

**UNIVERSITY OF NAIROBI
DEPARTMENT OF SOCIOLOGY AND SOCIAL WORK**

**FACTORS INFLUENCING DISMISSAL OF CRIMINAL CASES IN KENYAN
COURTS: A CASE STUDY OF MAVOKO LAW COURTS, MACHAKOS**

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DECLARATION

This Project is my original work and has not been presented for an award of a degree or a certificate in any other University:

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DEDICATION

This Project is dedicated to the many Victims of Injustice in Kenyan Courts

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ABBREVIATIONS AND ACRONYMS

| | |
|-------------|--|
| CJS | Criminal Justice System |
| CJSA | Criminal Justice System Agency |
| CJSA | Criminal Justice System Agencies |
| CMC | Chief Magistrate Courts |
| CPC | Criminal Procedure Code |
| ICJ | International Commission of Jurist |
| ICJ | International Commission of Justice |
| KI | Key Informants |
| LOK | Laws of Kenya |
| ODPP | Office of Director of Public Prosecution |
| PM | Principal Magistrate |
| RM | Resident Magistrate |
| RRI | Prison Rapid Result Initiatives |
| SPM | Senior Principal Magistrate |
| SPSS | Statistical Package for Social Sciences |
| SRM | Senior Resident Magistrate |
| WPA | Witness Protection Agency |

ABSTRACT

This study set out to explore factors influencing dismissal of criminal cases in Kenyan Courts, with a specific focus on Mavoko Law Courts. This is due to a general feeling among Kenyans that Courts have failed the Criminal Justice System by arbitrarily dismissing criminal cases, thus, contributing to the perceived high crime rates in the county. The aim of was to find out why dismissal of criminal cases at Mavoko Law Courts can be attributed to corruption of witnesses by the accused persons, lengthy trials due to frequent court adjournments; and inefficiencies by the law enforcement Agency. The study therefore adopted a descriptive study design, in order to establish the factors responsible for dismissal of criminal cases. A sample size of 86 dismissed cases in the year 2013 at the Mavoko Law Courts was targeted by this study. Of the dismissed cases 70 victims who were contacted on phone availed themselves for the study. Of those that availed themselves, 14 cases were considered spoilt. As such, only 56 cases were valid for the present study. In addition 10 Key Informants (KI) namely magistrates, Advocates, **Court Prosecutors, Police investigation officers and Court Clerks were interviewed. Descriptive statistics was used to present data in tables and figures. The study findings identified several in-efficiencies** in the criminal justice system namely; lack of witnesses and lack of evidence; poor investigations, ineffective prosecutions and illegal confinement by the arresting agency. It was therefore concluded that the main cause of prosecution malpractices was inadequate training as well as delay in the criminal process. The study therefore recommends that prosecutors should be recruited from law graduates who are well versed in legal prosecution.

CHAPTER ONE: INTRODUCTION

1.1 Background of the Study

The conditions that lead to criminal case dismissals may be varied. Stine, (2013) posit that these are factual, legal, and logistical. Logistical issues are usually those that involve the process of getting the to prosecute. He continues to say that it is the prosecutor who has the power to dismiss a case. The factors that lead to such decision are depend on several factors like how strong the state's evidence, if there are viable witnesses, availability of defense and mitigating circumstances of the accused. However an experienced criminal defense attorney will attempt to discover factors that support dismissal and negotiate with the prosecuting attorney to obtain the most favorable outcome based on those circumstances (Stine, 2013).

However not all criminal charges lead to trial or a plea. Such cases are usually dismissed, by the prosecutor or the court. A good defense lawyer must establish whether there are good reasons on which the case can be dismissed (Stine, 2013). In the recent past, the general feeling among the public is that the Kenyan Criminal Justice System (CJS) is complacent while dealing with criminal cases thus failing to deter crime or contain it within reasonable limits (Muhoro, 2000). Indeed, the CJS is society's primary instrument of social control. **Its primary roles involve protection, law and order, enforcing the law, identifying criminals, prosecution and rehabilitation . According to Siegel (2007) the CJS as a system of law enforcement involves apprehension and prosecution.** It is therefore expected that those who commit crime must be punished so as to deter others from committing crimes thus reinforcing the observance of law and order in society. However, the foregoing observation does not reflect the Kenyan CJS, hence perception that Kenyan courts are complacent and ineffective while dealing with crime. What ails successful prosecution of cases in the third world countries Kenya among them is the negative social consequences accrued whenever criminal cases abort.

Delay in court processes may also lead to case dismissal. Hausner and Seidel (1979) carried out a study in the District of Columbia Superior Court to establish the consequences of delay as a factor of dismissal of court cases. They found that “factors

apparently associated with the seriousness, complexity, and importance of the case-- the number of codefendants, the number of charges, the crime seriousness score, and the arrest record of the defendant-were positively associated with processing time” . On their part Ostrom and Hanson ran a model that “captured the interaction of case and defendant-related characteristics on case processing time”. The results were that “case processing time will be longer for cases in which a defendant is convicted of a serious felony charge... and the defendant has been released on bail” (1999).

There are extraneous factors that may lead to case dismissal; Ostrom and Hanson (1999) attribute processing time while Hausner and Seidel (1979) advance the theory but include defendant characteristics, such as the prior record; and the bail status ordered, the type of attorney appointed, and whether a jury demand was made.

There is little research factors influencing case dismissal in Kenyan Courts and this is the basis of serious research gaps. This study highlights certain factors, which basically affect processing time; usually both case-related and non-case-related factors came from the client and the Criminal Justice Coordinating Council. The case as it may be, the aim of the study is to expose the factors that impact criminal case dismissal.

