

**THE EFFECTS OF MAGISTRATES' TRANSFER ON THE  
ADMINISTRATION OF JUSTICE IN KENYA: A CASE STUDY OF  
COURTS IN NAIROBI CITY COUNTY**

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## DECLARATION

This research report is my original work and has not been presented to this or any other university for an academic award.

Signed.......... Date.....01/09/2020.....

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This research report has been submitted for examination with my approval as the University supervisor



Signed.....Date...03/09/2020.....

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## **DEDICATION**

To my wife Rachel,

For her unfaltering support and patience; you were my inspiration.

To my daughter Joan and sons Felix and Dennis,

For their understanding when I spent so much time on the computer.

To my mother Monica,

The reason of what I have become today.

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## **ABSTRACT**

Although studies have been carried out on staffing and transfers of judicial officers, there is limited empirical data on the effect of frequent magistrates' transfer on the administration of justice in Nairobi City County. This study sought to answer the question on the effect of magistrates' transfer on the administration of justice in courts in the county. Specifically, it investigated the effect of magistrates' transfers on case backlog, on internal courts operations and on magistrates' personal lives in four magistrates' courts in Nairobi City County. It was a descriptive survey based on both the Uncertainty Reduction and the Socio-Technical System Theories. Using purposive and systematic random sampling, the study sampled 2597 stakeholders for the period between 1<sup>st</sup> September and 30<sup>th</sup> October, 2019 methods. Semi-structured questionnaires and key informant interviews were used to collect data. Quantitative data was analyzed using Statistical Software for Social Scientist (SPSS) Version 20 and results presented in tables and graphs. Qualitative data supplemented quantitative data. The findings showed that magistrates' transfer leads to case backlog and delays, increases case administration costs, makes it difficult to organize the courts' calendar and negatively affects the magistrates' learning curve and education of their children. Judiciary should develop a widely acceptable transfer policy that give magistrates longer transfer notifications. Transfer and hand-over protocols should ensure that cases do not suffer unnecessary delays and costs and they should be such that they align transfers to the national education calendar. Insight from the study could enhance best practices in handling magistrates' transfers in Kenya.

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## **ABBREVIATIONS/ACRONYMS**

<b>CoA</b>	Court of Appeal
<b>CPS</b>	Crown Prosecution Service
<b>CUC</b>	Court Users Committee
<b>ELC</b>	Environment and Land Court
<b>ELRC</b>	Employment and Labor Relations Court
<b>HC</b>	High Court
<b>JAC</b>	Judicial Administration Council
<b>JMFC</b>	Judicial Magistrate First Class
<b>JMVB</b>	Judges and Magistrates Vetting Board
<b>JSC</b>	Judicial Service Commission
<b>JTF</b>	Judiciary Transformation Framework
<b>JTI</b>	Judiciary Training Institute
<b>LSK</b>	Law Society of Kenya
<b>NBA</b>	Nigerian Bar Association
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>SC</b>	Supreme Court
<b>SJT</b>	Sustaining Judiciary Transformation
<b>STS</b>	Socio-Technical System (Theory)
<b>URT</b>	Uncertainty Reduction Theory

# **CHAPTER ONE**

## **INTRODUCTION**

### **1.1 Background to the Study**

The judiciary, as an arm of the government, is a critical constitutional organ in Kenya that is responsible for dispensing justice, interpreting and applying laws, making laws through precedence, protecting public rights and guarding the constitution (Ghai, 2018). The judiciary is empowered to make decisions and adjudicate on matters affecting persons, institutions and governments. It determines the constitutionality and legality of national laws and policies and the legal propriety of acts and behaviors of citizens (Kaweesa, 2012). In many countries, the judiciary is hierarchical with judges in higher courts mandated and authorized to change or void decisions made by judges of lower-courts (Rankin, 2014).

Arguably, transferring judicial officers that include magistrates for purposes of reforming and/or restructuring the judicial system, must have regard to their critical role. A job transfer is when a job position demands that an employee relocates from one institution/geographical region to another without any change in salary, status or responsibility (Sims, 2002). For instance, in the USA, magistrate judges are appointed by merit for an eight-year renewable term though their duties vary from district to district (McCabea, 2014). Staffing in lower courts follow models that distribute available staff among the districts. Subsequently, the Assignment Judge and the Trial Court Administrator can either allocate or transfer staff to the divisions based on their assessment of the respective needs (Williams, 2003).

In Guyana, magistrates have both civil and criminal jurisdiction and are located in the magistrate's court in every district. In some states, judiciary staffing is handled by the Registrar of the Supreme Court and the Public Service Ministry (Republic of Guyana, 1998, Kaieteur News, 2014). In Argentina, magistrates in the lower federal court are nominated by a Magistracy Council, chosen by the president but their transfer is determined by this Magistracy Council (Garro, 2000, Goethe University, 2013). In Trinidad and Tobago, where magistrates mostly exercise original jurisdiction over criminal matters, transfers and reallocation is handled by the Court Human Resource Management Unit in compliance with the Public Service Regulations, terms of

employment and in line with development of core staff competencies (The Judiciary of Trinidad and Tobago, 2013, Republic of Trinidad and Tobago, 2019).

In England and Wales, magistrates are referred to as justices of the peace and they serve as volunteer judicial officers whom legal training or qualifications are not a requirement (The UK Judiciary, 2019). A focus on five ex-communist countries (Poland, Czech Republic, Hungary, Bulgaria and Romania) shows that supranational (power and influence that transcends national boundaries/governments) actors are largely involved on matters of creating and staffing the courts including transfer of officers' across the countries (Volcansek, 2010).

In Africa, instituting a viable, democratic and a functional judiciary has been a major concern of national governments since the post-independence years but this has succumbed to challenges such as inefficiency and poor organization of the judiciary and court systems (Igbanugo, 2018). In mitigation, many African countries have adopted officers' reshuffles and transfers as judicial reform tools (Manga, et al., 2013). For example, In Nigeria, where the state-based magistrates' courts provide jurisdiction over a wide range of offences, the Nigerian Bar Association (NBA) recommends judicial officers be moved around every five years as a measure to reducing their chance of compromising integrity (Anthasius, 2019; Tajudeen, 2013). However, in Borno, Delta and Lagos states, judicial officers are allowed to control their own case calendars (Langseth, 2003). In Uganda in 2011, in a bid to enhance efficiency and effectiveness in the judiciary, there was a country-wide reshuffle involving 71 judicial officers, 46 of whom were magistrates (Bath, 2013). In Ethiopia, under the judicial reform, a sub-program within the Justice System Reform Program (JSRP) a Judicial Administration Council (JAC) was established and granted the mandate to decide on the human resource concerns of federal judges, including placement and transfers as well as remuneration, staff appraisal and fringe benefits (Yohannes, 2011).

In the Kenyan judicial system, the superior courts are structured into a hierarchical system with the Supreme Court (SC), being the highest followed by the Court of Appeal (CoA), and then the High Court (HC). In addition, there are courts with status equal to that of the high court, that is, the Employment and Labor Relations Court (ELRC) as well as the Environment and Land Court (ELC) (Republic of Kenya, 2010, Hierarchy Structure Services, 2018). The subordinate courts are the Magistrates Courts, Kadhis Courts, Courts Martial as well as local tribunals (Republic of Kenya, 2010).

Magistrates' courts in Kenya are established under the Magistrates' Courts Act (No. 26 of 2015) and may be presided over by either a Chief Magistrate, Senior Principal Magistrate, Principal Magistrate, Senior Resident Magistrate or a Resident Magistrate. These courts have jurisdiction in both criminal and civil matters (Republic of Kenya, 2015).

Magistrates are a critical interface between the public and the judicial system and mostly serve as courts of first instance in civil, criminal and family matters (Green, 2013, Bansal, 2014, UK Judiciary, 2014). In recent years, as a measure of increasing effectiveness and performance there have been frequent magistrates' transfers in Kenya. In 2015, 31 magistrates were transferred, while in 2016, 17 Chief Magistrates were transferred by the Judicial Service Commission (JSC) (Kariuki, 2015, Vidija, 2016). In the Kenyan judicial system, transfers are framed within the context of resolving the imbalance of skills in respect to needs on the ground. This means, transfers are motivated by the need to rationalize internal staff ratio and skills. Other triggers including need to review career progression paths and to improve terms and conditions of service that may cover among other issues like the provision of mortgage, medical scheme and loan facilities (Judicial Service Commission, 2014). As far as the Judicial Service Commission is concerned, there is need for the judiciary to institutionalize a stable transfer policy. Therefore, knowing what to do if a situation arises at work related to job transfer is in the best interest of leaders in an organization (Just Answer LLC, 2014).

## **1.2 Statement of the Research Problem**

There are several factors that influence transfer of magistrates in Kenya. One of them was the vetting process which was carried out by the Judges and Magistrates Vetting Board (JMVB) and which rendered some of the magistrates' services obsolete and compelled them to leave office subsequently triggering transfers to fill their positions. Other triggers include transfer policy, establishment of new courts, the nature of cases in certain areas which may necessitate posting of officers of a certain rank and the need to strike a balance between case load and the number of judicial officers in a court station. These scenarios are followed by transferring of magistrates from one court to another or from one region to the other so as to fill the void.

In other situations, a need to break familiarity in one court, which often is regarded as basis for compromised integrity, is the determining factor. Additionally, promotion is also a factor that contributes to magistrates' transfer. However, whereas transfers *per se* have no problem, when done too frequently, they could create job disruptions both internally and externally. This is supported by existing anecdotal evidence that shows that both the dispensation of justice and other judicial functions (such as the personnel, activities and structure of the justice system) are affected by transfers. Although studies have been carried out on staffing and transfers of judicial officers, there is limited empirical data on its effect in Nairobi City County. There is a need to analyze the extent to which frequent magistrates' transfer affect the administration of justice in the country, hence this study.

### **1.3 Research Question**

The study's general research question was: what are the effects of magistrates' transfer on the administration of justice in courts in Nairobi City County?

#### **1.3.1 Specific Research Questions**

The study sought to answer the following specific research questions:

- i) What are the effects of magistrates' transfers on case backlog in magistrates' courts in Nairobi City County?
- ii) What are the effects of magistrates' transfer on the internal operations of the courts in Nairobi City County?
- iii) What are the effects of magistrates' transfer on the personal lives of judicial officers in Nairobi City County?

### **1.4 General Objective**

The study's main objective was to assess the effects of magistrates' transfer on the administration of justice in the magistrates' courts in Nairobi City County.

#### **1.4.1 Objectives of the Study**

The study was guided by the following specific objectives:

- i) To investigate the effect of magistrates' transfers on case backlog in magistrates' courts in Nairobi City County.
- ii) To find out the effect of magistrates' transfers on internal operations of the courts in Nairobi City County.

- iii) To determine the effect of magistrates' transfers on the personal lives of judicial officers in courts in Nairobi City County.

### **1.5 Justification of the Study**

The study is significant since it has sought to quantify as well as gain insight on the actual impact of transferring magistrates and how this implicates on the capacity of the Kenya Judiciary to deliver justice to the public. To the policy makers in the judiciary, this study has provided insight that could help improve relevant policy guidelines and matters of transfers in the judiciary so as to mitigate on the aftermath of magistrates transfers. Implementing the recommendations could contribute to embracing best practices in handling transfers in a way that makes them more responsive to the delivery of justice. The findings and insights could support better judgement for court users and court administrators seeking to understand how to address the consequences of personnel transfer on court proceedings and on the administration of justice. In addition, the knowledge and insights could be extended to judiciaries in other countries who like Kenya are undergoing reforms in their judicial systems.

The findings of the study have accentuated the knowledge on matters of transfers in the public service in general and the judiciary in particular. This could be helpful to individuals who have some stake or interest in the subject matter of the study including students, academicians and researchers. In this regard, the study could offer some grounds for further study on judicial-related issues.

### **1.6 Scope and Limitations of the Study**

This study examined the direct and indirect consequences of magistrates' transfer in courts in Nairobi City County. The study was limited to four magistrates' courts in Nairobi City County, that is; Milimani Law Courts, Kibera Law Courts, Makadara Law Courts and the Children's Court at Milimani. These are courts of first instance, with jurisdiction and powers in proceedings over both criminal and civil cases. The study focused on the magistrates' courts because besides being the courts that are highest in number throughout the country, they are also the most widely distributed. Nairobi City County was chosen because it has the highest concentration of these courts and therefore findings within Nairobi magistrates' courts are a reflection of magistrates' courts in other parts of the country. The study targeted stakeholders in place for the period between 1st September, 2019 and 30th October, 2019.



The researcher encountered respondents concerns that the questions they were asked were probing into their competency and efficiency as judicial officers (or that of their fellow judicial officers) or even had a bearing on the outcome of cases pending before court. However, the researcher dealt with this issue by enhancing trust in the respondents whereby he assured them of confidentiality of data obtained and explained to them that the study was purely for academic purposes. Another limitation was where the respondents became concerned or were skeptical over being victimized for their views on the short comings in the judicial system. This problem was dealt with by requiring the respondents to fill the research instruments anonymously.

### **1.7 Definition and Operation of Terms**

**Administration of justice** refers to the processes by which the legal system of a country is carried out (Duhaime's Law Dictionary, 2019). From a research perspective, administration of justice refers to a set of theories, and the methodology used in investigating the acquisition and utilization of tangible and intangible resources by the judicial system with a view to providing justice in a given scenario (Guimaraes, Gomes, & Filho, 2018). In this study administration of justice was used to refer to expedition and determination of cases in the magistrates' courts.

**Backlog** refers to a number of activities which have not yet been done but which need to be done (Black's Law Dictionary, 2019). In the judicial process this refers to inability of courts to supply services in response to the demand of cases filed at 100% and which leads to accumulation and congestion of cases in the courts and occasions delay in the administration of justice (Dakolias, 2014). In this study backlog was used to mean delays in the determination of cases that are already before the magistrates' courts.

**Internal Operations** according to McGrady (2019) involve performance of a practical work or practical application of principles or processes for the non-public affairs of a company or community. Dotdash Publishers (2018) note that internal operations involve administration of business practices so as to have efficiency within an organization. In the context of this study this meant activities carried out within the judiciary generally and specifically within the magistrates' courts for the purpose or tangential to the dispensation of justice.

**Personal** refers to activity or event belonging to or affecting a particular person rather than anyone else (Privacy Sense, 2019). In a job situation, personal matters relate to the psychological, physiological and social issues that affect an employee (Dotdash Publishers, 2019). In this study it refers to issues that directly affect an officer of the court and specifically magistrates in a personal capacity.

**Transfer** refers to moving from one place of job to another, or to make someone to move, especially within the same organization (Briscoe, Schuler, & Tarique, 2012). In a job situation this refers to a state where an employer requests or demands that an employee relocate, from one place to another, for business reasons or for organization's policy issues (Just Answer LLC, 2014). In this study transfer refers to the relocation of magistrates from one working station to another as an administrative function within the judiciary.

## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

This chapter examines the relevant literature concerning transfer of judicial officers, particularly focusing on magistrates. It examines the reasons that make it necessary to transfer magistrates, the consequences this has on case backlog, the impact of transfers on internal operations of magistrates' courts and the impact of magistrates' transfer on their personal lives. The chapter then critiques the literature reviewed and presents a theoretical framework.

#### **2.2 Job transfers overview**

Transfers occur when employees are shifted to another department or site or a related classification without altering their job rank, responsibilities or salary (Heathfield, 2018; Sukat Organization, 2012). The Torrance Unified School District (2009) handbook proffers transfer as the relocation of an employee to a different department or job site or to a related classification within the same salary range. As per the Judicial Service Act (2011), a transfer basically refers to the appointment to some office other than that previously appointed to either on permanent basis or otherwise and which is not necessarily a promotion (Government of Kenya, 2011).

