

**AN ANALYSIS OF  
VIRTUAL COURTS IN AFRICA**

# CONTENTS

<b>EXECUTIVE SUMMARY</b>	<b>3</b>
<b>VIRTUAL COURTS AND ACCESS TO JUSTICE</b>	<b>4</b>
The Development of Virtual Courts in Africa	
Breaking Down the Utility of Virtual Courts	
Mapping the Virtual Court Landscape in Africa	
<b>THE CHALLENGES ASSOCIATED WITH VIRTUAL COURTS</b>	<b>12</b>
Infrastructural Challenges	
Technical Challenges	
Procedural Challenges	
Social Challenges	
<b>REPLICABLE BEST PRACTICES AND OPPORTUNITIES</b>	<b>18</b>
Singapore	
China	
<b>THE EXISTENCE OF VIRTUAL COURTS IN A POST-PANDEMIC AFRICA</b>	<b>21</b>
Opportunities	
Recommendation	
Conclusion	

# EXECUTIVE SUMMARY

The COVID-19 pandemic has brought many changes in the legal sector in Africa. The legal industry in the past two decades has been slow but now in the uptake of technology it is clear that an accelerated transition is imminent.

The nature of the legal profession is one that is distinctly unique in its malleability. While other industries have revolutionized and adopted technological drastic shifts from human transactions ,the legal industry is stuck playing catch-up in certain regards.

This is because the drafting of law will always carry a reactive element to it. Its implementation takes a similar approach, as one will rarely see anticipatory litigation taking place. This reactive nature has fed into the operation of the law and justice systems themselves as they have been slow in their digital transition despite the obvious benefits. This is represented in the alarming numbers related case backlogs and drawn our durations for the resolution of cases.

One much needed change that the pandemic has resulted in is the digitalisation of legal services and more specifically, introduction of virtual courts. Thus far, they have been instrumental in ensuring access to justice in the midst of the pandemic and present the potential of dramatically improving the efficiency of the justice system. These changes have not come without challenges and have also been met with scrutiny from legal practitioners, governments and other groups. That said, it seems more than likely that they will be a fixture in Africa's legal future, as they have been for various other countries. The global practices on the same, specifically those in Asia, serve as a roadmap for the journey many African states should take in the digitalisation of their courtrooms for the purposes of enhancing access to justice.

<sup>1</sup> Naicker, P. (2018). *Adoption of online legal services by law firms in South Africa* (Doctoral dissertation, University of Pretoria).

<sup>2</sup> Mosweu, T. L., & Kenosi, L. (2018). Implementation of the Court Records Management System in the delivery of justice at the Gaborone Magisterial District, Botswana. *Records Management Journal*.

<sup>3</sup> Chawinga, W. D., Chawinga, C., Kapondera, S. K., Chipeta, G. T., Majawa, F., & Nyasulu, C. (2020). Towards e-judicial services in Malawi: Implications for justice delivery. *The Electronic Journal of Information Systems in Developing Countries*, 86(2), e12121.

<sup>4</sup> Muigua, K. (2020). *Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice*.

# 1. VIRTUAL COURTS AND ACCESS TO JUSTICE

## A. The Development of Virtual Courts in Africa

The incorporation of technology in the legal ecosystem has rather remained unchanged over the last century to jurisdictions that have embraced technology adoption.

Up until the COVID 19 pandemic, the speed of change has been unparalleled, pushing courts from hopeful murmurs of being virtual in a decade's time, to courts functioning virtually within two weeks. It is notable that the after-effect of the current pandemic on the legal landscape is its impact on the courts.

Virtual Courts focus on eliminating the presence of litigants and physical adjudication of cases in courts. It's adoption is incorporated with artificial intelligence techniques into the various stages of judicial proceedings.

### *i. Virtual Courts Models*

Provision of virtual courts in each country is dependent on the gap in the judicial system that needs to be filled; hence the reason for different virtual court models adoption.

- Testifying under CCTV. South Africa for example, acknowledged provision of this model back in 1996, to allow vulnerable witnesses to testify via CCTV either on the prosecutor's application or the court's initiative.
- The Namibian Criminal Procedures Act allows children below 14 years of age to present recorded video footage statements for cross examination without direct interaction with the children.
- Live video call conferencing is the most adopted model. Testimonies are secured remotely during court proceedings without witnesses or the accused having to be physically present. Proceedings and more trials are concluded faster and quality of justice is improved.

<sup>5</sup> CORNER, P. S. Leveraging technology to enhance access to justice for children in Africa.

<sup>6</sup> Ibid

## *ii. Legislation on Virtual Courts*

There has been a constitutional divide on adoption of virtual courts for judicial proceedings. For most countries, adoption had to be a quick action without proper legislation. Out of 25 Countries with virtual courts in Africa, only 12 have comprehensive legislation, while 13 are operating without.

In Nigeria, for instance, suits were filed by Lagos and Ekiti State governments questioning the constitutionality of virtual hearings. They challenged the audiovisual or video-conference platforms used in aid of hearing and determination of cases. The Supreme Court, however, ruled that Virtual Courts sittings were constitutional. This was preceded by an argument that the virtual courts still upheld Section 36 (3) & (4) of the Nigerian Constitution, which state that Courts or tribunals, in determining the civil rights and criminal liability of a person, conduct their proceedings and pronounce its decisions in public. This was argued not just to be restricted to formal courtroom settings.

