer cannot find the previous records of a habitual criminal before the person is brought to trial, the criminal may

be sentenced as a first time offender. They further mention that if court staff cannot locate the case papers relating to a certain trial, an appeal against conviction may be delayed and justice may not be done to a citizen who may have been wrongly convicted.

Thurston (2005) argue that dysfunctional management of records undermines a legal and judicial system. Decisions are made without full information about cases. The absence of record keeping system and controls leaves scope for corruption or collusion between court officials and lawyers. Court time is wasted, delays are created and the judiciary's standing is lowered.

Between 1999 and 2011 the International Records Management Trust (IRMT) in collaboration with World Bank (WB) conducted studies on legal and judicial records with the intention of bringing suggestions and finding solutions on how court records should be managed effectively. As a result reforms in the judiciary systems were introduced in many countries (IRMT, 2011).

The studies revealed that many countries around the world are facing the problem of poor management of court records. The findings of their studies highlighted that in many countries, court records are neglected, less protected and unsecured. They mentioned that misplacement, loss and theft of court records normally lead to delays and case backlogs. For example, in South America and other countries such as Ecuador and Argentina are facing the problem of poor court records management. As a result the use of information technology was introduced to overcome the problem.

These studies also revealed that negligence in dealing with court records was noted in Africa by the Association of Commonwealth Archivist and Record Managers. As a

result ACARMA undertook a court records management project in Gambia, Botswana, Ghana, Kenya and Namibia. This was done in order disseminate information about the importance of good record- keeping as well as encouraging the preservation and use of court records.

The results of the project revealed that court records in some countries were being lost through deliberate destruction as a matter of policy, arbitrary destruction by those responsible for them or by natural causes such as fire, revolution and negligence. It was pointed out that in Kenya has the highest incidence of missing files during the execution process or when litigants request for proceedings.

Nthomiwa (2007) and IRMT (2011) also found out that also in some African countries the use of Information and Communication Technology (ICT) in the judiciary system has been introduced to manage court records. For example, in Botswana the Court Records Management System (CRMS) is used to combat court records management problems, to address the issue of loss or misplacement of case files which cause delay in processing and finalizing litigations. The authors mention that some of the African countries such as Ghana, Kenya and Namibia are still striving to manage their court records effectively. Nthomiwa (2007) and IRMT (2011) further indicated the use of Information and Communication Technology (ICT) in Tanzania and Uganda has been introduced though the primary courts are still completely manual.

Studies conducted by the IRMT (2002) revealed that South Africa is also facing the problem of poor court records management. They mention that court records are sometimes reported missing and this is common in remand cases. It was established that in SA, the security and protection of court records has been a major concern.

Records management in courts is seen as an integral part of court business not as a separate discipline. They mentioned that the use of tracking systems in the South African courts was suggested to overcome the problem of missing case files. According to Mail and Guardian (2011) and IRMT (2002) the use of information technology in courts, automation of court processing and record keeping has been developed but it is still in its infancy stage.

According to IRMT(1999), a lack of trained professionals for record keeping in courts and storage facilities are the major contributing factors to poor records management. Motsaathebe and Mnjama (2009) mention that the subcommittee on Ethics and Governance (2005) in Kenya suggested the standardization of training and qualification to regulate entry level for all registry personnel. It was suggested that short training courses should be offered to those working in registries and also there is a need for the establishment of professional societies and associations for records management personnel to improve record keeping system.

1.3 STATEMENT OF THE PROBLEM

The Constitution of South Africa (1996) established a unified judicial system that comprises the Constitutional court, the Supreme Court of Appeal, the High court and the Magistrates court. According to IRMT (2002) each court in South Africa is responsible for its own records. Courts create, receive and maintain large volumes of records on a daily basis which need to be managed effectively from their creation to disposal. Their sensitivity and time pressures on courts make effective records management essential.

Poor records management undermines legal and judicial system. Decisions are made without full information about cases. Unavailability of records hinders service

delivery and becomes a problem in the administration of justice especially for the victims who laid charges against their perpetrators. Magistrate courts are the lowest courts in the judiciary system. They deal with types of cases such as criminal and civil cases. They have jurisdiction over all offences except treason, murder, rape and certain other cases such as serious armed robbery (IRMT, 2002). It is important for a magistrate court to create, maintain, secure and protect its records so that they can be available at the right place and the right time when they needed. Most of the cases begin at the lowest level of the court, that is, magistrate court before they can proceed to the higher court where appeal is made. Without these records an appeal cannot proceed and justice for the person who laid an appeal will delay. To function effectively, court depends on the availability of case records. In the Eastern Cape, there is no study done concerning records management in Magistrate courts, therefore the extent to which they are affected by records management has not been established.

1.4 RESEARCH QUESTIONS

This study seeks to answer the following research questions:

- What types of records are created, received, maintained and used by the court at Middledrift Magistrate court?
- What type of infrastructure is available for management of court records at Middledrift Magistrate court?
- What security measures are established to protect court records from loss, theft, damage and unauthorized access at Middledrift Magistrate court?
- What obstacles are the records officials encountering in managing and using the court records at Middledrift Magistrate court?

1.5 RESEARCH OBJECTIVES

This study is guided by the following objectives:

- To determine types of records created, received, maintained and used at Middledrift Magistrate court between 2007- 2011.
- To describe the available infrastructure for the management of court records.
- To find out the security measures for the protection of court records from loss, theft, damage and unauthorized access at Middledrift Magistrate court.
- To identify obstacles encountered in the management of court records at Middledrift Magistrate court.

1.6 SIGNIFICANCE OF THE STUDY

This study will help the record keepers in magistrate's courts to identify the possible gaps that might be challenging or prove problematic in the management of their records. This study will help in attending to problems existing in management of court records. This study has also made some recommendations on how the magistrate's court should do to manage the court records effectively. They can also use the findings to request for funds needed to improve records management, for example, training of court clerks and records keepers.

1.7 DEFINITION OF TERMS

The terms are defined to avoid ambiguity and uncertainty of their meaning in this study.

1.7.1 Archives

In records management, the term archives is defined as any records that are recognized as having long term value (IRMT, 1999).

1.7.2 Case file/ case docket

Case files are files or documents relating to specific action, event, person or other subject (Ropper and Millar, 1999).

1.7.3 Court

In this study the term court refers to a governmental body consisting of one or more judges who sit to adjudicate disputes and administration of justice (Bryan, 2004).

1.7.4 Court record

In this study the term court record refers to any document or other material that is received or maintained by the court to or in connection with judicial proceedings (Judicial Council of California, 2011).

1.7.5 Electronic record

Electronic records are the type of information that is generated electronically and stored by means of computer technology (Records Manual Policy, 2007).

1.7.6 Judiciary

Penner (2001) defines judiciary as the branch of government responsible for interpreting the law and administering of justice.

1.7.7 Life cycle concept

According to the (IRMT, 1999), life cycle concept is a concept that draws and analogy between the life of a biological organism which is born, lives and dies and that of a record, which is created and is used for as long as the record has continuing value and then is disposed of by destruction or by transfer to an archival institution.

1.7.8 Magistrates

They are judiciary officers with strictly limited jurisdiction and authority, often on the local level and often restricted to criminal cases (Statsky, 1986).

1.7.9 Record

According to Sanders (2009), the term record refers to information created, received and maintained as evidence and information by an organization or person in pursuance of legal obligations or in the transaction of business.

1.7.10 Records management

The ISO 15489 (2001) defines records management as the field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records including the processes for capturing and maintaining evidence of information about business activities and transactions in the form of records.



1.8 THESIS OUTLINE

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Chapter one

This chapter provides the introduction, statement of the problem, research questions, objectives and significant of the study.

Chapter two

This chapter provides the relevant literature on court records management and theoretical framework.

Chapter three

This chapter discusses the research methodology adopted for the study.

Chapter four

This chapter provides the data analysis, presentation and interpretation of the findings.

Chapter five

This chapter presents the conclusion and recommendations of the study.

1.9 Summary

The chapter provides the introduction and background of the study, problem statement, research questions and objectives of the study. The chapter also gives the definition of some the terms used and outlines the structure of the thesis. The next chapter deals with the review of the literature including the theoretical frameworks that guide the study.



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CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

This chapter deals with the relevant literature review on the management of court records in magistrate courts as well as the theoretical framework. Record management is very crucial for the functioning of the court. Both nationally and internationally, judiciary systems have engaged in some reforms to make records management efficient and effective in their courts. The available literature shows that magistrate courts are dealing with huge number of case records. Magistrate courts are at the lowest level in the hierarchy of judiciary, most of the cases begin at this level. The magistrates courts has a duty to ensure that records in their courts are created, maintained, secured and preserved in an effective manner so that they can be available at the right place and time when they are needed.

2.2 Theoretical Framework

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Based on literature review, the following are the theoretical approaches concerning records management: the records life cycle and records continuum model. Atherton (1985:44) indicates that the life-cycle concept of records management has been championed for some years by the National Archives in Washington and Public Archives in Ottawa. According to Hare and McLeod (1997), the life cycle concept was developed by the National Archives of the United States of America in the 1930s. Atherton (1985) further mentions that the life cycle concept stated that records have a clearly defined life from birth to death. Life cycle concept provides the greatest potential for effective management of recorded information particularly where records are held in paper form.

On the other hand, the records continuum model emerged in the 1980's and 1990's as an alternative to records life cycle concept (Shepherd and Yeo, 2003). It forwards that the continuum model, managing records is seen as a continuous process where one element of the continuum passes seamlessly into another. Yusof and Chell (2000) cite that as an alternative to life cycle concept, the continuum model has a major advantage of accommodating electronic records.

According to IRMT (1999) care of records is governed by four concepts. IRMT mention that records must be kept together according to the agency responsible for their creation in the original order established at their creation. The records follow a life cycle; the care of records should follow a continuum and that records can be organized according to hierarchical levels in order to reflect the nature of their creation.



2.2.1 The Life Cycle of a Record

According to Yusof and Chell (2000), the records life cycle is one of the core concepts of records management. The authors argue that the life cycle of records reflects the opinion that all records irrespective of form and purpose pass through certain well defined phases. Penn, Pennix and Coulson (1994) cite that the records life cycle concept provides a structure for effective and efficient records management. Yusof and Chell (2000) argue that the principle behind this concept is that recorded information has similar life to that of a living organism. It is born, lives and dies. In the life cycle of records, records are viewed like living organisms. Many authors mention that records in the life cycle have life are created or received. They argue that at this stage, their physical form and content are established and then maintained, referred to, revised, and refiled. They further indicate that as the age of the records increases, the need have to be disposed of. Shepered & Yeo (2003) and Parker (1999) suggest

that the stages that records pass are current stage, semi-current stage, and non-current stage. Sheperd & Yeo (2003) and Parker (1999) argued that in the current stage records are regularly used for the current business of an organization and continue to be maintained in their place of origin or receipt. Records in this stage are sometimes called active records. They further mention that in semi-current stage, records are required so infrequently for current businesses whereas in non-current stage, records are no longer required for current business and should be either destroyed or transferred to an archival repository.

Artherton (1985) is of the opinion that the life cycle concept has been useful in promoting a sense of order, systematic approach to the overall management of recorded information. The author argues that the strict adherence to of records life cycle to its principles undermines any trend toward greater cooperation and coordination of archivist and records managers. Artherton further states that the records life cycle ignores many ways in which the records management and archives operations are interrelated or even intertwined. Their professions while distinct are working towards the same objective, that is, the effective management of recorded information through all the stages of the continuum from creation to disposal.

2.2.2 The Continuum Model

According to Yusof and Chell (2000), the records continuum model refers to a consistent and coherent regime of records management processes from the time of creation of records (and before creation in the design of recordkeeping system) through to the preservation and use of records as archives. Flynn (2001) mentions that this definition of continuum suggests some similarities between the life cycle models. The author mentions that the records life cycle covers creation, preservation and exploitation of records as archives. The author further indicates that records can

have current, regulatory and historical value from the time of creation simultaneously not sequentially.

In this study, the continuum model will be employed. Sherpered and Yeo (2003) stated that in the continuum model managing records is seen as a continuous process where one element continuum passes seamlessly into another. They argue that the dimensions in the continuum are most time-based, but represent different perspectives on the management of records. According to these authors the continuum model embraces the view that records function simultaneously as organizational and collective memory from the time of their creation. This model is based on the premise that a record once created remains useful and there is no end to it. Even if the record has exhausted its primary value, they still have some secondary value which may be administrative or political.

According to Upward (2000) continuum model is being used in Australia as a metaphor to assist in getting records management right in recordkeeping environments built around electronic communications since it has a major advantage of accommodating electronic records. Upward (2000) argues that in continuum model, records exist space time not space and time. Records, no longer extent or moved elsewhere can still be observed in the place they once occupied in space time through data about their life history or their connection with events. Upward (2000) further argues that even if records cannot be observed, their place, space and time is always there.

Bantin (2008) cites that in the continuum model, the process of managing records is regarded as a continuous activity that focuses on the operations that produce records. Based on the continuum model, the archivists and records managers need

to be involved together with information systems designers in the creation of records keeping systems. Barry (1994) cites that records in an electronic environment are dynamic and recursive in nature. The electronic records may exist in more than one stage of the life cycle.

In this study, the continuum model will be employed. According to continuum model, records in an organization need to be created or received and classified, scheduled and maintained. The continuum model is relevant to the study as magistrates courts create, receive, and maintain different types of court records including serious cases on daily basis. Atherton (1985) suggested a unified model consisting of four stages rather than eight stages of records life cycle. He mentions that the first two are traditional model, that is, creation or receipt and classification of record. Third stage is the scheduling of information and the final stage is the maintenance and use of information. Atherton indicates that these four stages show the pattern of continuum rather than of a cycle. The author further mentions that these four stages are interrelated. Together they form a continuum in which both records managers and archivists are involved in the ongoing management of recorded information.

IRMT (2002) mention that in courts records are created and received to aid in the process of the case hearing and the court refers to the case file as the case proceeds. IRMT further state that in magistrates courts there is a need to create and maintain records that will not only manage a case from its inception to its closure, but that it may be necessary to refer to it at some later date. They mention that court records are created to serve certain purposes but they can be used in future by magistrates, lawyers and judges. Ropper and Millar (1999) indicate that in courts records can be used in a creation phase but the record can be needed in the middle of its life.

They further argue that managing court records is crucial because magistrates or judges may refer to the record either as a precedent or for the retrieval or appeal. To pass judgement, magistrates depend on the availability of records with accurate information from different sources and from precedence cases especially in countries where common law is used. Continuum model is concerned of managing records from creation to disposal from current systems either by destruction or long term preservation in some form of archive.

According to IRMT (1999), many records in an organization are kept only for a short time and other records have a longer value as evidence of or information about the actions or functions of an agency. They mention that those records worth of preserving for their enduring value are normally preserved in an archival institution.

Based on the continuum model, the archivist, and record managers need to be involved together with information system designers in the creation of record keeping systems. Flynn (2001) posited that records managers and archivists appraise records and decide on what records would support the functions of an organization during the record keeping system design.

The researcher is of the opinion that since the continuum model has an advantage to accommodate electronic records it is more relevant to the study as electronic records has been introduced in magistrate courts in many countries around the world. Studies conducted by the IRMT and World Bank between (2002-2011) reveal that due to the challenges faced in managing court records electronic records has been introduced in many countries around the world. Johare et al (2009) argued that in countries such as Australia, United Kingdom, Asia, South America computerization has been introduced for the management of court records. On the other hand,

Thurston (2005) mentions that in some African countries such as Botswana and South Africa electronic records management in court has been introduced. IRMT (2011) reveal that also in Tanzania, Uganda and Kenya ITC in magistrate courts has been introduced.

According to Johare et al (2009) computerization in magistrates has been also used as aim of reducing backlog on court cases, reducing loss and misplace and theft of court records. They also reduce the difficulties to retrieve or locate a case file or case record. They further mention that courts where files are available through remote electronic access, information are made available more quickly and convenient. With a remote electronic system, it takes few minutes to retrieve information that can take days or weeks to retrieve if only paper files are available.

Turner (2002) argues that as an alternative to paper files, electronic records have many advantages. More than one person can see such a document at a given time. The electronic documents are available over connections with the computer file room system. The costly steps of paper processing go away. It has been mentioned that records in electronic form are rarely if ever they get lost. Wamukoya (2007) states that computerization in an organization help in reducing cost storage, improve retrieval of records, access and quicker response.

2.3 RECORDS MANAGEMENT IN COURTS

According to Nthomiwa (2007), courts play a crucial role in a society and occupy a central place in the lives of the people and in good governance of a country. The author mentions that it is important for the courts to perform efficiently and effectively for the good of all .The author further states that courts create records on daily basis and these records need to be managed in an effective and efficient manner so that

they can be available at the right time at the right place when they are needed. IRMT (1999) mention that records management in court play a crucial role in the administration of justice because to function effectively courts depends on the availability of accurate, authentic and reliable information presented timeously. They further argue that records are fundamental to the efficient and effective operation of a legal system. They are also crucial to the administration of law than to any other function of the public sector.

