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# The Use Of Information Technology In South African Courts

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Abstract: First world countries such as the United States of America, Russia and Singapore adopt advanced information technology methods, unlike South African courts. These countries courts are fully based on the information technology systems, which result to paperless courts; this is the potential way forward for South African courts. From paper based courts to paperless courts are steps in the direction towards the transformation of the operating systems of the courts in South Africa. It is vital for South Africa to play catch up to these countries by launching pilot projects in courts of electronic filing systems and electronic courts. It is apparent that for South Africa to utilise information technology techniques in the courts will definitely change the face of justice and the court system, which will have a domino effect on all aspects of the courts in South Africa. The advancements of social media and technology are overtaking the outdated court systems in South Africa. Since the technology of social media surpassed the courts in South Africa, in some ways this means that the voice of the courts do not reach as many people as it is possible through advancements in information technology. The current use of information technology is minimal and the current dependence is on the paper based system and filing in person are outdated procedures. The lack of potentially tapping into resources that could enhance the court system is an injustice, which holds back the South African courts from progression to

world renown status such as first world countries across the world. This paper aims to discuss all the innovative trends in the abovementioned countries and for South Africa to be taken forward in relation to e-discovery techniques, which parties use in preparation for trial.

Keywords: information technology, courts, paperless, e-filing, e-discovery

## 1 Introduction

The benefits of employing fully fledged information technology in the courts of South Africa would be endless. It is apparent that the current status of information technology and the courts can hardly be seen in South Africa. An overview of the rules of court in relation to the encouragement of information technology is sub minimal. (Baboolal-Frank, 2015,12) The Judge President of the constitutional court had carried support for e-filing from first world countries, however post judicial support there has been no transformation of the court systems. This paper aims to discuss the benefits of the information technology systems adopted in the courts of first world countries and to investigate possible reasons why South Africa continues to play catch-up.

## 2 South Africa

The Judiciary made a statement illustrating that the Western Cape is the only province that utilised advanced information technology techniques inter alia electronic filing, use of video conferencing and satellite communication for indigent witnesses in areas that are far away from the court's jurisdiction. The judiciary recognised the progression of advancements of information technology "as steps in the right direction for the utilisation of Information Technology to improve levels of efficiency" for courts. (Media Statement following the Strategic Planning Session for the South African Judicial Arm of the State, 18 August 2012) These methods of employing information technology to fast track justice has been utilised and needs to become a trend instead of a novelty in a one province project. These methods are electronic filing and record keeping, use of video conferencing and satellite communication for witnesses that are situated in distant areas, which are methods that have also carried support from the Judge President of the Constitutional Court Justice Mogoeng Mogoeng.

(R Baboolal-Frank, 2015, 12 cited News24 Available at <http://www.news24.com/SouthAfrica/News/Mogoeng-calls-for-electronic-court-filingsystems-20141128>)

3 UK

In 1991 recommendations were made to improve the electronic data base to three gigs of memory with a growth of memory per annum of 50 mega bytes. (P Waugh,1991,27) It is apparent that advancements in technology is relative to time as twenty five years later this amount of memory today is equivalent to little storage as our cellphones carry more memory capacity. “In the emerging 'information society', knowledge and information are treated as the core economic variables and the dominant social actors are seen as those who process information in accordance with codified bodies of knowledge.” (A Clark, 1997, p1) We have developed into a society that he who holds the key to knowledge is through computers at their fingertips, as books and knowledge can be stored in one system, and no longer in various sources of books but easily stored electronically, and a quick search allows the information within your reach in minutes and sometimes even seconds.

The United Kingdom uses information technology to enhance the clerical workload of the courts such as automated summons and to ensure that the administrative work is computer generated to ease the clerical load so that justice can be more efficiently undertaken. (A Clark, 1997, 14-15) Too often are the laborious workload of administration results in copious amount of time spent on admin rather on assisting people in an efficient manner.

Unfortunately legal information technology is expensive and lies in the hands of the wealthy and few firms that can afford it.

“The adoption of information technology in legal settings has been associated most closely with developments in the elite law firms where sophisticated systems are used to enhance the provision of creative and flexible legal services for corporate and institutional clients” (A Clark, 1997,25)

Technology cuts down manual labour and ensures that the computer is able to do the labour at a faster rate and more than thousand times the load. When law firms are able to sue out one thousand summons a day, it is not the manual labour that attends to this large quantity but

computer generated systems and speedy printers and photocopy machines. Convenience and technology go hand in hand as convenience is the output of advanced technology systems.