To manage transfers, organizations should develop an employee transfer policy (Core HR, 2012). An effective transfer policy needs to comprehensively address issues that cover the rights of the organization to deploy or transfer employees, the terms and conditions and procedures that guide employees in the application for transfer to another job, transfer back to former job and the effects of transfer on remuneration and seniority (Judicial Service Commission, 2014). Claudius (2011) notes that the terms, conditions and procedures for application for transfers should be stipulated in the policy and further postulates that the policy should clearly state the organization's stand on employee transfer so as to prevent any misconception among employees.

There are several types of transfers that include horizontal transfers, vertical transfers, geographical transfers, lateral transfers and demotions. Horizontal transfer, also known as lateral transfer is where the employee is moved from one department to another in the same level (Roberts, 2018). This is triggered by job matching and job relocation in an organization (Ariga, 2004). Horizontal transfers are instituted by the

organization's management with the aim of maintaining production or output or when a new employee fails to adjust his/her skills and abilities accordingly in the given job. It can also be done to increase the versatility and widening of skills for employees or for job training (Sasaki, Takii, & Wan, 2013). According to Kalpana (2015), a horizontal transfer is regarded as a geographical transfer when an employee changes in the job's geographical location (for example from one county to another) without a change in responsibilities or remuneration and is meant to satisfy employees' needs and their desire to work in a friendly atmosphere, in a department where scope for individual growth is high, in or near their native place or place of interest.

On the other hand, vertical transfer occurs where an employee moves from a lower job level to a higher level as a result of promotions as well as for vertical knowledge transfer (Cova & Fejfarová, 2015). The authors further state that vertical knowledge transfer may be influenced by internal factors at the individual and organizational levels and this may include willingness to share knowledge as well as organizational climate. Josten and Schalk (2010) point out that demotion is a kind of vertical transfer that involves loss of status or rank of an employee. Accordingly, there are several reasons that may compel for demotion which include and not limited to: poor employee performance, disciplinary actions, position elimination or organizational restructuring, and at times an employee-desired reduction in responsibility. In addition, demotions have the potential to reduce employee's feelings of exhaustion, but in this case only if the new position is less demanding. The common types of magistrates transfer in Kenya include lateral transfer, especially from one type of law court to another, vertical transfer during promotions and geographical transfer, where magistrates move from a court station in one geographical area to another.

According to Sukat Organization (2012), job transfers may occur for several reasons including a request by the employee due to personal or social reasons such as family or health, a requirement from the human resource department dictating the time period that a staff member may be retained in a given region or department, and changes in work necessitating transfers in organizations. A drop in production or rather downsizing or total stalling of certain business activities/operations may call for job elimination in some cases but as an alternative the employees may request for transfers. Claudius (2011) points out that organization re-engineering due to factors such as mergers and takeovers may compel the affected staff to seek for transfers.

Causes of transfer for judicial officers cited include staying in one station for a long period of time (Tajudeen, 2013) or government policy (Bath, 2013). They could also be as a result of disciplinary sanctions (United Nations Office on Drugs and Crime, 2015). The Office of the United Nations High Commissioner for Human Rights (2013) has stressed that human rights must be observed in the transfer of judiciary staff. The office directed that individual judges must have a right to enjoy independence in performing their professional duties free from any manipulations such as punitive and forceful transfers. In other words, while it may be necessary to transfer magistrates from one court station to another, this must be done whilst respecting the principle of the independence of the judiciary as an institution from undue interference by the other arms of government (Republic of Kenya, 2016).

The Human Resource Council (2018) postulates that for purposes of control and removal of disjointed transfers, organizations should formulate appropriate transfer policies which clarify when staffs consider themselves eligible to apply for transfer by meeting certain clear and pre-existing conditions such as the length of service in a particular position or station. In addition, Harewood (2018) states that the transfer policy should clearly state the events and circumstances that could possibly oblige the management to go for employee transfers in view of reducing the staff head count, such as, economic recession and government policies.

In Kenya, although the retired constitution provided for the independence of the courts, transfers continued to be abusively used as a punitive tool against judges and magistrates who acted dispassionately and with independence to the executive's disadvantage (Mbote & Akech, 2011). However, under the Kenya Constitution, 2010, the power to appoint, discipline, and dismiss magistrates is wholly transferred to a more empowered and restructured Judicial Service Commission. Nonetheless, the right to transfer, promote or remove officers in the judiciary, be it judges, magistrates, or other judicial officers, is one of the key elements of the independence of the judicial arm of government. This study sought to determine both the internal and external triggers of transfers for the magistrates in courts in Nairobi City County.

### **2.2.1 Effect of Magistrates' Transfers on Backlog of Cases**

According to Lim (2013), magistrates' transfer leads to a backlog of cases which relates to a huge pile up of unattended cases impeding the capacity of the courts to hear or

determine them within reasonable and stipulated timelines. Consequently, the backlog of cases leads to unreasonable delays which in turn not only render the adjudicative process inconvenient but also compromise the capacity of the judiciary to deliver services effectively and efficiently (Alam, 2000). Golding (2013) postulates that delay in the hearing and determination of cases due to backlog, increases pressure on the current cases and is thus detrimental in the realization of justice and the rule of law as well as the economic development of a country. Imwalwa (2014) supportively points out that backlogs are a serious concern since they undermine the constitutional imperative of delivering timely justice. According to Waters and Strickland (2017) delays are pernicious in several ways especially because they undermine the public interest in final resolution of disputes. In addition, judges could get demoralized and hesitant in making a ruling when they realize that they will not determine a case but this will be done by their successor after they go on transfer (Ghosh, 2018). This study sought to determine the relationship between magistrates' transfers, case backlog and overall effect on administration of justice.

An article on Bangladesh judiciary highlights rotation and transfer of judges as a contributor to backlog, an implication that the movement of judges makes it impossible for a judge to push forward a case from the initial mentioning to sentencing seamlessly (Alam, 2000). There is need to determine the link between transfers and case backlog in Kenya since the study was done in Bangladesh, though both are developing countries. In Kenya, the concern over case backlog has been persistent. According to the Daily Nation Newspaper (7<sup>th</sup> February, 2018) a large number of cases have been progressively piling up in courts for over a decade in spite of a clean-up drive. In the Kenyan law, a case terminates or abates when one of the parties or the accused demises before the conclusion of the trial (The Kenyan Judiciary, 2018). In January, 2017, the Hon. Chief Justice, David Maraga launched his blueprint under the Sustaining Judiciary Transformation (SJT) initiative where all courts were required to clear case backlog by ensuring that all cases which were five (5) years old and above were heard and concluded by December, 2018 (Directorate of Public Affairs and Communication, 2018).

A study that investigated factors influencing management of case backlog in judiciary within Meru and Tharaka-Nithi Counties in Kenya was able to identify availability of judicial staff as a contributing factor to the management of case backlog. However, this

study which recommended that the judiciary should ensure adequacy of staff, did not look at what role magistrates' transfer plays in the backlog issue (Makau, 2014). This study determined whether and how the prevalent transfers of magistrates are contributing to backlog of cases in courts in Nairobi City County, a concern that has been persistent for long in the corridors of justice.

### **2.2.2 Impact of Transfers on Internal Operations of Magistrates' Courts**

The justice system helps to uphold, test and enforce the law and the courts' role is to resolve disputes in a fair and rational manner. The court is an impartial and independent forum and as such, judges are free to execute the law dispassionately irrespective of either the government's or public interest. Moreover, court decisions are governed by the law and the available evidence hence discarding bias or suspicion (Canadian Superior Courts Judges Association, 2008). According to Heathfield (2014), when a transfer takes place, it helps develop the employee by widening their span of knowledge, exposure and experience. On the flip side though, when transfers affect magistrates, the proceedings in cases before them are disrupted. The effect of such transfers could thus lead to increased costs of litigation due to delays, drawn-out court processes, disrupted cause-lists and case diaries, miscarriage of justice, prolonged stay of suspects in custody and change in overall performance indicators. These issues are core to on-going cases and thus affect internal court processes. Delays in the hearing and conclusion of cases as occasioned by transfer of magistrates would lead to prolonged time before case determination, reported to be 35.3 months in Cook County in Illinois (Monek, 2009). Other outcomes include increased cost of litigation and reduced public confidence in the courts. Case assignment with due flexibility and concern for consistency is central in case-processing and can directly affect the length of proceedings and hence reduce the costs of seeking justice (UNODC, 2011). This study sought to determine the impact of transfers on internal operations of Magistrates' Courts.

As Bridgman and Corboy (1982) observe, a majority of the layman population disregard the civil justice system due to internal issues such as time consuming tendencies and cost inefficiency. According to Monek (2009), a study done in Cook County in the USA shows that it took an average of 35.3 months for a case to be disposed by either settlement, prosecution, default or verdict, while from filing the lawsuit to verdict, a case may take 3 to 4 years. This depicts a slow and painstaking

internal processing of cases that could lead to miscarriage of justice. The current study looked at Kenya's situation, specifically on the effect of magistrates' on the expeditious determination of cases.

Monek (2009) notes that a delay of cases in courts and lengthy court procedures occasion deterioration of evidence and make it difficult for justice to be realized by the end of the case trials. It also erodes public confidence and loyalty to the court system. Bureaucracy when combined with transfer of magistrates could lead to serious challenges of internal operations of the court. In some instance restarting of a case further affects internal operations of the magistrates' courts as shown by Laws (2016). It could also distort records management. A study by Mafu (2014) revealed occasional misplacement of court records due to lack of case file tracking system. Records management is an integral part of a case process from registration to determination (International Records Management Trust, 2010) and this could be made worse by magistrates' transfer. This study sought data on whether magistrates transfer has an effect on courts' daily routines and annual work plans.

Proportionality and appropriateness of time it takes to provide an outcome for a case is a predictor of justice dispensation under the maxim, justice delayed is justice denied (Burstyner & Tania, 2014). In Mombasa Kenya, the trial of a British terror suspect, Jermain Grant stalled for two years, between 2015 and 2017 upon the transfer of the presiding magistrate (The Standard Newspaper, 2<sup>nd</sup> February, 2017). This shows that magistrates' transfer could lead to serious implications on internal operations of courts with some cases simply stalling. This study sought to find out the impact of magistrates' transfer on internal operations of the affected courts.

### **2.2.3 Impact of Magistrates' Transfer on the Personal Lives of the Magistrates**

Work transfer is a change. All changes come with disturbing the status quo. This notwithstanding, job transfer is a job experience that should bring out job satisfaction. There exists a positive relationship between job satisfaction and performance implying that high job satisfaction is tantamount to high job performance and the resultant overall organizational performance (Bakotić, 2016). Also, different demographic factors like, age, gender and income affects the job satisfaction (Valen, 2011). Furthermore, there are several outcomes from employees' transfers that affect individual employees. For example, the employees having a good attachment with the organization may have their



morale disturbed by a transfer (Gary, 1998). Additionally, family members of the employee could get psychologically disturbed especially where they have to relocate to a new region with the entire families. Transfers will also have financial cost implications to the affected person in form of shifting households and furniture. The transferred employee may resign if not willing to leave the current location (Gary, 1998). It is for this reason that the Oregon state in the USA passed a law stating that from July 1, 1946, no transfer is to infringe the rights of a judicial service member or deprive them of any benefits or credits accruing to them (Oregon Laws, 2013). The current study sought data on how magistrates transfers affect their personal benefits or situations.

In summary transfers lead to disruption of life for the affected officers evident through disruption of schooling for the children of the affected officers, mental and physical stress, disrupted knowledge flow, compromised performance and possible confusion (Kalimo, Ei-Batawi, & Cooper, 1987). Furthermore, that performance contracting has been introduced and applies across the board to ensure the judicial staff and officers are highly competitive and professional and that they serve the public with utmost dedication (Judiciary Transformation Framework, JTF 2012 - 16) thus job transfers are potentially counterproductive and the two have been found to be inversely correlated (Ndogo, 2015). In the same light, initial days after relocation renders employees to feel anxious and worrying about how well they will perform at the new job stations. Other feelings are inadequacy when compared with experienced employees, and a general concern on how well they will get along with their co-workers (Kukreja, 2019). Therefore, where magistrates' transfer becomes an item of reforming and restructuring a judicial system, the movers of the policy must take into consideration this vital role that magistrates play in the administration of justice. This study sought the officers' perception on the effect of transfers on their personal lives.

### **2.3 Magistrates' Transfer and Administration of Justice**

In Kenya, challenges that face the criminal justice system continue to persist. Improving the broad performance of law and justice processes is a complex and long term task which is beyond the strengthening of particular institutions (ICJ Kenya, 2018). Despite this, the Kenyan public generally considers the judiciary to be in charge of deciding cases and settling disputes among the people and/or between the people and the state. However, in addition to these, judicial officers (judges and magistrates) have additional

roles in the execution of justice in the country, for example, ensuring justice is available and that the constitution is observed by all including other institutions of the state (Ghai, 2016). This study aimed at determining the effect of magistrates' transfers on ability of the judiciary to decide cases and to settle disputes.

Under the Constitution of Kenya 2010, the Judicial Service Commission (JSC) has the mandate of ensuring that the judiciary is independent and accountable and that it is well equipped to ensure it is efficient and effective in the overall administration of justice (Government of Kenya, 2010). In this regard the Commission's mandate includes appointing, disciplining and/or otherwise removing from office, judicial officers and other staff of the judiciary. The Constitution also provided for a vetting mechanism through which Judges and Magistrates, appointed under the previous constitution, and who did not meet various performance thresholds, were to be removed by the Judges and Magistrates Vetting Board. This leaves the issue of transferring magistrates as a function to be undertaken by the judiciary administration. At the top of this administration is the Chief Justice as head of the institution and the Chief Registrar as the chief court administrator and accounting officer. This study obtained data that could improve on the policy of transferring magistrates.

Transferring magistrates result in varying outcomes both on the affected persons and in the delivery of justice. A poor implementation of the policy of transferring magistrates, however noble the intentions could be, can cause disruptions which are counterproductive to the overall aim of enhancing the performance of the judiciary in question. A study in India illustrates, from the judges' perspective, how poorly implemented transfers of judicial officers could severely impede administration of justice at the lower courts ( Asian Development Bank, 2010). This study sought to gain insight and to build on knowledge that could help improve the transfer of magistrates in a practical aspect.

Krishnan, *et al* ( 2014) point out that frequent transfers frustrate judges by contributing to instability of the court and their personal lives as well. Additionally, frequent transfers deny judges the opportunity to bring a case to completion from start to finish and hence makes it impractical to appreciate the progression of a case. Due to frequent transfers, there is bound to be a disconnect between judges and the society, thus depriving judges of the incentives to create impact to the community. This study sought

to determine the impact of magistrates' transfer on the administration of justice in the affected courts.

## **2.4 Theoretical Framework**

The study was founded on the Uncertainty Reduction Theory and The Socio-Technical System Theory and the study aimed at enriching the precepts of these two theories.

### **2.4.1 Uncertainty Reduction Theory**

The Uncertainty Reduction Theory (URT) that was developed by Charles Berger and Richard Calabrese in 1975 postulates that it is essential to use correspondence to retrieve an individual's data in view of projecting their action. This is because, when a person meets new people in a new work station, the social interactions are meant to reduce uncertainty and enhance predictability as explained by this theory which is variably referred to as initial interaction theory (Bajracharya, 2018). In support of this theory, research findings have it that initial interactions between strangers involve exchange of personal and public information but these interactions are not static since they may change as they develop (Haunani, 2008).