Kenya recently gazetted the Electronic Case Management Practice Directions, 2020 which outline practice directions on Virtual court's proceedings. The directive clearly outlines the operation of virtual courts in Kenya; from provision of the legislation, technology used in the judicial proceedings, registration of electronic transactions, e-filing requirements, payment receipt and electronic discovery, and inspection of documents

In 2019, Ghana's Judicial service started a paperless Electronic Case Management System (ECMS), as part of its e-justice transform project. This later became the foundation for the enactment of virtual courts in 2020 as a way to enact justice amidst the COVID 19 pandemic..

Gambia's judiciary partnered with the United Nations Development Program to deliver justice to its citizens. In this partnership, the chief justice established an Interagency Task Force (IATF) to review legislative and constitutional impediments for establishing Virtual Courts. Two virtual courts for civil and criminal cases were approved for establishment and Practice Directives issued. Following consultations on the legislative and Constitutionality of the Virtual Courts, the Chief Justice approved the establishment of 2 Virtual High Courts for civil and criminal cases and issued Practice Directives.

Zimbabwe drafted the Judicial Laws(Ease of Settling Commercial and Other Disputes ) Amendment Bill in August, 2016 which is aimed at speeding up settlement of disputes, particularly disputes of commercial nature. This Bill is intended to enable the provisions made by rules of courts to allow for virtual sittings. It further allows rules to be made for matters such as electronic authentication of documents, electronic access to records filed with the Registrar of the High Court and electronic service of proceedings in court..

### *iii. E-Services*

E-citizen web portals give the public online access to public services offered by various Government Departments. E-judiciary in the legal systems allow ease of access of judicial services to the citizens . It is vital to note that countries with well defined e-services have had seamless transitions from physical court to virtual court proceedings than those without. A few countries are highlighted as below:

Rwanda's judiciary has the best clearly outlined Integrated Electronic Case Management System. The Online Cases Division clearly outlines the purpose of the Integrated Electronic Case Management System, benefits, account creation, case filing and follow up, a self-service user manual and video recording on how to access the system. Access to these online services is outlined on Rwanda's Judiciary website.

The Judiciary of Kenya also gives provision of an e-filing system with a complete court users guide. This provision allows for e-case registration, e-payments, automated fee assessment, e-calendar, e-case search and e-services. Kenya has e-services for most government services accessible to the public. E-judiciary was enacted to speed up judicial processes and enhance delivery of services while reducing paper-based backlog.

South Africa's e-filing services in courts is enabled by the Court Outline system, an end-to-end E-Filing, Digital Case Management and Evidence Management system for the High Courts of South Africa. Court Online allows for electronic document sharing and filing, speedy documents inspection and faster ,accurate and real time feedback on cases.

The Egyptian Government Services Portal is also one of the most developed in Africa. As illustrated below, Poll results from the government directory from a total of 260441 who accessed their government portal indicates that approximately 30% of users were pleased with e-services, 21% were displeased, 11% were aware of existence but had never used and 36% were unaware of the existence of such services.

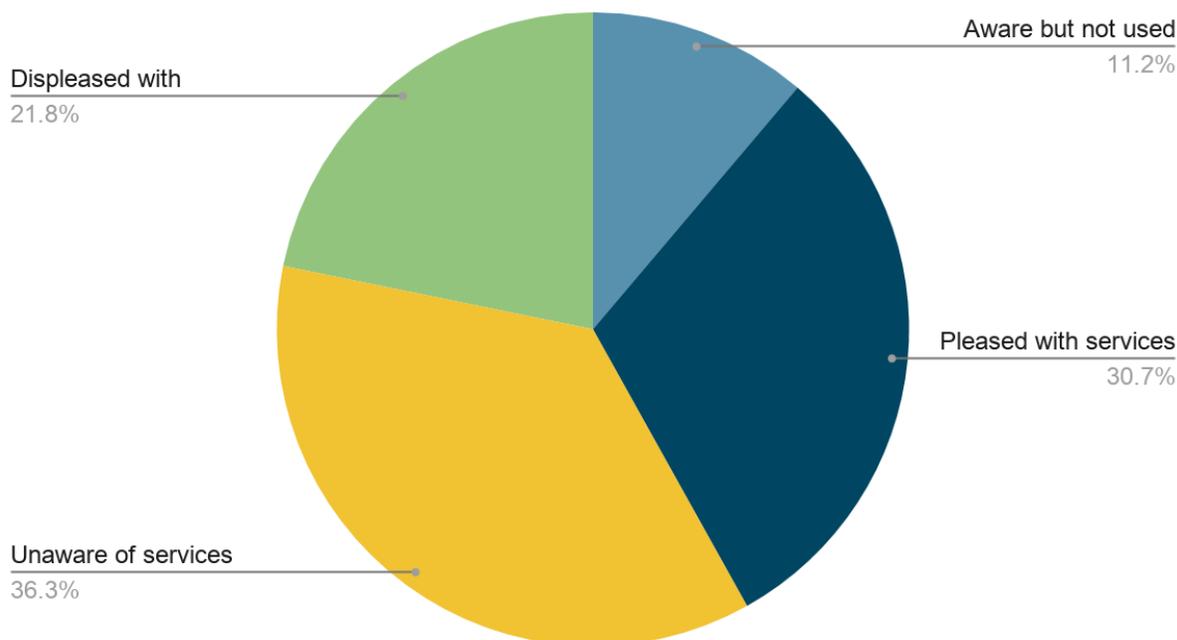
<sup>7</sup>Mukherjee, R. R., Patel, S., & Snigdha, S. (2020). Videoconferencing: An Emerging Concept in Courtrooms. Available at SSRN 3635165. <sup>8</sup> <https://allafrica.com/stories/202007150111.html> <sup>9</sup> The constitution of the Federal Republic of Nigeria, 1999.