1.2 Problem Statement

For the dispensation of justice to be efficient the three parts of the CJS must work in harmony like in the systems theory where parts work together for the functioning of the whole system. A malfunction in any part of the systems has an effect on the whole system. However several obstacles tend to hamper the functioning of the legal Sub-System in Kenya leading to dismissal of criminal cases (KNHCR: 2013). These obstacles include failure of witnesses to appear in court to testify during trial, non-availability of the exhibits not availed in court during trials, failure of government experts such as doctors, and for unavailability of the medical reports or of document examiners to testify in court during trials, amongst other obstacles (UN-Habitat, 2002.)

Additionally lack of harmony in the judicial system may lead to a rise in crime rates through case dismissals leading to a perception that the CJS has failed to contain crime to reasonable limits (KNHCR: 2013). When witnesses fail to appear before court during trials, the cases are either dismissed or adjourned to be heard on a different date. When the cases are dismissed, criminals return to the society where they are likely commit more crimes. Similarly, when cases are adjourned, witnesses may get discouraged thus increasing the possibility of them failing to appear before court on a subsequent hearing date, thus leading also to dismissal of criminal cases.

This study therefore assumes that corruption of witnesses by an accused person, inefficiencies of law enforcement agencies, intimidation of witnesses by members of criminal gangs, amongst other reasons, are some of the factors that contribute to dismissal of criminal cases in court. These, together with the experience of the researcher with the judicial system at the Mavoko Law courts occasioned the need to explore the factors that influence the dismissal of criminal cases in Kenyan courts with specific focus on Mavoko Law Courts. The knowledge generated by this study sheds light on some of the problems that contribute to dismissal of criminal cases in Kenyan courts.

1.2.1 Research Questions

- i. Does corruption of witnesses influence dismissal of criminal cases?
- ii. To what extent are lengthy trials influenced by dismissal of criminal cases?
- iii. Does intimidation of witnesses during trial influence dismissal of criminal cases?

1.3 Study Objectives

This study was guided by a general objective and specific objectives

1.3.1 General Objective

The study sought to establish the factors that influence dismissal of cases in Kenyan courts, a case study of Mavoko Law courts in Athi River Machakos County

1.3.2 Specific Objectives

- i. To find out whether corruption of witnesses influences dismissal of criminal cases.
- ii. To assess the extent to which lengthy trials influence dismissal of criminal cases.

- iii. To establish how intimidation of witness during the trial influence dismissal of criminal cases.

1.4 Justification of the Study

According to Muhoro, (2000). “Concern has been raised by the public over the Criminal Justice System’s inability to contain crime within reasonable limits in Kenya”. On the other hand, the current emerging trend of case dismissals in court is also worrying. For example in Mavoko law Courts, 430 cases were dismissed in the year 2013 alone! No wonder the report by The Economic Survey, 2013, indicate that there was an increase of 9.8% in the number of reported crimes in Kenya.

Hopefully, the study findings may help to fill a knowledge gap as regards the functionality of CJS in Kenya, improve on justice delivery; and more specifically, shed light on the magnitude, categories and factors that influence dismissal of cases in Kenyan Courts.

Additionally the study findings may be used as a basis to carry out further research. Besides, the study will generate information and add to the body of relevant knowledge by providing critical information regarding dismissal of criminal cases in Kenyan Courts.

1.5 Scope and Limitations

This study is confined to investigating factors influencing dismissal of 430 criminal cases concluded by the Mavoko Law Court in the year 2013, alone, compared to 400 cases in 2012. There are only 4 Magistrate Courts at Mavoko Law Court which are just an iota compared with 200 Magistrate courts in whole country. Due to this geographical restriction and the sample size, the research did not generalize the study results to the whole country. The study was limited to the prosecution side of the case and not the defense. The study was also limited to three objectives; to find out whether corruption of witnesses influences dismissal of criminal cases, to assess the extent to which lengthy trials influence dismissal of criminal cases, and to establish how intimidation of witness during the trial of criminal cases influence dismissal of criminal cases. In addition, the study was limited to the principal Magistrate Courts only.

1.6 Definition of Key Terms and Concepts

Criminal case:

This term will be used to mean a matter brought before a court of law involving an act of offence for adjudication.

Deviance:

Behavior that violates social norms, including law

Criminal Justice System:

The term will be used to mean, government agencies responsible for social control. The agencies consist of the police, the courts and corrections.

Trial:

This term will be used to mean the process of adjudication.

Felonies:

The term will be used to mean serious offences which carry a penalty of three years imprisonment or more.

Law Enforcement Agencies:

The term will be used in this study to refer to the police, courts and the Prisons.

Evidence:

The term will be used to mean pivotal information given by witnesses about occurrences of crime(s), without which there can be no trial or justice process.

Intimidation of Witnesses:

The term will be used to mean physical violence, explicit or implicit threats of physical violence, death threats and property damage.

Case Dismissal

The term will be used to mean case dismissed under circumstances under which a case should otherwise be successfully prosecuted

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

These chapters provide an overview of the structure of the Criminal Justice System in Kenya and examination of the Kenyan Judicial Process. In addition, it will also review empirical information on factors that influence dismissal of criminal cases and relevant theories. The theories include theory of planned behavior, theory of reasoned action, social ecology theory and the due process model. The chapter also provides a conceptual framework

2.2 The Kenyan Judicial Process

Kenya's judicial system started in 1897 when the colonial government gave out the Crown regulations which marked the beginning of a legal system in Kenya. The premiere regulations were the East African Order in Council. This action literally established the judiciary in Kenya and the first Chief Justice of the Kenyan Judiciary, Sir Robert William Hamilton was appointed in 1906. During the colonial the office of the Chief Justice was a reserve of the colonizers. When Kenya attained independence in 1963 John Ainley the Chief Justice served until 1968 only to be replaced by another Briton Hon. Justice Dennis Farrel. The first Black Kenyan to occupy the office of the Chief Justice was the late Kitili Maluki Mwendwa who came into office in 1968. Sir James Wicks then took up the office and served until January 1982 when he was replaced by Sir Alfred Simpson.