The theory postulates that people wish to eliminate uncertainty. In a study by Kramer (1993) on employees who were transferring within the same company, it was found that during initial interactions individuals who are information-seeking are perceived positively. In addition, transferees tend to open up on personal topics easily with those they perceived positively during initial interactions. Kramer notes that transferred employees emphasize on reducing transfer shocks and uncertainty in their new environments an implication that as uncertainty increases, information seeking motives increase. In the URT, lack of skills in gathering information and poor communication affect the interpersonal communication. This implies that in the context of this theory a person who is unable to seek information is disadvantaged.

In this study, URT explains that when magistrates transfer to a new work station they need to create new relationships and learn the organization in order to enhance their performance. The immediate social interactions are meant to reduce uncertainty and enhance predictability in a new job situation. Within the context of the theory, this is a process. However, this study endeavored to show that the principles of URT would explain that transfers are disruptive in the life of the magistrates whereby achieved reduction of uncertainty and enhanced predictability in their current job situation is

disrupted when the officers go to new stations. Arguably, the process of reducing uncertainty and enhancing predictability will have to be repeated in the new work stations. As a consequence, the performance of the magistrates will initially reduce as they attempt to get used to the new work environment. This cyclic disruption ultimately affects hearing and timely determination of cases as well as the personal lives of the magistrates and hence the overall performance of the judiciary. The argument in the context of this study is that performance of magistrates is better where uncertainty has been reduced to minimum levels and predictability is optimized. Therefore, in view of URT, magistrates' transfers should be minimized and made predictable and determinable.

This theory formed by basis for the two first objectives of the study: the effect of magistrates' transfers on case backlog in magistrates' courts and the effect of magistrates' transfers on internal operations of the courts. However, it failed to adequately give theoretical ground work for the effect of transfers on magistrate's lives and thus the researcher adopted the socio-technical system theory.

#### **2.4.2 The Socio-Technical System Theory**

To cover the effect on magistrates' transfers, the study adopted the social-technical systems (STS) theory. STS theory which was originally developed by Emery and Trist (1960) involves the interaction between humans, machines and environmental aspects in a work system. Baxter & Sommerville (2011) point out that the socio-technical systems approach focuses on the incorporation of human, organizational and technical factors in the design of organizational systems and of great essence is the harmonization of the technical and organizational aspects. This theory has principles which are relevant to this study. One of such principles is the participation of employees in the organization structure design. This was important to the study in that the judicial system in Kenya ought to involve the magistrates in formulating policies and structures of the court system so as to put a check on the drawbacks of the transfer procedures on the operations of the judicial system.

The STS theory further provides that the institutional conditions ought to provide for quality standards of life. This is essential in the instance where the transfer affect the personal life of the magistrate. This theory suggests that the social system and the design of the organization should consider the lives of the employees which in this case

are the magistrates. According to Eason (2008), the STS theory places much emphasis on the reality of work and the interdependence between the social system and the technical artefacts and by this it helps in internalizing the impacts of changes in the technical system on the performance of an organization. In the context of the Kenya judicial system, this theory provides that the transfer system should consider the existence of the factors that affect the lives of the magistrates. However, this theory emphasizes that changes should be made continuously to meet changing environmental pressure. According to Wanza and Nkuraru (2016), change management influences the entire organizational performance in various aspects such as leadership, technology, as well as organization structure and culture.

As per this research, the judicial structure and systems have a responsibility of creating an environment that can enable magistrates to learn and adapt accordingly to changes in the nature of the society and systems. The transfer policy makers at the judiciary have the duty of learning the dynamics of social characteristics and formulating strong relevant policies to address it.

## **2.5 Research Hypotheses**

H<sub>1</sub> Magistrates' transfers have a significant effect on the case backlog in magistrates' courts in Nairobi City County.

H<sub>2</sub> Magistrates' transfers have a significant effect on the internal operations of the courts in Nairobi City County

H<sub>3</sub> Magistrates' transfers have a significant effect on the personal lives of judicial officers in courts in Nairobi City County.

## **CHAPTER THREE**

### **RESEARCH DESIGN AND METHODOLOGY**

#### **3.1 Introduction**

This chapter presents the design and methodology that was adopted by the study. It defines the study geographical area, the target population, the sample and sampling procedure, research instruments, data collection and data analysis procedures.

#### **3.2 Research Design**

The study used a cross-sectional research design which made it possible for the collection of data from respondents who may have similarities but differ in key characteristics (Roundy, 2018). This research design allowed for combination of both qualitative and quantitative methods. Data collected was about the magistrates' transfer and in which case participants were distinctly those in selected courts in Nairobi City County.

#### **3.3 Target Population**

The study sought information from the magistrates stationed in courts within Nairobi City County plus other identified stakeholders in the justice systems that are affected by their services. The target population was highly dynamic and infinite but, the study targeted stakeholders in place for the period between 1<sup>st</sup> September, 2019 and 30<sup>th</sup> October, 2019. The population of this study consisted of stakeholders that interact with the magistrates within Nairobi City County. The study targeted 2597 stakeholders in the four courts in Nairobi including Milimani Law Courts, Children's Court, Kibera Law Courts and Makadara Law Courts. The target population is reflected in Table 3.1.

#### **3.4 Sample Techniques and Sample Size**

The study adopted purposive and systematic random sampling to identify the respondents. According to Patton (1990), purposive sampling requires the researcher to develop a sample from respondents who bear specialist knowledge and have capacity on the research issue and are willing to relay relevant and in-depth responses. This method was used in identifying the courts under study within Nairobi. Four magistrates' courts were studied.

Systematic sampling was used to select the study sample and being a probability based sampling technique, each member of the population had equal chances of selection. The

study used a list of distribution of magistrates, listing of cases, list of members of Court Users Committee (CUC) and list of lawyers and counsel from the Law Society of Kenya (LSK) for the months of September and October 2019 as the sampling framework. The sampling frame was used to arrive at the participants and in which the total population (N) was divided by the sample (s) number to give the  $n^{\text{th}}$  position. All individuals that fell within the  $n^{\text{th}}$  position were sampled and this process repeated until all the sample was filled up. The individuals included magistrates in selected courts, parties to criminal, civil and children cases reported in the courts under study between 1st September and 30<sup>th</sup> October, 2019. Other respondents were selected members of CUCs, lawyers and state/prosecution counsel.

According to Mugenda and Mugenda (2003), a sample that is at least 10% of the population of interest is representative enough. Gay (1996) further postulates that between 10 and 20 percent of the population are sufficiently able to provide findings that are reliable. Consequently, the researcher preferred to obtain ten percent (10%) of the population under each stratum. The procedure of obtaining the sample size is as shown in the Table 3.1. The sample was drawn from a population that had 57 magistrates (30 in Milimani Law Courts, 7 in the Children's Court, 9 in Kibera Law Courts and 11 in Makadara Law Courts). It also included 1300 parties to criminal cases, 1000 parties to civil cases, 90 advocates and 38 prosecuting and state counsel as well as 110 non-judicial members of the CUCs. The Court Users Committee, commonly abbreviated as CUC, is a platform that brings together actors and users (judicial and non-judicial) of court services. The justice sector platform is critical in enhancing public participation and stakeholder engagement. It is also meant to develop public understanding of court operations, and to promote effective justice sector partnerships. The sample also included 1 Registrar High Court and 1 Registrar Magistrates' Courts from whom data was obtained.

Table 3.1 The Sample Population

Respondents	Court Station				N	S
	Milimani Law Courts	Children's Court	Kibera Law Courts	Makadara Law Courts		
Magistrates	30	7	9	11	57	12
Parties to criminal cases	600	100	300	300	1300	130
Parties to civil cases	800	200	-	-	1000	100
Non- judicial Members of Court Users Committees	40	10	30	30	110	11
Lawyers	45	3	20	22	90	9
State Counsel	15	1	10	12	38	4
Registrar High Court					1	1
Registrar Magistrates Courts					1	1
<b>Total</b>					<b>2597</b>	<b>268</b>

*Source: Office of the Registrar, Magistrates Courts, (2019)*

### 3.5 Data Collection Procedure

Quantitative data from magistrates was collected by use of questionnaires that were constructed by the researcher and organized according to objectives of the study. For qualitative data, in-depth interviews were conducted with key informants, who included Registrar High Court and Registrar Magistrates' Courts. The responses helped supplement interpretation of the quantitative results. Unstructured questions, founded on the specific objectives of the study were used to fabricate the interview guide that helped retrieve information from the informants. The questionnaire that had both open-ended and closed-ended questions allowed for focused, conversational, two-way communication and in-depth responses from participants. The key informants were purposively chosen based on their personal experience and professional knowledge on magistrates' transfers.

#### 3.5.1 Validity of Research Instruments

Validity, the degree by which the sample of test items represents the content the test is designed to measure, was achieved by reviewing the instrument with experts who have experience in the matters that were investigated (Borg & Gall, 1989 cited in Abdifitah,



2015). The aim was to ascertain the suitability of the instrument to collect the data. These experts included the supervisor and lecturers at the Department of Political Science and Public Administration, University of Nairobi.

### **3.5.2 Reliability of Research Instruments**

Reliability was achieved through a statistical analysis for reliability of the construct (Odesso, 2012). Split-half technique was appropriate for this because it took care of changes in times and circumstance. Split-half technique was done to 27 individuals, which is 10% of the sample size. It involved the researcher collecting data then splitting the data pieces into two equal parts for which statistical analysis was done separately and the results compared. Cronbach's alpha coefficient that ranges between 0 and 1 was used to test the reliability (Waiganjo, 2013). Higher alpha coefficient values meant that instrument's scales are more reliable. The acceptable Cronbach's alpha value was 0.778 meaning it met the threshold. This implied that the instruments are sufficiently reliable for measurement, but those with lower scales were discarded. The participants in the pilot were never part of the main study.

### **3.6 Data Analysis**

After collection, data was checked, cleaned, coded and entered, then edited and finally classified. Quantitative data was analyzed using the SPSS version 20. In addition, both inferential and descriptive statistical data analysis was done. As such descriptive data was presented using percentages, frequencies, mean and standard deviation while inferential data was tested for regression, correlation and ANOVA. Frequency and percentage tables as well as graphs were plotted for some responses in view of enhancing better presentation of the results.

Qualitative data provided descriptive information on perceptions and opinions of key informants on magistrates' transfers. Qualitative analysis was conducted and used to supplement interpretation of quantitative analysis and then analyzed thematically. The qualitative data collected was analyzed by use of content analysis approach guided by the objectives of the study.

### **3.7 Ethical Considerations**

To meet ethical concerns and standards during the study, the researcher obtained an introductory letter from the University of Nairobi which was used to apply for a research permit at the National Commission for Science, Innovation and Technology

(NACOSTI). These documents were used by the researcher to introduce the study to the sampled respondents. The researcher ensured that all information given by the respondents is maintained private and confidential. The researcher assured the respondents that no private information would be divulged to any third party and that data obtained would not be used for any purpose other than academic. Informed consent was sought from the respondents before the questionnaires were issued. The researcher has acknowledged all literature cited in the study to avoid cases of plagiarism.

## CHAPTER FOUR

### DATA PRESENTATION AND DISCUSSION OF FINDINGS

#### 4.1 Introduction

This study aimed at assessing the effects of magistrates' transfer (the independent variable) on the administration of justice (dependent variable) in the magistrates' courts in Nairobi City County. This chapter discusses the results of the analysis and presents the data that was found after the research was conducted. The chapter provides data on response rate, presents results of background information, results on effects of magistrates transfers on backlog of cases, on internal operations of the courts and on their personal lives. The chapter also contains results and discussions of inferential statistics (Correlation, ANOVA and regression analysis).

#### 4.2 Response Rate

Out of 268 respondents who were targeted by the researcher only 253 responded (33 officers of the court, 221 parties to court cases and 2 registrars). This was as shown in Table 4.1. This translates to 94% response rate which is a good response rate well above the 70% threshold (Doherty, 1994).

Table 4.1 Response Rate

<b>Respondents</b>	<b>S</b>	<b>Actual</b>
Magistrates	12	9
Parties to criminal cases	130	123
Parties to civil cases	100	93
Members of Court Users Committees	11	11
Lawyers	9	10
State Counsel	4	5
Registrar High Court	1	1
Registrar Magistrates Courts	1	1
<b>Total</b>	<b>268</b>	<b>253</b>

*Source: Office of the Registrar, Magistrates Courts (2019)*

### 4.3 Background Information

To determine demographic characteristics of the sample population, the respondents were asked to provide information on their age, gender, level of education and work experience. The information is presented in Tables 4.2 - 4.5.

#### 4.3.1 Age of the Respondents

Table 4.2 shows the age distribution of the respondents.

Table 4.2 Age Distribution of the Respondents

<b>Respondents</b>	<b>Frequency</b>	<b>Percentage</b>
Below 25 years	39	15
25-35 years	108	43
36-45 years	62	25
46-55 years	29	12
above 55 years	13	5
<b>Total</b>	<b>251</b>	<b>100</b>

*Source: Field Data (2019)*

Findings in Table 4.2 show that the majority (43%) of the respondents were aged between 25-35 years while 25% are aged between 36-45 years. This implies that most of the respondents in the study were young and middle aged.

#### 4.3.2 Gender Distribution of the Respondents

Table 4.3 shows the gender distribution of the respondents.

Table 4.3 Gender of the Respondents

<b>Respondents</b>	<b>Frequency</b>	<b>Percentage</b>
Male	175	69
Female	78	31
<b>Total</b>	<b>253</b>	<b>100</b>

*Source: Field Data (2019)*

The findings in Table 4.3 show that a majority (69%) of the respondents were male while 31% were female. This suggests that more males than females either interact with or use the magistrates' courts.

### 4.3.3 Respondents Level of Education

The level of education attained by the respondents is as shown in Table 4.4.

Table 4.4 Level of Education

Category	Response	Frequency	Percentage within Group
<b>Officers of the Court</b>	Diploma/Certificate	8	3
	Bachelors degree	11	4
	Masters degree	14	5
<b>Parties to Court Cases</b>	No basic education	37	15
	Primary Education	29	12
	Secondary Education	32	13
	Diploma/Certificate	58	23
	Bachelors degree	58	23
	Masters degree	5	2
	Doctorate degree	1	0
	<b>Total</b>	<b>253</b>	<b>100</b>

Source: Field Data (2019)

The findings in Table 4.4 show that among officers of the court, 14 out of 33 who responded on their education levels had a masters degree (representing 42% within group) while 11 (33% within group) had a bachelors degree. This was expected since to become an advocate one has to have at least a basic law degree. On parties to the court cases, a majority (26% within group) had certificate or diploma followed by those with no education at 37 (19% within group). This shows that most of the officers of the court have advanced education qualifications while most of the parties to court cases had no basic education. These findings suggest that education is not a factor for one to be involved in court cases.

### 4.3.4 Duration of working time with judiciary

The length of time that the officers of the court had worked with the judiciary is as shown in Table 4.5.

Table 4.5 Length of Time Worked with the Judiciary

<b>Officers of the Court</b>	<b>Frequency</b>	<b>Percentage</b>
less than 5 years	12	34
5-10 years	8	23
11-15 years	13	37
16-20 years	2	6
<b>Total</b>	<b>35</b>	<b>100</b>

*Source: Field Data (2019)*

Table 4.5 shows that a majority (35%) of court officers had worked in, or interacted with the judiciary for a period ranging between 11-15 years, while 25% indicated that they had worked for years ranging between 5-10 years. This shows that officers of the court in the study had work experience in the judiciary over a moderate number of years. And it implies that the information given by officers of the court could be held as reliable.