<sup>10</sup> The constitution of the Federal Republic of Nigeria, 1999. <sup>11</sup> Addadzi-Koom, M. E., & Bediako, E. A. (2019). Implementing an E-Justice System in Ghana: Prospects, Risks, Challenges and Lessons from Best Practices. *KNUST LJ*, 8, 108. <sup>12</sup> <https://www.gm.undp.org/content/gambia/en/home/blog/2020/undp-support-to-the-establishment-of-the-virtual-courts-in-respo.html>

<sup>13</sup> Zimbabwe Judicial Laws Amendment (Ease of Settling Commercial and Other Disputes) Act, 2017 <sup>14</sup> *Ibid* <sup>15</sup> Watson, Adam and Rukundakuvuga, Regis and Matevosyan, Khachatur, Integrated Justice: An Information Systems Approach to Justice Sector Case Management and Information Sharing - Case Study of the Integrated Electronic Case Management System for the Ministry of Justice in Rwanda (August 29, 2017). *International Journal for Court Administration*, Vol. 8, No. 3, 2017, Available at SSRN: <https://ssrn.com/abstract=3028664>

## Egypt's Governorate Online Portal Access - Citizen Feedback

Egypt's Citizen Feedback



The e-justice system in Egypt is among the earliest in Africa, launched in February 2019. This platform has been used to publish present contents of the country's constitutional court verdict , and publish court verdicts.

### **B. Breaking Down the Utility of Virtual Courts**

There are various states that have been heading towards virtual courtrooms, frontlined by the USA, Singapore and Dubai. The difference between these states and many of those in Africa is that for them, the digitalisation of courtrooms did not need to be galvanised by a pandemic. Other than the resilience that these systems bring to the justice sector in such times, there are a wide range in which virtual courts improve and complement existing judicial services.

### *i.. Expedity*

Getting a case heard to its conclusion in many African states is a task that usually requires patience. This is a product of inefficient filing systems, courtroom bureaucracies, challenges in obtaining and producing evidence, legal tactics designed at prolonging court hearings and the already existing backlog of cases.

While adopting virtual courtrooms will not change some of these factors, it will lead to more efficient means of running judiciaries. Facilitating easier and faster access to court documents, and reducing or completely eliminating the time spent on travelling and transferring documents will significantly ease some of the time related burdens plaguing judiciaries.

While this may come with the trade off of introducing new ways to delay court hearings on the part of legal practitioners, that will most likely not lead to a net negative impact on the time spent in court hearings. This is because the incentive to prolong court hearings, additional legal fees, will remain present and largely unaffected by the digitalisation of courtrooms. Thus, these changes should create a significantly positive impact on the expedite of court hearings.

### *ii. Cost Effectivity*

The virtualisation of courtrooms would alter the operational costs of running judiciaries. Many critiques of the digitalisation of legal services argue that this would lead to a decrease in employment opportunities. However, as much as this is true to some extent, statistical projections present a future in which the loss of employment caused by automation is minimal. Assigning some of the more automatable tasks to machines and computers would enable employees of the judiciary to focus on other tasks that need more of a human touch. This would eventually drum up the efficiency with which judiciaries function and therefore reduce the costs related to the performance of said tasks.

### *iii. Wider Access to Justice*

Virtual courts ease the geographical barriers associated with access to justice. There are certain limitations placed on courts based on jurisdiction that force people to travel for the purposes of accessing justice. In some instances, some would rather default to less enforceable or even illegal means of justice due to the physical barriers they face in accessing justice.

An argument against this that is unique to the African context is based on the absence of reliable internet services in some regions. In fact it is said that more than one hundred million people living in rural Africa have no access to the internet. Although this should not be a problem going forward with the increasing internet penetration across the continent. This is with strategies such as the African Union ICT Strategy that is aimed at ensuring African countries have sufficient internet connection including reliable fiber optic connections in all the countries.

#### *iv. Anonymity and Comfort of Victims and at Risk Witnesses*

There are certain cases in which the anonymity of the victims and witnesses is at risk by an appearance in court with the accused. These include cases regarding sexual harassment, rape, human trafficking and other trauma inducing incidents. There are currently measures that have been put in place to protect individuals in the courtroom. These include the non-disclosure of the victim's identity, the closing of such cases to the public and other measures based on limiting the contact of the victims with the abused.

Using the virtualisation of courtrooms will provide an added dimension to this. The level of comfort a witness has in a courtroom does play a role on the testimonies that they deliver. Ensuring that a vulnerable witness does not share the same physical space, as would be possible with virtual courtrooms, would go a long way in guaranteeing the comfort and security of vulnerable witnesses enduring court hearings.