Within a legal context, records support legal rights and obligations as well as providing evidence that contribute to accountability. Legal records are not created, maintained, and made accessible so that the government and citizens will not be able to exercise their rights (IRMT, 1999). Motsaathebe and Mnjama (2007:175) argue that management of court records is essential for carrying out activities. Corrigan (1987) cited in Motsaathebe and Mnjama (2007:175) noted that during the course of a case, a lawyer may extract information then compare, analyze and manipulate it to reach a certain conclusion. This process requires information from different sources.

Motsaathebe and Mnjama (2009:134) mentioned that the importance of well managed information in dispute settlement and adjudication is very crucial because when an accused person appeals against conviction, the decision of the judge is made after assessing the records of proceedings from lower court. The authors mention that if the case record cannot be located due to poor record keeping practices, the accused person might be denied justice. Ropper and Millar (1999) mentioned that good record keeping in courts enable the concerned parties to enquire about the status of their case. Without court records, cases cannot be

determined and decisions are delayed. Musembi (2005) argues that poor records management in courts may result in compromising the administration of justice. Bolshakov (2006) postulated that legal uncertainty and judiciary inconsistency are the factors that contribute to poor access to justice system.

According to IRMT (1999), in order to ensure that court records are well managed, record-management standards should be implemented. These standards ensure that records are kept in a systematic and planned manner according to the legal and administrative requirements of the organization or government. Record keeping standards can improve the level of protection of court records. They further mentioned that control systems in courts are used to ensure that records are authentic, reliable and accurate.

Thurston (2005) posited that the absence of record keeping systems and controls within the judicial system leaves scope for corruption or collusion between court officials and lawyers. She argued that this can lead to delays, court time is wasted and the judiciary standards are lowered. Thurston (2005) further stated that the large volume of records passes through a typical court system, their sensitivity and time pressures on courts makes effective records management essential.

Roper and Millar (1999:7) state that in many countries, the public is more concerned about the honesty and accountability of government. Good record keeping within the legal system can help maintain a high level of accountability in that businesses and International aid agencies ensure that their investments go to countries with sound governance. An accountable and transparent legal system is a good evidence of a strong and honest government.

Motsaathebe and Mnjama (2007:184) argue that the security and protection of records is a prerequisite for an organization to safeguard records from damage and destruction. The importance of records lies with the information they contain. The authors mention that management of court records needs both special consideration and attention because the practice of law by its nature depends on information. IRMT (1999) noted that court records need to be handled by individuals who are well trained in managing court records.

The studies conducted by the International Records Management Trust in collaboration with World Bank (2002-2011) on legal records revealed that many countries around the world are having poor records management in their courts. These studies suggested that there is need for the systems to ensure that court records are secured, protected and made available when required. The authors reported that in magistrate courts, case records are misplaced, misfiled and lost thus causing delays and case backlogs. These studies mentioned that computerization in magistrate courts has been introduced as a way of reducing backlogs, losing, misplacement and saving records in courts.

According to Johare *et al* (2009), developed countries such as United States of America, Canada, United Kingdom and Australia are examples of countries that have successfully implemented computerization in courts. They mentioned that the Electronic Filing System in magistrate courts is used as a way of reducing the considerable demands of handling physical case files and long term costs of storing official documents. Johare *et al* (2011) stated that the archival institutions in these developed countries are the leading advocates for developing, establishing and providing authoritative guidance on all aspects of ERM.

Studies done by the IRMT (2002) revealed that with the high level of education and computer literacy, Asian countries have been able to achieve what many governments and organizations around the world strive for, that is, the effective use of technology to streamline workflow and improve service delivery in courts.

IRMT(2002); Motsaathebe and Mnjama (2009) mentioned that in Africa, the managing of court records is a major concern and many countries are engaged in some projects to improve their record keeping systems in courts. In countries such as Botswana, South Africa, Kenya, Tanzania, Uganda, Gambia and Zambia, the use of technology in courts has been introduced to overcome the problem of case backlogs in courts, missing and loss of court records. Nthomiwa (2007) mentions that South Africa in an effort to improve efficiency has introduced a computer program called the Court Records Management System (CRMS) and Case Management System in 2008. The author indicated that the intention of the CRMS is to help the staff to manage case records that have been managed manually. Case Management system was developed to overcome the difficulties resulting from strain on manual processes and to deal with unacceptably high case backlogs.

2.3.1 TYPES OF RECORDS RECEIVED AND CREATED AT MAGISTRATE COURT

According to Ndenje- Sichelwe et al (2011), much of the activities in an organization lead to the creation of records. They mentioned that record creation is one of the phases of the life cycle of records. Diamond (1983:1) argued that creation of a record begins when a pen is put to paper, data is generated by a computer or information is captured on film, tape or any form of medium. The International records management standard (ISO 15489-1:2001) mentioned that records should

constitute qualities of authenticity, integrity, usability and reliability. Shepherd and Yeo (2003) argued that records created within an organization should also be reliable and accurate in their context. They mentioned that to achieve this, records must be created and maintained systematically. They further argued that records should be what they purport to be and that their purported creators have indeed created them.

Yusof and Chell (1999) argued that the creation and capturing of a record involves developing consistent rules to ensure integrity and accessibility, deciding on systems to log and track records and procedures for registering, classifying and indexing. The Judicial Council of California (2011) stated that the manner in which documents are created, captured and managed can determine the ease of access and efficiency when they are finally archived and disposed of.

IRMT (2002) mentioned that magistrate courts create several types of case records such as civil, criminal and miscellaneous case records. The Judicial Council of California (2011:3) mentioned that in court, the creation of court record involves the documents and other information provided by the parties to aid the court in making its decision. According to the IRMT (2011), creation of record also involves the documentation of what the court did and decided. This includes matters related to case management as well as the decisions of the court.

Turner (2002) is of the opinion that documents must meet several conditions, regardless of whether they are in paper or in electronic form. Turner (2002) point out that the authenticity and integrity of court records need to be guaranteed overtime so that users can be confident that records are genuine and trustworthy. The author further mentioned that for the records to be usable they must be accessible to

authorized users and provide sufficient evidence of the context to their creation to enhance users understanding of their significance. Being able to rely on the integrity and authenticity of court document is fundamental to the judiciary process.

The IRMT (2002) revealed that in Argentina, the ticket system is used. It is issued and moved around the system as the record that a document has been received and that a case has been initiated. The ticket system is designed to ensure that cases are assigned equitably.

IRMT (2002) stated that in African countries, the police officer creates a docket and complete the charge sheet. It also asserts that the record is sent to court whereby the court clerk serves as the control point through which record is captured in court record keeping system. At this point a court record is created and a case number is assigned a unique identifier with the name of district, names of parties, name of magistrate and date of filing the case. In courts, this process is also known as case registration process.

The authors further mentioned that in the creation of civil cases, an attorney prepares a summon which is brought to the office of the clerk. The summon is given a case number and all documents relating to a case, for example, original summon and supporting documents are placed in a civil case file. All documents relating to a case file are kept together in one case file.

The studies conducted by the IRMT (2002) in South Africa revealed that each court is responsible for its own records and record management is seen as an integral part of the court business and not as a separate discipline. They mentioned that clerks are responsible for the day to day safe keeping and control of records in courts. Day to day guidance on management of court records is provided in codified instructions

on Archives as issued by the Department of Justice. These codified Instructions also cover the closing and disposal of case records instructions. The court clerk serves as the control point through which records are captured in court record keeping system.

Records Management Manual Policy (2007) state that in South Africa, record management is enhanced by the Public Finance Management Act 1999; the Promotion of Access to Information Act 2000; the Electronic Communications and Transactions Act 2002 and the Promotion of Administrative Act 2000. Accordingly, governmental bodies have an obligation to manage their records properly, to provide access to information contained in records, to provide reasons for administrative decisions and to ensure the authenticity of records.

2.3.1.1 MAINTENANCE AND USE OF COURT RECORD

According to Judiciary Council of California (2011:3-4), the maintenance of records is a fundamental element of records management. It argues that the aim of records management is to ensure that records remain secure, intact, accessible and intelligible for as long as they are needed. In addition, court records must be kept in a manner that ensures their completeness and availability in both during the life of an active case and after it is closed where the results may still be relevant to the parties and the public (Judiciary Council of California, 2011).

Court records must be kept in a manner that allows easy and convenient access to those who want to see them. Judiciary Council of California further state that the system of maintaining court records minimize the risk of misfiling, loss or damage of court records or any of its parts. It also emphasizes the continuing existence and availability of records.

Studies conducted by the IRMT between (1999 and 2011) revealed that in many countries around the world, it is the responsibility of the court clerks and registry clerks to ensure that court records are maintained in an efficient and effective manner and are always at the right place when needed. IRMT (2002) mentioned that in South East Asia, it is the responsibility of court registries to handle and maintain court records. Standards and guidelines for the creation, use and disposition of court records are available in government administrative manuals.

Motsaathebe and Mnjama (2007:180) are of the opinion that since there are various ways of classifying records and documents, classification of records should be done in a manner that facilitates systematic storage and speedy retrieval of information. This can save time and effort used by records keepers searching for the record. Parker (1999:15) states that sometimes staff spent more time looking for records and information because they may be wrongly classified and filed. This has been also forwarded by Gill (1993), who argued that there is nothing more frustrating than inability to find a record.

According to Paker (1999:30); Motsaathebe and Mnjama (2007), types of filing systems include numerical and alphanumeric. The Judiciary Council of California (2011) further indicated that the terminal digit filing systems by case numbers is another type of classification system that is also used in courts. Filing systems in courts ensure that records are retrieved at the right time, place, and at the lowest cost.

Motsaathebe and Mnjama (2007) mentioned that to maintain court records, file movement cards are required to control the movement of files among court officials. They further mention that bar codes and file tracking systems are also necessary to

prevent loss of court records. This is supported by Griffin and Ropper (1999) who argued that for the effectiveness of case file tracking system, basic records tracking tools such as file location cards, file movement files and file transfer slips should be in place in an organization.

According to Lo Pucki (2008), in magistrate courts in the United States of America, court files are maintained in electronic format and made them available on internet. Lo Pucki (2008) mentions that the USA is regarded as having the world's most transparent court system.

Studies conducted by IRMT (2002) revealed that in Ecuador, court clerks are responsible for the maintenance of paper files and are assigned accountability for the safe keeping of records. The authors cited that these personnel have to sign a caution making them legally liable for the records they manage. The authors further mentioned that in Ecuador, managing magistrate court records procedures have been introduced to control movement of files through their life cycle. For example, lawyers are required to leave their identification as a security deposit for a loan period of up to 30 days when they request case file. Motsaathebe and Mnjama (2009) mention that computerized case tacking and dedicated file rooms had been established in Ecuador. They stated that the system provides quicker access to information about cases. The system was designed to address the problems of lost documents and files.

According to IRMT (2002), the Argentine System of Juridical Information was launched to improve its judicial system. They mention that there is a case- tracking system and automated filing and follow- up of cases in different jurisdictions. Furthermore the Case Management System is used with computerized case tracking

system which provides quicker access to information about the cases. The system enables the users to check the status of a case.

According to Nthomiwa (2007), the use of Electronic Filing System (EFS) was introduced in South East Asia and Singapore. It is a web based application accessible to judges, court clerks, registrars, lawyers, and administrative staff. The author mentions that policies and procedures have been established for creating, maintaining, and disposing of electronic records.

IRMT (2002) noted that in 1990, the Chief Justice in Singapore decreed a set of reforms that transform Singapore's legal system into an example of efficiency and effective use of technology. The main reason behind the reform was a case backlog at all levels of courts as well as a lack of incentives to perform effectively. To conquer the backlog of cases, technology became an enabler for the Judiciary to introduce new services not possible in the paper based systems.

2.3.2 COURT RECORDS MANAGEMENT INFRASTRUCTURE

For an organization to perform its tasks, it depends on the availability of proper records management infrastructure. World Bank (2009); Dikopoulou and Mihiotis (2012) mention that without a records management infrastructure, organizations cannot either manage effectively their daily operations or use of knowledge and experience of the past for guidance. Physical infrastructure and adequate resources are needed to be in place so that records can be managed effectively.

2.3.2.1 Physical infrastructure

Parker (1999) argued that records in an organization are expensive to maintain and store. The author states that records need to be kept somewhere and they need

space, equipment, supplies and also staff. According to IRMT (2002), magistrate courts need physical infrastructure for court records. These authors mention that magistrate's courts need to have storages to deal with the case load of case records.

They further argued that the storage for keeping court records must have enough space to accommodate equipment used to keep records. They further mention that proper records management requires appropriate environmental conditions and physical security. Kemoni and Ngulube (2007) opine that the unsatisfactory management of records results in delays and poor service delivery, frustrations on the part of the public and also encourages corruption. They mention that registries in government departments are the gatekeepers for information of the department.

Studies conducted by the IRMT (1999) revealed that storages such as registries and record centers are needed to keep court records. Parker (1999) states that facilities for active records need to provide enough storage space and protect the records from physical damage. The author mentions that in an organization there must be enough space to meet the current needs and provide some room for records growth. According to IRMT (2011), court registry in Rwanda is responsible for the administering of current and semi current paper as well as electronic records produced by the court. The authors mention that to facilitate management of the current and semi current records, the registry has developed internal record management procedures to guide staff in the proper care and management of case files. Motsaathebe and Mnjama (2007) argue that for records to be managed effectively, records centers need to keep semi-current and non-current records.

Twinning and Quick (1994) mentioned that institutions in many African countries have a serious problem of storage due to high costs and unfavorable physical

conditions. Twinning and Quick (1994) argue that these problems are caused by the increases in the volume of records produced and lack of storage as well as preserving records for a long time. Parker (1999) argues that buildings for records must be secured and constructed from fire proof materials. More so, the buildings must be leak free and have effective drainage systems to prevent water built-up which may lead to flooding.

2.3.2.2 Information and Communication Technology infrastructure

According to Nthomiwa (2007:3), for a court to properly manage its records, information and Communication Technology (ICT) infrastructure is also needed. Nthomiwa mentions that facilities such as computers with internet, fax machines photocopying machines and phones are needed. The author argues that such systems in place ensure co-ordination amongst all the key players in the life of a case record.

Studies conducted by the IRMT between (2002/2011) revealed that ICT has been introduced in many countries around the world. They mention that in African countries, for example, in Rwanda and South Africa, Digital Court Recording Machines and Transcription systems had been introduced in courts. These systems help in the case proceedings to record all information from the parties.

2.3.2.3 Office equipment

Johnson and Kallaus (1987) mention that once information in an organization has been processed, distributed and used, it must be stored for future use. They cite that in the manual records system, that information is then stored in filing cabinets. In an aut system, the information is stored on magnetic tape or computer system.

These authors further indicate that storage for records must have enough cabinets to store records.

Johnson and Kallaus (1987) further mention that to be efficient, record systems need to make full use of office equipment. They state that drawers and shelf files need to be carefully checked to avoid overcrowding. In addition, record folders need to be properly labeled and divided to make them easy for retrieval.

2.3.2.4 Staff

According to IRMT (2002), proper records management requires trained staff, adequate and continuous funding. Motsaathebe and Mnjama (2007) mention that managing records requires time and effort and this can be achieved through dedicated and well trained staff. Studies done by Motsaathebe and Mnjama (2009) revealed that due to problems encountered in managing court records, in Kenya, the Sub-committee on Ethics and Governance (2005) suggested the standardization of training of qualification to regulate entry level for all registry personnel and also short training courses for personnel registry.

2.3.3 SECURITY OF COURT RECORDS

According to Wiggins (2000), the main emphasis with records management is on the organization and safeguard of recorded information throughout its life cycle. Parker (1999) mentions that records are important because of the information they contain thus, one of the major aspects of organization is to safeguard records from damage and destruction. Shepherd and Yeo (2003) point out that organizational records need to be protected against lost or temporary misplacement. They argue that to

ensure their integrity, appropriate measures must be also taken to protect them from unauthorized alteration.

Judicial Council of California (2011) mentioned that it is frustrating to search for lost court records. They mentioned that by implementing effective tracking protocols such as bar codes and radio frequency identification devices, staff time can be saved.

According to Ngoepe & van der Walt (2010), the purpose of tracking records is to document their movement so that the organization knows where its records are at any given time. They further argue that tracking may also be used to monitor the use of records and to maintain an auditable trail of recordkeeping system. They are of the opinion that tracking may be used to ensure that a particular record is dealt with by the person to whom it has been assigned and that action is taken by a predetermined date.