#### **4.4 Effects of Magistrates Transfers on the Backlog of Cases**

The first objective of the study aimed at investigating the effect of magistrates' transfers on case backlog in magistrates' courts. In line with this, the study sought information on whether the transfer of magistrates has increased backlog of cases based on the experiences of both the parties to court cases and that of the officers of the court. The information leading to the findings is arranged according to the related sections of the questionnaire.

Table 4.6 Effects of Magistrates Transfers on the Backlog of Cases

Variable	Category				Frequency	Percentage	
Number of magistrates who handled one case	only 1				64	29	
	2 magistrates				101	46	
	3 magistrates				35	16	
	4 magistrates				6	3	
	more than 4				15	7	
Length of time taken by a case	less than 1 year				69	31	
	1-3 years				89	40	
	3-5 years				43	20	
	5-10 years				16	7	
	more than 10 years				4	2	
			<b>SA</b>	<b>A</b>	<b>N</b>	<b>D</b>	<b>SD</b>
Magistrates' transfer increases case backlog	Officers of the court	F	10	13	6	3	1
		%	30	40	17.5	10	2.5
	Parties to cases – Responses	F	70	93	34	16	8
		%	31	42	16	7	4
Magistrates' transfer causes cases to begin afresh	All respondents	F	69	106	47	20	11
		%	27	42	18	8	4
Magistrates' transfer causes case termination	All respondents	f	73	71	53	38	18
		%	29	28	21	15	7
Magistrates' transfer increases cost of litigation	All respondents	f	75	83	55	27	13
		%	30	33	22	10	5
Magistrates' transfer delays conclusions of court cases	Officers of the court	f	11	12	6	3	1
		%	33	35	20	10	3

Source: Field Data (2019)

The transfer of magistrates often means that a case may be handled by more than one magistrate before it is concluded and hence leading to unreasonable delays. In this regard the study sought to establish the number of magistrates who handled a particular case. The findings presented in Table 4.6 show that a majority (46%) of the parties to

court cases had their cases handled by two magistrates while 16% indicated that their cases had been handled by three magistrates. Only 29% had had their case handled by one magistrate. This shows that most of the cases in the magistrates' courts in Nairobi City County had been handled by more than one magistrate. The implication of having a case handled by more than one magistrate is that it may affect not only the efficiency and speed of settling cases, but also has the potential of different magistrates rendering different and subjective opinions about any issue during the progression of the case which consequently affects the administration of justice. This is supported by findings from an article by Alam (2000) on Bangladesh judiciary that highlights rotation and transfer of judges as a contributor to backlog, in which the movement of judges makes it impossible for a judge to push forward a case from the initial mentioning to sentencing seamlessly.

To establish whether magistrate transfers affected the duration of the case, parties to court cases were asked to indicate the time their cases had taken in court. The findings presented in the Table 4.6 show and that 31% of the parties to court cases indicated that their cases had taken one year, 40% indicated that their cases had taken between 1-3 years while 20% indicated their cases had taken between 3 and 5 years, 7% indicated theirs had taken between 5-10 years and for 2% of the respondents, their cases had taken more than 10 years. Therefore, a majority had had their cases running for between more than a year. A study by Burstyn and Tania (2014) concluded that for a person seeking justice, the time it takes for their case to be resolved is critical to their justice experience and could render their treatment wholly 'unjust' especially when the closure takes 'too long'. Thus a delay in determination or conclusion of cases has a negative effect on the administration of justice.

As shown in Table 4.6, 70% of the court officers agreed that the transfer of magistrates had occasioned increased backlog of cases (40% agreed while 30% strongly agreed). This shows that the transfer of magistrates is a significant contributor to backlog of cases and thus negatively affecting administration of justice. This view is supported by Makau (2014) who identified the transfer of magistrates as a contributor to case backlog. The author opined that without control, frequent transfer of magistrates could result to backlog of cases in the magistrates' courts and subsequently affect administration of justice.



One of the reasons for the delay was that in some instances the transfer of a magistrate occasioned cases to start afresh. The findings presented in Table 4.6 show that a majority (42%) of the respondents agreed while 27% strongly agreed that the transferring of magistrates had caused cases to start afresh. Cumulatively, this showed that 69% of the respondents agreed that transferring of magistrates causes hearing cases to be re-started. A periodical report by Laws (2016) cited a wide range of reasons why cases are held up by adjournments and one of them is when cases get transferred from one judge to another and which could lead to cases starting afresh. This means that frequent transfer of magistrates could lead to re-starting of cases afresh leading to delayed justice (Burstyner & Tania, 2014) .

As to whether the transfer of magistrates had caused the termination of cases, the findings in Table 4.6 show that majority (29%) strongly agreed and a similar percentage agreed that several cases had been terminated because the sitting magistrate had been transferred, therefore bringing the case to a premature ending. The total 58% of court official who agreed shows that the transfer of magistrates had moderate effect on the termination of cases. These findings suggested that the possibility of judges being free from haphazard transfer mitigate premature termination or collapse of cases. This view is supported by a report by Laws (2016) which stated that courts that took control of the transfer of their magistrates experienced fewer collapse of cases. That means courts that determine the calendar of magistrates have more court cases being concluded and thus better delivery of justice (The Kenyan Judiciary, 2018).

An increase in litigation costs has been noted to negatively affect the administration of justice as some of the parties in a court case may be unable to raise the fees. The study sought information on the effect of magistrates transfer on the cost of litigation. The findings presented in Table 4.6 shows that majority at 63% (33% of the respondents agreed while 30% strongly agreed) agreed that the cost of litigation had increased as a result of the transferring sitting magistrates. This implies that transferring sitting magistrates who are presiding over a case has a direct relationship with case administration costs which increases. Case delays linked to transfer of magistrates can occasion increased costs of litigation, disrupted cause-lists and case diaries, prolonged stay of suspects in custody and change in overall performance indicators (Heathfield 2014; Bridgman and Corboy, 1982; Monek, 2009).

The study sought data from the officers of the court on whether the transfer of magistrates had caused the delayed conclusion of court cases. The findings presented in the Table 4.6 shows that majority (35%) agreed that conclusion of court cases in their respective stations delayed after the sitting magistrate was transferred while 33% strongly agreed, cumulatively giving a total of 68% of the officers of the court that agreed. This shows that the transfer of magistrates had a significant effect on the delay of conclusion of cases. As supported by Waters and Strickland (2017), unnecessary delays of court cases negatively affect the involved parties as they find it hard to move on until the case is concluded. A study by Ghosh (2018) that was done in India, showed that judges get demoralized and are hesitant in making a ruling when they realize that they will not be able to conclusively determine a case after receiving letters of transfer to new stations

#### **4.5 Effect of Magistrates Transfers on the Internal Operations of the Court**

The second objective of the study aimed at establishing the effect of magistrates' transfers on internal operations of the courts. In this regard the study sought information on frequency of magistrates transfers; effects of magistrates transfers on the case maintenance costs, custody of suspects, organization of case documents, court daily plans, courts annual plans and the administration of justice. The data obtained was analyzed and presented in percentages and frequencies in Table 4.7.

Table 4.7 Magistrates Transfers and the Internal Operations of the Court

Variable	Category					Frequency	Percentage
Number of Magistrates Transfers in Past Decade	None					7	22
	1-3 times					6	18
	4-6 times					20	60
		<b>SA</b>	<b>A</b>	<b>N</b>	<b>D</b>	<b>SD</b>	
Magistrates Transfers Leads to Increase of Court Cases Maintenance	Officers of the court	F	9	12	8	2	2
		%	27	36	24	6	6
Transfer of magistrates Prolongs Custody of Suspects	All respondent	F	75	82	71	18	7
		%	30	32	28	7	3
Transfer of Magistrates makes it Difficult to for administrative staff to organize Case Documents	All respondent	F	25	82	82	57	7
		%	10	32	32	23	3
Transfer of Magistrates Makes it Difficult to Organize Court daily plans	All respondent	F	43	68	94	38	10
		%	17	27	37	15	4
Transfer of Magistrates Creates Disruptions in Judiciary annual (medium term plans in terms of months)	All respondent	F	47	78	92	26	10
		%	19	31	36	10	4
Transfer of Magistrates resulted in Miscarriage of Justice	All respondent	F	73	87	67	20	6
		%	29	34	26	8	2

Source: Field Data (2019)

As to the number of times the officers of the court had been transferred to different stations in the past decade, the findings in Table 4.7 show that 60% of the officers of the court had transferred to different stations 4-6 times in the past decade. 18% indicated that they had transferred 1-3 times while 22% had not been transferred at all. This shows that majority of court officers had transferred to different court stations. Frequent transfers imply that there is a high rate of accumulation of partly heard cases as

magistrates leave their stations to report to new ones. It therefore means that such accumulation negatively affects administration of justice in the country.

Responses from Key Informant one (KI-01) showed that reasons that triggered transfers included consideration of long period stayed in the current location; request by the said court officer, for example on medical grounds; disciplinary issues such as a need to break corrupt cartels and for security reasons such as the 2007/08 post-election violence. Key Informant two (KI-02) observed that transfers can be done when there is need to match the number of magistrates with the case load or a need to address performance concerns that is currently guided by data of court cases. In addition, the vetting process for judges and magistrates led to some officers being found unsuitable to continue in service and this necessitated the need to transfer magistrates in order to bridge the gaps occasioned by the exercise. KI-02 further observed that triggers of transfers could be either internal or external. For instance, internal could be due to sickness of self or of kin. External triggers include complaint from Law Society of Kenya (LSK), from an affected individual or from other key stakeholders on issues such as discipline concerns.

Regarding the effects of the magistrates' transfers on court cases' maintenance costs, the results presented in the Table 4.7 shows that majority (36%) of the officers of the court agreed while 27% strongly agreed that transfer of magistrates causes increase in cost of maintaining court cases. Cumulatively a total 64% of the officers of the court believed that the transfer of magistrates had caused the increase in case maintenance costs. Increased cost of case maintenance means that fewer resources are available for other functions in the administration of justice. According to KI-01, in some cases the accused persons take advantage of the transfer of magistrates by requesting the case to start the cases afresh, the aim being to cause fatigue and frustrate the witnesses. In extreme cases, the judiciary may have the magistrates go back to their former court stations to hear and conclude the partly heard and advanced cases but this will bear a cost on the judiciary which is put at Ksh. 18,000 per day.

The study intended to find out whether the transfer of magistrates in courts caused prolonged stay in custody of suspects (individuals with active cases that are not yet determined). The findings as presented in Table 4.7 show that 32% of the respondents agreed, while 30% strongly agreed that transfer of magistrates prolongs custody of suspects. Cumulatively this showed that 62% of the respondents agreed that the transfer

of magistrates causes the prolonged stay in custody of suspects. This outcome is undesirable in two fronts. One the held up suspect has his/her justice delayed which in itself is a limiting factor to dispensation of justice. Secondly, the holding up of the suspects in penal institutions means increased costs of hearing the cases and this negatively affects administration of justice in the country. Setting timeframes is a necessary condition to start measuring case processing delays for suspects (UNODC, 2011). However, this is likely to be aggravated by transfers which mean that one case is handled by different magistrates.

The study gathered data on whether transferring of magistrates had complicated the organization of case documents by the administrative staff. The findings are presented in the Table 4.7 and show that majority (32%) of respondents neither agreed nor disagreed on whether transfer of magistrates makes it difficult for administrative staff to organize case documents while 10% agreed. Cumulative frequencies showed that those that agreed were 42%. This shows that the transfer of magistrates has an effect on making it difficult for administrative staff to organize case documents. This was cited by KI-01 especially where interpretation of a case context of the incoming magistrate is different from that made by the magistrate who has gone on transfer, or where long-hand proceedings of the transferred magistrate are illegible and needs to be typed. Overall, this would have a negative effect on administration of justice. Records management is not a separate skill or discipline in the management of court business but an integral part that is critical right from apprehension to determination of a case (International Records Management Trust, 2010). A study by Mafu (2014) revealed occasional misplacement of court records associated to lack of case file tracking system and which can be made worse by the transfer of magistrates.

The study obtained data on whether transfer of magistrates made it difficult in organizing the court's daily plans. The findings presented in Table 4.7 show that 17% of the respondents strongly agreed while 27% agreed. Cumulatively, majority (44%) of respondents agreed that transfer of magistrates makes it difficult to organize the court's dairy plan. On the other hand, a cumulative 19% either strongly disagreed (4%) or disagreed (15%) that transfer of the magistrates had made it difficult to organize the court's daily plans. This suggests that the transfer of magistrates has a modest effect on making it difficult to organize the courts diary plans and thus negatively affecting administration of justice. According to KI-02, when effecting transfer of magistrates,

the directing letters stipulate that the partly heard cases should be handled to conclusion. However, this may not be possible as court daily plans have dates fixed months ahead. The effect will be that the case will most likely be handled by another magistrate occasioning further delay and inconveniencing the parties. This could further be compounded by poor filing system or work overload for those left at the station. This is supported by a study done by Gomes, Guimaraes and Akutsu, (2017) that revealed a direct and positive relationship between court caseload and productivity of judicial officers. However, the strength of this relationship depended on court specialty and was moderated by the number of administrative assistants, officer's experience and the number of places a judge works. The aftermath is that justice is delayed and may never be served. Independence of the judicial diary is an important aspect of efficiency of determining cases (UNODC, 2011).

The study sought data on whether transfer of magistrates had created significant disruptions in the judiciary mid-term plans especially in terms of month-based plans. The findings presented in Table 4.7 show that 36% of the respondents were not sure if the transfer of magistrates had caused significant disruptions in the judiciary annual plans. However, cumulatively almost half (49%) of the respondents either agreed (31%) or strongly agreed (19%). This shows that most of the respondents were in agreement that magistrates transfer caused disruptions of the judiciary calendar. Monek (2009) has noted that delay of cases in courts and lengthy court procedures occasion deterioration of evidence and make it difficult for justice to be realized by the end of the case trials. It also erodes public confidence and loyalty to the court system. This is an implication on how the delay occasions uncertainty and thus could affect judiciary calendar in terms of making their annual plans.

To gauge the perception of the respondents, they were asked to indicate whether they felt that transfer of magistrates had resulted in the miscarriage of justice. The findings presented in Table 4.7 show that 34% of the respondents agreed while 29% strongly agreed that the transfer of magistrates had resulted in miscarriage of justice in the affected cases. This cumulatively showed that a majority (63%) of the respondents agreed. This means that the transfer of magistrates was thought to be a significant contributor to miscarriage of justice in the magistrate's courts which is clear indicator that transfer of magistrates negatively affects administration of justice. This findings corroborates a report by American Bar Association which showed that transfer of

magistrates brings about delay of cases and hence legal maxim, “justice delayed is justice denied” (American Bar Association, 2009)

#### 4.6 Effect of Magistrates Transfers on the Personal Life of Judicial Officers

The third objective of the study aimed at investigating the effect of transfers on the personal lives of magistrates. The matters investigated included effect of transfers on education of their school-going children, interference with self-sponsored studies and whether it leads to mental stress. It also examined whether it disrupts the magistrates’ knowledge flow (especially where they are supposed to share information with colleagues), whether it negatively affects work performance during initial days of relocation and effect of transfers on magistrates’ learning curve. The results were presented in graphs in the following sections.

##### 4.6.1 Transfer of magistrates interferes with the education of school going children

The study sought data on the effect of transfer of magistrates on the education of their school-going children of the affected magistrates. The findings are presented in Figure 4.1.