#### *v. Greater Access to Information on Court Proceedings*

The information collected based on the ongoing of court cases plays an important role in research and the education of interested parties. While the number of attendees to a virtual court session would still be limited due to bandwidth and security reasons, these limits are malleable and not as impeding to access to information as the physical limits set by the walls of a courtroom.

<sup>16</sup> Finucan, L. (2018). Smart Courts: Roadmap for Digital Transformation of Justice in Africa. <sup>17</sup> <sup>18</sup> Ibid

<sup>19</sup> [https://au.int/sites/default/files/documents/30938-doc-ict\\_african\\_continent\\_integrated\\_strategic\\_planrev2.pdf](https://au.int/sites/default/files/documents/30938-doc-ict_african_continent_integrated_strategic_planrev2.pdf) <sup>20</sup> Melaku, T. (2018). The Right to Cross-Examination and Witness Protection in Ethiopia: Comparative Overview. *Mizan Law Review*, 12(2), 303-324 <sup>21</sup> Witness Protection Act, *Part III*, Act No. 2 of 2010.

## C. Mapping the Virtual Court Landscape in Africa

Virtual courts in Africa have positively been taken by a number of countries. This is topped up with e-services and e-filing systems. In our analysis of these three provisions, the following has been recorded.

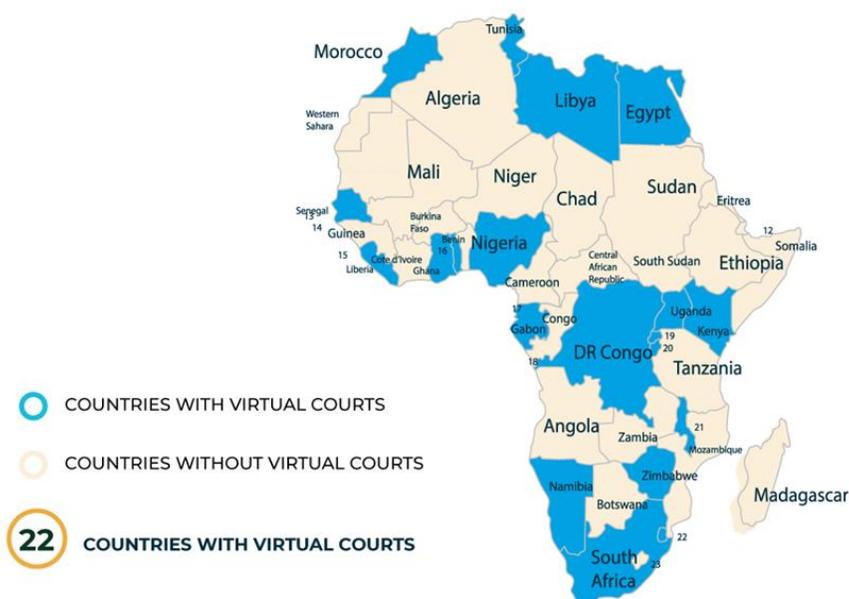
- <sup>22</sup> African countries have implemented virtual courts.
- <sup>34</sup> Countries have fully operational e-services systems in their government websites..
- <sup>29</sup> Have e-filing systems incorporated in their court processes.
- <sup>20</sup> Countries have all the services mentioned(virtual courts, e-services and e-filing provisions)
- <sup>17</sup> Have neither of the mentioned services.

The Breakdown is as illustrated in the mappings below:

LAWYERS  
HUB

AFRICA LAW  
TECH

### AFRICA COUNTRIES WITH VIRTUAL COURTS



RWANDA  
SIERRA LEONE  
SOUTH AFRICA  
TOGO  
TUNISIA  
ZIMBABWE

GAMBIA  
GHANA  
KENYA  
LESOTHO  
LIBYA

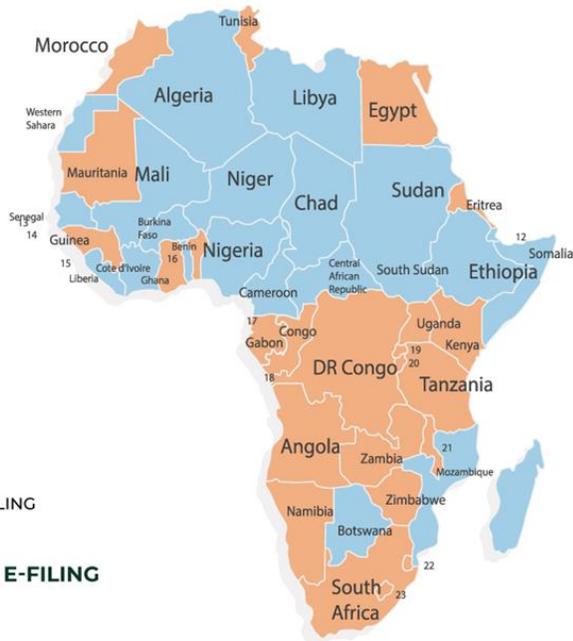
MALAWI  
MAURITIUS  
MOROCCO  
NAMIBIA  
NIGERIA