World Bank (2009) posited that that the loss control of records have consequences to all citizens especially the poorest who are least able to defend themselves. The authors cite that without access to records either directly or through their representatives, the public does not have the evidence needed to hold officials accountable on the prosecution of corruption and fraud.

Johare et al (2009) in their paper revealed that that the problem of missing files has been occurred in Malaysian magistrate court and resulted in huge backlogs. They mention that to overcome the problem of missing of court records, the bar coding system for file tracking has been used.

Vallis (2009) mentions that automated tacking system that use bar code or radio frequency technology to track the movement of court records are helpful in managing

check-in and check-out process as well as producing reports that assist the staff in locating missing records

IRMT (2002) revealed that in Argentina, documents on the files are foliated so that it can be determined if documents are missing. Control systems are used to ensure that court records are maintained with their validity and integrity. The authors cite that that bar code system is used to track the movement of court records. Information about cases is provided from the case tracking system and case files are consulted under supervision. They state that the system was designed to address the problems of lost documents and case files.

Studies by the IRMT (2002) in Singapore revealed that all civil cases and court records are held electronically. They mention that documents are prepared in draft form and then entered in EFS. Court documents are retained in PDF format and stored in a juke box that can store large volumes of digital records and keep them readily accessible. The authors revealed that the user functions of the EFS include the electronic filing of court documents, receipt of court documents, searching for and tracking court cases and records. They further state that there is a high level of security built into the EFS and these include unique user IDs, passwords, and documents transmittal through secure channels using Virtual Private Network (VPN).

Nthomiwa (2007); Motsaathebe and Mnjama, (2009) mention that African countries have a major concern about the security and protection of court records. The authors state that in Botswana, Court Records Management Systems (CRMS) are used to manage court records. The CRMS uses the program that was developed by an American Company ACS which is used to manage court records in America. Nthomiwa (2007) also added that the CRMS was introduced to address the problem

of lost or missing files and slow response to public enquiries on case status. The information on court cases for example, civil and criminal case records are entered into the system. The author further state that for the security of records against theft and loss, file tracking system and biometrics (signatures) are used.

Studies conducted by IRMT (2002); Motsaathebe and Mnjama (2009) revealed that in South Africa, several incidents of lost dockets and court records due to theft had been reported. This shows that efficient and effective security measures are needed in magistrate courts to ensure that their records are safe from any court records enemies. The authors further mention that adequate security procedures and systems need be provided to prevent loss, theft or destruction of court records. They argue that in courts, court record tracking systems are needed to be implemented in order to prevent loss and misplace of court records. The authors further mentioned that loss and misplacement of court records in SA has been reported to occur in remanded cases.

Ntabazalila, (2001) states that in South Africa, automation of court records and record keeping systems have been developed. Integrated Justice System (IJS) and Case Management system (CMS) have been introduced ensure proper work flow, document management and information management. Under Integrated Justice System, the Integrated Case Management System was designed to automate civil and criminal case management system in magistrate courts. The aims of the Court process are to reduce processing time, eliminate corruption, track case electronically, provide accurate and current management of information, reduce delays, improve access to information and reduce the incidence of lost dockets and case files.

According to Motsaathebe and Mnjama (2007) court records must be protected from all hazards, improper access, accidental loss, theft, damage and unwanted destruction. They further mention that there are some security measures that are used to protect court records which include fire detectors, fire extinguishers, fire alarms and use of security guards. These systems can detect easily records that are at risk. For example, it has been reported in a local newspaper, *City Press* (2012), that the Magistrate court in Polokwane, South Africa, has been caught by fire. The City Press reported that all the computer systems and documents were destroyed by fire. Only dockets that were kept in steel box remain undamaged.

This similar incident has occurred at Middledrift Magistrates court (2000) in the Eastern Cape, South Africa, where court records were destroyed by fire. Another incident was also reported in the local newspaper, Daily Dispatch 10.11.2009. More so, in Zwelitsha magistrate court in the Eastern Cape, South Africa, court records and case dockets were once stolen during the night. Fire detectors and fire alarms need to be installed in court registries and offices where court records are kept.

2.3.3.1 PRESERVATION OF COURT RECORDS

Roper and Millar (1999) argued that preserving the record's integrity is another aspect of maintenance. They further stated that the record keeping system within a legal system environment should ensure that information is maintained in a secure environment. They argue that court records are very important and must be protected physically to ensure that they are available for the administrative and legal purposes as well as for informational and research purposes. Court records need to be maintained in such a way that they can retain their value.

According to Commonwealth Secretariat (2009) and IRMT (1999) preservation of records involves ensuring that records are safe from loss and damage. Records must be protected from natural disasters, from acidity, excessive exposure to light and from mishandling (IRMT, 1999). A slightly positive air pressure balance should be maintained within records storage area to ensure consistency of temperature and relative humidity (Commonwealth Secretariat, 2009).

IRMT (1999) further mention that legal records, particularly case files can be voluminous and organizations often look for ways to reduce the quantity of materials in hand. The authors mention that microfilming has been considered as a valuable way to preserve information while saving space. Studies conducted by Motsaathebe and Mnjama (2007) revealed that the preservation of court records microfilming is used in Asia. Case records that are inactive and more than 10 years old are converted to microfilm for permanent retention and storage. They indicated that microfilming is preferred for records preservation due to its stability, its low cost storage requirements and the fact that it does not require migration. Motsaathebe and Mnjama (2007) stated that for example, in Singapore about 49 million pages were microfilmed and housed in 15 storage cabinets. On the other hand, records awaiting for microfilming are stored off site until their disposition is authorized by the National Archives under the terms of the National Heritage Act.

2.3.3.2 PREVENTION OF UNAUTHORISED ACCESS TO COURT RECORDS

Court records need to be protected and secured to prevent unauthorized access. According to Parker (1999:71), security of records is important and not everyone should have access to records. Parker further argues that physical security measures are important in preventing unauthorized access to records. The author

mentions that access to storages must be restricted to staff whose main job is to store and retrieve records. Parker (1999) indicates that it is important for the staff to be trained to understand the need for tight security. Ropper and Millar (1999) mention that access refers to the terms and conditions that allow a user to view records. Shepherd and Yeo (2003) are of the opinion that records need to be accessible to authorized users and provide sufficient evidence of the context of their creation to support user's understanding of their significance.

Roper and Millar (1999) mention that access to court records should be restricted to authorized personnel. They argue that legal records often contain highly sensitive personal information and access to the records must be closely monitored. For example, studies conducted by that IRMT (2002) revealed that in Ecuador, court records are viewed under supervision.

IRMT (2002) cite that in Argentina, contact between court users takes place at the front desk. They mention that to ensure that no unauthorized person have access on court records, access to the front desk is controlled by a security system on the entrance door. In Argentina, lawyers enquire about their case at the front desk counter and present documents there. They mention that only the court staff is allowed beyond the front desk where active files are stored. According to Records Manual Policy (2007), all governmental bodies in South Africa are required to protect records against unauthorized access and tampering to protect their authenticity and reliability as evidence of the business. The policy state that records storage areas e must be protected at all times against unauthorized access. Staff members that need access to files in the registry are required to place a request for the file at the counter.

2.3.3.3 DISPOSAL OF COURT RECORDS

According to the Judicial Council of California (2011:4), retention periods of court records should relate to how long it must be available to the public. They mention that some court records must be retained indefinitely; others have a limited shelf life and need not be retained. According to IRMT (1999), retention periods must reflect the administrative needs of the organization as well as the wider needs of the society. They argue that decisions about the retention of case files depend on various factors because case files document the interaction between the accused and judiciary authority as well as providing evidence of decision in the case. These files need to be retained for as long as the accused has appeal rights and only when a court needs a precedent.

Ropper and Millar (1999) argue that provision must be made to ensure that some personal information can be retained for evidential, informational or research value once it has served its original purpose. Diamond (1983) argues that with confidential or proprietary records, special precautions must be taken to ensure that destruction is total and the records can in no way be recreated.

According to IRMT (2002), many countries around the world such as United Kingdom, Canada, Australia, Argentina, Botswana, South Africa and to mention few have the responsibility of ensuring that all government departments including judiciary system have retention schedules for their records. Nthomiwa (2009) argue that the absence of records retention schedules within an organization may result in file overloading, misfiling of documents and case backlog. He further states that this can have a negative impact on service delivery which includes inefficiency in the ability of the courts to administer.

Studies conducted by the IRMT (2002) revealed that in South America, Argentina, files for finalized cases are stored and destroyed after a period determined by law. The authors mention that a special law governs the process of transferring files to the judicial archives and provides mandatory retention of the records. These retention periods range from 10 to 30 years depending on the nature of the case.

In South Africa, as far as records management is concerned, unauthorized destruction of records could be considered a deliberate action to conceal the reasons for administrative actions. It has been stated that destruction of public records should be done in accordance with a written disposal authority issued by the National Archives and Records Services or its provincial equivalents (Promotion of Administrative Justice Act, 2000).

2.3.4 CHALLENGES ENCOUNTERED IN MANAGING COURT RECORDS

Roper and Millar (1999) argue that record keepers face many challenges when handling their records. Handling huge quantity of records, pressures of work and lack of professionals and inadequate resources are some of the challenges encountered by record keepers.

2.3.4.1 Large quantity of records

Ropper and Millar (1999) argue that records are basics to legal systems. They added that large volumes of records tend to accumulate after a relatively short period. The authors further mention that courts usually have a backlog of cases waiting to be heard. Also, the police and public prosecutors deal with an ongoing volume of case loads of crime. Each of these activities result in records and these records need to be cared for properly. A local newspaper, Mail and guardian (2011) reported that the state of the court is one of busiest court in South Africa. The press reported that

courts are overloaded especially in South Gauteng. The number of cases has doubled over the past three years from 35000 in 2007 to about 65000 in 2010 but the number of administrative staff has not kept pace.

2.3.4.2 Storages

According to IRMT (2002), courts create many records in a short time which need storages to be kept. Many countries do not have enough resources for physical infrastructure. The problem of storage is one of the major problems in management of court records. IRMT (2002) further maintain that due to the shortage of space, in some countries record keepers put case files in bundle of boxes piled on the floor which cause difficulties to retrieve or have easy access to the case record.

Motsaathebe and Mnjama (2009) mentioned that in many countries around the world court registries within the court system suffered from inadequate records storage facilities. Motsaathebe and Mnjama (2007) mentioned that in Botswana High Court there was a problem of storage facilities. They mentioned that some of the storage facilities were not adequate and suitable for the records. Shelves were overcrowded making retrieval of court records from them slow and time consuming. They further mention that due to the problem of storage semi -current records and non - current records are kept together.

2.3.4.3 Lack of resources

IRMT (1999) mention that although Information Technology has been introduced in many countries, due to inadequate resources throughout the world or within individual countries. IRMT (1999) further stated that many developing countries do not have the technical capacity, management infrastructures, hardware and software

support facilities or trained personnel to support the wholesale introduction of computers within the public sector. Thurston (2005) opines that the speed at which Information Technologies and e- records being adopted around the world is not being matched by the skills and infrastructure needed to manage them.

The PCS (2011) revealed that the courts in South African have got a shortage of computers and printers. It also mentioned that there is also a lack of air conditioners which create an extremely uncomfortable workplace environment. The infrastructural short comings have got negative impact in the departments to address court rolls. IRMT (2001) state that, lack of material supplies and resources to purchase them are a common problem in developing countries. Ropper and Millar (1999) argue that countries with limited resources have a problem in getting regular and consistent supplies of stationery such as file cover. It mentioned that this problem is usually pronounced in the lowest court. For example, file covers are important to keep together records. They argue that court records are regularly moved into and out of the court; if records are not kept in file cover records will soon become damaged. Again if papers are not secured inside the file covers, they are likely to fall out or get lost. Poor infrastructure adversely affects the functioning of the courts (IRMT, 2001).

2.3.4.4. Lack of trained personnel

IRMT (1999) pointed out that, legal records must be kept properly from their creation to disposal by trained personnel. In many countries such as Argentina, Ecuador and South Africa, they use unpaid interns to work in registries to manage court records. According to Motsaathebe and Mnjama (2009), the managing of records requires much time and effort and can only be achieved through the use of trained personnel.

Jerome (2007) posited that in South America, Trinidad and Tobago, almost 90% of the magistrates courts have no dedicated staff assigned to manage the court records and no structured records management programme exist. Rapid turnover of staff due to centralized public service appointments where public officers are promoted in and out of the organization has also resulted in the loss of institutional memory and expertise (Jerome, 2007). The author further argues that absence of structured orientation and training programmes should exists to develop the knowledge, skills and abilities of new staff members. Therefore, lack of trained professionals in records management is another contributing factor to mismanagement of records.



2.4 Summary

This chapter covered the record life cycle and continuum theories that were deemed relevant to the study. Relevant literature to the objectives of the study was reviewed. The next chapter will discuss the research methodology used for the study.

CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Introduction

This chapter discusses the methodology and methods that have been employed in this study. Research design, data collection methods such as questionnaires, interviews and personal observation are discussed.

3.2 Overview of study area

This study was conducted at Middledrift Magistrate Court in the Eastern Cape Province, South Africa. Middledrift is situated on the South East of Alice town and on the South West of King William's Town on R63 Road. Middledrift is a small town situated along Keiskamma river. It consists of 63 villages under Middledrift municipality. Middledrift is mainly populated by Xhosa speaking people. The town has other government departments such as Social Development, Home Affairs, Post Office, Public Works, Middledrift Municipality and Middledrift Correctional Services. Middledrift Magistrate court is a district court situated between the police camp and the Post Office. The court serves two police stations, Middledrift Police station and Chungwa Police station.

The researcher gained permission to collect data from the magistrate court through Head Office at Zwelitsha. The researcher explained the rationale of the research to the court manager who introduced the researcher to the staff members.

3.3 Research methodology

This study used both qualitative and quantitative research approaches (triangulation). According to Ngoepe and van der Walt (2010), the mixed methods approach can lead to insights and understanding that might be missed when a single

method strategy is used. Each approach adds something essential to the ultimate findings. Ngoepe and van der Walt (2010) used mixed methods in their studies on records management programmes.

Qualitative methods are typically used to answer questions about the complex nature of a phenomenon with the purpose of describing and understanding it from the participant's point of view. A qualitative method increases the researcher's depth of understanding of the phenomenon under investigation (Bailey 1978; Babbie, 2007; Leedy, 2001 and Walliam,2006).

On the other hand, quantitative method relies on measurements to compare and analyze different variables. Bless and Higson (2006) state that this form of research considers how often a variable is present and generally uses numbers to communicate the amount. Quantitative method helps the researcher to be able to compare the respondents' answers.

3.3.1 Research design

Research design is defined as a plan or structured framework of how the researcher intend to conduct the research process in order to solve the research problem (Babbie and Mutton, 2001).

Case study research method was used in this study. According to Yin (1984) case study is defined as an empirical inquiry that investigates a contemporary phenomenon within its real life context. Yin (2002) mentions that case studies are used to illustrate problems and provide opportunities to gain understanding in complex situations. The author mentions that a case study is known as triangulated research strategy. Yin (2003) mentions that the need for triangulation arises from the

ethical need to confirm the validity of the presentation in case studies. This could be done by using multiple sources of data collection methods. Data collection methods such as questionnaires, interviews and observation were employed in this study to collect information from the respondents.

3.3.1.1. Population

This study selected a sample of 50 people. The population in this study included the court staff such as court manager, magistrate, prosecutors, court clerks, lawyers, branch commander, investigating officers from SAPSM and court users such as complainants, accused persons and witnesses. 40 completed questionnaires were returned resulting to a response rate of 80%.

3.3.1.2 Sampling

According to Bless and Higson-Smith (2000), sampling is a technique by which a sample is drawn from the population. It is a practical way of collecting data when the population is infinite.

Purposive and random sampling was used to select the participants. According to David and Sutton (2004), Babbie (2008) purposive sampling is based on the researcher's knowledge and opinion regarding the characteristics of a representative sample. More so, the purposive sampling is based entirely on the most appropriate respondents to select.

The targeted group included the court manager, magistrate, prosecutors, lawyers, court clerks, branch commander and Investigating Officers from SAPSM. This technique was used by Tshotlo and Mnjama (2010) in their case study of records management audit in Gaborone City Council.

Random sampling was used to collect data from lawyers and court users such as complainants, accused persons and witnesses. Court roll register was used to select participants from complainants, accused and witnesses. Random sampling was used because each court user in the universe has an equal probability of being chosen for the sample. The court users were randomly selected from the court roll register for each and interviewed immediately using structured questionnaires.

3.3.2 Data collection methods

Combination of data collection methods such as questionnaires, interviews and personal investigation on how court records are managed were employed in this study. Mouton (1996) argues that inclusion of multiple sources of data collection in a research is likely to increase reliability. Motsaathebe and Mnjama (2009) employed triangulation method in their studies on management of High Court records in Botswana.