Hon. Justice Fred Kwasi Apaloo served as Chief Justice in two countries. He was the Chief Justice of Ghana between 1977 and 1986. In Kenya, he served for a year until he was replaced by Hon. Abdul Majid Cockar who then occupied the office until his retirement from the Judiciary in 1997. Justice Cockar has served and continues to serve in various Judicial Commissions including the Commission to Probe into the Sale of Grand Regency since his retirement. Hon. Justice Zachaeus Richard Chesoni who was previously the Chairman of the Electoral Commission of Kenya, took over the office and served until his untimely death in 1999. He was replaced by Hon. Justice Chunga who resigned from the office in 2003 paving way for the appointment of the Hon. Justice J.E. Gicheru. The Hon. Justice Gicheru came to the helm of the Judiciary in 1982. After serving as a Judge

1982 and was replaced by Hon. Chief Justice Willy M Mutunga who was appointed in June 16, 2011 after an unprecedented public recruitment exercise.

According to the International Commission for Justice Kenya report ICJ (2005) ‘the existence of independent judiciary is at the heart of judicial system that guarantees human life in full conformity with international standards’. On the strengthening of judicial reforms in Kenya further states that ‘it is the obligation of every state to ensure that the judiciary is indeed an independent arm of the government’ It further adds that ‘while a claim can be made that the primary task of the justice sector is to deliver the rule of law, it should immediately be appreciated that various factors affect service delivery in our judicial systems’. Kameri (2011), on his part said; ‘for the rule of law to be realized, there must be suitable ‘application mechanisms’, including an independent and professional judiciary, easy access to litigation and reliable enforcement agencies’ he continues to say that the realization is dependent on access to power and economic resources, and this he explains ‘is why the rich and the powerful tend to have better access to the rule of law’. The Task Force on Judicial Reforms that was appointed as a result of a stakeholders’ meeting in 2009 identified weak administrative structures as lack of operational autonomy and independence of the judiciary as factors that undermine the effective administration of courts. (Mwanzia and Kanina, 2009).

2.3 The Structure of the Criminal Justice System

The criminal justice system refers to the three pillars of social control, i.e. Police, Courts and Corrections. According to Siegel (2007), these pillars form the Criminal Justice System and are responsible for law enforcement; i.e. Apprehension, adjudication, and correction of those charged with criminal offences.

According to Tapan (1960), the three pillars are interdependent. To illustrate this, Law courts usually deal with cases brought in by the police or rely on the police to conduct investigations that will help the courts dispense justice. On the other hand courts are dependent on prison and probation services to deter crime and correct behavior of offenders. However, interrelationships between the police, courts and correctional institutions are sometimes beset with inefficiency and failures, which

often lead to termination of Criminal cases. While courts are considered as "dumping ground" for arrested persons, correctional institutions serve as hiding place for the protection and patrol of law enforcement agencies. It's also the re-entry point for those released from correctional institutions to the community. However the CJC must ensure that all parts are integrated in order to achieve maximum efficiency.

According to Parsons (1950), the pillars are interconnected such that failure in one pillar produces a significant failure in the others. For example, if the police fail to bond witnesses, and/or conduct shoddy investigation, the courts will be obliged to dismiss the cases because of lack of or insufficient evidence. Wherever such cases are dismissed, the respective criminals return to the society and perhaps to commit more crimes. The society may even blame the courts for releasing the suspects but in the real sense it is the police who would have failed in their professional role.

2.3.1 The Police Service

The foundation of the Police Service was formed under National Police Service Act, 2011. In the constitution 2010, the National Police Service Commission (NPSC) is empowered to recruit officers for all branches of the police

According to the new act, 'all persons who were immediately before the commencement of this Act, officers or employees of the Kenya Police Force and the Administration Police Force, established under the Police Act [Cap. 84.] and the Administration Police Act [Cap. 85.] Respectively, including officers working with the Criminal Investigations Department shall upon commencement of this Act become members of the Service in accordance with the Constitution and this Act'. The Act continues to stipulate that. ' The Service shall be under the overall and independent command of the Inspector-General appointed in accordance with Article 245 of the Constitution and the provisions of this Act. (2) The Inspector-General may perform the functions or exercise the powers of the office in person or may delegate to an officers subordinate to him'

2.3.2 The Court System

The constitution 2010 is a new constitution in Kenya which for the first time provides for the separation of powers between the executive, legislative and judicial arms of government. Kenya's laws are inherited from the former colonial masters Britain but are modified to suit Kenyan conditions.

According to Chapter 10 of the constitution the system of courts is as follows it the Supreme Court, the Court of Appeal and the High Court. Next are special courts with jurisdiction over matters relating to employment and labor relations, and the environment and land? These special courts have the status of the High Court. It then establishes the following subordinate courts: magistrate's courts, Kadhi courts and courts martial. Further, the constitution allows the legislature to establish other subordinate courts. The Supreme Court has exclusive original jurisdiction over matters relating to the elections to the office of the president. Further, it has the power to issue advisory opinions on matters concerning county government. It also has appellate jurisdiction over appeals from the Court of Appeal. In turn, the Court of Appeal has jurisdiction to hear appeals from the High Court and other courts or tribunals. Government of Kenya (1985).