BURUNDI  
EGYPT  
ESWATINI  
GABON

**VIRTUAL (RESTRICTED TO BAIL & FEW HEARINGS )**  
UGANDA

**REMOTE** DEMOCRATIC REPUBLIC OF CONGO

# AFRICA COUNTRIES WITH E-FILING



COUNTRIES WITH E-FILING

COUNTRIES WITHOUT E-FILING

**29** COUNTRIES WITH E-FILING

ANGOLA  
BURUNDI  
CONGO  
DRC  
EGYPT  
E GUINEA  
ERITREA  
ESWATINI

GABON  
GAMBIA  
GHANA  
GUINEA  
GUINEA - BISSAU  
KENYA  
LESOTHO  
MALAWI

MAURITIUS  
MOROCCO  
NAMIBIA  
NIGERIA  
RWANDA  
SEYCHELLES  
SAO TOME & PRINCIPE

SIERRA LEONE  
SOUTH AFRICA  
TANZANIA  
TOGO  
TUNISIA  
UGANDA  
ZAMBIA  
ZIMBABWE

# AFRICA COUNTRIES WITH E-SERVICES



COUNTRIES WITH E-SERVICES

COUNTRIES WITHOUT E-SERVICES

**34** COUNTRIES WITH E-SERVICES

ANGOLA  
ALGERIA  
BOTSWANA  
BURUNDI  
CONGO  
DRC  
EGYPT  
E GUINEA  
ERITREA

ESWATINI  
GABON  
GAMBIA  
GHANA  
GUINEA  
GUINEA - BISSAU  
LESOTHO  
KENYA  
MALI

MALAWI  
MAURITIUS  
MOROCCO  
NAMIBIA  
NIGERIA  
RWANDA  
SIERRA LEONE  
SOUTH AFRICA  
TANZANIA

TOGO  
TUNISIA  
UGANDA  
ZAMBIA  
ZIMBABWE  
SEYCHELLES  
SAO TOME & PRINCIPE

## 2. THE CHALLENGES ASSOCIATED WITH VIRTUAL COURTS

While the benefits to be reaped from virtual courts are numerous, they do come with unique challenges. The African context presents a unique blend of challenges based ranging from infrastructural needs to challenges based on cultural norms and practices.

### A. Infrastructural Challenges

#### *i. Low Internet Penetration Rates*

Unreliable internet connectivity and provision is prevalent in remote localities. Without stable internet connectivity, virtual courts will remain beyond reach for the rural and marginalized communities in Africa.<sup>22</sup>

Using inferences from data collected by internetworldstats.com, it is clear that in comparison, countries with the lowest internet penetrations have had a major challenge adopting virtual courts. Eritrea, Burundi, Central African Republic, Chad, Congo, Guinea Bissau, Madagascar, Niger, Sierra Leone and South Sudan have the lowest internet penetration rates in Africa of below 15%. As earlier highlighted, all these countries have also not adopted the virtual court system.

Kenya and Libya, with the highest internet penetration rate of 87.2% and 74.2% respectively are recorded to have seamlessly adopted virtual courts and e-filing systems. The mapping below the Internet Penetration levels across Africa.

High cost of the internet is a similar challenge resulting in most of the population living in rural areas having no access to the internet. Virtual setting in Africa seems like a possibility to widen the gap on access to justice for the poor in Africa as a result of the high costs of the internet. Additionally, people living in rural Africa have no access to smart devices that can enable them to attend virtual court sessions

<sup>22</sup> Finucan, L. (2018). Smart Courts: Roadmap for Digital Transformation of Justice in Africa.



## **B. Technical Challenges**

### ***i. Lack of skills for operating the system***

Citizens, clerks at court and the legal fraternity have reported being unable to effectively operate Electronic Case Management Systems because of lack of user skills. Lesotho for example has recorded a notable user inexperience of their ECMS. This can however be rectified with effective user training.

### ***ii. Complicated systems***

Even though judicial systems have enacted immense training on effective usage of Electronic Case Management Systems, some systems are too technical to use. For example, online filing has been and continues to be a challenge for many legal practitioners and clerks in Kenyan courts. Simplifying the processes on the ECMS can be achieved by continuous platform development updates and testing backed up by comprehensive user training.

### ***iii. Challenges in Managing electronic evidence***

Most virtual courts are yet to set up systems that deal with large volumes of electronic evidence. Even though technological developments and solutions are in place, failure to properly manage preservation and collection of digital evidence may lead to unfavourable outcomes in legal proceedings.

<sup>23</sup> Falchetta, G., Pachauri, S., Parkinson, S., & Byers, E. (2019). A high-resolution gridded dataset to assess electrification in sub-Saharan Africa. *Scientific data*, 6(1), 1-9.

<sup>24</sup> <https://blogs.worldbank.org/europeandcentralasia/e-justice-does-electronic-court-reporting-improve-court-performance>

## **C. Procedural Challenges**

### ***i. Lack of Uniformity***

Countries with no legislation or directives on running virtual courts lack uniformity in handling court proceedings. Using different rules on similar cases in different virtual courts causes Intercircuit splits, an impediment to access to justice.

### ***ii. Bias in urgent matters***

Unclear directives on what constitutes urgent matters has resulted in a backlog of seemingly very crucial cases. Gender based violence cases for example may not be heard expeditiously because of non-classification of urgency.<sup>25</sup> Judicial heads take into account the gendered nature of existing laws in choosing urgent matters to deal with. Delayed virtual court hearings due to prioritization on sense of urgency only delays access to justice.