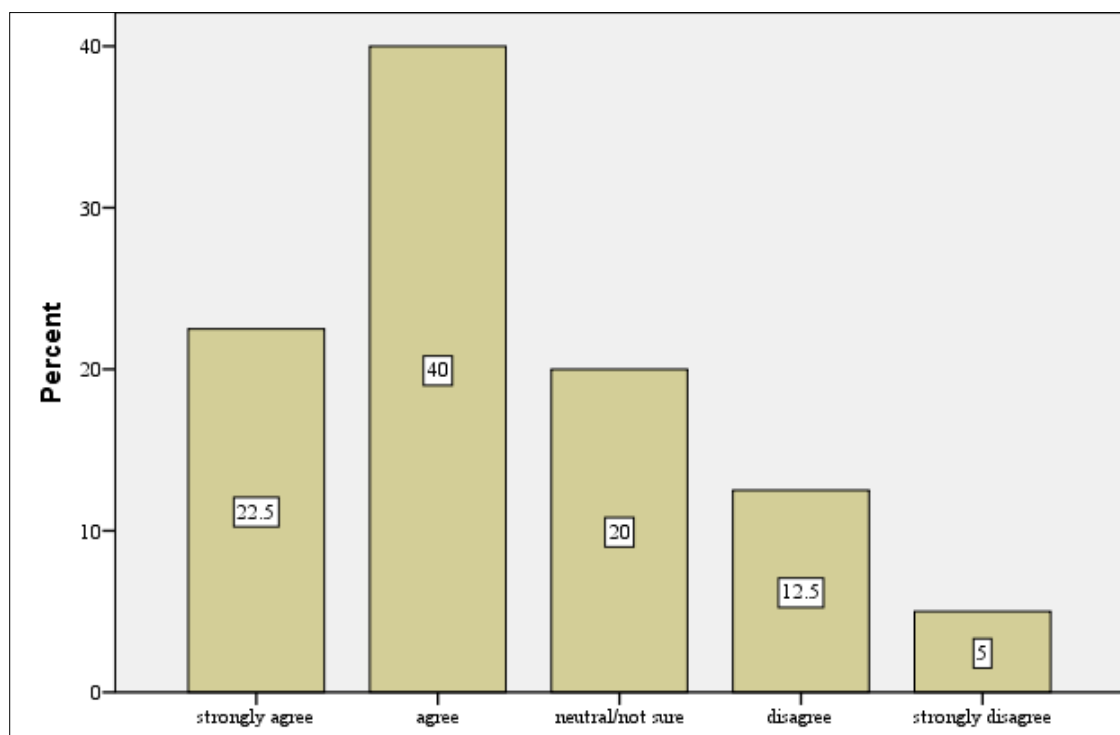


Figure 4.1 Transfer of Magistrates Interferes with Education of their children

The findings in Figure 4.1 show that 40% of the respondents agreed that transferring of magistrates interferes with the education of their school-going children while 23% of the officers of the court strongly agreed. Cumulatively, this gives a total of 63% of the respondents who believed that transfers affected the education of their children. Such an effect could affect the individual magistrate’s job performance and thus negatively affect their effectiveness in administration of justice. This is because parenting is a key risk factor in development and maintenance of children’s behavior, and could lead to children’s enduring behavior problems that would present stress to parents (Ryan, O’Farrelly , & Ramchandani, 2017). According to Gary (1998) family members of the employee could get psychologically disturbed especially where they have to relocate to a new region with the entire families and this would lead to behavior that exerts mental stress on the parents and thus affecting their performance.

#### 4.6.2 Interference with self-sponsored studies

The study sought data on the effect of transfer of magistrates on the education of self-sponsored studies. The findings were presented in Figure 4.2.

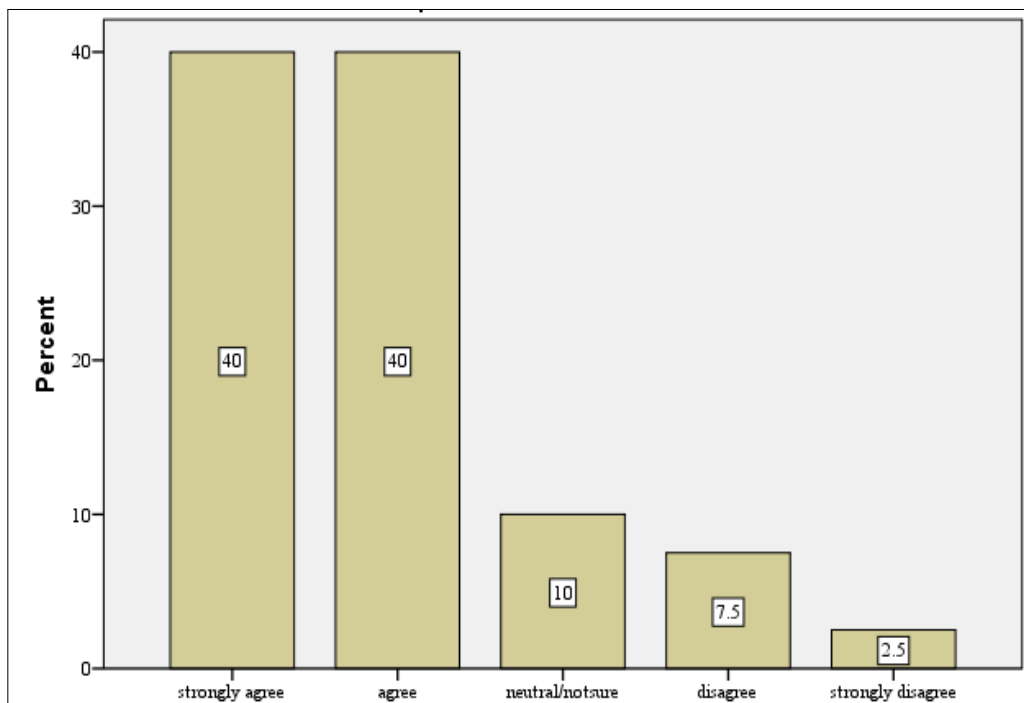


Figure 4.2 Transfer of magistrates interferes with own education

The findings in the graph show that majority either agreed (40%) or strongly agreed (40%) thus cumulatively showing that 80% of the respondents agreed. This implied that



the transfer of magistrates interferes with their self-sponsored studies. Judicial officers skills should be discovered, nurtured and developed as a conscious way of building a successful organization (Oresi, 2005). This objective is achieved through training and which could be and is often through self-sponsorship. The findings in this section shows that the transfer of magistrates had a significant effect on their self-sponsored studies. Furthermore, it implies that it affects their professional development and which may lead to negative performance by the judiciary as an organization and eventually affect the administration of justice.

#### 4.6.3 Significant mental stress

To understand the effect of transfers on the psychological status of the magistrates, the study sought data on whether the transfer of magistrates had caused significant mental stress. The findings were presented in Figure 4.3.

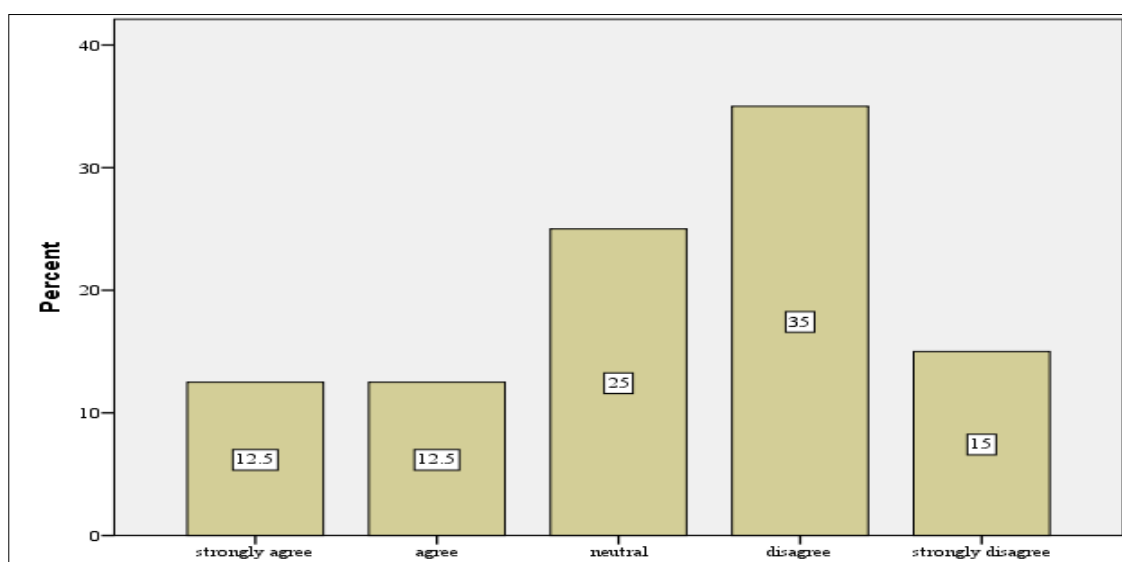


Figure 4.3 Transfer of Magistrates causes Magistrate Mental Stress

The findings in the graph show that 25% of the respondents disagreed and equally 25% strongly disagreed, cumulatively meaning a majority 50% of respondents did not agree that transfer of magistrates caused them significant mental stress. 25% of them were neutral about it. This shows that the transfer of magistrates did not cause mental stress to the magistrates. A poor mental status of the magistrates would negatively impact their productivity and thus results to poor administration of justice.

#### 4.6.4 Disruption of the officers' knowledge flow

To determine the effect of transfers on the capacity to work as a team, the study measured the extent to which transfer of magistrates disrupts their knowledge flow. The findings are presented in Figure 4.4.

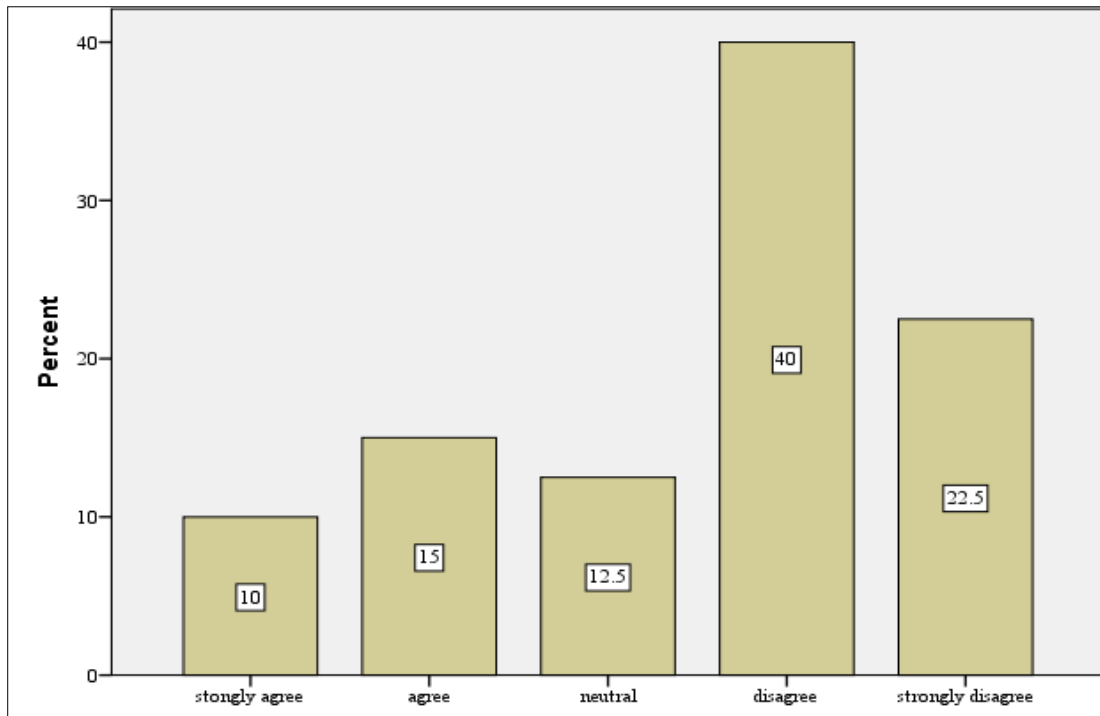


Figure 4.4 Transfer of magistrates disrupts knowledge flow

The findings in the graph show that cumulatively total of 63% of the officers of the court (40% disagreed and 23% strongly disagreed) did not believe that the transfer of magistrates disrupted their knowledge flow. This shows that the transfer of magistrates had a minor negative effect on the capacity and power of team-work of the respondents. Despite the fact that knowledge flow is the power that drives teamwork, management and transfer of knowledge is a complex process that depend on several factors that vary from organization to organization. One such factor is organizational culture (Ajmal & Koskinen, 2008; Zhuge, 2012). This implies a culture that curtails knowledge sharing, will negatively affect knowledge flow. Findings in this study show that resultant disruption of knowledge flow due to magistrates transfer has a low effect on administration of justice. This further suggests there are mechanisms in place used by magistrates to overcome knowledge flow challenges associated with job transfers.

#### 4.6.5 Negative work performance during initial days of relocation

The study aimed at finding out whether magistrates perform poorly in their work during the in initial days after relocation. The findings were presented in Figure 4.5.

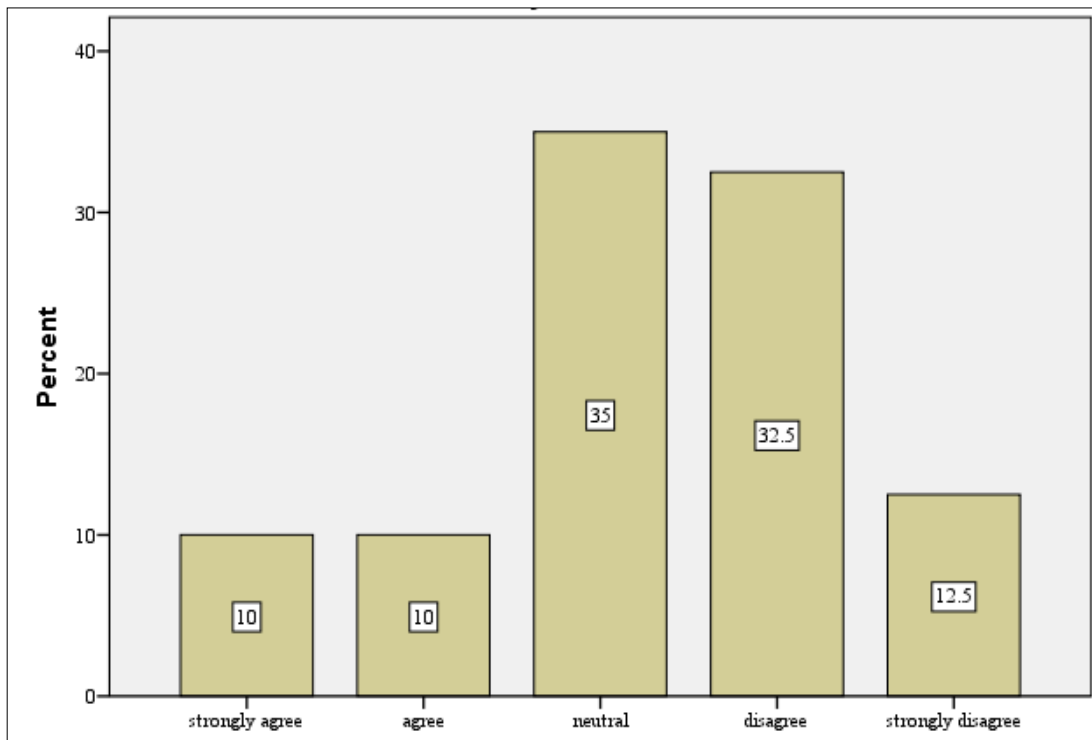


Figure 4.5 Magistrates performance disrupted by transfers

The findings in the graph show that 35% of the officers of the court were neutral on the effect of magistrates transfer on their work performance in their initial days of relocation. Cumulatively though 45% (32.5% disagree, 12.5 strongly disagree) of officers of the court disagreed that magistrates' performance was disrupted by transfers. Initial days after relocation renders employees to feel anxious and worrying about how well they will perform at the new job stations. Others have feelings of inadequacy when compared with experienced employees, and a general concern on how well they will get along with their co-workers (Kukreja, 2019). To overcome this there is need for effective orientation programs. The findings suggest anxiety and worry associated with performance of magistrates after relocation is fairly managed through orientation. However, based on the fact that a significant number of respondents indicated neutral, there is need for possible improvement.