Magistrates' courts are established under the Magistrates' Courts Act. They are supervised and controlled by the Chief Justice. Section 3 of the Act establishes resident magistrates' courts with jurisdiction throughout Kenya. These courts are subordinate to the High Court, and are duly constituted when held by chief, senior principal, principal, senior resident and resident magistrates. They have jurisdiction over criminal and civil matters. In the case of criminal matters, the Criminal Procedure Code (chapter 75 of the Laws of Kenya) establishes the kinds of offences that may be tried by the different categories of subordinate courts, while reserving certain offences for the High Court. With respect to civil matters, the jurisdiction of resident magistrates' courts is limited to matters where the value of the subject matter in question does not exceed KES 500 000. (Chapter 75 of the Laws of Kenya). The resident magistrates are appointed by the Judicial Service Commission. Resident magistrates' courts have jurisdiction throughout the country but with limited power of appellate jurisdiction Government of Kenya (2010)

District magistrates' courts, established under section 8 of the Magistrates' Court Act, also have jurisdiction in criminal and civil proceedings. District magistrates are appointed by the Judicial Service Commission. In civil proceedings, section 9 provides that a district magistrates' court shall have and exercise jurisdiction and powers in proceedings of a civil nature where either the proceedings concern a claim under customary law, or the value of the subject matter in dispute does not exceed KES 5 000 (or KES 10 000 where the court is constituted by a district magistrate having power to hold a magistrates' court of the first class). District magistrates' courts are established for every administrative district but the Chief Justice may designate two or more districts as one district. As far as criminal proceedings are concerned, they exercise powers and jurisdiction as conferred on them by the Criminal Procedure Code or any other written law. In civil matters, the pecuniary jurisdiction and powers are enshrined in section 9 of the Magistrates' Courts Act. Only first class district magistrates' courts have limited appellate jurisdiction. **The courts are entrusted with the responsibility of solving controversies and determining the guilty or innocence of a party charged with the violation of a criminal law. Odegi Awuondo (1993) underscores the importance of a trial court. He observes that in law, the purpose of a court trial is to help determine guilt by way of hearing the case, calling witnesses, listening to mitigation and hence try to locate the alleged crime in the continuum of that action. Sometimes, the accused if not satisfied with the verdict, appeals to the higher courts'.**

At independence, the Kenyan parliament repealed colonial laws that were contrary to their values. Both inherited and post- independence legislation were administered by courts which were established by the Judicature Act. The new constitution of Kenya 2010 has made major changes in the structure of the Judiciary. The Supreme Court is the highest court with the mandate to interpret the constitution. The court is headed by the Chief Justice. Below this are; the High Court- which has original jurisdiction in serious crimes and hears appeals from lower courts; Resident Magistrate Courts- presided over by Resident magistrate, senior Resident Magistrate, Senior Principal Magistrate, Principal Magistrate and Chief Magistrate; District Magistrate courts have jurisdiction in Districts under which they operate. They are classified into first, second, and third classes. The

third class magistrate courts have now been abolished. Martial Court deals with cases in the military, Government of Kenya (2010)

To the ordinary citizen charged with crime, the experience of going to court can be confusing, frightening and frustrating. Courts follow legal rules and procedures that only lawyers, judges and magistrates fully understand. The court system is often intricate and complex. Offenders are frightened because they experience a loss of control over their destiny. The experience is frustrating because the court system does not always function as effectively as it should be. Delays therefore are inevitable. Delay has an element of bias; it is also arbitrary and discriminative. The delay is also procedural and human.

Connie Ngondi-Houghton,(2006) writing on access to justice in Kenya notes that. ‘The ruling class in Kenya has since independence used the rule of law in its struggle to balance the competing interests of the deeply rooted imperialist interests, the economic aspirations of the people in the context of extreme poverty and very high expectations, to meet the imperatives of a unified nations in the context of ethnic stratified society; to underpin its legitimacy and survival through the ideology of development; and above all to underscore and facilitate the primitive economic accumulation of the ruling class in a context where capital has been in the hands of foreigners and Asian immigrants’. This according to her is the basis of its discrimination against women and the vulnerable. She observes that’ the main challenges to desired reforms towards increased access to justice have been: poor domestication of international human rights norms; lack of political will; the public’s ignorance of rights and the law; lack of accessibility to public information; archaic laws, legal language and practice lagging behind social change; conflict between customary and formal law; extreme poverty and non-affordability of the legal services; impunity of law enforcement officers in their violation of the law; poor conditions of work for law enforcement agencies hence poor moral; poor management of law enforcement institutions; and inadequate physical infrastructure among others.

Connie (2006) observes that ‘in recent past accessing the formal judicial system for ordinary citizens has been a challenge as evidenced with the many unreported crimes and large backlog of cases in courts. Indeed the justice system is a continuum. It begins from points of entry where service of the system is sought, to the enforcement of end of case,

enforcement of judgment or the serving sentence. The idea of accessibility is broad and goes beyond physical accessibility of legal institutions to include affordability, cultural appropriateness such as language, social acceptability and relevance of applicable norms and processes, simplicity, convenience and friendliness of processes and agents of the law; fairness of treatment throughout the process and of outcomes; and timeliness and efficiency of delivery among others'. 'It is relevant to matters of language, dress, procedure, cost, physical accessibility, legal representation, sentencing, judicial legal development, impartiality, independence of judicial officers and general efficiency of the entire system' she posits. Only a small percentage of Kenyans seek the services of or interact with, and an even smaller percentage access justice through the formal system. Majority of the latter is the poor, women, children, and refugees. Connie acknowledges that 'all laws are in very complex archaic English, in small print, and have to be purchased'. This according to her 'limits peoples understanding of the law in a context where ignorance of the law is no defense. This also necessitates the use of interpreters with a frequency that creates ample occasion for misinterpretations and risks of injustice. The use of interpreters is often superfluous where all parties understand Kiswahili but the magistrates insist on conducting proceedings in English via interpreter'.