3.3.2.1 Questionnaires

In this study self-administered questionnaire with closed and open - ended questions was used to gather information. Self-administered questionnaires are easily distributed to a large number of people and they allow anonymity. Bless and Smith (2006) mention that questionnaires tend to encourage frank answers and also help to eliminate interviewer bias. According to Powell (1985), questionnaires also save time and the researcher can facilitate the collection of large amount of data in a relative short period of time. Questionnaires allow respondents to answer them on their own time.

According to Wimmer and Dominick (1991), open ended questions have advantages that allow the respondents freedom in answering questions and the chance to provide in- depth responses.

Bailey (1978) mentions that a closed question helps respondents to understand the meaning of the question better. The author further mentions that questions in a closed questionnaire can be answered within the frame work and responses can consequently be compared better with one another.

The questionnaire in this study was constructed in such a way to gain useful and relevant information from the participants. All questions were based on the objectives of the study, that is, the types of records created, received, maintained and used at MMC; court infrastructure, security and preservation of court records and obstacles encountered in managing court records.

The questionnaires were distributed to court clerks, investigating officers and court users on different occasions. The completed questionnaires were collected by the researcher after two days from the court clerks and investigating officers. The court users were requested to complete the questionnaire at the same time during court visits.

3.3.2.2 Interviews

According to Wimmer and Dominick (1991), interviews involve direct personal contact with the participant who is required to answer questions relating to the research problem. Interviews were used to gather both quantitative and qualitative data from respondents because almost always interviews produce a better response rate. Powell (1985) cites that the personal contact of the interview helps to encourage or put more pressure on person to fully respond. Powell mentions that by using interviews, the interviewer can ensure that all items on the questionnaire have been considered and the respondents did not omit difficult questions. Kalof *et al*

(2008) indicate that the interviews allow the interviewer to probe, clarify and ask follow up questions. Interviews are very effective and response rate is usually high.

In this study, structured and unstructured interviews were used to gather detailed information from key informants such as the court manager, magistrate, and Branch commander (SAPSM). The researcher made different appointments with the key informants. Interviewing individual respondents has advantages. Each respondent could describe his and her experiences about the topic fully without interpretation resulting in more abundant and richer data.

The aim of interviews was to get information on how court records are managed and protected from creation, receipt, maintenance, use and preservation. The prosecutors and lawyers were also interviewed by the researcher to gain information about service delivery in the court. Each session of the interviews with the respondents took about fifteen to twenty minutes.

The interviews were also conducted with record keepers and Investigating officers after questionnaires had been completed. This helped the researcher to fill gaps in the data collected through the questionnaires.

3.3.2.3 Observation

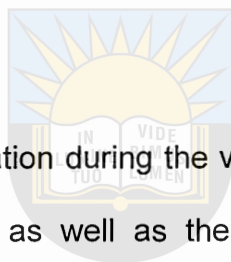
According to Bless and Higson- Smith (2006), observation is a research technique in which the behavior of research subjects is watched and recorded without any direct contact or interaction. They mention that observation is a useful method since it can provide rich qualitative data.

Non participant observation in this study was employed. During visits at MMMC and at SAPSM the researcher had time to observe how court records are created, maintained, protected and preserved. At MMC, the researcher was given permission

by the court manager and magistrate to observe in the court how information in the DRCS is machine captured. The researcher had time to observe how court records are created and maintained. The researcher also observed the movement of the court records between the court clerks and the prosecutors.

The researcher observed the classification system in place, how files are arranged in the cabinets and the retrieval of court records by the court clerks. Observation was also made on security methods used to protect court records and court infrastructure. Storage for semi-current and closed court records (strong room) were also observed.

The researcher also made observation during the visit at the Investigating Unit. The researcher observed the storage as well as the security of case dockets. The researcher also observed the storage for semi current and non- current court records.



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3.4 Data analysis

Basically data analysis entails breaks down of data into constituent parts to obtain answers to research questions. According to De Vos (1998), data analysis means the categorizing, ordering and summarizing of data to obtain answers from research questions. Babbie (2008) point out that the purpose of analysis is to reduce data to an intelligible and interpretable form so that the relations of research problems can be studied and tested for a conclusion to be drawn. In this study, data was coded and analyzed using the Statistical Package for Social Sciences (SPSS) and presented in form of tables, frequencies and percentages.

3.5 Ethical considerations

During this research, the researcher gained permission from the court manager. The aim of the research was explained to the key informants and also to the participants. In conducting this study, the researcher adhered to the principles of research ethics, assuring the confidentiality and anonymity of the participant. The participants were informed that they were free to participate in the research. They were asked to sign the consent form. The participants were informed about the purpose of the study and their rights and privacy were not violated. They were told that the research was only to fulfill the academic purposes.

3.6 The validity and reliability of the study

According to Mouton (1996), validity is concerned with just how accurately the observable measures actually represent the concept in question or whether in fact they represent something else. Reliability is the extent to which the observable measures that represents a theoretical concept are accurate and stable when used for the concept in several studies.

In the construction of the questionnaire in this study, the researcher ensures that all questions were based on the aims and objectives of the study. Combination of data collections such as questionnaires, interviews and observations were used to ensure that information gained from the respondents was valid for the study.

3.7 Summary

The chapter describes the research methodology used in the study including sample size, data collection methods and the method of data analysis. Ethical considerations applied in the study were also outlined. The next chapter is the presentation of the analyzed data.

CHAPTER FOUR: DATA ANALYSIS, PRESENTATION AND DISCUSSION

4.1 Introduction

This chapter provides the presentation and discussion of the findings collected in this study. The objectives of the study were to determine the types of records created, received, used and maintained at MMC. Furthermore, the objectives of the study were to describe the available infrastructure, finding out existing security measures for the protection of court records from loss, theft and damage and to identify obstacles encountered in the management and use of the court records at MMC.

4.2 Data presentation as obtained from questionnaire, interviews, document study and observation.

Out of 50 questionnaires distributed, 40 (80%) questionnaires were returned to the researcher. These questionnaires were distributed to court manager, magistrate, prosecutors, lawyers, court clerks, Police Branch Commander, Investigating officers from South African Police Service, Middledrift (SAPSM) and randomly selected court users such as complainants, accused and witnesses (Table 1).

Table 1: Types of respondents

Type of respondents	Frequency	Percentage
Court manager	1	2.5
Magistrate	1	2.5
Police Branch Commander	1	2.5
Court clerks	6	15
Police Investigating officers	4	10
Court users	27	67.5
Total	40	100

4.2.1 Demographic characteristics

Various characteristics of the respondents were collected to establish their profiles.

4.2.1.1 Gender of respondents

Thirty (75%) of the respondents were males while (10) (25%) were females (table 2).

Table 2: Gender of respondents

Gender	Frequency	Percentage
Male	30	75
Female	10	25
Total	40	100

4.2.1.2 Age range

Nineteen (45%) of the respondents were between 18-34 years while 16 (42%) were between 35-49 years and the rest (13%) were above 50 years (table 3).

Table 3: Age range of respondents

Age group	Frequency	Percentage
18-34	19	45
35- 49	16	42
Above 50	5	13
Total	40	100

4.2.1.3 Court staff qualification level

Motsaathebe and Mnjama (2007); IRMT (1999) argue that legal records must be taken care of in a professional manner by individuals that are well trained to manage the responsibilities involved. Special skills are required by court administrators for matters such as managing cases.

The court staff that included court manager, magistrate, prosecutors and court clerks were asked to indicate their qualifications. Two (20%) of respondents indicated that they possess matriculation certificates, 3 (30%) had diplomas and another 3 (30%) had under graduate degrees whilst the rest, 20% had post graduate degrees (table 3). This shows that most of the staff members are well qualified. The importance of formal qualification by court administrators has been mentioned in a paper by Commonwealth Secretariat (2009). It has been pointed out that professionalism for court administration should be a priority in the drive to reform and create more efficient court systems.

Table 4: Level of education



Type of qualifications	Frequency	Percentage
Matriculation	2	20
Diplomas	3	30
Under graduate degrees	3	30
Post graduates degrees	2	20
Total	10	100

4.2.1.4 The position of court clerks

The respondents were asked to indicate their position in the magistrate's court. Two (33%) of the respondents were senior administrative clerks whilst four (67%) were court clerks at junior level (table 5).

Table 5: Position of court clerks at MMC

Position	Frequency	Percentage
Senior Administrative Officer	2	20
Court clerks (junior level)	4	80
Total	6	100

The respondents were further asked to indicate their experience in their positions. 50% (3) of the respondents revealed that they had been in their position more than five years, 33% (2) had over ten years in their positions while 17% (1) had less than five years (Table 6).

Table 6: Experience of court clerks

Experience	Frequency	Percentage
10 years and above	2	33
5 years and above	3	50
Less than five years	1	17
Total	6	100

The Police officers were also asked to indicate their positions. 1 (10%) indicated that he was a senior investigating officer and 3 (30%) indicated that they were junior investigating officers (table 7).

Table 7: Position of Investigating Officers

Position	Frequency	Percentage
Senior Investigating Officer	1	25
Investigating Officers (junior level)	3	75
Total	4	100

Investigating Officers were also asked to indicate their experience. One (25%) of the respondents indicated that he had more than 10 years in his position while the rest (75%) had more than five years (table 8). From the above information, it appears that the majority of respondents had experience in their position.

Table 8: Experience of investigating officers

Experience	Frequency	Percentage
10 years and above	1	25
Five years and above	3	75
Less than 5 years	0	0
Total	4	100

The magistrate, court manager, prosecutors and lawyers were asked to indicate experience in their position. The magistrate indicated that he had more than ten years serving his position, the court manager had more than five years, one of the prosecutors had more than ten years while the other one had more than five years. The two lawyers indicated that they had more than five years of experience.

4.3 Types of court records created, received and maintained

Courts create and receive many types of records. In addition, court records are also created and received by the police officers. The Police are among the major stakeholders in the Department of Justice. It is stated in the Bill of Rights in the Constitution of South Africa 1996, that after the police arrest an accused person, that person must appear before the magistrate court within 24 hours depending on the case. In this case, the Police officers are responsible for the creation of case dockets before an accused person is brought to the court.

Ropper and Millar (1999) stated that the creation of court records in courts is crucial for management of records. They argued that if legal records are not created, maintained and made accessible, governments and citizens may be unable to enforce their rights.

More so, the researcher sought to know the figures responsible for the creation and receiving of court records. The six court clerks mentioned that court clerks and prosecutors are responsible for the creation and receiving of court records.

When asked about the sources of other court records, 3 (50%) respondents indicated that the court receives case records from Police officers and prosecutors, 2 (33%) revealed that the court received records from lawyers and the prosecutors whilst 1 (17%) mentioned that they received case records from police officers (table 9). According to the information given by the respondents, the court receives case records from different sources.

Table 9: Other sources of court records

Where records come from	Frequency	Percentage
Police officers and prosecutors	3	50
Lawyers and prosecutors	2	33
Police officers	1	17
Total	6	100

The interviews conducted by the researcher with the court manager revealed that court clerks and prosecutors were responsible for the creation and receiving of court records. The court manager also confirmed that the MMC receives case records from the police officers, lawyers and prosecutors.

The researcher also conducted interviews with the magistrate concerning the magistrate's responsibility in the creation and receipt of court records. The magistrate pointed out that magistrates are no longer involved in the administration of the courts. He explained that the court manager is the one responsible for the management of court records.

When the police officers were asked about the responsibility in the creation and receiving of case dockets, all the respondents indicated that police officers and Investigating officers were responsible for the creation of case dockets. The investigating officers were further asked whether they received records from other sources. Their responses indicated that they received records from police officers and prosecutors. When interviewed, the Branch Police Commander confirmed that their office receives records from the police officers and from the prosecutors.

This supports the findings by IRMT (2002) which established that magistrate court being the lowest court in the hierarchy of the justice system is the origin of result most cases. As a result magistrate courts create many types of records. These records need to be managed in such a manner so that they can be available when needed.

The court clerks were asked to indicate the types of records created, received, and maintained at MMC. The majority of respondents said the court received, created, and maintained criminal, civil and miscellaneous case records whilst the rest indicated criminal and civil case records.

There researcher sought to confirm this by interviewing the court manager. The court manager mentioned that MMC deals with criminal, civil, and miscellaneous cases.

The court clerks were also asked to indicate which records were created in their offices and their responses indicated that criminal case records form the bulk of records created and received in their offices.

An analysis of court registers by the researcher revealed that the court creates and receives many court records. Registers are maintained for all records. For instance, there is a register for all criminal cases. The information recorded included the name of the prosecutor, clerk of the court, interpreter, the case number assigned by the police, the court's case number, the name of the accused and the crime committed. The criminal record registers are differentiated by week days. Each week day (Monday to Friday) has the case register. For the purpose of differentiating the cases, new cases are entered in blue while additional details on old cases are entered in red. Information in these registers is also captured in the Integrated Case Management System (ICMC). The researcher observed that after information is captured, case files are filed in the cabinets

For civil cases, lawyers prepare a summon which is stamped with a numbering machine and given the next case number in a sequential order. Documents relating to a case such as original summons, return of service and supporting documents are placed in a civil case file. All civil cases are registered in the civil claim register. The civil claim register includes all information about the case such as case number, name of plaintiff, defendant, attorney and date. All of the civil cases are filed in a box which they called the "jacket box". The jacket box is used to keep all case records. In the jacket box, cases that are to be heard at a certain date are kept together. For example, all cases that are scheduled for the same date are kept together. All information about the cases is also captured in ICMS.

When the respondents from SAPSM were asked, they show the types of records in their office and how they were created, received and maintained. In addition, they indicated that their office created criminal cases only.

The researcher conducted interviews with the Police Branch Commander concerning the type of cases created in his office. He indicated that his office only deals with criminal cases. For further clarity, the researcher asked the court manager where else the court receives civil cases if they are not created by SAPS. He indicated that civil cases can be prepared by attorneys/ lawyers when complainants lodge civil complains. This finding supports results of the studies conducted by the IRMT (2002) on legal and judicial records and information systems around the world. According to these studies, police officers deal with the criminal cases only.

From the above information, it shows that criminal and civil cases are the most cases created and received at MMC. This finding supports the results of the studies conducted by Motsaathebe and Mnjama (2007) on the management of High court records in Botswana. Similarly, Nthomiwa (2007) in the paper on the "Presentation of Case Flow Management System" states that criminal and civil cases are the most cases created and received in magistrate court. Johare *et al* (2009) on their paper argued that criminal and civil cases are the most case records created in courts. These results also support results of the IRMT (1999-2002) on legal and judiciary records and information systems which revealed that the magistrate courts create civil cases, criminal cases, and miscellaneous cases.

4.3.1 Rate of court records accumulation over five years at MMC

Magistrate's courts are known to create and receive most of court records as they are the lowest courts in the hierarchy of most justice systems. Therefore many cases

initiate from the magistrate court before they may be transferred to other courts. As a result, magistrate courts create and receive many records each year.

This study sought to investigate the role of records management in the functioning of a magistrate court. One of the objectives of the study was to determine the types of records created, received and maintained at MMC between 2007 and 2011 at MMC. The researcher chose the five fixed years to establish the total number of court records that has been created and received between these years.

The respondents were asked to indicate the approximate number of records received, created and maintained in the court during this period. The respondents indicated that during this period, the volume of records was very high because court case files were kept together with traffic fines. The analysis by the researcher on court statistics revealed that between 2007 and 2011 about 5194 records had been created and received at MMC. (see table 10).

Although the respondents had indicated that the volume of case files was caused by traffic files, the statistics at the time of research showed that MMC still created many records each year excluding traffic files. For example, between 2010 and 2011, the number of records has not decreased despite the withdrawal traffic files. This shows that the traffic files did not form the majority of case records. The overcrowding of records in courts has also been revealed by the local press "*Mai & Guardian*" (2011). The press mentioned that in Gauteng, the busiest court in SA has been facing a problem many court records that cause difficulties to the staff to retrieve and keep records safe.

Table 10: Court statistics of Criminal and civil case records MMC created between 2007 -2011

Year	Criminal cases	Civil cases	Total
2007	1031	141	1172
2008	1022	107	1129
2009	1053	99	1152
2010	913	125	1038
2011	593	110	703
Total	4612	582	5194

4.3.2 Format of court records at MMC

The format in which records are kept in an organization is very crucial to records management. In a magistrate court, records are created, received and stored in both hard and electronic formats.

The respondents were asked about the format in which court records are created, received and stored in the MMC. Four (67%) of the respondents indicated that both manual and electronic records are created while two (33%) indicated the use of the manual system is used (table11). During an interview with the court manager, he mentioned that both manual and electronic systems are used to create and receive court records. The manager indicated that manual records comprise most of records created in the court. He further explained that although records are initially created manually, they are later on captured in the computer system.