## **D. Social Challenges**

### ***i. Digital Illiteracy***

For decades, most court systems in Africa have focused on paper documentation for most court processes. This implies that court workers have very little exposure to knowledge on digital literacy. It would take time and a lot of training to have them adapt to the new digital system.

### ***ii. Rigid legal systems***

The legal fraternity is known to be very rigid, conservative and hostile to systematic change. The inflexibility of the legal fraternity to new modes of operation has delayed adoption of virtual courts and digitizing the judicial systems.

### ***iii. Mistrust in the System by Citizens***

Rigidness to adapt is not only observed in the legal fraternity but also from citizens of the countries involved. For citizens used to justice access in the traditional physical court setup, virtual courts have been perturbed as a sham from its introduction.

<sup>26</sup> <http://www.legalserviceindia.com/legal/article-3595-virtual-courts-challenges-and-a-way-forward.html>

## **E. Legal Challenges**

### ***i. Right to a fair trial***

Countries with no legislation or directives on running virtual courts lack uniformity in handling court proceedings. Using different rules on similar cases in different virtual courts causes Intercircuit splits, an impediment to access to justice.

The right to a fair trial is one of the fundamental principles of access to justice. The principle of a fair trial requires that the procedure for trial should include trial in an open court or a public hearing. Courts have a duty to facilitate attendance by all members of the public and no limitation shall provide for attendance by only a category of members in a hearing where merits of a case are being examined.

Representatives of the media should also be allowed in a public hearing and report on judicial proceedings. The virtual courts have impacted the right to a fair trial where in most cases the public have not been able to access links to court hearings. The public as well lack the necessary equipment to enable them to login to virtual court proceedings. As per the principles and guidelines of the right to a fair trial by the African Commission on Human and peoples' Rights (ACHPR). Article 10 of the Universal Declaration of Human Rights (UDHR) requires the right to a fair trial which includes trial in a public hearing. Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) also requires trial in a public hearing.

Virtual courts have posed a challenge to this principle, due to security concerns related to virtual hearings. However, the provision for a public hearing is not an absolute right and can be exempted in some circumstances. The ACHPR guidelines provides for limitation in the quest to protect children, witnesses or victims of sexual violence or as a matter of national security. This notwithstanding, all judgements must be pronounced in public. Thus, the lack of public hearing through the use of virtual courts does not necessarily impede on the right to a fair trial.

### ***ii. Presentation of Evidence***

The use of virtual courts has presented challenges such as analysis of evidence and credibility of the evidence. For instance, during cross-examination the judicial officer or the opposing counsel may not be able to subconsciously evaluate the account of a witness or expert testimony during cross-examination

This is due to lack of the same ability to evaluate the body language or answers of the witnesses or experts as they would have in in-person testimony.

Appearance through a video link may be subject to credibility test where a witness unfamiliar with appearance via a camera may pose to show a witness as not answering questions convincingly. In other circumstances the witnesses might be getting secret advice to read documents in testimony by a person off-camera without the knowledge of the judicial officer or the opposing counsel in a proceeding. Virtual courts defeat the essence of examination of a witness, especially cross examination of a witness, as a witness is likely to be coached by virtue of being next to his advocate.

Advocates are also denied the opportunity to take the witness through statements or documents properly (which are normally adopted in Court) .Ordinarily an Advocate shows the witness statements or documents which are the basis upon which cross examination is to be done. Presumption in virtual courts that a bundle of documents are supposed to be adopted as they are in the list of documents, defeats the essence of admissibility of documents and denies the maker of the documents an opportunity to testify on them.

Ordinarily the Evidence Act demands that documents be produced by their makers, but some Judges direct documents to be adopted as they are in the list of documents. People representing themselves i.e., without Advocates, find a challenge of accessing the virtual court links which are ordinarily posted on Advocate sites like Kenya Law, and they also cannot file court documents through the e-filing systems only accommodate law firms and organizations.

Lastly, virtual courts allow advocates to administer oaths to witnesses which defeats the essence of oaths and affirmation of witnesses. Ordinarily swearing of witnesses is usually done by courts. The High Court Kenya In *Frank Wanyama & Alex Olaba* quashed the conviction and ordered a retrial because the Chief Magistrate court did not properly swear a witness before testifying at the trial court. <sup>27</sup>

<sup>27</sup> Republic V Frank Wanyama & Alex Olaba, Kenya.

### 3. REPLICABLE BEST PRACTICES AND OPPORTUNITIES

In terms of replicable best practices, Asian countries represent the best use case when it comes to virtual courts. Additionally, the nature of the challenges they face, from an infrastructural and even cultural point of view, provide a similar lens from which to analyse virtual courts. For the purposes of this research, we shall analyse the use of virtual courts in the following countries.



#### A. Singapore

Singapore represents the earliest use of virtual courts, as they began setting for this transition as early as 2002. While this has given them a significant head start when it comes to the digitalisation of courtrooms, they do still represent a state that many in Africa can learn from should they wish to use a slowly incremental uptake of such systems.<sup>28</sup>In Singapore, the uptake was initially in subordinate courts only. This allowed them, like China to experiment with virtual systems with minimised risk, slowly expanding to the level at which they are today.