In self-assessment, the Kwach Report (1998) found that corruption; lack of accommodation, cumbersome laws, procedures and lack of training generally hampered the administration of justice. The report (1998) states that: 'The Kenyan judiciary has experienced in the recent past lengthy case delays and backlog, limited access by a population, laxity in security, lack of adequate accommodation, cumbersome laws and procedures questionable recruitment and promotion procedures and general lack of training, weak or nonexistence sanctions for unethical behavior and inequitable budget'. The report notes that 'the bulk of the woes facing the judiciary today revolve around judiciary budgetary allocation, which can never cover the basic needs of the judiciary'. Judges and other court personnel the report continues to say 'work under conditions that are not conducive to efficient administration of justice. Inadequate court facilities, shortage of basic equipment and lack of technology compound the situation. Due to lack of storage for both finalized and active case files, are often found heaped all over the

registries in no proper order'. The quality of justice that is meted out by the courts reflects the professional integrity and caliber of the kind of people who are appointed to the important office of a judge. Personal qualities of judges in matters of moral uprightness, professional honesty, and intellectual sharpness are crucial in winning to the judiciary the necessary respect by the public. It is important that members of the public must have confidence in the kind of people who administer justice and who are custodians of their constitutional rights, Government of Kenya (2010)

2.3.3 Prisons

Kenya Prisons Service is headed by the commissioner of prisons. It derives its mandate from the Prisons Act. According to the Act 'the Kenya Prisons Service functions are to contain and keep offenders in safe custody, rehabilitate and reform offenders, facilitate administration of justice and promote prisoners opportunities for social re-integration. To decongest the prisons, non-custodial sentences such as community service are used by courts as alternative to jail terms'.

The prison's Rapid Results Initiative (RRI) was launched in 2007 to harness team strength and client participation to speed up delivery of services within 100 days. The approach tackled large-scale, medium and long-term change efforts through a series of small-scale, results-producing and momentum-building initiatives. In 1911, the Kenya Prison Service was established under the Ministry of Home Affairs, Heritage and Sports. In 1917, the posts of Commissioner of Prisons and Assistant Commissioner of Prisons were created, and the control and management of prisons became the sole responsibility of the commissioner.

The 92 correctional institutions in Kenya include 89 prisons, two borstals; and one youth training centre. In 1911, 319 staff supervised 6,559 inmates. Since 2003, when president Kibaki came to power, prisons have undergone major reforms that saw television sets, computers and educational facilities. The prison service has also cultivated a good public image. Inmates now have access to television radio broadcasts. TV sets are fitted on walls of prison halls. Prisoners spend their evenings watching news and other programmes.

2.3.4 Section 87 (a) of the C.P.C.: Nolle Prosequi

The Office of Director of Public Prosecutions (ODPP) Kenya is the office, responsible for instituting and undertaking criminal proceedings against any person before any court (other than a court martial) in Kenya with respect of any offence alleged to have been committed Government of Kenya (2010). The current office holder is Keriako Tobiko. The acronym DPP had previously been used to define the Deputy Public Prosecutor, an office under the Attorney General in Kenya's previous Constitution when that office had prosecutorial powers. The establishment of the Office is in line with Kenya's Vision 2030, which the Government formulated (2008) as a long-term development blueprint for the country.

ODPP became an independent constitutional office from the Office of the Attorney General on July 1, 2011 under Article 157 (1) of the Constitution. The aim was to professionalize prosecution services in the process of creating confidence among citizens in the administration of justice. The office focuses on matters of criminal activities and exerts powers of prosecution on alleged culprits (other than court Martials). The Director of prosecutions may, in any criminal case, whether in the High Court or Subordinate court and at any stage of the case before verdict or judgment (whether judgment has been written or not but before it is pronounced) enter a nolle prosequi. He may do so orally (by stating in Court that he is entering a nolle prosequi under this section) or in writing. There upon the accused shall be at once be discharged in respect of the charge for which the nolle prosequi is entered.

This discharge shall not, however, operate as a bar to subsequent proceedings against him on account of the same facts. This power is delegated under section 82 of the Criminal Procedure Code and Legal Notice No. 106 of 1984 to the Solicitor General, Deputy Public Prosecutor, Assistant Deputy Public Prosecutor, Principal State Counsels and Provincial State Counsels. For clarity, there are some Provincial State Counsels who are either State Counsels I or State Counsels II. These are allowed to sign the Nolle Prosequi as Provincial State Counsels and not in their respective designations. (Constitution of Kenya 2010)

2.4 Factors Influencing Dismissal of Criminal Cases

2.4.1 Witness intimidation

According to Voruz, (2005) ‘Witness intimidation includes threats against a witness and victims of crimes’. This problem Voruz continues ‘strikes at the root of the criminal justice system since it denies critical evidence to police investigators and prosecutors, thus undermining the government’s ability to protect and represent citizens. Intimidation is known to occur in areas more typically associated with high rates of crime, such as inner cities, high-density population areas and those where co-operation between the community and police has traditionally been poor’. Offenders can create a general atmosphere of fear and non-cooperation with the Criminal Justice System such that while victims and witnesses of crime in the community may not be threatened directly, their fear of reprisals is such that they are discouraged from reporting crime and/or from giving evidence (Schiff, 2007). The present study intends to test the effect of this problem on dismissal of cases at mavoko Law Courts.