Table 11: The records format

Format for court records	Frequency	Percentage
Manual and electronic	4	67
Manual	2	33
Total	6	100

The researcher observed that both manual and electronic systems are used to create court records at MMC. This finding supports the results of the studies conducted by the IRMT between 1999 and 2011 which revealed that although electronic record keeping systems have been introduced in magistrate courts, in most countries, court records are still kept manually due to lack of resources to sustain electronic records management systems.

The police officers were also asked to indicate the format in which their case dockets are kept and all their responses indicated that both manual and electronic records management systems were used. In a bid to get more information on records format, the researcher conducted interviews with the Police Branch Commander who confirmed that both manual and electronic systems are used.

4.3.3 Electronic Records Management Systems

Most of the developed countries in the world have introduced computerization of court records. The researcher wanted to know whether MMC has Electronic Records Management system in place and the majority(67%) of the court clerks indicated that their office had electronic records management system, one (17%) respondent was unaware of an electronic records management system while another seemed to know nothing about an electronic records management system (table 12).

Studies conducted by the IRMT (1999-2002) in various countries revealed that electronic records systems in magistrate courts have been used as a strategy to reduce backlog, speeding up case proceedings, reduce loss, misplacement, theft and filing court documents electronically. For example, in Singapore, Electronic Filing System is used to provide magistrate courts with an electronic registry and work flow system.

Johare *et al* (2009) state that developed countries such as the United States of America, United Kingdom and Australia are examples of countries that have successfully implemented computerization in magistrate courts. In Africa, electronic records keeping systems have been introduced in few countries. For example, in Botswana, an electronic Court Records Management system is used to manage court records (Nthomiwa, 2007). Johare *et al* (2009) mention that the electronic systems in magistrate courts are also a way of reducing the considerable demands of handling physical court records as well as long term costs of storing official documents.

Table 12: Electronic records management system

Electronic records management system	Frequency	Percentage
Yes	4	80
No	1	10
Unaware	1	10
Total	6	100

As a follow up, the respondents who indicated that their office has electronic records management system were asked about electronic records management system that the magistrate court uses. The majority (50%) of the respondents pointed out that

Integrated Case Management System (ICMS) and Digital Court Records System are used while one (16.6%) said Digital Court Recording System (DCRS) machine is used. Another (16.6%) of the respondents were unaware of any electronic records management systems and the rest (16.6%) did not know (table 13).

Table 13: Records management system in place at MMC

Which ERMS is in place	Frequency	Percentage
Integrated Case Management System and Digital Recording Machine System	3	50
Digital Recording Machine System	1	16.6
Unaware	1	16.6
Not known	1	16.6
Total	6	100

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The interviews with the court manager concerning electronic records management systems used at MMC revealed that the ICMS is used to capture all information about the cases from the beginning till the cases are finalized. The court manager explained that the DRCS machine is used in court proceedings to record cases on trials and bail application. In the system, all information about the court officials and court users are captured indicating the date, magistrate, prosecutors, lawyers, interpreter, accused, witnesses and complainants.

The respondents were also asked whether they were trained in electronic records management. The majority of respondents said they were trained in electronic records management but one respondent said she had no electronic records management training.

The interview with the court manager revealed that most staff members were trained electronic records management except the newly appointed court clerk. Lack of formal training among court clerks has been mentioned by the IRMT (1999) in their studies in legal and judicial records and information systems. These studies revealed that in some countries such as The Gambia, Argentina and Ecuador, court clerks were not trained. In Ecuador for example, unpaid interns were used in court registries. However, the absence of training opportunities is regarded as a cause of high staff turnover.

The I/O's were asked to indicate the electronic records management system used in their office. The majority of respondents indicated that Crime Administration System (CAS) was used to capture information from case dockets and the rest were not sure about the electronic records management system used. The researcher conducted interviews with the Police Branch Commander who confirmed that Crime Administration System is used to capture case dockets.

When the police officers were asked whether they were trained in electronic records management system, all of them revealed that they were trained in the use of electronic records management system. Interviews with the Police Branch Commander confirmed this.

Studies conducted by the IRMT (2002) around the world revealed that in many countries, electronic records management systems have been introduced to manage court records. For example in Asia, Singapore, Electronic Filing Systems are used. Johare et al (2009) also mentioned that developed countries such as UK, USA and Australia have successfully implemented electronic records management systems in their courts.

4.3.4 Transfer of court records to other courts

The respondents were asked if the court can transfer case records to other courts. All the respondents indicated that the court sometimes transfer current case records to other courts. The respondents were asked to indicate which court records are can be transferred to other courts. All the respondents indicated that records with sentences above three years are normally transferred to other courts.

The respondents were further asked to indicate how these records are transferred. The majority of the respondents (67%) mentioned that a messenger is used to deliver the court records to other courts while (33%) indicated that the court records are transferred to other courts by post (table 14).

An interview with the manager reflected that some court records are transferred to other courts. The manager confirmed that cases with more than three years sentence are transferred to the regional court. He further indicated that before the court records are transferred, a court clerk makes copies before sending them to respective courts. He indicated that court clerks had a responsibility to ensure that all copies of court records are certified. The court maintains the registers for transferred case records. The manager stated that most of the time, the court messenger is used to deliver the court records to ensure that the respective courts receive the records on time and have to sign. He also added that the post may also be used in some cases. The use of messenger to deliver court records to and from the court has also been revealed by Motsaathebe and Mnjama (2007). Their studies revealed that a messenger is used to deliver court records Botswana High court.

The procedure of making copies of original copy before the case record is transferred makes it easier for the court to ensure that information about the case is

available. This can help only if the transferred case records may not reach their destination due to unforeseen circumstances. For example, it was reported in the local press (*Daily Dispatch*, October 2012) that court records once got lost in the East London Magistrate court. It was reported that the messenger of the court did not bring the post to the court although the messenger signed for the post from the post office.

Table 14: Methods used to transfer court records

How case records are transferred	Frequency	Percentage
Messenger	4	67
By post	2	33
Total	6	100

The respondents were further asked if they received records from other courts. The majority of respondents said that the court did not receive records from other courts whereas one respondent said the court received records from other courts.

An interview with the court manager revealed that the court does not receive any case records from other courts. The court manager explained that MMC is the one that transfers some current case records to the Regional court. He indicated that the respondents who said the court received records from other courts may have confused the case records with the inter court correspondences.

When the I/O's were asked whether their office transferred their case dockets, all the respondents revealed that their office did not transfer the case dockets. The police

officers were also asked if their offices received any case records from other courts. All the respondents revealed that their office did not receive case records from other courts. The interview with the Police Branch Commander revealed that his office did not receive or transfer any case dockets. He indicated that each police station had its own area to deal with. Cases that occurred in one area cannot be transferred to another police station or court.

4.4 Records management infrastructure

Studies conducted by IRMT (2002-2011) revealed that most countries in the third world are struggling with proper storage for their court records. Also the studies done by the Motsaathebe and Mnjama (2009) revealed that in most countries, registry courts are facing the problem of storage facilities. These studies revealed that most countries were facing the problem of poor records management infrastructure. Court records were congested in courts and were stored inappropriately.

Johnson and Kallaus (1987) argue that effective records management needs physical infrastructure storage, offices and resources. They mention that paper records and computer hardware need storage that provides adequate space. They further state that records need range of stationery and office equipments such as cabinets, shelves and drawers. They further argue that subsystems are also needed to capture, classify, maintain and dispose off records to ensure that they remain accessible in future. The IRMT (1999) argue that lack of storage in managing court records is one of the contributing factors to ineffective records management.

The problem of storage facilities in magistrate courts has led many countries around the world to introduce computerization to store court records. For example, in UK,

USA, Asia, Australia and to mention few, the Electronic Filing Systems are used for the filing, maintenance and use of court records.

4.4.1 Physical infrastructure

The respondents were also asked whether their offices had adequate storage for court records. All respondents indicated that the court had storage for court records. As a follow up question, the respondents were asked if the court has storage for semi-current and noncurrent case records. All respondents mentioned that semi-current court records are kept in the storage room and noncurrent court records are kept in the strong room. On observation, the researcher noted that there was a small storage room for semi-current records and strong room for closed files. Semi-current court records were arranged numerically on the shelves. The researcher noticed that although the strong room storage for non-current records had enough space, filing of case records was not of high standard. Some of case records were lying on the floor.

The researcher also noted that the registry office that is supposed to accommodate court records was too small to accommodate the voluminous court records. As a result, current court records were kept in the offices of court clerks. This contradicts with the Records Management Manual Policy of South Africa (2007) and NARS Act of (1996) that require all government departments to keep their records in Registry office.

During interviews, the court manager pointed out that the Registry office at Middledrift Magistrate court was too small to accommodate court records. He further mentioned that internal arrangement was made to keep current case files in the offices of the court clerks.

When the police officers were asked if their office had storage for case dockets, all respondents indicated that their office had proper storage for case dockets. They indicated that semi current dockets and pending cases are kept in steel cabinets in their offices separately from the current case dockets while closed case dockets and finalized cases are kept in the station archives. The researcher observed that the store for case dockets is well built with metal shelves and steel cabinets that are used to keep case dockets in good condition. Closed files are arranged neatly and kept in archival boxes.



4.4.2 Resources

According to IRMT (1999), the problem of inadequate resources such as funding is a challenge in managing court records especially in developing countries. This problem can lead to poor records management in lower courts. The researcher wanted to know whether MMC had enough resources to manage court records. All of the respondents indicated that MMC did not have enough resources to manage court records.

According to Nthomiwa (2007), resources such as office furniture and equipments, computers, photocopying and fax machines, scanners and telephone lines are required in court as well as the stationery such as registers, file covers and papers. The respondents were asked if the court had enough office furniture such as cabinets, desks, chairs, shelves and stationery to keep court records. All

respondents confirmed that their offices had enough office furniture. Cabinets and shelves are used to keep court records. They were further asked to indicate the kinds of cabinets were used to keep court records safely. All of respondents said wooden and steel cabinets were used to keep case records.

On observation, the researcher observed that wooden and steel cabinets were used to keep court records and case dockets. At SAPSM soft file covers were used to keep charge sheets. At MMC hard file covers (Z20 files) were used to keep court records.

The respondents were further asked whether their offices had enough computers, scanners, fax and photocopying machines. All respondents indicated that the court does not have enough computers, scanners, fax and photocopying machines. The researcher observed that in MMC there were few computers. Each court had one computer which allowed only one person at a time to capture court records in the system. The single scanner that they had in their office was not functioning.

Parker (1999) argued that after records have been processed, they need to be managed effectively so that they can be available at any time when they are needed.

The researcher sought to know whether MMC had enough staff to manage court records. The majority of respondents revealed that the court had enough staff to manage them while others indicated that they have not.

An interview with the court manager revealed that MMC does not have enough resources. He mentioned that registry office was too small. Also the court does not have enough computers and scanners for court records. The court manager further mentioned that the court had fax and photocopying machines which make it easier

for the staff to perform their jobs. Concerning the training of staff in records management, he indicated that the court had trained staff in records management. He further indicated that the court have enough staff to manage court records.

The shortage of resources in courts had been also reported by the Public Service Commission, 2011. The findings of the Commission noted that magistrate courts have the problem of office equipment such as computers and scanners which make it difficult for the court staff to perform their duties.

4.5 Maintenance and Use of court records

According to IRMT (1999), the maintenance and use of records include the classification, filing and proper storage of records as records pass through the stages. The authors argue that, where the records storage and retrieval system does not exist, the judgement of magistrate alone can be inadequate in preventing the maladministration of the justice system. According to Judicial Council of California (2011) the system of maintaining court records involves minimizing the risk of misfiling, loss or damage of court record or any parts of it.

4.5.1 Records Classification System/ File plan

Parker (1999); Ngulube and Ngope (2010) point out that a record classification system provides the means of knowing what records exist and where they are kept in an organization and if they are easily retrievable. Parker (1999) states that the creation or adoption of good records classification systems by an organization can save time spent for searching a single record. The author further mentions that there are several types of classification systems that are used to classify records. Records should be managed in an effective manner all the time. According to this author,

where records are not well managed, the staff can spend most office time looking for a single record.

This study sought to know if MMC had a classification system in place. All respondents indicated that there was a classification system for court records. They were further asked to state the classification system used in the court. The majority of the respondents indicated that numerical classification system was used whilst the rest indicated that the court records were arranged chronologically. According to Judicial Council of California (2011), numerical, alphanumeric and terminal digit filing systems by case numbers are commonly used for filing court records in USA. The numerical classification system seems to be the most system used in classifying records in magistrate courts. This system has the possibility of unlimited expansion and also misfiling can be reduced.

The researcher also wanted to know if the respondents were trained in the use of the classification system. The majority of the respondents indicated that they were trained while one respondent indicated no training had been given.

The study also revealed that numerical classification system was used. This is similar to the results of the studies by Motsaathebe and Mnjama (2007) at Botswana High Court which established that numerical classification system was used. The respondents were asked if the existing classification system was effective. All the respondents indicated that it was effective and made easy it to retrieve court records.

The police officers were also asked to indicate the classification system that their office used. All the respondents mentioned that numerical classification system is used. The respondents were also asked if they were trained in using the classification system. All of the respondents indicated that they were trained. IRMT

(1999) states that an appropriate filing type system should be used in police records to enable the rapid identification and retrieval of papers. They mention that the simplest system would be store files by year and then by sequential number within each year.

4.5.2 Records use

Court records are usually moved in and out of the court and are frequently passed between the judiciary and clerk of the court or other administrative staff. The respondents were asked whether the court has file movement register to control movement of case records. All respondents said the court has file movement registers. They were asked whether the file registers are updated. All respondents indicated that file movement registers were updated. In an observation, the researcher confirmed that file movement registers were constantly updated.

They were further asked whether the court lends out court records to court officials such as prosecutors, lawyers and magistrates. Four (67%) of the respondents indicated that court officials are allowed to borrow case files whilst two (33%) stated that court officials were only allowed to make copies of the record (table 15).

Table 15: Lending of court records to court officials

Lending of case files	Frequency	Percentage
Yes	4	67
No	2	33
Total	6	100

The respondents were asked to indicate the prescribed time or period for borrowed case records. Three (50%) respondents indicated that the prescribed time for borrowers was a day during working hours and one (17%) said there was no prescribed time. Two (33%) of the respondents indicated they were unaware of the prescribed time for borrowed case records (table 16).

Motsaathebe and Mnjama (2007) observed that the absence of prescribed time for borrowers is one of the contributing factors that lead to misplacement or loss of case records. The court clerks would not know whether the particular file is still with the borrower or not. The IRMT (2002) in their studies on legal and judiciary records and information systems in South Africa also established that in a magistrate court, some court officials took court records to work on them at their home.

Table 16: The prescribed time for borrowed case record

Prescribed time	Frequency	Percentage
A day	3	50
No prescribed time	1	17
Unaware	2	33
Total	6	100

Interviews with the court manager revealed that court officials are not allowed to borrow case records. The court manager indicated that court officials are allowed to make copies of case records and are required to pay for copies. He further indicated that, it is when the photocopying machine is not working that the court official may be allowed to take the case file out of the office. Even in such a case they have to sign

in control file movement register the name of the borrower, date and time the case file has been taken out and also the date the file is to be returned. The court manager stated that the borrower is required to return the case records on the same day. The researcher observed that control movement register is in place and updated regularly.

The information gave by the respondents contradict the findings of the study done by IRMT (2002) in Ecuador and South America. These studies revealed that in Ecuador court officials are allowed to borrow court records up to 30 days.

Court records are known to be used by court officials and court users such as lawyers, prosecutors and magistrates. According to IRMT (2002), most countries around the world for example, South America, Asia, United Kingdom and United States of America, criminal and civil case records are public records and are open to inspection normally on payment of a fee. Similarly in South Africa, both civil and criminal records are public records and are open to inspection normally on a payment of fee.

The respondents were asked about the procedures the court officials use for the requisition of case files. The majority of the respondents indicated that court officials make request verbally while other respondents mentioned that court officials fill a form when requesting to use a case file.

An interview with the court manager revealed that an official who wants a case file must fill a form. However the researcher observed that no form was filled by court officials when they request for case files and there was no prescribed time for borrowed case files. The court officials made requests verbally.

According to Ngulube and Ngoepe (2010), the misplacement and loss of records in an organization may be partially due to ineffectiveness of tools to monitor the movement of files. For the effectiveness of maintaining case record, the magistrate court needs to have procedures which must be followed when someone requests a case file. For example, in Ecuador, lawyers are required to leave their identification as a security deposit.

Respondents were asked what was done if a case file was not returned. All respondents said that the borrowers were reminded by court clerks. Three (50%) respondents indicated that they reminded the borrowers verbally while 33% indicated by telephone and by writing and one (17%) indicated by telephone (table 17). An interview with the court manager established that most of the time court officials are reminded verbally.