The widespread use of virtual courts began in 2017, and ever since then over 30,000 cases have been filed using virtual court systems, representing an increasing trust among the citizens.<sup>29</sup> Furthermore, they have installed various tools and innovations that aid in the efforts to provide alternative justice systems and anticipatory injunctions in order to ensure the safety of victims. Victims of sexual harassment do not need to go to a physical court and can instead use their mobile phones to file for protective measures and on the side of alternative justice, the courts are currently in the process of making innovations specifically geared towards the resolution of traffic matters.<sup>30</sup>

The slow and deliberative uptake process by Singapore has resulted in many specialised uses of virtual courts and virtual court systems, however, the cream of the crop is arguably their data analytics models. The State Courts use data analytics to allocate resources effectively. For instance, it predicts the expected caseload so it can be prepared for upcoming trials. Meanwhile, a justice scorecard tracks the performance of the courts including wait times, and appeal and mediation success rates. The measurement process is automated and allows management to review and analyse the courts' performance and alignment to its goals.<sup>31</sup>

Additionally, the courts plan to launch a new customer relationship management system so as to understand user needs and improve service delivery. This will help identify their unmet justice needs and potential areas where the use of remote communication technology would provide the greatest benefits. Using such models would be a welcome sight in many African states, due to the paucity of resources available to some judiciaries, allowing them to utilize a more efficient method of operation.

## **B. China**

An important goal of China's judicial reform over the past decade has been to increase the professionalism, transparency and accountability of courts and individual judges. The implementation of new information and communication technologies (ICT) have been a key component of such reform to change the ways in which justice is delivered to the public and the judiciary is supervised. The concept of 'Smart Courts' was first proposed by China's top court, the Supreme People's Court (SPC), in 2015.<sup>32</sup> The SPC has since been directing courts at all levels to create Smart Courts.

In recent years, Chinese courts have seen rapid developments in online dispute resolution platforms, specialized Internet courts, and the wide use of AI tools across case management and adjudication processes in civil and criminal proceedings.<sup>33</sup> Other novel technologies such as distributed ledgers, blockchain and smart contracts solutions are currently being developed and rolled out in several local and specialised courts.<sup>34</sup> An important aspect of these developments is making trial data resources online. As of February 2020, there were over 81.5 million judgments and other judicial documents on the SPC's China Judgments Online, representing the world's largest digital repository of judicial information. This is made possible by the SPC's centralised big data management and service platform, which connects every court in China (which includes around 3,520 courts, 9,277 tribunals and 39 maritime courts).

While China has had a significant headstart over most African states, there is a lot that we can learn from them even when the reason behind the launching of virtual courts differs as much as it does. The first of these lessons is the sectoral use of virtual courts. The three courts in Hangzhou, Beijing and Guangzhou were the first in which cases could fully be conducted online, all the way from the filing to the rendering of the ruling. These courts were established in 2017 and were only used for a small range of cases. However, with time, the utility of these courts expanded as the judges and legal practitioners grew more comfortable with them and as the trial and error process realised more effective results down the road.

Beyond the use of the courts, a mobile court app has been developed and is downloadable on WeChat, China's most popular social media app. Facial recognition technology is used to authenticate the parties and one can file a case and communicate directly to the judge by sending text and audio messages and uploading evidence on the app. The parties and the judge can log onto the app at the same time, undertake the pre-trial mediation, complete the e-signing of the mediation settlement (if successful) and deliver the judgment on the app.<sup>35</sup>

The internet courts have also been used on an experimental basis with AI tools to assist with the adjudication of basic, non-complex cases, real-time recording and transcription of trial proceedings as well as the provision of legal information to the parties. To illustrate this, the Beijing Internet Court developed bots that provides the parties with some basic but important legal information, including the question of whether the court is the appropriate jurisdiction.

These courts are seen by Chinese policymakers as the breeding ground for experimentation. Several local courts have expanded their online functions throughout the litigation process. In March 2019, the SPC expanded the 'mobile court' pilot to 12 provinces and municipalities. A national e-evidence platform based on blockchain technology has also been established, linking courts in 22 provinces and municipalities.

It is not difficult to see a similar trajectory for African states. The adoption of virtual courts would present a multitude of benefits for the African populace at a national and regional level. From increasing access to justice, to facilitating more expeditious and easily facilitated trials at a regional court basis. Even though China is infrastructurally more advanced than more African states and has a population that is more willing to transition to technology, the challenges that they had based on a numerical point of view do present a learning opportunity for African states. That learning opportunity is to think long-term.

In the initial stages of the virtual courts, the numbers of people utilizing them was rather small, leading to case backlog where people preferred in-person court services in courts where said services were no longer available. While this could lead to potential backlogs in various judiciaries, sound planning and use of contingency measures would prove to be a useful tool in ensuring the backlog remains a solvable issue as we transition to digital courtrooms.

<sup>28</sup> Allsop, J. (2019). Technology and the Future of the Courts. *U. Queensland LJ*, 38, 1.<sup>29</sup> <https://govinsider.asia/digital-gov/inside-singapores-move-to-virtual-court-hearings/>

<sup>30</sup> *Ibid* <sup>31</sup> Toh Yung Cheong (2020). Inside Singapore's move to virtual court hearings. <sup>32</sup> Islam, M. S. (2020). Judicial Reforms in China: The Way of Strengthening Judicial Independence. *Diponegoro Law Review*, 5(01).