#### 4 USA

In the United States the adoption of computerised technology in practice is to compete with other firms in relation to computers technology, to assist in relation to higher productivity. (A Clark, 1997, 16) The result is that information technology is employed to enhance the courts by re-engineering the structure of the court system and employing the IT professionals to ensure the system works actively and efficiently. (Chris Crawford at <http://www.ncsc.org/Topics/Technology/Technology-in-the-Courts/Resource-Guide.aspx>) This is a necessary measure to ensure that the computers work to their full capacity. The level of monitoring and quality of assurance of these information technology developments is a necessary measure to ensure the sustainability of the programmes to wean any glitches.

The IT professionals do the following: (<http://www.uscourts.gov/careers/who-works-judiciary/technology-careers> )

“Video of Federal Judiciary Careers: Information Technology

“The U.S. Courts’ Information Technology (IT) professionals support the courts’ extensive technology programs. They make it possible for the judiciary to deliver justice in a technology-driven environment. The federal Judiciary seeks IT professionals who are in touch with the latest technology and software programs.”

“Judiciary IT positions vary considerably depending on the position level and an individual court’s needs. These professionals:

- design, manage, and support computer-based information systems;
- design, modify, and adapt software;
- write code;
- perform hardware maintenance and troubleshooting;
- test and validate hardware;
- train users in the judiciary’s various technology solutions;
- demonstrate and apply their knowledge of computer processes and capabilities;

- meet with customers to help them assess their needs and identify software solutions;
- explain technical information in an understandable way to the user;
- know the capabilities, limitations, and functional applications of information technology;
- know theories, principles, practices, and usage of computer hardware and software, office database design, and data communications;
- have knowledge of Local Area Networks (LANs) and Wide Area Networks (WANs), including systems security standards;
- are familiar with operating systems, servers, and workstation products; and
- are able to work with flowcharting, form design, and control procedures.”

“High-level IT Managers may be responsible for entire systems and networks. In total, IT positions represent a broad range of technology duties and responsibilities. The many specialized IT positions in the courts include programmer analyst, programmer, application administrator, and network administrator.” (<http://www.uscourts.gov/careers/who-works-judiciary/technology-careers>)

So at the management level of the advanced electronic systems are expert IT professionals to ensure that the systems operates in accordance with its aims.

Thereafter you have litigation mechanisms that are used in order to prepare for trial such as discovery. Discovery can also be e-discovery generated through computer technology to ensure that the computers can sift to the most important information and save on hours to find the needle in the haystack buried in the paperwork. Hence ‘[t]he solution devised involves the appointing of an Electronic Discovery Master (EDM) to litigation cases when the amount in controversy in a federal civil case reaches a specified threshold.’ This will aid the proceedings in countless ways, but most importantly, it will provide the court with the ability to once again provide justice in an efficient, effective and economical way.” (Z Parkins, 2011, 98)

“Although ethical considerations have been considered throughout, a brief additional note should be made here. If parties were as honest as they should be, an EDM system would be unnecessary, as all facts would accurately come to light in the courts of discovery. Parties would not try and hide important documents, and the expenses would be controlled by each party. However, this is

clearly not the case, as the origination of electronic discovery cases stemmed from documents being deliberately destroyed or lost” (Z Parkins, 2011, 109) Unfortunately the American discovery process does not allow for the parties to operate in a bona fide manner and can maliciously bury the opposition in thousands and sometimes in hundreds of thousands of pages of paperwork before they find the documents that are most relevant to their trial.

In the USA for the law to properly adjudicate discovery disputes it has been suggested that ‘the law catch up with the technology’ (G Sorebo, 2009,133) Cloud computing can be used to assist global companies in discovery of information in preparation for trial. (G Sorebo, 2009, 134)

In the digital age in order to progress forward, the law would have to be amended accordingly to dispose of the old practices and may pave the way for new practices, which pose challenges. (A Peyton, 2014, 1)

#### 4. International Tribunals

“Today, a host of different kinds of IT are used in the International Criminal Tribunal for the Former Yugoslavia (ICTY): video and audio recording of the court sessions; simultaneous interpretation; electronic court reporting; videoconferencing for witness hearings; and electronic files. Moreover, the ICTY maintains a web site with its decisions, background information, and sounds and images from the courtroom” (D Reiling, 2006, p189 cited <http://www.un.org/icty/>)

This is the idea situation where the proceedings are at court are electronically available and are for public knowledge through the internet, with the exception of certain cases that illicit extreme sensitivity such as cases involving minor children. It is apparent that justice can be undertaken and seen to done through information technology. Video and audio recording shows all the impressions of the witnesses to the Judge together with the expressions of the witnesses through examination in chief to cross examination. These videos and audio recordals also immortalise the proceedings as it will never be deleted and can be used as a frame of reference if the need arose.

#### 5. Netherlands

In Netherlands the court statistics revealed the number of cases against the number of staff and types of courts the budget utilised. These figures ultimately measure the efficiency of the court and are important factors to consider when developing methods to improve the system.