Table 17: Methods used to remind borrowers

The method used to remind borrowers	Frequency	Percentage
Verbally	3	50
By telephone and writing	2	33
Telephone	1	17
Total	6	100

When the police officers were asked if they lend records to other officials, they indicated that they did not lend case dockets to other officials. The interview

conducted with the Police Branch Commander confirmed that his office did not lend out case dockets.

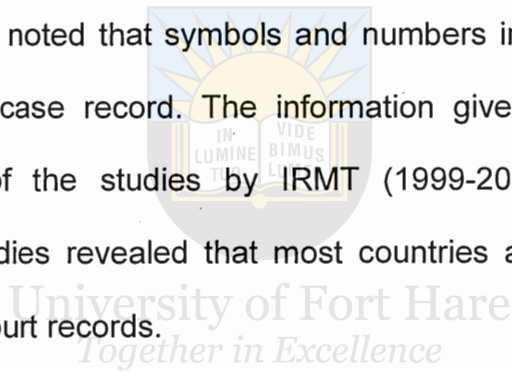
4.5.3 Retention and disposition Schedules

Retention schedules for court records relates to how long the case record must be available after disposal stage. Some court records are retained indefinitely and other court records have limited shelf life and need not to be retained after the case is closed.

According to Ropper and Millar (1999) retention schedules must reflect not only immediate administrative needs of the organization but also the wider needs of society for evidence and information about organization and its activities. For example, case files contain information between the accused and judiciary authority and provide the evidence of the decision in the case. They further argue that case files need to be retained for as long as the accused has rights to appeal and for as long as the court needs precedent.

The Promotion of Justice Act (Act no. 3 of 2000) of South Africa imposes a duty on the state to ensure that administrative action is lawful, reasonable and procedurally fair. It further states that if the request of the person fails due to unavailability of information caused by destruction of records where history of that action was recorded, it could be presumed that the administrative action was taken without good reason. The Act further state that as far as records management is concerned, unauthorized destruction of records could be considered a deliberate action to conceal the reasons for administrative actions (Constitution of SA, 1996, Section 195).

The respondents were asked if the court had retention schedules for their records. All respondents indicated that the court had retention schedules for court records. The court manager confirmed to the researcher that the court had retention schedules. He mentioned that Criminal Record Books are kept in a secured room when they are not in use. Some case records are destroyed after certain periods which are indicated by the Magistrate during sentence. Symbols and numbers such as D-3 are recorded to indicate the action to be taken after the expiry of the stated period. The researcher conducted an analysis on the court records that were due for disposal. The researcher noted that symbols and numbers indicating disposal date were recorded in each case record. The information given by the respondents supported the results of the studies by IRMT (1999-2002) on court records management. These studies revealed that most countries around the world have retention schedules for court records.



In the magistrate court, closed files form part of references used by lawyers, magistrates and judges. It must be ensured that these files are available at all times when they are needed. To ensure that closed files are transferred to Archives or strong room, movement registers for closed files need to be in place. When the researcher asked if their office have registers for closed files, all respondents revealed that their offices have registers for closed files. The researcher, however, noted that the court does not have register for closed files. It seemed that the respondents had mistaken movement registers for case files between the court clerks and court officials. These findings were also revealed by the studies conducted by Motsaathebe and Mnjama (2007) on court records management in Botswana High Court. They revealed that there were no registers for transferred court records to archives. The absence of registers for transferred court records is

against the National Archives and Records Administration Act of SA. According to this Act, a well-organized file plan enables an organization to find information easily. Records that are correctly filed and stored are easily accessible and this facilitates transparency and accountability.

When the I/O's were asked whether their office had retention schedules for their records, all the respondents indicated that their office had retention schedules for records. They were further asked if their office has registers for closed files. All the respondents mentioned that their offices have registers for closed files. All the respondents indicated that case dockets with finalized cases are transferred to archives. The inspection done by the researcher at SAPSM revealed that their office had registers for case dockets transferred to archives.

4.6 Security for court records

Motsaathebe and Mnjama (2007) state that information contained in records is very important. They argue that it is crucial for an organization to safe guard its records from any damage. Records should be protected from unauthorized access, accidental loss, theft and damage.

The respondents were asked who is authorized to take care of court records. All respondents indicated that court clerks were responsible for the security of court records. They were asked what measures they take to ensure that court records are secured. All respondents said they make it a point to ensure that offices and storage that keep records are locked at all time. The respondents were asked who is responsible for the keys stores and cabinets. All of the respondents said court clerks are responsible for the keys of cabinets in their offices and senior administrative clerk is responsible for the storage and strong room keys.

During inspection of storage and cabinets at MMC, the researcher observed that not all cabinets are locked at all times. Only the storage for semi- current records and strong room seemed to be locked at all times.

When police officers were asked who is responsible for the security of case dockets, all of the respondents indicated that the investigating officers were responsible for the security of case dockets. They were further asked what security measures they take to ensure that case dockets are secured. All of the respondents indicated that the cabinets with case dockets are locked at all times. The researcher wanted to know who is responsible for the storage key. All of the respondents indicated that the Investigating Officer was responsible for the safe keeping of the keys and in their absence the Branch Commander was responsible for the keys. The inspection conducted by the researcher at SAPSM revealed that cabinets and storages for case dockets were locked at all times.

The respondents were further asked how they ensure that records are safe and not altered and majority of them (67%) indicated that each document in the case record was assigned an entry number and also paper threads fasteners were used. Two (33%) respondents mentioned that entry numbers were used (table 18).

Table 18: Protection against alteration of court records

Records safety from alteration	Frequency	Percentage
Entry numbers and paper threads fasteners	4	67
Entry numbers	2	33
Total	6	100

The police officers were also asked how they ensure that case dockets were not altered. Two (50%) of the respondents mentioned that entry numbers and paper threads were used. One (25%) of the respondents indicated that paper threads are used while another one indicated that the Branch Commander conducts random inspection of case dockets to ensure that they are not altered (table 19).

Table 19: Protection against alteration of case dockets

Records safety from alteration	Frequency	Percentage
Entry numbers and paper threads fasteners	2	50
Entry numbers	1	25
Random inspection	1	25
Total	4	100

An observation by the researcher in both offices revealed that each document in the case record is assigned an entry number. Paper threads and paper binders were used to fasten each document received. The entry numbers are useful in the case file. If some of the documents in the case files have been removed, they can also be easily identified. The assigning of entry numbers or unique numbers on court records was also revealed by the IRMT (2002). These studies revealed that in Argentina and Ecuador unique numbers are used for case records. Also the documents in the files are foliated so that it can be determined if the documents are missing.

4.6.1 Security measures for court records

Security measures are important for the protection of records from theft and loss. In most countries where the system is paper driven security systems such as file case tracking, bar codes, and radio frequency identification devices are used to ensure that court records are not lost or stolen (IRMT, 2002) . Ngulube and Ngoepe (2010) mentioned that the purpose of tracking records is to document their movements so that the organization knows where its records are when needed. They further mention that tracking may be used to ensure that a particular record is dealt with by the person to whom it has been assigned.

The respondents were asked whether MMC has file case tracking system for its records. All of the respondents revealed that the court does not have file tracking systems. To protect court records from loss and misplacement, countries such as Singapore, Ecuador and Argentina, file tracking systems are used to track court records.

According to Judicial Council of California (2011), implementing effective tracking protocols such as bar codes, case file tracking and radio frequency identification devices, can save the time of searching a record.

The respondents were asked what security systems were used to protect court records. Two (33%) respondents mentioned that security guards and fire extinguishers were used, another (33%) indicated that the court had security guards and one (17%) said only security guards while the rest mentioned that fire detectors and security guards are used (table 20).

Table 20: Security systems used at MMC

Security systems	Frequency	Percentage
Security guards and fire extinguishers	2	33
Security guards	2	33
Fire extinguishers	1	17
Security guards and fire detectors	1	17
Total	6	100

The respondents were asked whether they are trained to use fire extinguishers. 60% of respondents said they were trained on the use of fire extinguishers while 40% of the respondents said they had no training. Fire detectors and fire alarms are needed to be in place in case of any outbreak of fire. There had been a fire incident at MMC in 2000 which caused severe damages on court records (Daily Dispatch, 2000).

When I/O's were asked whether case file tracking system is used for case dockets, all of them revealed that their offices do not have tracking systems. They were further asked to indicate security systems used in their office. The majority of the respondents mentioned that fire extinguishers would be used in the event of outbreak of fire. Other respondents stated that fire detectors had been installed as a security measure.

The observation done by the researcher revealed that both at MMC and SAPSM only fire extinguishers that were present. The researcher noted that there were no fire detectors.

4.6.2 Prevention of unauthorized access to court records

Physical security measures are important in preventing unauthorized access to the records. Access to the storage of records must be prevented and restricted (Parker, 1999). Records Manual Policy (2007) state that staff members must be trained to understand the need for tight security. All points of access must be secured. Records need to be protected against unauthorized access so as to protect their authenticity and reliability. According to Ropper and Millar (1999), access to court records should be restricted to authorized personnel. They point out that legal records contain highly sensitive personal information and access to the records must be monitored. For example, in Ecuador, court records are viewed by court officials under supervision of record keepers. When asked who had access to their court records, all the respondents mentioned that court clerks, lawyers, prosecutors and magistrate had access to court records.

The respondents were asked how their offices inhibit unauthorized access to their records. All respondents said the storages of court records are locked at all times and the key is with the senior administrative clerk. The court clerks further explained that they are requested to sign for the key from the senior administrative clerk wherever they wanted to retrieve court records from the store.

The Investigating Officers indicated that cabinets with case dockets and archives were locked at all times. The unit has registers which the officials are required to sign when they want information from archives. This helps the office to know who had been in the archives at a certain day, date and time.

When the I/Os were asked who had access to their case dockets, they revealed that only Investigating officers and the Branch Commander had access to case dockets.

They were further asked whether the public had access to their court records and case dockets. All of respondents said public did not have access to court records and case dockets.

The respondents were further asked how their offices ensured that electronic records are always safe from unauthorized access. All of the respondents revealed that they had passwords for the systems. This finding supports the results of the studies conducted by Motsaathebe and Mnjama (2009) on management of court records in selected countries. These studies revealed that in most countries around the world where electronic records had been introduced, biometrics and passwords are used. In Singapore, court records are retained in PDF format as a security measure.

An interview with the court manager, he confirmed that the public did not have access to court records. Turner (2002) mentions that in developed countries such as USA and UK, the public only access court records through internet. The author states that in Washington magistrate court, records are open to the public and putting them on the internet is a better way of allowing public to monitor what the court is doing. Lo Pucki (2008) mentions that in UK, citizens have can access court records through internet. At MMC, it was observed that the magistrate court did not have internet. The court had intranet for court officials only.

The I/O's were also asked whether their office has access to internet and all their responses reflected that they do not have internet in their offices.

4.6.3 Preservation of court records

According to Parker (1999); Ropper and Millar (1999), preservation involves ensuring records safe from loss and damage. Poor environmental conditions and natural disasters are major risk factors for records. Ropper and Millar (1999) mention that records must be protected from damage by acidity, excessive high or low temperature, biological agents, and from natural disasters such as water and fire. The respondents were asked whether their records were protected from damage by biological agents and natural disasters. All of the respondents indicated that court records were protected from natural disasters at all times.

Court records are used on a daily basis and it is easy for the file cover to get damaged and lose its shape. The respondents were asked what they do if the file cover is damaged. The majority of the respondents indicated that they replace damaged file cover whereas others said when the file was damaged they did not replace it with the new one. Replacing of file covers is important in records management. File covers for case records and case dockets need to be replaced when damaged so that they can maintain their good condition.

The I/O's were asked whether their records were protected from damage by biological agents and natural disasters. All of the respondents indicated that case dockets were always protected from natural disasters at all times.

The police officers were also asked what they do when the file cover is damaged. All of the respondents indicated that they replace the torn cover with the new file cover.

The researcher wanted to know how non-current court records are kept at MMC. All The respondents mentioned that closed files are kept in boxes and put in the strong

room. The respondents were further asked if the place was suitable for the records. The respondents indicated that the storages were well built. They were asked how relative humidity and temperature were controlled. The respondents said the court has installed air conditioners. On observation, the researcher noted that air conditioners and ventilators were used to control relative humidity and temperatures. The response given by the participants supports the findings of Commonwealth Secretariat (2009) which recommended that storage of court records need to be secured and controlled from relative humidity and temperature.

The respondents were asked what hazards and enemies if any, are likely to affect case records. The majority (66%) of the respondents indicated that moth and cockroaches usually affect the court records. 17% of respondents mentioned that water and fire are the hazards that affect court records. The rest of respondents (17%) indicated that water usually affects their court records (table 21).

The interviews with the court manager revealed that they were no hazards usually affects their court records. He indicated that the respondents who mentioned water refer to the old building that was destroyed by fire. On observation, the researcher noticed that there were some cockroaches and moths in the storage room. The inspection of the building by the researcher revealed that there were no leakages and the storage areas were always clean.

Table 21: Hazards that affect court records

Hazards and enemies affect court records	Frequently	Percentage
Moth and cockroaches	4	66
Water and fire	1	17
Water	1	17
Total	6	100

When the police officers were asked about hazards that usually affect their records, 50% of the respondents revealed that cockroaches affect their records and another 25% indicated moths and cockroaches usually affect court records. Other respondent (25%) mentioned that they were no hazards and enemies that affect their case dockets. On inspection of the building, the researcher noted that the building was in good condition (table 22).

Table 22: Hazards and enemies affect case dockets

Hazards and enemies affect case dockets	Frequency	Percentage
Cockroaches	2	50
Moths and cockroaches	1	25
No hazards and enemies	1	25
Total	4	100

4.6.4 Misplacement and loss of court records

According to Thurston (2005), well managed court records are essential for an efficient of legal system. Records are the means by which citizens and organizations are able to enforce their rights.

IRMT (2002) mention that court clerks in magistrate courts are responsible for the maintenance of case files and are held accountable for the safe keeping of records in South America. To ensure that records are kept in an efficient and effective manner, the authors mention that the personnel have to sign a pledge making them legally liable for the records they manage.

Thurston (2005) mentions that records in courts support accountability and making the judiciary systems more transparent. Accurate and readily accessible records of judiciary rulings reduce the potential manipulation of records resulting to delays, corruption and inaccuracies. Delays in locating case records and filing document have direct impact on the citizen. More so, unavailability or ineffective control of file movement registers might contribute to the misplacement of court records (Thurston, 2005).

The problem of misplacement and loss of court records was also revealed by Motsaathebe and Mnjama (2007). The study revealed that in Botswana High Court, cases would not be sent for trial because case files were misplaced or lost due to the improper case file movement registers.

The respondents were asked if their office ever experienced incidents of misplacing or losing court records. All respondents mentioned that their offices had experienced the misplacement and loss of court records.

The respondents were asked to indicate how often the misplacement of court records occurred in their offices. The majority (66%) of the respondents indicated that they sometimes experience misplacements; one respondent (16.6%) indicated it was rare while another 16% indicated that it happens once a month (table 23).

Table 23: Misplacement and loss of court records

How often court records misplaced and lost	Frequency	Percentage
Sometimes	4	66
Rare	1	16.6
Once a month	1	16.6
Total	6	100

The respondents were asked to indicate the approximate number of case records misplaced or lost during this period. All the respondents mentioned that misfiling and misplacement of case files occurred. They indicated that between 2007 and 2010 the court dealt with many case records and it was difficult for the court to handle these court records. The majority of the respondents were not sure about the exact statistics of case records lost during this period.

An interview conducted by the researcher with the court manager revealed that it was rare for the case records to get lost at MMC. He mentioned that it was misplacement and misfiling which usually took place. He further mentioned that even in such cases the files were eventually recovered.

Thurston (2005) argues that due to voluminous case records created in magistrate court, it is common for case records to be misplaced or lost. The problem of missing,

misplacement or loss of court records has been also revealed by Motsaathebe and Mnjama (2007). Studies conducted by the IRMT (1999- 2002) also revealed that most countries around the world have been facing the problem of misplacement and loss of court records. Johare *et al* (2009) revealed that countries in Asia, United Kingdom, Australia and United States of America and Africa has introduced computerization of court records to reduce the problem of misplacement, loss, delays and backlogs in courts.

The problem of misplacement and loss of court records has been also reported in the local press. The "*Mail and Guardian*" (2011) reported that in the South East Gate High Court, there has been cases of misplaced, lost or stolen court records. Motsaathebe and Mnjama (2007) argue that the misplacement and loss of court records leads to delays, adjournments and backlogs. This is more when an accused person appeals. If the record cannot be located due to poor records management system, the accused person might be denied justice. Kwamboka (2011) reported that court records once get lost in Kenya. It was mentioned that in this situation, the judges were unable to proceed with cases due to the unavailability of the original records.