2.4.2 Lengthy Trial Process

Criminal case trials are known to generally take lengthy periods. In USA, Duggan, and Civile (1976) observes that many criminal trials take several months to conclude. They cite reasons such as sickness and uncooperative witness, and so forth. As such, both the complainant and defendant get exhausted and stressed with the process to a point they may abandon pursuit of justice. The result is that, criminal cases end up being terminated. In Kenya members of public have often complained about the lengthy trials occasioned by frequent court adjournments. This study is out to test the influence of this factor on dismissal of criminal cases in Kenyan courts with specific focus on Mavoko Law Courts.

2.4.3 In-efficiency of the Law Enforcement Agencies

In many countries, especially in the third world, investigating agencies have inadequate qualified officers to detect criminal incidences (Murray, 1997). Besides they have excessive workloads which end up impacting on the quality of investigation. In several countries, those responsible for investigations are affected by these constraints, affecting the quality of evidence adduced in court, hence prompting dismissal of cases. According

to Connie Ngondi-Houghton (2006), Management of CJS such as the Police, Judiciary and the Prisons jointly affect the efficiency of these institutions in the delivery of justice. She cited many court in-efficiencies, for example, in courts due to lack of basic technology, inadequate storage facilities for both finalized and active cases causing files to be heaped in registries with no proper order. This situation is likely to result to file misplacement. When files get misplaced, in the interest of justice, magistrates are constrained to adjourn cases. This sometimes annoys witnesses who may end up absconding in the subsequent hearing dates, hence leading to dismissal of cases. These amongst other in-efficiencies make the delivery of process cumbersome. This study is out to test how inefficiency of processes within the agencies of the CJS in Kenya influences dismissal of cases in court with specific focus on Mavoko Law Courts.

2.4.4 Corruption within the Agencies of Criminal Justice System

Mwaeke (2011) cited corruption within the agencies of the CJS that involved sharing of confidential court reports with criminals. This contributed to non-cooperation by witnesses during trial of criminal cases and led to amongst other things, termination of such cases in Kenyan Courts. This study assumes that corruption is likely to be one of the major factors that is responsible for dismissal of criminal in Kenyan Courts and intends to test the extent of the problem at the Mavoko Law Courts.

2.4.5 Lack of Modern Technology and Basic equipment

Kwach Report (1998) reported ‘that corruption, inadequate court facilities, shortage of basic equipment and lack of technology affect the functioning of the whole CJS’. The report continues that ‘due to lack of storage for both finalized and active case files, are often found heaped all over the registries in no proper order and sometimes get misplaced for a long time, hence, inconveniencing the trial process through frequent adjournments. Inadequate technology occasioned delay in the processing expert reports’..

2.5 Theoretical Framework

The current study will be based on the outlined theories.

2.5.1 Theory of Planned Behavior

The theory of planned behavior was first proposed by Ajzen and Fishbein in 1980. The theory focuses on behavior as a product of cognitive processing of attitudes, perceptions and beliefs, hence relevant in explaining non-cooperative behavior by witnesses due to intimidation. The basic tenet of this theory is that, 'human behavior is guided by three kinds of basic considerations; behavioral beliefs, normative beliefs and control beliefs. In their respective aggregates, behavioral beliefs produce a favorable or unfavorable "attitude toward the behavior, while normative beliefs result in subjective norm and control beliefs gives rise to "perceived behavioral control' (Ajzen, 1991).

Ajzen, (2002) says that 'in combination attitude toward the behavior, subjective norm and perceived behavioral control leads to the formation of a behavioral intention' . In particular, 'perceived behavioral control is presumed to not only affect actual behavior directly, but also affect it indirectly through behavioral intention' (Zimmerman et al., 2005). Normative beliefs are according to the theorists; ' individual's positive or negative evaluations of self-performance of the particular behavior. The concept is the degree to which performance of the behavior is positively or negatively valued. It is determined by the total set of accessible behavioral beliefs linking the behavior to various outcomes and other attributes'. 'Control beliefs are individual's beliefs about the presence of factors that may facilitate or impede performance of the behavior, these are in most cases linked to the intimidation of the witnesses' (Ajzen. 2001). The concept of perceived behavioral control is conceptually related to self-efficacy.

The Theory' has thus been used, to explain attitudes and behavior (in this case non-cooperative behavior by witnesses attributed to intimidation), or even to predict such behavior (Friedman und Harvey, 1986). This theory is used to explain human behavior and or identifying change strategies Ajzen, 2002).. Most importantly, this theory focuses on behavior as a product of cognitive processing of attitudes, perceptions and beliefs.

According to this theory, therefore. Programs and Policies that aim to transform already developed attitudes, perceptions, perceived norms and in making change will have better results other than intimidation of witnesses.

2.5.2 Theory of Reasoned Action

The theory is somewhat related to the Theory of Planned Action. The key application of this theory is prediction of behavioral intention. The subsequent separation of behavioral intention from behavior allows for explanation of limiting factors on attitudinal influence (Ajzen, 1980). This theory suggests that, 'a person's behavioral intention depends on the person's attitude about the behavior and subjective norms; hence function of both attitudes towards behavior and subjective norm towards that behavior, which has been found to predict actual behavior'.