“In 2002, the judiciary had more than 8500 staff employed, a budget of E650 million and a turnover of approximately 1,583,000 cases. There are 19 district courts with normally four sectors each: a civil law sector, a criminal law sector, an administrative law sector and a local courts sector. The civil law sectors have a specialized commercial unit and a unit for summary proceedings. The formerly over 60 local courts were administratively integrated into the districts courts in 2002. They deal mostly with small money claims, traffic violations, minor family matters, and employment and rent contracts. In these fields, they also have summary proceedings. There are five appeal courts which hear appeals of civil, criminal and some administrative cases.” (D Reiling, 2006,190)

So using the abovementioned variables a method was defined in order to improve the system.

“However, how should this improvement be defined? These past years, the judiciary has been studied extensively from the perspective of organization science. This produced many significant insights on ways to enhance effectiveness and efficiency by reorganizing the courts and their processes. But organization science cannot conclusively determine how the judiciary's work of administering justice should be improved. The ultimate standard in a legal context is a legal quality standard. The most generally accepted legal quality standards are laid down in both article 14 of the International Covenant on Civil and Political Rights (ICCPR) and article 6 of the European Convention on Human Rights (ECHR): citizens are entitled to a fair hearing of their case within a reasonable time by an independent, impartial tribunal. Improved administration of justice means better compliance with the ideals in article 14 ICCPR and article 6 ECHR: fair hearing and reasonable delay. An important aspect of fair hearing is equal treatment. Citizens may reasonably expect to be treated equally when the courts ensure consistency of their decisions. We will see how courts can use IT for that purpose. Reasonable delay: Timeliness is generally considered to be a very important aspect of the services of the courts. Speedy decision-making was long held to be at odds with careful

judicial consideration of cases. We will see, however, that using IT to improve consistency can actually shorten handling time as well”. (D Reiling, 2006,190)

Hence the conclusion was to improve efficiency and the court systems was through information technology systems.

## 6. Russia

Justice Mogoeng Mogoeng supported the Russian information technology systems that were implemented, which he encouraged for a South African context. Global information technology encourages e-commerce, ultimately the veracity of digital signatures would need to be determined in the Russian context.

“With the advent of global information technology, electronic documents are increasingly used in Russian business practice. Individual entrepreneurs and organizations enter transactions by exchanging e-mails, private users subscribe to e-mail services on the internet under contracts they sign electronically; banks introduce customer telebanking systems, and business make payments through electronic payment systems. These examples by no means exhaust the list of all potential uses of electronic documentation. In this context, it becomes necessary to determine the legal status of electronic documents in the system of Russian law.” (V Naumov & T Nikiforova 2005,p62)

In Russia legislation allows for digital signatures to be acceptable.( V Naumov & T Nikiforova 2005,p62) Digital signatures are verified through certificates authenticating the signature to be verified from the digital signatory. (V Naumov & T Nikiforova 2005,p64)

In Russia the validation of electronic digital requires not only legislation but economic investment. (G Finocchiaro,2002,67)



“Code of the Russian Federation. This provision allows the use of electronic digital signature, stating that "the use in the making of a transaction of facsimile reproduction of a signature with the assistance of means of mechanical or other copying, electronic-digital signature, or other analogue of an actual hand-written signature is allowed in cases and by the procedure provided by a statute, other legal acts, or agreement of the parties.”  
“However this provision suffers a number of limitations, the most important of which is that its scope of application seems limited to a transaction. Moreover:- it requires an agreement or a legal provision, - it does not directly apply to relations with public administrations, - it does not provide to the judge criteria for a decision.” (G Finocchiaro,2002,67)

It is apparent that digital signatures are not utilised all the time for commercial transaction as there are still drawbacks in using this method to conclude transactions.

## 7. Australia

Digital signatures in Australia is not commonly used, the electronic signatures are mainly used for online government services. (A Srivastava, 2009, 47)

## 8. Electronic Signatures

In South Africa the Electronic Communications and Transactions Act 25 of 2002 (“the Act”) deals with the legislative implications of digital signatures.

The Act deals with the veracity and validation of electronic and digital signatures.