#### 4.6.6 Magistrates transfer undermines their ability to come to grips with their learning curve as magistrates

The study sought data on whether the constant transfer of magistrates undermines their ability to come to grips with their learning curve as magistrates. The findings are presented in Figure 4.6.

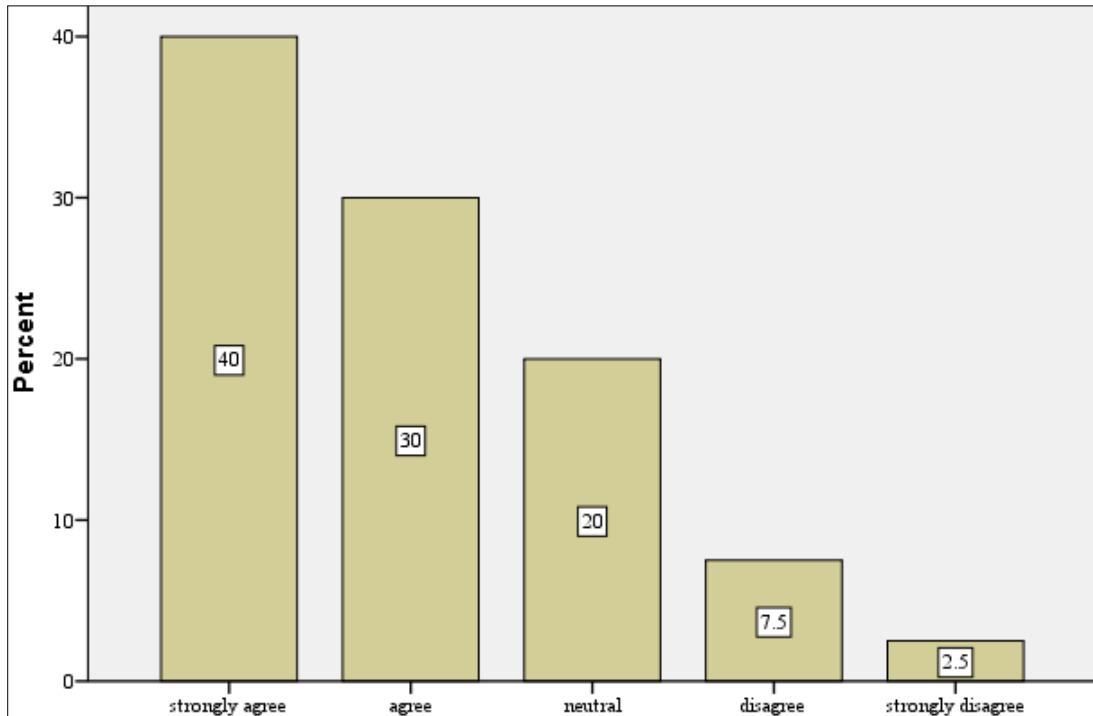


Figure 4.6 Transfers disrupts learning curve of magistrates

The findings in the Figure 4.6 show that majority (40%) of respondents strongly agreed while 30% agreed that magistrates' transfer undermines their learning curve as magistrates meaning that cumulatively 70% of the officers of the court agreed. A learning curve is a correlation between a learner's performance on a task and the time required to complete the task; this can be represented as a direct proportion on a graph (Roediger & Smith, 2012). It posits that a learner's efficiency in a task improves over time the more the learner performs the task. It shows that the transfer of magistrates had a negative effect on the magistrates' learning curve and thus affecting the administration of justice. This suggests that the rate of improving performance of the magistrates at new work stations is interfered with by transfer.

According to KI-01, a transfer may affect a magistrate's personal life as well as the lives of other judicial officers. At a personal level, when one is transferred to a new

location it takes time to settle down for self and family. In addition, adopting the climate and the culture of people sometimes is hard, as equally is in making new friends among colleague and leaving behind others. One needs to be psychologically prepared and plan for family transfer. The situation is made difficult if it in hardship areas. According to KI-02, transfers psychologically affect magistrates’ personal lives. This is evident in own projects, schooling for children or family matters. Where school fees have been paid then an officer might have to move without them. It therefore means one will have to rent an extra house in the new location which is an additional cost. The time it takes a transferred officer to settle down and adjust in a new location will ultimately affect his or her productivity. Resentment of the officer especially when unhappy with the transfer may also compromise productivity.

#### 4.7 Effect of Magistrates’ Transfers on the Administration of Justice

To determine the effect of magistrates’ transfers on administrative justice the study obtained data on the court proceedings, disruption at the beginning and conclusion of cases and overall perception on the miscarriage of justice. The data obtained was analyzed and results presented in the in form of frequency tables as shown in Table 4.8.

Table 4.8 Effect of magistrates transfer on the administration of justice

Variable	Category		SA	A	N	D	SD
Transfer of magistrates Interferes with court proceedings	All respondents	F	82	91	58	19	3
		%	32	36	23	8	1
Transfer of magistrates disrupts beginning and Conclusion of Court Cases		F	67	95	67	22	2
		%	26	38	26	9	1
Transfers of magistrates lead t miscarriage of justice		F	51	80	85	30	7
		%	20	32	34	12	2

Source: Field Data (2019)

As to whether the transfer of magistrates interferes with proceedings in the magistrates courts the findings presented in the Table 4.8 show that 36% of the respondents agreed while 32% strongly agreed that the transfer of magistrates interferes with proceedings in the magistrates’ courts. Cumulatively, this shows 69% of the respondents agreed. This means that the transfer of magistrates has a significant effect on the proceedings

of the court. According to KI-01, transfers slow down the core duties and organization of court proceedings especially stalling of cases as a new court officer is awaited to take over. A Similar outcome is experienced when a hardworking magistrate is replaced by a lazy one. According to KI-02, some cases can be jinxed by high frequency of transfers of officers to an extent that affected parties lose hope and trust in the capacity of the judiciary to dispense justice. This makes litigation expensive and to others life is brought to a standstill while they pursue their cases. In criminal cases, where there is need for witnesses, the case may need to be restarted. When there is only one key witness, and the witness unfortunately has passed on, the case could collapse or is terminated.

The study aimed at establishing whether the time for starting and conclusion of cases in the magistrates' courts was significantly affected due to transfer of magistrates. The findings as presented in the Table 4.8 indicate that 38% of respondents agreed that time for starting and conclusion of cases in the courts is affected as a result of transferring magistrates while 26% strongly agreed. In total therefore 64% of the respondents were in agreement and this shows that the transfer of magistrates' disrupted case progression and thus affected the administration of justice.

The study obtained the respondents perception on whether the transfer of magistrates led to miscarriage of justice. The findings as presented in Table 4.8 show that 32% of the respondents were neutral on whether the transfer of magistrates had led to miscarriage of justice. However, a total of 52% of the respondents agreed (31.62% agreed and 20.16% strongly agreed) that the transfer of magistrates had led to miscarriage of justice. In mitigation, KI-01 observed that it is important to provide a credible system that reduces the effects of transfers. Likewise, the KI-02 suggested that the judiciary should come up with a clearly understood policy on transfer and more importantly one that is binding and adhered to. On transfer, a magistrate should be given adequate time to comfortably deal with all pending issues - for example a 3 months' window. The organization should also provide a credible system of redress for those affected by the transfer. There has been a loose plan for transferred magistrates to go back to their former stations for a while in order to conclude cases partly handled by them, but this has been discouraged for being expensive and prone to abuse.

## 4.8 Inferential Statistics

The study did inferential statistics in order to deduce properties of statistical relationship between magistrates transfer (independent variable) and administration of justice (dependent variable). Obtained data and the findings were presented in the section that follows.

### 4.8.1 Correlation

The study did correlation analysis in order to establish the relations between the different variables.

Table 4.9 Correlation Analysis

Correlations					
		Backlog of Cases	Interference on Internal Operations	Personal Life of Magistrates	Administration of Justice
Backlog of cases	Pearson Correlation	1	.084	.120	.222**
	Sig. (2-tailed)		.138	.460	.000
	N	253	253	33	310
Interference on Internal Operations	Pearson Correlation	.084	1	-.409**	.239**
	Sig. (2-tailed)	.138		.009	.000
	N	253	221	40	310
Personal Life of Magistrates	Pearson Correlation	.120	-.409**	1	.139
	Sig. (2-tailed)	.460	.009		.809
	N	33	33	33	40
Administration of Justice	Pearson Correlation	.222**	.239**	.139	1
	Sig. (2-tailed)	.000	.000	.809	
	N	253	253	33	310

\*\* . Correlation is significant at the 0.01 level (2-tailed).

Source: Field Data (2019)

Table 4.9 shows that the analyzed variables have a positive effect on administration of justice in the magistrates' courts. The  $r$  value for backlog at 2-tailed test is 0.222 which

shows it is positive. For interference on internal operations, the  $r$  value at 2-tailed significance is 0.239 while for a personal life of magistrates it is 0.139. This means all the variables were positively correlated to the dependent variable.

#### 4.8.2 ANOVA

The study did analysis of variance in order to explain analyze the differences among group means in a sample on matters of backlog of cases, internal operations of the courts and personal lives of magistrates. The results are presented in Table 4.10.

Table 4.10 Analysis of Variance (ANOVA) for all Variables

<b>Model Summary</b>				
Model 1	R	R Square	Adjusted R Square	Std. Error of the Estimate
	.387 <sup>a</sup>	.550	.079	.71606
a. Predictors: (Constant), Personal life, backlog of cases, Internal operations				

The analysis of variance (ANOVA) results in Table 4.10 indicate that R calculated was 0.387 and R square was 0.45. The R value is 0.387 represents the simple correlation. It indicates a fairly strong degree of correlation. The  $R^2$  value indicates how much of the dependent variable, "administration of justice ", can be explained by the combined independent variable. It shows that all the independent variables taken together explain 55% of the variations in administration of justice. The rest of 45% could be explained by other factors outside the model.

#### 4.8.2 Regression Analysis

The study did regression analysis through multiple regression then presented findings in Table 4.11. The study did regression analysis in order to determine the amount of variation in administration in justice as explained by backlog of cases, internal operations of the courts and personal life of magistrates. The results are presented in Table 4.11.



Table 4.11 Regression Analysis

<b>Coefficients<sup>a</sup></b>					
Model 1	Un-standardized Coefficients		Standardized Coefficients	T	Sig.
	B	Std. Error	Beta		
(Constant)	-.059	1.300		-.046	
Backlog of Cases	.199	.216	.142	.919	.049
Internal Operations of the Court	.618	.261	.399	2.369	.023
Personal Life of Judicial Officers	.297	.271	.186	1.097	.364

a. Dependent Variable: Administration of Justice

Table 4.11 shows regression coefficient of the multiple regression model. The independent variables had a varying p-value. P-value for backlog of cases and personal life of judicial officers had a value below 0.05 meaning they were statistically significant at 95% confidence level but not for personal life.

## CHAPTER FIVE

### SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

#### 5.1 Introduction

This chapter summarizes the study, draws conclusions and makes recommendations from the findings based on the objectives of the study, and with regard to the main variables in the study; that is magistrates transfer (independent variable) and administration of justice (dependent variable). The chapter then makes suggestions for further research.

#### 5.2 Summary

The study set out to assess the effects of magistrates' transfer on the administration of justice in the magistrates' courts in Nairobi City County. Specifically, the study aimed at investigating the effect of magistrates' transfer on case backlog in magistrates' courts in Nairobi City County, to find out the effect of magistrates' transfer on internal operations of the courts and to determine the effect of magistrates' transfer on the personal lives of judicial officers in courts in Nairobi City County. The study was a descriptive survey that targeted 2597 stakeholders in four magistrates' courts in Nairobi and who included officers of the courts, parties to criminal, civil and children cases reported in the courts under study between 1<sup>st</sup> of September and 30<sup>th</sup> October, 2019. It adopted purposive and systematic random sampling to identify the respondents

On the background of respondents, majority were youthful or middle aged and male. Most officers of the court are well educated while most of the parties to court cases had basic education. Majority of the officers of the court indicated that they had been working in the judiciary for years ranging from 11 to 15 years, while fewer had worked for years ranging from 5 to 10 years.

In line with the first objective of the study which sought to investigate the effect of magistrates' transfer on case backlog in magistrates' courts, most of the court officers (70%) agreed that the transfer of magistrates had occasioned increased backlog of cases. The backlog had in turn caused delays which had affected the administration of justice. A majority of the parties to court cases attributed the backlog to the fact that their cases were handled by more than one magistrate thus causing not only unreasonable delays in the settlement of cases but also affecting uniformity of the settlement. Furthermore, a majority of the respondents indicated that their cases had taken a long time to settle

with some taking as long as 10 years. The delay could be attributed to the fact that the transfer of magistrates had led to cases starting afresh. This fact was supported by 69% of the respondents. A majority, which is 58% of the respondents indicated that in some instances the transfer of magistrates had caused cases to be terminated. A ripple effect of magistrates' transfer is the increased cost of litigation as attested to by 63% of the respondents. Consequently, an increase in litigation costs could slow down parties in pursuit of justice and therefore negatively affecting administration of justice. Indeed, as indicated by a majority (68%) of the officers of the court the transfer of magistrates had caused the delayed conclusion of court cases.

Regarding the effect of magistrates' transfers on internal operations of the courts, the findings revealed that a majority of the officers of the court had transferred to different stations at least once in 10 years prior to this study and others as many as six (6) times, a rate which is significantly high. This high frequency of transfers causes an increase in case maintenance cost, an outcome that affects administration of justice unfavorably. Furthermore, magistrates' transfer results in prolonged stay in custody for individuals held in remand as their cases are processed, which overall has a negative effect on the administration of justice. The transfer of magistrates makes it difficult for administrative staff to manage and organize case documents and records. Subsequently, it may be hard to make decisions without requiring a magistrate who has been transferred to revert back to the former court station which has both monetary and time cost implications to the judiciary, and overall negatively affecting administration of justice. Further, magistrates' transfers have a moderate effect on courts daily plans, but have a potential to significantly disrupt the judiciary's annual plans. Disruption on the institution's annual plan would mean that its goals are not attained and thus affecting delivery of justice. Basically, magistrates transfer is a significant contributor to miscarriage of justice in the magistrates' courts and thus negatively affects administration of justice.

In line with the third objective which was to determine the effect of magistrates' transfer on their personal lives, the study revealed that a number of personal issues investigated had implications on their job performance. Majority of the respondents (63%) believed that their transfers negatively affected the education of their children and that could impact on their psychological condition. A negative outcome on children is likely to affect a parent magistrate, thus affecting their job output. Furthermore, the study

revealed that the transfer of magistrates interferes with their own privately sponsored studies as indicated by 80% of the respondents who agreed. This curtails personal development and has a negative effect on judiciary's ability to improve on its human capacities *vis-a-vis* the administration of justice. However, the findings revealed that at least 50% of the officers of the court were of the opinion that the transfer of magistrates did not result to any significant mental stress. Subsequently, mental health of the magistrates after relocation does not affect administration of justice. Similarly transfer of magistrates had a minor negative effect on capacity of magistrates to be team players as attested to by 63% of the officers of the court who felt that magistrates transfer does not impede information flow. This means that reduced team work is not a factor that would compromise the administration of justice. The findings equally revealed that magistrates' transfer does not affect their performance in the initial days after transfer, as supported by majority 45% of the officers. This means that orientation in new court stations is well managed to ensure the effect of relocation on administration of justice is minimal. The study however showed that transfers have a negative effect on the learning curve of magistrates as attested to by 70% of the officers of the court that agreed. This means that magistrates' self-improvement while on the job is affected by transfers.