The theory has two major basic tenets, namely; that there are determinants of specific behavior intentions which result in specific behavior in this case non-cooperation by witnesses, and that these determinants of behavior give guidelines for intervention, in order to transform that behavior. Determinants of non-cooperative behavior are likely to be the contributory factors that this study is out to unveil. According to the theory Behavioral intent is influenced by three primary factors; Attitude toward the behavior, social pressure to perform or not to perform the behavior. This theory further suggests that a specific behavior (in this case, non-cooperation by witnesses) can be predicted by specific perceptions (such as mistrust of Law Enforcement and the Judicial System) to contribute to non-cooperative behavior (Werner. 2004). Theory of Reasoned Action hence, best explains the back ground forces that shape the actions of witnesses or the reason why the witnesses behave the way they do, as explained by the determinants of behavior with regards to compelling forces such as intimidations.

2.5.3 Social Ecology Theory

Though this theory explains crime causation, this study adopts it to explain reasons behind the dismissal of the criminal cases, since it sets the conditions and perceptions of behavior that resonate with the theories of Planned and Reasoned Actions. The basic tenet of this theory is that, crime thrives in an environment of social disorganization such as; weak social controls, siege mentality, mistrust of social control institutions, weak neighborhood cohesiveness, neighborhood fear of crime and unemployment amongst others. Perception of crime and victimization produces neighborhood fear. Such is an ecology or environment in the victims of crime and witnesses find themselves in (Siegel. 2007)

This study therefore adopted Social Ecology Theory to explain the relationship between the environment of social disorganization, crime and intimidation of witnesses that may result to non-cooperation by witnesses during trial of criminal cases which could result to the dismissal of these cases. In such an ecology or environment there is Mistrust of the institutions of social control, weak neighborhood cohesiveness, neighborhood fear and siege mentality no witness is likely to come forward to give evidence in support of any criminal justice process, hence non-cooperation by witnesses. Social Ecology Theory therefore resonates with the Theories of Planned Behavior and Reasoned and thus setting specific conditions or perceptions of behavior (in this case due to the intimidation of the witnesses. When, for instance a witness is lynched in public and the police take no action, the community will likely develop mistrust and have reasons to fear.

Residents will always tell others of their previous personal involvement with victimization, spreading word that neighborhood is getting dangerous. Victimization of witnesses and perceptions that the witnesses will not get any help or support from the agencies of Criminal Justice System is likely to trigger behavioral beliefs, attitudes and responses against any cooperation with such institutions. This theory will also be therefore very useful in influencing the nature of policies that must be formed to avert intimidation of the witnesses.