The most important provisions of the Act are:

**'advanced electronic signature'** means an electronic signature which results from a process which has been accredited by the Authority as provided for in section 37;

## 2 Objects of Act

(1) The objects of this Act are to enable and facilitate electronic communications and transactions in the public interest, and for that purpose to-

- (a) recognise the importance of the information economy for the economic and social prosperity of the Republic;
- (b) promote universal access primarily in underserved areas;
- (c) promote the understanding and, acceptance of and growth in the number of electronic transactions in the Republic;
- (d) remove and prevent barriers to electronic communications and transactions in the Republic;
- (e) promote legal certainty and confidence in respect of electronic communications and transactions;
- (f) promote technology neutrality in the application of legislation to electronic communications and transactions;
- (g) promote e-government services and electronic communications and transactions with public and private bodies, institutions and citizens;
- (h) ensure that electronic transactions in the Republic conform to the highest international standards;
- (i) encourage investment and innovation in respect of electronic transactions in the Republic;
- (j) develop a safe, secure and effective environment for the consumer, business and the Government to conduct and use electronic transactions;
- (k) promote the development of electronic transactions services which are responsive to the needs of users and consumers;
- (l) ensure that, in relation to the provision of electronic transactions services, the special needs of particular communities and, areas and the disabled are duly taken into account;
- (m) ensure compliance with accepted International technical standards in the provision and development of electronic communications and transactions;
- (n) promote the stability of electronic transactions in the Republic;
- (o) promote the development of human resources in the electronic transactions environment;
- (p) promote SMMEs within the electronic transactions environment;
- (q) ensure efficient use and management of the .za domain name space; and
- (r) ensure that the national interest of the Republic is not compromised through the use of electronic communications.

### 13 Signature

(1) Where the signature of a person is required by law and such law does not specify the type of signature, that requirement in relation to a data message is met only if an advanced electronic signature is used.

(2) Subject to subsection (1), an electronic signature is not without legal force and effect merely on the grounds that it is in electronic form.

(3) Where an electronic signature is required by the parties to an electronic transaction and the parties have not agreed on the type of electronic signature to be used, that requirement is met in relation to a data message if-

(a) a method is used to identify the person and to indicate the person's approval of the information communicated; and

(b) having regard to all the relevant circumstances at the time the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated.

(4) Where an advanced electronic signature has been used, such signature is regarded as being a valid electronic signature and to have been applied properly, unless the contrary is proved.

(5) Where an electronic signature is not required by the parties to an electronic transaction, an expression of intent or other statement is not without legal force and effect merely on the grounds that-

(a) it is in the form of a data message; or

(b) it is not evidenced by an electronic signature but is evidenced by other means from which such person's intent or other statement can be inferred.

(Section 13, Electronic Communications and Transactions Act 25 of 2002)

Ultimately the allowance and creation of digital signatures was to allow the conclusion of commercial transactions at the convenience of the parties. We see the conclusion of these transactions most often in the transactions dealing with the sale of a vehicle or any transaction with the banking institutions.

In view of section 39 of the Constitution, international law in relation to consideration of the UNCITRAL model Law on electronic signatures 2001, article 2 states that:

- (a) “Electronic signature” means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory’s approval”

Electronic signatures utilise techniques such as validation through biometric devices and personal identification pins. (UNCITRAL,2001,21)

It is apparent from the domestic legislation that electronic/digital signatures are recognised in the South Africa and the legislation complements international legislation governing digital signatures.

However despite, digital signatures being used in transactions there is no use of it in legal pleadings. When we refer to the rules of court, we find that the rules do not allow for digital signatures on pleadings, which is unfortunate as it means that one attorney is confined to signing off hundreds to thousands of pleadings manually.

“Rule 18 of the High Court:

18. Rules relating to pleading generally.- (1) A combined summons, and every other pleading except a summons, shall be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4(2) of the Right of Appearance in Courts Act, 1995 (Act No.62 of 1995) , has the right of appearance in the Supreme Court, only by such attorney or, if a party sues or defends personally, by that party.”

(GNR.48 of 12 January 1965: Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa)

In the Magistrates' Court Act, section 5(3)(a)(ii) provides for a summons to be signed by the attorney for the plaintiff or s5(3)(a)(iii) the plaintiff to sign in person if they do not have any representation.

It is apparent from the wording stipulated in the Act and rules of court, which signing electronic on pleadings are not excluded and have not seemed to be a rule of practice as it does not constitute originality on face value. However if pleadings can be signed electronically by attorneys of the firm, it would cut the manual labour of the attorneys of signing thousands of pleadings. Perhaps an amendment to legislation regarding electronic signatures on pleadings is a necessary amendment.

## 9. Conclusion

The advancements of information technology in the court systems is a necessary transformation for courts and justice in South Africa. Information technology creates efficiency, as it improves access to justice and allows the computers to generate the manual and laborious work that clerical administrators attend to. Instead clerical administrators may assist more people to access their rights through assistance at court regarding suing out summons and launching applications.

Innovative technology through information technology creates necessary convenience, and ranges to digital signatures, which pleadings can be made easier, by utilising electronic signatures so that attorneys are not buried in the administration of signing thousands of summons to be issued before the court. Courts can also issue summons electronically instead of manually, which in the long term saves time and money. Information technology and the advancements are expensive but in order to make money and create time, money needs to be spent to attain an improved justice system through advancements of information technology in South Africa.

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