The respondents were further asked about the approximate number of case records lost or misplaced per year. Three (50%) respondents indicated that one or no record lost per year, another two (33%) indicated that no case records get lost while the rest (17%) said it was rare (table 24).

Table 24: Court records lost and misplaced per year

Court records lost per year	Frequency	Percentage
1 or nil	3	50
Nil	2	33
Rare	1	17
Total	6	100

During an interview with the court manager, he admitted that the MMC had experienced the misplacement of case records but not oftenly. The court manager further mentioned that even the case records considered misplaced, there were always recovered. This finding contradicts with the results of the studies by the IRMT (1999-2002) in several countries. These studies revealed that in some countries around the world, the magistrate courts were faced with the problem of backlogs and case delays and adjournments due to the misplacement and loss of court records.

When I/O's were also asked if their office ever came across with misplacement and loss of case dockets, all respondents revealed that misplacement and loss of case dockets occurred. They were further asked to indicate how often the case dockets got lost. The majority of the respondents indicated that it happened sometimes and the rest indicated it was rare.

The researcher sought to know how many case dockets got lost per year. The half (50%) of the respondents indicated that no losses of case dockets, 25% indicated two case dockets while the rest (25%) indicated that one case dockets got lost (table 25).

Table 25: Case dockets lost and misplaced per year

Case docket lost	Frequency	Percentage
Nil	2	50
Two	1	25
One	1	25
Total	4	100

An interview with the Police Branch Commander, the researcher was told that case dockets sometimes get lost and misplaced. These findings were also revealed by the IRMT (2002) in their studies on legal and judicial records and information systems in South Africa. The authors point out that Kenya and Ghana had the highest incidences of missing out court records at the hearing stage. According to the East African Standard (2001), missing of case records from the law courts in Kenya is regarded as a matter of gross in justice. The IRMT (2002) further mentioned that in South Africa the incidences of misplacement and missing of court records was reported in many remanded cases.

The respondents were further asked whether they create a temporary file when the original case record cannot be located. All of the respondents revealed that the court creates a temporary file.

Motsaathebe and Mnjama (2007) state that record keepers need to merge the temporary case files with the recovered case files for the effectiveness of records management. The researcher wanted to know whether the respondents merge the temporary files with the lost case file when it is recovered. All respondents said they merge the duplicate file with the original one when it is recovered.

4.6.4.1 Factors leading to the misplacement and loss of court records

According to Ropper and Millar (1999) management of court records requires well trained and dedicated personnel. The authors indicate that employing less trained personnel and having high volumes of case files with no proper storage may lead to misplacement and loss of records. The respondents were asked what factors led to the misplacement of court records. 50% of respondents indicated that misplacement and loss of case records was due to improper filing on the shelves, 16.6% of the respondents indicated that sometimes misplacement was due to negligence and misfiling by the responsible court clerk while 16.6% indicated that this may have caused by the court clerk who did not shelf back the case file in the cabinet. One respondent was unaware of contributing factors to misplacement and loss of court records (table 26).



When the court manager was asked the contributing factors to the misplacement and loss of records, he confirmed that misfiling was among the major contributing factors. He mentioned that court clerks were responsible for filing since court records were kept in their office. Motsaathebe and Mnjama (2009) opine that the negligence in dealing with court records lead to the undertaking of the commonwealth court records project by the Association Commonwealth Archivists and Records Managers (ACARM). The main aim of ACARM is to disseminate information about the importance of good record keeping to those who create, manage, preserve or use court records. This project is done by the countries that share a legal tradition with Britain. It has been mentioned that with the help of ACARM the management of court records has improved in these countries.

Table 26: Factors leading to misplacement and loss of court records MMC

Factors lead to misplacement and loss of court records	Frequency	Percentage
Misfiling and improper shelving	3	50
Negligence and misfiling	1	16.6
Not shelving back of case records	1	16.6
Unaware	1	16.6
Total	6	100

When police officers were asked to indicate the contributing factors related to the misplacement and loss of case dockets, the majority of the respondents indicated that misfiling was among the major cause while the rest indicated that the misshelving of case dockets was the cause

4.6.4.2 Impact of losing or misplacing court records

The practice of law by its nature depends on information. In the context of managing legal records, when an accused person appeals against conviction, the decision of the judge is made after assessing the records of proceedings from a lower court. If the record of proceedings cannot be located due to poor record keeping practices, the accused person might be denied justice. Thurston (2005) argues that dysfunctional records management in courts undermines legal and judiciary system.

The respondents were asked about the impact of misplacement and loss of case records and case dockets to the court, and to the court users (complainants, witnesses and accused persons). All respondents indicated that loss or

misplacement of case records lowers and damages the image of the magistrate court. They further said that, it delays case proceedings and causes unnecessary backlogs to the court. Also court users lose hope and trust in the magistrate court and the general justice system.

An interview with the court manager revealed that the misplacement and loss of case records have a negative impact to the judicial system. The court manager mentioned that the impact of case delay slows down the finalization rate of cases at the court and affects monthly targets. He further indicated that delays due to loss and misplacement of case records cause the accused person to be kept in custody for a longer period. The researcher also conducted interviews with the prosecutors and lawyers. The respondents revealed that delays in court proceedings have negative impact to court users. They indicated that sometimes witnesses in the cases are students. Delays affect their studies because they are supposed to come to court for case hearings which causes them to miss their classes. The respondents further mentioned that some court users are employed in private sectors and they may face the threat of being fired by their employers. One of the respondents revealed that the complainants lose hope and confidence in the magistrate courts and sometimes end up withdrawing their cases due to delays in case proceedings. Thurston (2005) opines that lack of evidence in the form of records can lead to the judicial system failing to bring justice to country citizens. If the court record cannot be located, the accused person may be denied justice.

4.7 SERVICE DELIVERY BY MMC

Records in magistrate courts are fundamental to the efficient and effective operation of the justice system. They support accountability by making the justice system more

transparent. Accurate and readily accessible court records reduce the potential for the illicit manipulation resulting from delays, corruption and inaccuracies. Kemoni and Ngulube (2008) point out that poor records management practice have adverse consequences to public service delivery. They argue that the unavailability of records sometimes force officials to take decisions on an ad hoc basis.

According to Motsaathebe and Mnjama (2007), the availability and completeness of court record plays a crucial role in the functioning of the courts. In order for a case to proceed, the initiating documents should be available. Failure to locate or to provide required case record means that the case cannot proceed, hence there will be delays encountered in determining the case. Lack of evidence in the form of records can lead to failure of the judicial system to bring justice to the citizens.

The government of South Africa has adopted the principles of *Batho Pele* (People First) that highlight the responsibility of each civil servant to perform his or her duties accordingly. Civil servants are expected to serve the public in an efficient and effective manner. The magistrate court is where citizens come for justice. Some of people travel far from the court and expect the magistrate court to solve their cases immediately they lodge complaints.

To gain insight on how service is delivered by the magistrate court, the researcher conducted interviews with the court users starting with two prosecutors and two lawyers. These people were interviewed because they use the court nearly on a daily basis to attend cases. They may know how records management affects service delivery at MMC.

The respondents were asked whether they ever experienced delays a court hearing. All of the respondents indicated that they do experience delays in case proceedings.

The researcher wanted to know what causes delays in case proceedings at MMC. The respondents indicated that most of the time the delays are caused by the Investigating Officers from the Department of South African Police Services who do not bring case dockets on time.

The researcher further asked the respondents if the delays in case proceedings may be due to unavailability of court record. All of the respondents confirmed that the court had sometimes experienced the delays due to the unavailability of court records.

In an interview, one of the prosecutors mentioned that she remembered one case in 2012 when the case record was not available in the court and this led to the postponement of the case though the record was recovered later. The problem of the unavailability of court records in magistrate courts has been also revealed by reports in the local press (Citizen, 2005).

The respondents were also asked the approximate number of cases adjourned per month due to unavailability of case files. All respondents indicated that not more than three cases. During interviews, the court manager indicated that it is rare for the case record to get lost at MMC. The court manager pointed out that although the record was not available in the court it was recovered later. He explained that it is possible that the person who is working in the office by that time when the record was missing may be not familiar with the filing of case records.

From the above responses, it appears that most of the time the problem of delays in case proceedings mainly lie with the I/O (SAPSM) that sometimes do not bringing case dockets on time. These findings were also revealed by several local newspapers (Daily

Dispatch 2009, Herald, 2005, Star, 2005 and Mail and Guardian 2011).The study conducted by the Motsaathebe and Mnjama (2007) also revealed that cases were not sent for trial due to the unavailability of court records. Several studies conducted by the IRMT(2002-2011) and the local press (*Daily Dispatch*,2012 and *Star*,2005) revealed that most of the time the public struggle to get their cases to be resolved at the magistrate courts due to unavailability of case dockets and case records. Some of the cases are postponed or adjourned due to lack of documentary evidence. Some of the accused persons are kept longer in custody and others are unable to get appeal due to unavailability of relevant court records from record keepers.

The researcher also sought to get information about service delivery at MMC, from the court users such as the accused persons, complainants and witnesses. Court users such as accused person, complainant and witnesses are the members of the public who come to magistrate court for justice. Therefore, a total number of 23 court users were interviewed by the researcher.

The respondents were asked whether that was their first appearance in court for their cases. The majority (65%) of respondents indicated that it was not their first time and 35% (8) stated that it was their first time in court (table 27).

Table 27: First time to appear in court for the case

First time in court	Frequency	Percentage
Yes	8	35
No	15	65
Total	23	100

The respondents were further asked to indicate how many times they visited the court for their cases. Nine (39%) of the respondents mentioned that it was their second time while 26% (6) said it was their third time. 33% (8) indicated that it was their first time (table 28).

Table 28: Times visited the court for the case

How many times in court	Frequency	Percentage
First time	8	35
Twice	9	39
More than once	6	26
Total	23	100

The researcher wanted to know when their cases began. 13% (3) of the respondents indicated that the case began in 2010, another 9% (2) said the case began in 2011 and 13% (3) mentioned 2012. The rest (65%) of respondents said their cases began in 2013 (table 29).

This shows that most cases began in 2103. It also indicates that the MMC does not have huge backlogs of cases since the majority of cases began in 2013. The DoJ& CD defines backlog in a Magistrate court as all cases longer than six months on the court roll (PSC, 2011).

Table 29: Year the case began

In which year the case began	Frequency	Percentage
2010	3	13
2011	2	9
2012	3	13
2013	15	65
Total	23	100

The respondents were asked to indicate the reasons why the cases were delayed. 5 (22%) of the respondents revealed that there was not enough information. Another five (22%) mentioned that the accused were not available; (4%) 1 of the respondents indicated that their Attorney was not available. Two (9%) indicated that complainants were not available while another two (9%) of the respondents said SAPS did not bring case dockets. The rest of the respondents said that it was their first time. (Table 30).

The problem of misplacing case dockets in S.A has been revealed by the IRMT (2002) in study on legal and judicial records. The study established that some police officers were found removing comments on the dockets. The problem of unavailability of case dockets in magistrate courts was also revealed at the Pretoria magistrate court. It was revealed that most of the time, case dockets were not available on time in court. (IRMT, 2002). It has been mentioned that the docket is supposed to be in the court three days before the set date for the trial.

The respondents were further asked whether their cases were postponed due to unavailability of court records and all of them said their cases were not postponed due to the unavailability of court records.

According to the information given by the respondents, this shows that court records at MMC were well managed by the records keepers. The respondents did not mention any delays that were caused by the unavailability of court records from court clerks.

Table 30: Reasons why cases are postponed

Reasons for case repeating	Frequency	Percentage
For further investigation	5	22
Accused not available	5	22
SAPS did not bring case docket	2	9
Attorney not available	1	4
Complainant not available	2	9
First time	8	34
Total	23	100

The defendants, complainants and witnesses were also asked how they feel about the delays in court cases. 10 (43%) of respondents mentioned that they were frustrated. 5 (22%) indicated that they were losing trust and confidence in the magistrate court while the rest (35%) revealed that it was their first time at the court and they wished that their cases could be finalized soon (Table 31).

Table: 31 Feelings about the delays of the case

Feelings about the delays	Frequency	Percentage
Frustrated, time consuming and disturbing	10	43
First time appearance in court	08	35
Losing hope and confidence	5	22
Total	23	100

The respondents were further asked what they expected from MMC and all of them indicated that they expect the court to speed up and finalize their cases soon.

4.8 Challenges encountered in managing court records at MMC

Studies conducted by IRMT (2002) revealed that many countries around the world are facing challenges in managing court records. Storage and lack of resources are major problems in managing court records. Also, the use of less trained personnel is another problem. For example, interns in Ecuador were placed at registries due to the shortage of staff.

The respondents (court clerks) were asked to indicate obstacles that they encounter when managing court records. The majority of respondents indicated that lack of resources is among the obstacles hindering the management of court records whereas one of the respondents mentioned lack of training.

They were also asked about the current records management system at MMC. All the respondents said the current records management system in the court is good. The respondents further indicated that the court is able to deliver good service because filing and security of case records is of high standard.

The prosecutors and lawyers were also asked about the current record management system at MMC. The majority of respondents mentioned that the current management system is good. One of respondents said the recording system used in court need to be upgraded

Interviews with the court manager revealed that the current records management system is good although the court does not have enough resources. The court manager also revealed that the court has made requisitions for computers and scanners.

4.9 Summary

This chapter presented data analysis based on the objectives of the study. The data was discussed using the relevant literature. The next chapter deals with the conclusions and recommendations.



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CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter discusses the conclusions and recommendations of the study.

5.2 Findings of the study

This study was guided by the following objectives to determine types of records created, received used and maintained at MMC, to describe available infrastructure, to find out security measures to protect court records from loss, theft, damage and unauthorized access and to identify obstacles encountered in managing court records.

5.2.1 Type of records created, received, maintained and used at MMC

At MMC, court clerks and prosecutors are responsible for the creation and receiving of court records on a daily basis. The court clerks create, receive and maintain criminal, civil and miscellaneous court records. They are aware that court records need to be created, maintained and made available when they are needed.

The maintenance of records is another aspect of managing records. For the proper maintenance, classification system of records should be in place. All the respondents revealed that MMC has classification system for court records. The findings revealed that numerical classification system is in place. The court has file movement registers to monitor movement of court records. The findings also revealed that MMC do not have the prescribed time for borrowed files and case file tracking systems. In

this study, 100% of the respondents mentioned that at MMC the misplacement and misfiling of court records normally occur.

Studies conducted by Motsaathebe and Mnjama (2007) in 2007/2009) revealed that although classification systems are in place, court records are get misplaced, misfiled and get lost. This finding supports the results of the studies on legal and judiciary records and information systems conducted by the IRMT (1999-2011) in different countries. These studies revealed courts were faced by the problem of backlogs, case delays and adjournments due to the misplacement and loss of court records.



5.2.2 Records management infrastructure

The findings of the study also revealed that MMC has problem of storage. All the respondents confirmed that the court does not have enough space to keep current court records. The registry office which is supposed to keep current court records is too small to accommodate the voluminous court records. As a result, current court records are kept in the office of the court clerk. According to Records Manual Policy (2007), in South Africa, government departments are required by the NARS directives to keep their records in a spacious office and centrally located registry. The office space allocated for use as a registry must be able to accommodate all documents and records. Lack of storage is known as one of the contributing factors to poor records management. The court clerks supported by the court manager also indicated that the MMCC does not have enough resources such as such as computers and scanners. For example, each court has one computer which means that only one person can work on a computer. However, the findings revealed that the court has enough office furniture for the clerks to perform their duties.

The researcher noticed that MMC have electricity problem which sometimes cause unnecessary delays in case proceedings. During the researcher's visits at MMC, the court was busy upgrading the power system. Roper and Millar (1999) mention that the quality and reliability of electricity should always be assessed and taken into consideration in any computerization project.

5.2.3 Security measures to protect court records from loss, theft, damage and unauthorized access

The findings on the security and protection of court records at MMC revealed that strong security of court records was maintained for semi-current and non-current court records. The stores for these court records were locked at all times and the keys were strictly controlled. Court staff who wanted to retrieve case records at the storage signed for the key from the senior administrative clerk. However there was no file tracking system.

The physical security of the records was adequate and unauthorized access as well as alteration was controlled by signing of register. The hiring of security guards and installation of fire detectors served to reinforce the security and protection of records.

The findings at MMC revealed that preservation of court records was adequate as there were no biological, chemical and atmospheric agents that were likely to damage court records. There were ventilators and air conditioners to control relative humidity and temperature hence there were no leakages in the buildings.

5.2.4 Obstacles encountered in managing court records at MMC

The respondents were asked to indicate the obstacles encountered in managing court records at MMC. The majority of respondents indicated that lack of resources

is major problem at MMC. For example, the court has few computers, no internet and inadequate storage for current court records. Another respondent mentioned that training of the personnel is another problem. The problem of resources at MMC was confirmed by the court manager.