Inferential statistics showed that variables have a positive effect on administration of justice in the magistrates' courts. Backlog of cases and personal life of magistrates had a statistically significant effect on administration of justice but the effect of personal life was not significant.

### **5.3 Conclusions**

The study made the following conclusions based on the objectives. With regards to the effect of magistrates' transfer on case backlog, the study concludes that transfer of magistrates is a significant contributor to backlog of cases through delay of cases, restarting of cases and in some instances termination of cases. Furthermore, transferring sitting magistrates' increases administration costs of a case while suspects in criminal cases take advantage of magistrates' transfer to demand restart of cases, and this effectively frustrates witnesses. The study therefore concludes that transfer of magistrates leads to case backlog in and thus negatively affects the administration of justice.

With regards to effect of magistrates' transfer on internal functions, the study concludes that transfer of magistrates has a significant effect on the increase to cost of litigation. It also has a significant effect on the prolonged stay in custody of suspects as well as a significant effect on making it difficult for administrative staff to organize case documents. Transfer of magistrates has a modest effect on making it difficult to organize the courts diary but significantly disrupts the judiciary's annual plans. Overall, transfer of magistrates is thought to be a significant contributor to negative effects on internal functions of the judiciary.

On the effects of magistrates transfer on their personal lives, the study concludes that transfer of magistrates has a negative effect on the education of their school going children. It also has a significant effect on their own privately sponsored studies. The study further concludes that transfer of magistrates does not cause significant mental stress to the magistrates and has a minor negative effect on their capacity to teamwork as well as knowledge flow of the respondents. The study concludes that magistrates' transfer does not have a significant effect on their performance in court after relocation, but has a negative effect on the magistrates' ability to come to grips with their learning curve. A delay in settling down upon transfer means a break in continuity in actual job performance, in this case administration of justice, and thus the legal maxim 'justice delayed is justice denied' will find a meaning.

#### **5.4 Recommendations**

In line with the findings the study made the following recommendations:

- i. The judiciary policy on transfer should be made more inclusive and acceptable with focus to less frequent transfers as a way of reducing case backlogs.
- ii. Magistrates should be given longer notifications of transfers in order to enable them to reduce the number of cases which are partly heard or pending when they transfer.
- iii. The Judicial Service Commission should develop hand-over protocols for outgoing, and incoming magistrates, to ensure that cases do not suffer unnecessary delays and accumulated costs as new magistrates familiarize themselves with the cases.

- iv. The Judicial Service Commission should align transfer of magistrates with the national education calendar to avoid disruption of education of the affected officers' children.
- v. Regard should be had to ongoing privately sponsored education and professional courses for judicial officers when determining where and when to transfer magistrates.

### **5.5 Suggestions for Further Research**

The researcher would like to suggest the following topics as areas for further research:

- i. A study into other factors affecting administration of justice, for example budgetary allocation and interference from the executive.
- ii. The relationship between magistrates' transfer and judicial reforms.

## REFERENCES

- Asian Development Bank. (2010). *Challenges in Implementing Access to Justice Reforms*. Mandaluyong: Asian Development Bank.
- Abdifitah , M. M. (2015). *Influence of Information Communication Technology (ICT) on Quality of Education at Secondary Schools In Mogadishu Somalia* . Nairobi: University of Nairobi.
- Ajmal, M. M., & Koskinen, K. U. (2008). Knowledge Transfer in Project-Based Organizations: An Organizational Culture Perspective. *Project Management Journal*, 39(1), 7-15.
- Alam, S. M. (2000). A Possible Way out of Backlog in Our Judiciary. Dhaka, Bangladesh.
- American Bar Association. (2009). *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Trial*. Chicago, USA: The Constitution Project.
- Anthasius, J. (2019). Five Functions of the Magistrates Courts in Nigeria. Lagos, Nigeria.
- Bajracharya, S. (2018). Uncertainty Reduction Theory. New Delhi, India. Retrieved from <https://www.businessstopia.net/communication/uncertainty-reduction-theory-definition>
- Bakotić, D. (2016). Relationship between Job Satisfaction and Organisational Performance. *Economic Research Journal*, 29(1), 118-130.
- Bansal, R. (2014). What are the Functions of Judicial Magistrates' Courts in India? New Delhi, India.
- Bath, T. (2013). 46 Judicial Officers Transferred. Kampala, Uganda.
- Baxter, G., & Sommerville, I. (2011). Socio-technical systems: From design methods to systems engineering. *Interacting with computers*, 23(2), 4-17.
- Black's Law Dictionary. (2019). *Backlog: Definition*. Retrieved from [thelawdictionary.org: https://thelawdictionary.org/backlog/](https://thelawdictionary.org/backlog/)
- Braxton-Benjamin, N. (2014, May 19). Judiciary Admits to Staffing Problems. Port of Spain, Trinidad and Tobago.
- Bridgman, T. F., & Corboy, P. H. (1982, 8 January). Memorandum to the Illinois Committee to Study Caseflow. *Management in Law Division*.
- Briscoe, D., Schuler, R., & Tarique, I. (2012). *International Human Resource Management: Policies and Practices for Multinational Enterprises 4th Edition*. New York: Routledge.
- Bryman, A. (2008). *Social Research Methods*. Oxford: OUP Oxford.

- Burstyner, N., & Tania, S. (2014). Justice Delayed is Justice Denied. *Victoria University Law and Justice Journal*.
- Canadian Superior Courts Judges Association. (2008). The Role of the Courts. Ottawa, Canada.
- Cherry, K. (2018). *Cross-Sectional Research Method: How Does It Work?* Retrieved from Very well Mind: <https://www.verywellmind.com/what-is-a-cross-sectional-study-2794978>
- Claudius, P. (2011). Ensure Legal Compliance of Policy on Employee Transfer. Penampang, Malaysia.
- Commonwealth Magistrates and Judges Association . (2013). *The Status of Magistrates'in the Commonwealth*. Commonwealth Judges and Magistrates Association.
- Commonwealth Secretariat. (2019). *Our History*. Retrieved from The Common Wealth: <http://thecommonwealth.org/our-history>
- Core HR. (2012). Employee Transfer. London, UK. Retrieved from <https://corehr.wordpress.com/2012/05/03/employee-transfer-2/>
- Daily Nation Newspaper. (2015, February 6). Judiciary transfers 31 magistrates. (T. Kariuki, Ed.) Nairobi, Kenya: Nation Media Group. Retrieved from <https://www.nation.co.ke/news/Judiciary-Magistrates-Transfers/1056-2614302-9x1e13/index.html>
- Daily Nation Newspaper. (2018, February 7). Thousands of Cases Choke Courts Despite Dleanup Drive. (D. Otieno, Compiler) Nairobi, Kenya. Retrieved from <https://www.nation.co.ke/newsplex/justice-denied/2718262-4295704-6ghvh1z/index.html>
- Dakolias, M. (2014). Court Performance Around the World: AComparative Perspective. *Yale Human Rights and Development Journal*, 1-56.
- Directorate of Public Affairs and Communication. (2018). Maraga Orders Conclusion of 5000 Cases. Nairobi, Kenya: Kenya's Judiciary.
- Doherty.M. (1994). *threshold*.
- Dotdash Publishers. (2018). *Operations Management*. Retrieved from [www.investopedia.com: www.investopedia.com/terms/o/operations-management.asp](http://www.investopedia.com/terms/o/operations-management.asp)
- Dotdash Publishers. (2019). *How to Deal With Personal Issues at Work*. Retrieved from [thebalancecareers.com: https://www.thebalancecareers.com/how-to-deal-with-personal-issues-at-work-526107](https://www.thebalancecareers.com/how-to-deal-with-personal-issues-at-work-526107)
- Duhaime's Law Dictionary. (2019). Administration of Justice Definition. (L. Duhaime, Ed.) New York, USA.



- Eason, k. (2008). Sociotechnical systems theory in the 21st Century:. *Sense in Social Science.*, 123-134.
- Garro, A. M. (2000). Staffing the Judiciary and Prosecutorial Offices in Argetina: Trials and Tribulations in Search of Merit, Integrity and Accountability. *Southwestern Journal of Law and Trade in the Americas*, 134-140.
- Ghai , Y. P. (2016). *The Role of the Judiciary Under the New Constitution: Part 1*. Nairobi: Katiba Institute.
- Ghai, K. K. (2018). *Judiciary: Functions, Importance and an Essential Quality of Judiciary*. Retrieved from Your Article Library.
- Ghosh, Y. (2018). An Analysis of the Cyclic Syndrome of Delay, Arrears and Pendency. *Asian Journal of Legal Education*, 5(1), 21-39.
- Goethe University. (2013). *Order From Transfer: Comparative Constitutional Design and Legal Culture*. (F. Gunter, Ed.) Frankfurt: Edward Elgar Publishing.
- Golding, M. (2013, August 14). Strengthening of criminal case management system to help reduce backlog. *Jamaican Observer*.
- Gomes, A. O., Guimaraes , T. A., & Akutsu, L. (2017). Court Caseload Management: The Role of Judges and Administrative Assistants. *Contemporary Administration Journal*, 21(5).
- Government of Kenya. (2010). Chapter 10: The Judiciary. In *Constitution of Kenya*. Nairobi: Government Printer.
- Government of Kenya. (2010). Sixth Schedule: Transitional and Consequential Provisions, Part 5: Administration of Justice. In *Constitution of Kenya*. Nairobi: Government Printer.
- Government of Kenya. (2011). *Judicial Service Act*. Retrieved October 7th, 2014, from Kenyalaw.org:  
[http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Judicial\\_Service\\_Act\\_2011.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Judicial_Service_Act_2011.pdf)
- Green, D. (2013). The Role of Magistrates. *Speech given by Minister of State for Policing and Criminal Justice* . London, UK: Government of UK.
- Guimaraes, T. A., Gomes, A. O., & Filho, G. E. (2018). Administration of Justice: an Emerging Research Field. *RAUSP Management Journal*, 53(3).
- Harewood, W. (2018). *Human Resource Management in a Recession*. Mount Hope, Trinidad.
- Haunani, D. S. (2008). *Uncertainty Reduction Theory*. New York, USA.
- Heathfield, S. M. (2014). *Transfer at Work Is a Career Opportunity*. New York, USA.
- Heathfield, S. M. (2014). *Transfer at Work Is a Career Opportunity*. New York, USA.

- Heathfield, S. M. (2018). *A Transfer at Work Is a Career Opportunity*. New York, USA: Dotdash publishing Company.
- Hierarchy Structure Services. (2018). *Kenya Court Hierarchy*. Retrieved from hierarchystructure.com: <https://www.hierarchystructure.com/kenya-court-hierarchy>
- Human Res. (1998). *Essentials of Human Resource Management*. New York: Prentice Hall College Division. Retrieved from What is Human Resource: Website on HRM for Students: <http://www.whatishumanresource.com/employee-transfers>
- Human Resource Council. (2018). *HR Policies & Employment Legislation*. Ottawa, Canada.
- ICJ Kenya. (2018). *Criminal Justice Reforms: Issues and Options For Kenya* . Nairobi, Kenya.
- Igbanugo, H. A. (2018). *The Rule of Law, Judicial Corruption, and the Need for Drastic Judicial Reform in Sub-Saharan Africa's Nation*. Chicago, Illinois, USA: American Bar Association. Retrieved from [https://www.americanbar.org/groups/international\\_law/publications/international\\_law\\_news/2013/summer/the\\_rule\\_of\\_law\\_judicial\\_corruption\\_need\\_for\\_drastic\\_judicial\\_reform\\_sub\\_saharan\\_africas\\_nation/](https://www.americanbar.org/groups/international_law/publications/international_law_news/2013/summer/the_rule_of_law_judicial_corruption_need_for_drastic_judicial_reform_sub_saharan_africas_nation/)
- Imwalwa, M. (2014). *Overstretched Courts Cause Backlog*. Windhoek, Botswana.
- International Records Management Trust. (2010). *Evidence-Based Governance in the Electronic Age Case Study Legal and Judicial Records and Information Systems in South Africa* . Pretoria: International Records Management Trust and World Bank.
- Jones , W. J., Steffy, B. D., & Bray, D. W. (1991). *Applying Psychology in Business: The Handbook for Managers and Human Resource*. New York: Lexington Books.
- Josten, E., & schalk, R. (2010). The effects of demotion on older and younger employees. *Personnel Review*, 39(2), 2016.
- Judicial Service Commission. (2014). *Human Resource Procedures and Policy Manual*. Nairobi, Kenya.
- Just Answer LLC. (2014). *Employment Laws; job transfer Laws*. New York, USA.
- Kaieteur News. (2014). *Staffing Process for Family court underway*. Guyana, Guyana.
- Kalimo, R., Ei-Batawi, M. A., & Cooper, C. L. (1987). *Psychosocial Factors at Work and Their Relation to Health*,. Geneva, Switzerland.
- Kalpana, R. (2015, June 17). *Types and Reasons for Transfer of Employees in an Organisation*. Retrieved from Business management idears web site: <http://www.businessmanagementideas.com/organisation/types-and-reasons-for-transfer-of-employees-in-an-organisation/2495>

- Kariuki, T. (2015). *Judiciary Transfers 31 Magistrates*. Nairobi, Kenya: Nation Media Group.
- Kaweesa, G. (2012). *Case Backlog and the Right to Due Process in the Judiciary (Unpublished Thesis)*. Retrieved October 8th, 2014, from [parliament.go.ug](http://www.parliament.go.ug): [http://www.parliament.go.ug/new/images/stories/jud\\_backlog.pdf](http://www.parliament.go.ug/new/images/stories/jud_backlog.pdf)
- Kiplaga, S. (2018). CJ Maraga Reshuffles Judges, Odunga Moved to Machakos. Nairobi, Kenya: Daily Nation.
- Kothari, C. K. (2004). *Research Methodology- Methods and Techniques*. New Delhi:: New Age international (P) Ltd.,
- Kramer, M. W. (1993). Communication and Uncertainty Reduction During Job Transfers: Leaving and Joining Processes. *Communication Monographs, Vole 60*, 231-247.
- Krishnan, J. K., Kavadi, S. N., Girach, A., Khupkar, D., Kokal, K., Nupur, S. M., . . . Shukla, B. T. (2014). *Grappling at the Grassroots: Access to Justice in India's Lower Tier*. Retrieved August 4th, 2014, from <http://harvardhrj.com>: [http://harvardhrj.com/wp-content/uploads/2014/07/V27\\_Krishnan\\_et\\_al.pdf](http://harvardhrj.com/wp-content/uploads/2014/07/V27_Krishnan_et_al.pdf)
- Kukreja, S. (2019). *What is Orientation?* Retrieved from Management Guide: <https://www.managementstudyhq.com/purpose-of-orientation.html>
- Langseth, P. (2003). Strengthening Judicial Integrity and Capacity in Nigeria, a Progress Report. *11th International Anti-Corruption Conference*. Seoul: IACC.
- Laws, E. (2016). Addressing Case Delays Caused by Multiple Adjournments. *Helpdesk Research Report*.
- Lim, G. (2013, August 9th). *Backlogs*. Retrieved October 8th, 2014, from [innovativejustice.com](http://www.innovatingjustice.com): <http://www.innovatingjustice.com/blogs/backlogs>
- Mafu, V. N. (2014). *The management of court records in Magistrate Court: A case of Middledrift Magistrate Court, Eastern Cape*. Alice, South Africa: University of Fort Hare.
- Makau, J. A. (2014). *Factors Influencing Management of Case Backlog in Judiciary In Kenya: A Case of Courts Within Meru And Tharakanithi Counties*. Nairobi: University of Nairobi.
- Manga, C. F., Warigia, R., Shaw, M., Reitano, T., Sing'oei, A. K., & Young, L. A. (2013). Rethinking the Role of Law And Justice in Africa's Development. *UNDP's Discussion Papers on Democratic Governance*.
- Mbote, P. K., & Akech, M. (2011). *Kenya: Justice Sector and the Rule of Law*. Johannesburg: Open Society Initiative for Eastern Africa.
- Mccabea, P. G. (2014). *A Guide To The Federal Magistrate Judges System*. New York: Federal Bar Association.