## 4. THE EXISTENCE OF VIRTUAL COURTS IN A POST-PANDEMIC AFRICA

It is predicted that there is a likelihood of a spike in court cases past the pandemic. This is attributed to the health insurance disputes, equitable access to healthcare disputes, contracts enforcements and employment claims. The predicted Tsunami of cases will need a change in strategy by the courts and a continued use of technology to ensure continued delivery of justice expeditiously Post the Pandemic.

### A. Opportunities

#### *i. Smart Courts in Africa*

Learning from the experience in China, African judicial systems can adopt the words of Richard Susskind and view courts as a service and not a place. This way, the courts will implement smart courts that are organizational construction and operational patterns of courts based on innovation and use of technology. This is geared towards quick and fair justice for people by supporting online intelligent court services and through enhancement of transparency and credibility. This is through use of Artificial Intelligence (AI), big data, cloud computing and blockchain. Like in china the smart courts should create online portals that take the form of web-based litigation platforms. People will no longer need to go to courts to file cases. The smart courts which include online hearing through video conferencing are convenient and cost effective.

#### *ii. Online Dispute Resolution*

As a way to reduce backlog and overcrowding in courts, use of Alternative justice systems can be implemented through use of technology in online dispute resolution (ODR) in Africa. The ODR system has been tested and verified as an innovative way of solving disputes and in the United States of America cybersettle has been one of the most success stories of the informal alternative justice system. The blind binding system uses an autonomous negotiation powered by AI. The parties submit their claims and the system helps them to arrive at a decision as per the negotiations through their submissions. The system helps both parties to arrive at a settlement figure. The success of Cybersettle prompted the City of New York to adopt the system that helped resolve a close to 40,000 backlog of personal injury claims.

### *iii. Use of blockchain*

The concept of blockchain offers various security, transparency and efficiency based reasons to adopt it in the legal sector. Blockchain is more resilient to hacking than any other known technology. The documentation of legal documents is very crucial and therefore begs a certain level of security. Court registries, land registries, company registries, intellectual property registries and the like should all adopt blockchain technology, as the system is more secure and difficult to manipulate. Smart contracts is another aspect of blockchain that lawyers should explore and utilize. As we move to virtual courts a system such as blockchain is inevitable to adopt to ensure that any documentation transacted in the virtual setting is secure and cannot be altered.

## **B. Recommendations**

### *i. Training*

Courts in Africa have been forced to quickly adopt use of technology and innovation in an attempt to fulfil their obligation of delivery of justice. This has not come without magnanimous challenges that still exist within our judiciary. Most Judicial officers in Africa are not familiar with the emerging technology in the justice sector and data protection. Therefore; training of judicial officers in handling technology equipment and data protection amidst security concerns in the systems is imminent and mandatory. The Training should be for all the judicial officers and other stakeholders in the justice sector including prosecutors (State counsels) and other Advocates and lawyers.

As a result of shift to technology in our courts, presentation and preserving of forensic and electronic evidence is a delicate matter. Lawyers and judicial officers need to be also trained on presentation of forensic evidence and handling of electronic evidence. The training should include lessons on cybersecurity.

### *ii. Internet Penetration Enhancement*

Better internet penetration will be a stepping stone to enhancing virtual courts in Africa. The Covid-19 pandemic made access to the internet a basic right. Very fast and reliable internet connection will make adoption of virtual courts seamless in African countries that have not yet adopted the system and access to remote proceedings easier to citizens based in remote locations.

### *iii. Enhancing technological infrastructure in the judiciary*

African judiciaries should in their financial planning prioritize the digitization of their court stations. Fitting courts with the latest technology equipment such as the latest version of computers and softwares to ensure that the virtual hearings and transactions are seamless. Broadband internet connection should also be explored for the latest technological infrastructure.

### *iv. Increase Judiciary Budgetary Allocation*

Governments in Africa must increase the funds allocated to the judiciary to ensure that the judiciary is able to fully transition into the digital landscape. The allocations should factor the judicial staff and court facilities including the correctional institutions that liaise with courts.

### *v. International best practices*

Judiciaries in Africa should emulate best practices for virtual court setting in progressive jurisdictions such as Singapore, China, USA and the UK to benchmark on the best technology to use in full adoption of virtual courts.

## **C. Conclusion**

Virtual courts in Africa have come a long way and have a long way to go if they are to be effective as far as fair trial is concerned amidst use of technology. Africa is a continent with great potential for technology disruption and the legal industry is becoming a major beneficiary of technology evolution. Lack of proper equipment and access to the internet are the greatest challenges facing the continent. Lack of technological technical knowhow in operating some of the equipment is also another challenge. Investment in technology equipment by the players in the legal industry should be prioritized.

Embracing change to move from traditional court practise should be prioritized both in policy and statute. Courts in Africa need to change the rigidity in the systems and create trust in the public of the ability by courts to dispense justice fairly and expeditiously by use of virtual courts. The players in the legal sector also need to embrace the change by restructuring their law firms into modern law firms that can operate smoothly within the tech ecosystem. Law firms need to align with court court transformation in the court modernization and adoption of virtual courts.



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