5.2.5 Service delivery at MMC

The findings concerning service delivery showed that the MMC is trying at its best to manage court records in an efficient and effective manner. The interviews conducted by the researcher with the magistrate, prosecutors, lawyers, complainants, accused and witnesses revealed that it is rare for the court to postpone cases due to unavailability of court records.

Service delivery is taken seriously at MMC and as a result there were no backlogs of cases pending hearing. It was, however, established that some delays do occur due to missing dockets from SAPSM.

5.3 Recommendations

From the findings of the study the following recommendations are made:

1. It was noticed that at MMC there is lack of sufficient storage for court records.

Lack of storage has negative effect on the effectiveness of records management. MMC needs to expand storage space for both current and semi-current court records. In South Africa, government departments are required by law to ensure proper keeping of all departmental records.

2. MMC does not have enough resources thus the department of Justice must ensure that court records have enough resources so that the court staff can perform their jobs effectively.
3. Training of the personnel is very important hence records management need well trained and dedicated staff. In this regard, MMC must ensure that all new appointees are trained and acquainted with necessary practices related to court records management.
4. To have a tighter control over court records, MMC should consider the establishment of a file tracking system or bar code system to ensure that court records can be easily tracked. This will minimize misplacement of records.
5. For the security and protection of court records, fire alarms and detectors are needed to be in place so that fire can be detected when break out.

5.4 Further research

Based on the findings of the study, since MMC is a small court, the results of the study cannot be generalized to larger courts. A further study in larger courts is recommended to be conducted.

5.5 Summary

This chapter discussed the conclusions and recommendations of the study.

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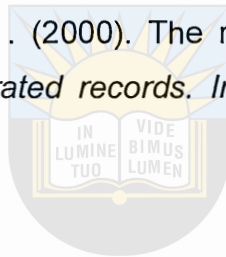
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APPENDIXES

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QUESTIONNAIRE

UNIVERISTY OF FORT HARE

FACULTY OF HUMANITIES AND SOCIAL SCIENCES

DEPARTMENT OF LIBRARY AND INFORMATION SCIENCE



TOPIC

*University of Fort Hare
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**THE MANAGEMENT OF MAGISTRATES COURT RECORDS: A CASE OF
MIDDLEDRIFT MAGISTRATE COURT, EASTERN CAPE.**

All information collected will be treated in confidential and will only be used for the purposes of the study.

Section A: Information about key informants

Instructions: Tick the correct answer by making an **X** in the box of your choice

Middledrift magistrates court	
SAPSM Brach Commander	

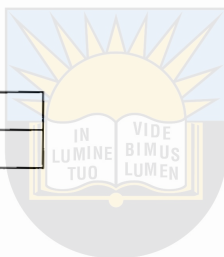
BIOGRAPHICAL DATA

1. POSITION

Magistrate	
Branch Commander	
Other, specify	

2. GENDER

Male	
Female	



3. RACE

African		White		Coloured		Indian		Other, specify	
---------	--	-------	--	----------	--	--------	--	----------------	--

4. AGE

18- 35	36-50	51 and above
--------	-------	--------------

5. HIGHEST LEVEL OF EDUCATION

Matric		Diploma/ Degree		Post- graduate		Other, specify	
--------	--	--------------------	--	----------------	--	----------------	--

6. Current Position:

7. Experience in the current post

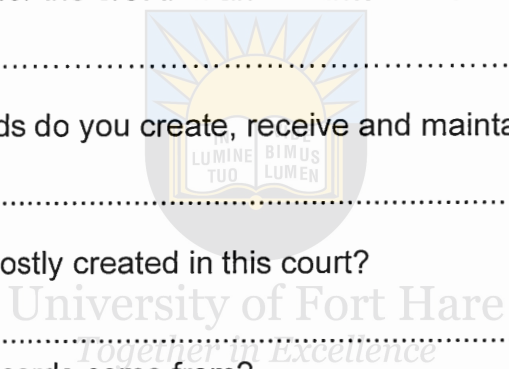
Less than 5 years	5-10 years	Above 10 Years
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SECTION B

This section is about court records management

(a) Types of records received, created, maintained and used at MMC

- 1. In which format the court keep its records?
.....
- 2. If it is electronic, do you have trained staff?
.....
- 3. Who is responsible for the creation and maintenance of records?
.....
- 4. What types of records do you create, receive and maintain?
.....
- 5. Which records are mostly created in this court?
.....
- 6. Where are these records come from?
.....
- 7. What is the level of growth of court records?
.....
- 8. Does the court receive case files from other courts?
.....
- 9. Does the court transfer current court records to other courts?
.....
- 10. If yes, how are records transferred?
.....
- 11. Do you have classification system for your records?
.....
- 12. Do you lend your records?
.....



13. Does your office have file movement register to control movement of case records?

.....

14. Does MMC have retention schedules for court records?

.....

15. Does the court have registers for closed files?

.....

(b) RECORDS MANAGEMENT INFRASTRUCTURE

1. Does your office have adequate storage to keep its records?

.....

2. Is there any storage for semi- current and non-current records?

.....

3. What records equipments the court use to keep records?

.....

4. Does the court have enough resources for managing records from creation to disposal?

.....

5. Does the court have enough cabinets, shelves and files to store records?

.....

6. Does the court have enough staff to manage records?

.....

(c) SECURITY OF COURT RECORDS

1. Who is authorized to take care of case records?

.....

2. Where case records are kept?

.....

3. Is the storage locked at all times?

.....

4. If yes, who is responsible for the keys?

.....

5. What security measures does the court have to protect records?

.....

6. Does the court ever experience theft of case record/ case docket?

.....

7. If yes, how often this happen?

.....

8. What are contribution factors that lead to theft of records?

.....

9. Does the court ever experience lost or misplaced case file or court docket?

.....

10. If yes, what are reasons for loss or misplacement of records?

.....

11. What is the impact of lost case files to the court?

.....

12. What is the impact of lost case record to the complainant?

.....

13. What is the impact of case record to the accused person?

.....

14. What is the approximate number of lost case record per month?

.....

15. What is the approximate number of lost case files per year?

.....

16. Does the court have retention schedules for court records?

.....

17. What methods the court uses to prevent unauthorized access to records?

.....

18. What methods court use to preserve records?

.....

19. How is the condition of the storage?

.....

20. Does the storage enable to keep records?

.....

21. Is there any pest infestation in place?

.....

22. What methods use to prevent court records from all hazards and enemies?

.....

(d) OBSTACLES ENCOUNTERED IN MANAGING COURT RECORDS

1. How is your current record management system?

.....

2. If it is good, is it able to deliver good service to the court users?

.....

3. If it is poor, how can it be improved?

.....

4. What obstacles court encounter when managing court records?

.....

Thank you for your cooperation.

REGISTRY CLERKS/ COURT CLERKS AND INVESTIGATING OFFICERS

SECTION A: Information about registry/ court clerks and I/O

Instructions: Tick the correct answer by making an **X** in the box of your choice

Court clerk	
Registry clerk	
Investigating Officer	

BIOGRAPHICAL DATA

1. GENDER

Male	
Female	

2. AGE

18- 34		35-49		50 and above	
--------	--	-------	--	--------------	--

3. HIGHEST LEVEL OF EDUCATION

Matric		Diploma/ Degree		Post- graduate		Other, specify	
--------	--	--------------------	--	----------------	--	----------------	--

4. POSITION:

5. Experience in the current post

5 years		5-10 years		Above 10 years	

6. Formal Training

Yes	
No	

7. If yes, which one?

.....

8. If no, Why?

.....

SECTION B

This section is about court records management

(a) Types of records received, created, maintained and used at MMC

1. . Who is responsible for the creation and receiving of court records?

.....

2. Where are these records come from?

Police officers	
Courts	
Public prosecutors	
Other, specify	

3. What types of records do you create, receive and maintain?

Criminal cases	
Civil cases	
Other, specify	

4. Which records are mostly created in this court?

Criminal cases	
Civil cases	
Other, specify	

5. What is the growth rate of the records in your court?

High	
Moderate	
Low	
Not known	

6. What is the approximately number of records created and received between 2007-2011?

(i) CRIMINAL CASES

Year	No. of cases
2007	
2008	
2009	
2010	
2011	

(ii) CIVIL CASES

Year	No. of cases
2007	
2008	
2009	
2010	
2011	

7. In which format are created?

Manual	
Electronically	
Other, specify	

8. If electronic format is used, does the court have electronic records management system?

Yes	
No	

9. If yes, which one is in place?

.....

10. If you have electronic records, have you been trained?

Yes	
No	

11. If no, why?

.....

12. Do you transfer current case records to other courts/ stations?

Yes	
No	
Not known	

13. If yes, which records are transferred?

.....

14. How records are transferred?

Yes	
No	

15. Do you receive other case records/ dockets from other courts/ stations?

Yes	
No	

16. If yes which ones?

.....

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(b) Maintenance and use of court records/ case dockets

1. Do you have classification system for your records?

Yes	
No	
Not known	

2. If yes, which one is in place?

Alphabetic	
Numeric	
Alphanumeric	
Other, specify	

3. If no, why?

.....

4. Have you been trained for using the classification system?

Yes	
No	

5. Is the classification effective to retrieve court records?

Yes	
No	

6. Does your office have file movement register to control movement of case records?

Yes	
No	
Not Known	

7. If yes, is the file register updated?

.....

8. If no, how do you trace borrowed case files?

.....

9. How often are records used by court officials or court users?

Daily	
Sometimes	
Not known	

10. Do you lend your records?

Yes	
No	

11. If yes, what is prescribed time or period for borrowers to keep the case file?

Yes	
No	
Not Known	

12. Which procedures are used for the requisition of case files by court officials?

Filling form	
Request verbally	
Request by telephone	

13. If the case file is not returned, do you remind borrower?

Yes	
No	
Not Known	

14. If yes, how?

By telephone	
By writing	
Email	
Other, specify	

15. If no, why?

.....

16. Does MMC have retention schedules for court records?

Yes	
No	
Not Known	

17. Does the court have registers for closed files?

Yes	
No	

18. If yes, are registers updated?

.....

(c) COURT RECORDS MANAGEMENT INFRASTRUCTURE

1. Does your office have adequate storage to keep its records?

Yes	
No	
Not Known	

2. If no, why?

.....

3. Is there any storage for semi- current and non- current records?

Yes	
No	

4. If no, why?

.....

5. Does the court have enough resources for managing records from creation to disposal?

Yes	
No	

6. Does the court have enough cabinets, shelves and files to store records?

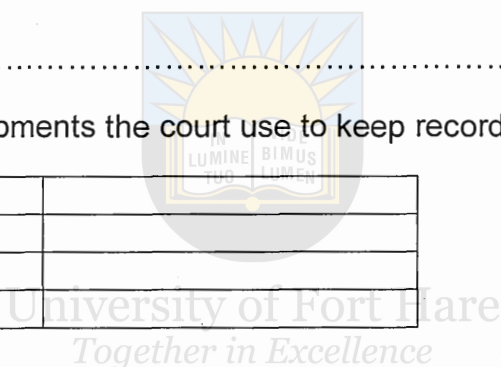
Yes	
No	
Not known	

7. If no, why?

.....

8. What records equipments the court use to keep records?

Cabinets	
Shelves	
Drawers	
Other, specify	



9. What kind of cabinets do you have?

Steel cabinet	
Wooden cabinet	
Other, specify	

10. How is the condition of the cabinets?

Good	
Fair	
Poor	
Other, specify	

11. Does the court have enough computers?

Yes	
No	

12. Does the court have photocopying machines?

Yes	
No	
Not Known	

13. If no, why?

.....

14. Does the court have fax machines?

Yes	
No	

15. Does the court have enough staff to manage records?

Yes	
No	

16. If no why?

.....



(d) SECURITY FOR PROTECTION OF COURT RECORDS/ CASE RECORDS

1. Who is authorized to take care of records/ case dockets?

.....

2. What is used to ensure that court records are secured at all times?

.....

3. Are your records locked at all times?

Yes	
No	

4. If yes, who has responsibility for keys?

.....

5. If no, why?

.....

6. What is used to ensure that records are safe and not altered?

Assigning entry number	
Using paper threads	
Other, specify	

7. Does the court ever come across with misplaced of case records?

Yes	
No	
Not Known	

8. If yes, how often?

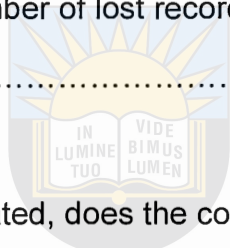
.....

9. What is the approximate number of lost/misplaced case files between 2007-2011?

.....

10. What is the approximate number of lost records per year?

.....



11. If the case file cannot be located, does the court create a new file?

Yes	
No	
Not Known	

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12. If the court recovers the lost or misplaced case file, do you merge it with the new one?

Yes	
No	
Not Know	

13. If no, why?

.....

14. What are contribution factors that lead to theft of records?

.....

15. What impact the lost or misplaced of court records have to the court and to the court users?

.....

16. Does your office have case file tacking system?

.....

17. What security systems does the court have?

Fire alarms	
Fire detectors	
Fire extinguishers	
Security guards	
Other, specify	

18. Are personnel trained to use fire alarms and fire extinguishers?

Yes	
No	

19. If no, why?

.....

(e) PREVENTION OF UNAUTHORIZED ACCESS TO COURT RECORDS

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1. Who has access on court records?

.....

2. What methods are used to prevent unauthorized access?

.....

3. What do you do to ensure that electronic records are safe from unauthorized access?

.....

(f) PRESERVATION OF COURT RECORDS

1. Are the records kept safe from damaged by biological agents and natural disasters at all times?

.....

2. What is done when the file is torn/ damaged?

Replace with new one	
Not replace it	
Not known	

3. How non- current records are kept?

.....

4. How is the condition of the storage?

.....

5. How is humidity and temperature controlled?

.....

6. Does the office have air conditioners?

Yes	
No	

7. If no, why?

.....

8. Is there any pest infestation in place?

Yes	
No	
Not known	

9. If no, why?

.....

10. What hazards or enemies, if any, likely to affect court records?

Fire	
Water	
Other, specify	

(g) OBSTACLES ENCOUNTERED IN MANAGING COURT RECORDS/ CASE DOCKET

1. What obstacles encountered in managing court records at MMC?

.....

2. How is your current records management system?

Good	
Fair	
Poor	

3. Is it able to deliver good service to the court users?

Yes	
No	

4. If yes, how?

.....

5. If no, how it can be improved?

.....

Thank you for your cooperation.



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COURT USERS: COMPLAINANT, WITNESSES AND ACCUSED PERSON

COMPLAINANT	
WITNESSES	
ACCUSED PERSON	

SECTION A: Information about court users

1. GENDER

Female	
Male	

2. AGE

18-34	35-54	55 and above

SECTION B: Questions about the processing of the case

1. When did the case begin?

.....

2. Is it your first time to come to the court for the case?

Yes	
No	

3. If no, how many times?

Twice	
Thrice	
More than 5 times	

4. If the case hearing is repeating, why is this case repeating?

Magistrate not present	
Loss of file	
Not enough information	
Other, specify	

5. Did the court ever postpone the case due to unavailability of court record in court?

Yes	
No	

6. How do you feel about the delay of the case?

.....

7. What do you expect from the court about the case?

.....

Thank you for your cooperation.



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PROSECUTORS AND LAWYERS

SECTION A: Information about prosecutors and lawyers

Instructions: Tick the correct answer by making an **X** in the box of your choice

Middledrift magistrates court	
-------------------------------	--

BIOGRAPHICAL DATA

1. GENDER

Male	
Female	

2. AGE

18- 34		35-49		50 and above	
--------	--	-------	--	--------------	--

3. HIGHEST LEVEL OF EDUCATION

Matric		Diploma/ Degree		Post- graduate		Other, specify	
--------	--	--------------------	--	----------------	--	----------------	--

4. Experience in the current post

Less than 5 years	5 - 10 years	Above 10 years
-------------------	--------------	----------------

SECTION B: QUESTIONS ABOUT CASE RECORDS/ CASE DOCKETS IN COURTS

1. Have you ever experience the delays in case hearing due to unavailability of court records?

Yes	
No	

2. If yes, what are the causes for the delays?

.....

3. How often does this happen?

.....

4. What is the impact of delays to the court?

.....

5. What is the impact of delays to complainants?

.....

6. What are the impacts of delays to accused person?

.....

7. What is the impact of delays to the witnesses?

.....

8. What is the approximate number of cases adjourned per month due to unavailability of records?

.....

9. What is the approximate number of cases adjourned per year due to unavailability on records?

.....

10. How is the service delivery in this court?

Good	
Fair	
Poor	

11. If it is poor, how it can be improved?

.....

Thank you for your cooperation.