- McGrady, S. (2019). *Improving your Internal Processes*. London, UK. Retrieved from <https://www.workspace.co.uk/community/homework/growth-and-strategy/improving-your-internal-processes>
- Monek, F. H. (2009). *Court Delay: Some Causes and Remedies*. New York, USA.
- Ndogo, C. K. (2015). *Factors Influencing Effective Implementation of Performance Contracting in Non-Commercial State Corporations: A Case of Kenya National Library Service in Kenya*. Nairobi: University of Nairobi.
- North Carolina Courts. (2008). *The North Carolina Judicial System*. Retrieved October 8th, 2014, from The North Carolina Judicial System: <http://www.nccourts.org/citizens/publications/documents/judicialsystem.pdf>
- Office of the Registrar, Magistrates Courts. (2019). *Courts Data and Records 2019* . Nairobi, Kenya.
- Office of the United Nations High Commissioner for Human Rights . (2013). *Chapter 4 • Independence and Impartiality of Judges, Prosecutors and Lawyers*. Retrieved August 4th, 2014, from OHCHR.org: <http://www.ohchr.org/Documents/Publications/training9chapter4en.pdf>
- OHCHR. (1985). *Basic Principles on the Independence of the Judiciary*. Retrieved October 8th, 2014, from ochr.org: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>
- Oregon Laws. (2013). *Effect of transfer of employee to another participating employer*. Retrieved from oregonlaws.org: <http://www.oregonlaws.org/ors/238.475>
- Oresi, E. M. (2005). *Employee Performance Management Practices: A Case of Court Registry Staff in Nairobi*. Nairobi: University of Nairobi.
- Privacy Sense. (2019). *Personal Information* . Retrieved from <http://www.privacysense.net/terms/personal-information/>
- Rankin, A. (2014). *What is the Judiciary*. (M. Wiley, Ed.) Sparks, Nessville, USA.
- Republic of Guyana. (1998). *Summary Jurisdiction (Magistrates) Act*. Georgetown: Government of Guyana.
- Republic of Kenya. (2010). *The Constitution of Kenya, 2010*. Nairobi: Government Printer.
- Republic of Kenya. (2015). Act Title: Magistrates Act. *Laws of Kenya, Number 26 of 2015*. Nairobi, Kenya: National Council for Law Reporting and the Office of the Attorney General.
- Republic of Kenya. (2016). *Petition No. 167 of 2016, In The Matter Of Alleged Contravention Of Articles 10, 47, 73, 159, 172, 258 And 259 Of The Constitution Of Kenya, 2010, Michael Osundwa Sakwa as Petitioner Vs CJ (*

- President Supreme Court Of Kenya, 1st Respondent vs the JSC*. Nairobi: Kenya Law Reports of the Judiciary.
- Republic of Trinidad and Tobago. (2019). *Magistracy: An Overview*. Port of Spain, Trinidad and Tobago: The Judiciary .
- Roberts, M. (2018). *Lateral Transfers In a Government Agency*. Retrieved from The Balance Careers: <https://www.thebalancecareers.com/lateral-transfer-1669469>
- Roediger, H., & Smith, M. A. (2012). The “Pure-study” Learning Curve: The Learning Curve without Cumulative Testing. *Springers Memory and Cognition Journal*, 989–1002.
- Roundy, L. (2018). *Cross-Sectional Research: Definition & Examples*. New York, USA.
- Ryan, R., O’Farrelly , C., & Ramchandani, P. (2017). Parenting and Child Mental Health. *London Journal of Primary Care*, 9(6), 86–94.
- Sasaki, M., Takii, K., & Wan, J. (2013). *Horizontal Transfer and Promotion: New Evidence and an Interpretation from Presepective of Task-specific Human*. Osaka, Japan.
- SFHR. (2013). *Demotion: How should we handle employee demotions?* Retrieved from Society for Human resource Managemnent.: <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/howshouldwehandleemployeedemotions.aspx>
- Sims, R. R. (2002). *Organizational Success Through Effective Human Resources Management*. Westport: Greenwood Publishing Group.
- STANDS4 LLC. (2019). *Definitions for Commonwealth*. Retrieved from [/www.definitions.net/definition/Commonwealth](https://www.definitions.net/definition/Commonwealth)
- Sukat Organization. (2012). *Human Resource Management*. New Delhi, India.
- Tajudeen, M. (2013). Kaduna NBA Calls for Immediate Transfer of Magistrates, Judges. (A. Aminu, Interviewer) Kaduna, Nigeria: Daily Times Newspaper.
- The Judiciary. (2012). *Judiciary Transformation Framework 2012-2016*. Retrieved August 4th, 2014, from <http://www.judiciary.go.ke/>: <http://www.judiciary.go.ke/portal/assets/downloads/reports/Judiciary%27s%20Tranformation%20Framework-fv.pdf>
- The Judiciary of Trinidad and Tobago. (2013). *Court Human Resource Management Unit*. Port of Spain, Trinidad and Tobago.
- The Kenyan Judiciary. (2018). *Criminal Procedure Bench Handbook*. Nairobi: The Kenyan Judiciary.
- The Standard Newspaper. (2017, February 2). Terror Suspect Trial Stalls for Two Years after Magistrate is Transferred. (W. Oketch, Compiler) Nairobi, Kenya.

- The Standard Newspaper. (2018). LSK President Laments Frequent Transfer of Judges and Magistrates. *Daily Newspaper*. (J. Murima, Compiler) The Standard Media Group.
- The Star Newspaper. (2016). 17 Chief Magistrates Moved in JSC's Latest Transfers. *Daily Newspaper*. (P. Vidija, Compiler) Kenya: The Star Publications.
- The UK Judiciary. (2019). *Who Are The Magistrates/*. Retrieved from <https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/magistrates/>
- Torrance Unified School District. (2009). Classified Employee Handbook. Maryland, USA.
- UK Judiciary. (2014). Magistrates' Court. London, UK.
- United Nations Office on Drugs and Crime. (2015). *Resource Guide on Strengthening Judicial Integrity and Capacity*. Vienna: UNODC.
- UNODC. (2011). *Resource Guide on Strengthening Judicial Integrity and Capacity*. Vienna, Austria: United Nations Office on Drugs and Crime.
- Urbancova, H., & Fejfarová, M. (2015). Vertical knowledge transfer in Czech organizations. *III(6)*, 231-242.
- Valen, L. (2011). Effect Of Work Life Balance Essay. *Anti Essays*, pp. 1-6.
- Vidija, P. (2016). 17 Chief Magistrates Moved in JSC's Latest Transfers. Nairobi, Kenya: The Star Newspaper.
- Vocabulary.com. (2019). *Transfer-Definition*. Retrieved from [www.vocabulary.com: https://www.vocabulary.com/dictionary/transfer](http://www.vocabulary.com/dictionary/transfer)
- Volcansek, M. L. (2010). Law and Politics Books Review. In D. Piana, *Judicial Accountabilities in New Europe: from Rule of Law to Quality of Justice* (pp. 588-589). Ashgate, UK: Farmharm.
- Wanza, L., & Nkuraru, J. k. (2016). Influence of Change Management on Employee Performance. *International Journal of Business and Social Science*, *VI(4)*, 190-199.
- Waters, N. L., & Strickland, S. M. (2017). Examining Delay: Its Causes, Consequences, and Possible Solutions in the Colorado Court of Appeals. Colorado, USA.
- Williams, R. J. (2003). Court Administration-Staffing Models. New Jersey, New Jersey, USA.
- Yohannes, A. (2011). Amended Federal Judicial Administration Council Establishment Proclamation (Proclamation No. 684/2010). Addis Ababa, Ethiopia.
- Zhugue, H. (2012). *The Knowledge Grid –Toward Cyber-Physical Society*, . Singapore: World Scientific Publishing Co.

## Appendices

### Appendix I: Questionnaire

#### Section A: Background Information

Kindly consider the questions which follow, concerning your background information, and tick the box [] that corresponds to you?

1. What is your age?  
Below 25 years old []      25-35 years old []      36-45 years old []  
46-55 years old []      above 55 years old []
2. What is your gender  
Male []      Female []
3. What is your highest level of education?  
Diploma/Certificate []      Bachelor's Degree []      Master's Degree []  
Doctorate Degree []      Other [] Kindly Specify.....
4. How long have you been working with the Judiciary? (for officers of the court only)  
Less than 5 years []      5-10 years []      11-15 years []  
16-20 years []      more than 20 years []
5. How many times have you been transferred (including promotions) from one station to another in the past decade? (for officers of the court only)  
None []      1-3 times []      4-6 times []  
7-9 times []      more than 9 times []

#### Section B: Effect of Magistrates Transfer on Backlog of Cases

Kindly consider the statements below, concerning the effects of magistrates' transfers on court processes. Tick the box [] which corresponds with the extent to which you agree or disagree with the statement.

How many magistrates have handled your case? (For parties to court cases only)

-----

For how many have your case been going on? (For parties to court cases only)

\_\_\_\_\_

**Key:** 1 = Strongly Agree, 2 = Agree, 3= Neutral/Not Sure, 4 Disagree, 5 = strongly disagree

Statement	1	2	3	4	5
Transfer of magistrates' from this station has increased the backlog of cases					
Several cases have had to be started afresh because the sitting magistrate was transferred					
Several cases have had to be terminated due to the fact the sitting magistrate was transferred					
The cost of litigation of several cases has been increased as a result of the sitting magistrates being transferred					
The conclusion of court cases in this station has been delayed by the sitting magistrate being transferred					

In which other way do you think magistrates' transfer contributes to backlog of cases in the magistrate's courts?

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In your opinion what would like done to improve this situation?

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**Section C: Effect of Magistrates Transfer on Internal Operations of the Court**

Kindly consider the statements below regarding the effects of magistrates' transfers on the internal operations of the court. Tick the box [√] that corresponds with how much you agree or disagree with the statement.

**Key:** 1 = Strongly Agree, 2 = Agree, 3= Neutral/Not Sure, 4 Disagree, 5 = strongly disagree



Statement	1	2	3	4	5
Transferring of magistrates in this court causes unwarranted increase to costs of keeping a court case going					
The transfer of a magistrate in this court has prolonged the stay in custody of suspects being tried in this court					
Transferring of magistrates has made it complicated for administrative staff to organize case documents					
Magistrates' transfer has created complications in organizing this court's daily plans					
Transfers of magistrates have created significant disruptions in the judiciary annual plans					
Transfers of magistrates have occasioned miscarriage of justice in the affected cases					

**Section D: Effect of Magistrates Transfer on Personal Life of Magistrates**

Kindly consider the statements below, on the effects of magistrates' transfers on their personal lives. Tick the box [√] that corresponds with the extent to which you agree or disagree.

**Key:** 1 = Strongly Agree, 2 = Agree, 3= Neutral/Not Sure, 4 Disagree, 5 = strongly disagree

Statement	1	2	3	4	5
Transferring of magistrates interferes with the education of their school going children					
Transferring of magistrates interferes with the education of self in privately sponsored studies					
Transferring of magistrates causes them significant mental stress					

Magistrates' transfer disrupts their knowledge flow as officers of the court					
Magistrates' transfer negatively impacts their performance in the court room in the initial days after relocation					
Constant transfers of magistrates undermine their ability to come to grips with their learning curve as magistrates					

Are there other ways in which the transfer of magistrates affects the personal life of the officers of the judiciary (please list here below)?

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What would like to done to improve on the effect of magistrate's transfers on their individual lives?

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### Section E: Administration of Justice

**Key:** 1 = Strongly Agree, 2 = Agree, 3= Neutral/Not Sure, 4 Disagree, 5 = strongly disagree

Statement	1	2	3	4	5
Transferring of magistrates interferes with proceedings in the magistrates courts					
Time for starting and conclusion of cases in magistrates courts is significantly affected due to transfer of magistrates courts					
Transfer of magistrates leads to miscarriage of justice					

In the range of percentages below, to what extent do you think transfer of magistrates impedes access of justice in your station?

	Range	Please tick
a	No Effect at all (0%)	
b	1% - 10%	
c	11% - 20%	
d	21% - 30%	
e	31% - 40%	
f	41% - 50%	
g	Above 50%	

## **Appendix 2: Interview Schedule**

1. In your view do magistrates' transfers affect internal functions of the courts?  
Kindly support your views.
2. Ultimately magistrates' transfers may affect their personal lives and that of other judicial officers. To what extent would you agree with this statement?
3. Do you consider magistrates' transfer as an issue of concern when it comes to administration of justice in Kenya?
4. Are there changes that you would propose that could contribute positively in the transfer of magistrates in Kenya and by administration of justice?

Thank you for taking your time

## Appendix 3: University Letter



*University of Nairobi*  
**COLLEGE OF HUMANITIES AND SOCIAL SCIENCES**  
*Department of Political Science & Public Administration*

Telephone: 318262 Ext.28171  
Telegrams: "Univari" Nairobi  
Fax: 254 (020) 243566  
Email: depe-pspa@uonbi.ac.ke

P.O. Box 30197  
Nairobi, Kenya.

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**1 November, 2019**

**TO WHOM IT MAY CONCERN**

**PETER MUTUA MULWA-C51/68482/2013**

The above named is a registered student at the Department of Political Science & Public Administration, University of Nairobi Pursuing a Masters Degree in Public Administration.

He has successfully completed the first part of his studies (Coursework) and is hereby authorized to undertake field research.

It is against this background that I request you sincerely to enable him collect relevant academic data for her studies.

Mr. Mutua is writing on "**The Effects of Magistrates' Transfers on the Administration of Justice in Kenya: A Case Study of Courts in Nairobi City County**"

The information he collects will be purely used for academic purposes. The student is also expected during the course of his research to abide by your regulations and rules.

In case of further clarification, feel free to contact the undersigned.

Thank you for your support.

**Prof. Fred Ojonyo (Ph.D)**  
**Chairman, Department of Political Science and Public Administration**

## Appendix 4: Research Permit



REPUBLIC OF KENYA



NATIONAL COMMISSION FOR  
SCIENCE, TECHNOLOGY & INNOVATION

RefNo: 591110

Date of Issue: 22/November/2019

### RESEARCH LICENSE




This is to Certify that Mr.. Peter Mulwa of University of Nairobi, has been licensed to conduct research in Nairobi on the topic:  
**THE EFFECTS OF MAGISTRATES TRANSFER ON THE ADMINISTRATION OF JUSTICE IN KENYA: A CASE STUDY OF COURTS IN NAIROBI CITY COUNTY** for the period ending : 22/November/2020.

License No: NACOSTI/P/19/2704

591110

Applicant Identification Number

  
Director General  
NATIONAL COMMISSION FOR  
SCIENCE, TECHNOLOGY &  
INNOVATION

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