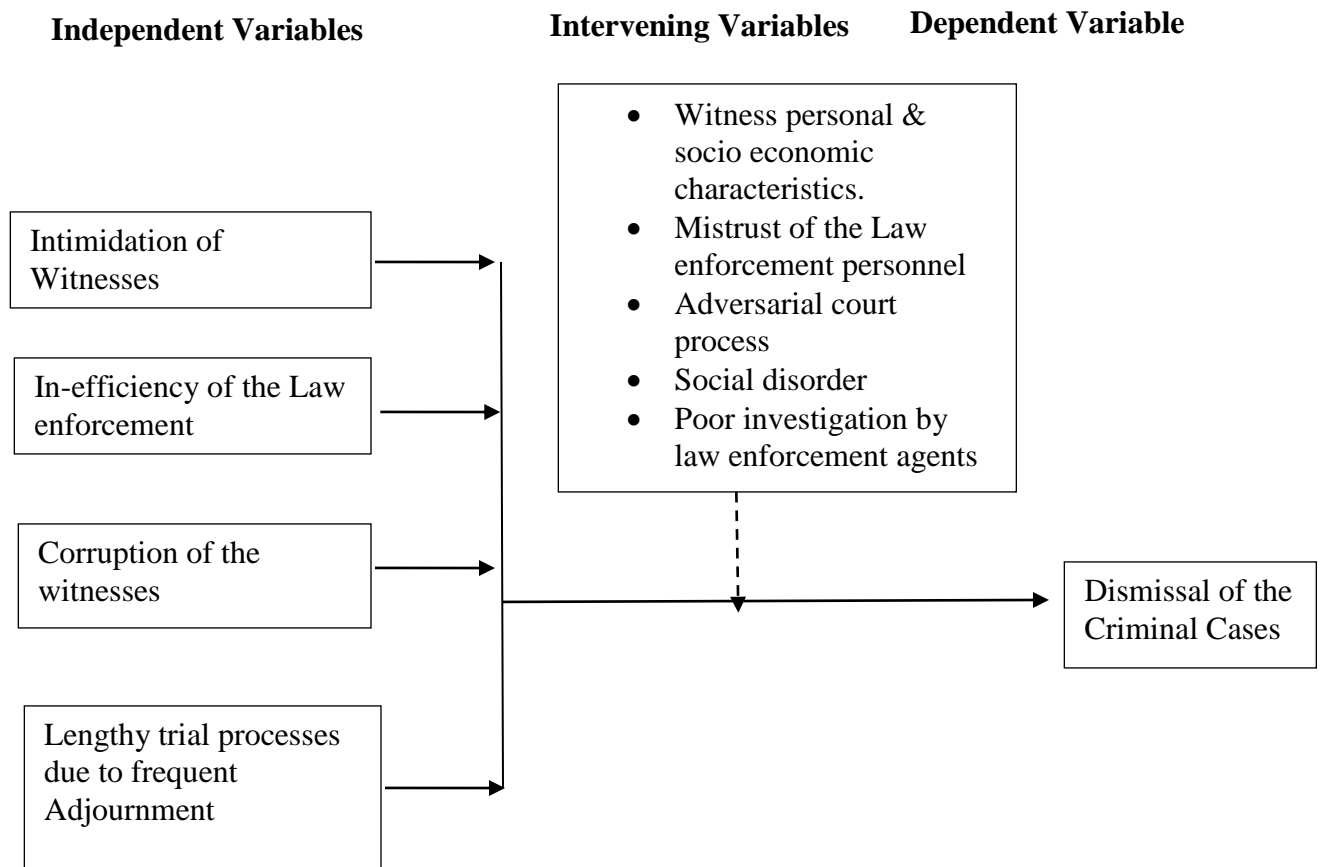
2.5.4 Assembly Line Theory

Herbert Packer's (1964) crime control model objective is to abuse criminal freedom and secure citizens and property. This aim is efficiently achieved by screening suspects, determining guilt and appropriate sanctions. The process depends upon high number of arrests and convictions that emphasizes speed and finality. Provided that no cluttering occurs to delay movement, then each case moves to successful resolution in a routine manner. It is administrative and managerial without review or second-guessing or fear of veto. By relying on decisions of police and prosecutor to investigate and release "probably guilty suspects," a presumption of guilt" permits bulk -processing. All those charged should be convicted since they are "probably guilty." Hence a summary trial process is used to discover "factual truth." It advances a "green light" administrative theory.

2.6 Conceptual Framework

A Conceptual Framework displays the relationship between the dependent and independent variables; the dependent variables in this study is dismissal of the criminal cases while the independent variables are intimidation of witnesses, in-efficiency of the Law enforcement, corruption of the witnesses and lengthy trial processes due to frequent adjournment. The intervening variables include witness personal and socio-economic characteristics, social disorganisation, police attitude towards the behaviour of criminals, mistrust of Law enforcement personnel while the moderating variables are Adversarial Court System, the police Act 2011. It is thought that corruption of witnesses may lead to dismissal of cases; lengthy trial process due to adjournment may also lead to dismissal of cases. The interplay of the independent variables, moderating and intervening variables may influence the outcome of the dependent variable. The relationship of these variables is presented in the conceptual framework shown in figure 2.1 below.

Figure 2.1 Conceptual Framework



CHAPTER THREE: METHODOLOGY

3.1 Introduction

The chapter describes the Research Design used to meet the objectives of the study. The thematic areas include the research setting, sampling and sampling design, data collection methods and instruments, units of observation, units of analysis and data analysis techniques.

3.2 Research Setting

The study was based at Mavoko Law courts in Arthi River Sub-county, Machakos County. Mavoko Law Court station was chosen since it's a major court that handles over 1000 cases per year. The cases are from within and the neighboring counties including the populous Nairobi and Kajiado County. It tries all criminal cases ranging from minor crimes like assaults to very serious crimes such as robbery.

For efficient administration of Justice, Mavoko Law Courts are classified into three tiers, numbered: The first segment is the Principal Magistrate Courts (PMC), which tries all felonies except murder and treason. However, the court has a lesser jurisdiction than the other higher tier courts in terms of awarding of sentence. The second tier is the Senior Resident Magistrates Court (SRM), Presided by a Senior Resident Magistrate. Its jurisdiction includes trial of all felonies except Murder and Treason. It tries cases such as robbery with violence cases, rape cases etc. It however has a lesser jurisdiction in awarding of punishment compared to other higher tiers. These courts are five in number at the Mavoko Courts. The third tier is the Resident Magistrates Court (RM), Presided over by a Resident Magistrate. This court tries less serious felonies and misdemeanors e.g. theft cases, assaults, trespass, being in possession of traditional liquor among others. The third tier is the resident magistrate court (RM), presided over by a resident magistrate. This court tries less serious felony and misdemeanor for example theft cases, being in possession of illegal liquor among others. These courts are four in number. In terms of staffing, the principle magistrate is administratively in charge of all other magistrates. In total Mavoko Law Courts has a total of four magistrates.

3.3 Research Design

The study used a descriptive survey. This method was preferred because it allows for generalization of research findings. The Survey method is descriptive in nature with the aim of describing the phenomena as it occurs. A survey was also the most applicable in the study as it facilitated comparison of data from the correspondents who form a broad category. This design has been used for similar studies in Kenya (Nyambati, 2001).

3.4 Unit of Observation and Unit of Analysis

The unit of observation was the Mavoko Criminal Courts. The units of analysis were the court files and registers, police files, and victims.

3.5 Target Population

The study targeted the 430 dismissed cases from the Mavoko law courts.

Table 3.1 Sample Frame of the Selected Cases

| Reason | Population | Sample | Percent (%) |
|---------------------------|------------|-----------|-------------|
| Lack of evidence | 140 | 28 | 20 |
| Conflicting/contradictory | 120 | 24 | 20 |
| Insufficient evidence | 170 | 34 | 20 |
| Total | 430 | 86 | 100 |

Source: (Mavoko law courts, 2013)

3.6 Sampling Procedure

The study consisted a sample size of 86 that were systematically selected cases from a list of 430 dismissed cases according to the Mavoko law court register 2013. The cases were dismissed in accordance with Section 202 C.P.C (lack of evidence), Section 215 C.P.C (insufficient evidence) and Section 210 C.P.C (conflicting evidence). According to Mugenda and Mugenda (2003) a sample of between 10% and 30% of a population is sufficient for a study. In this study therefore, 20% (86) of the population was chosen. The cases included in this study were selected using simple random technique where a list of all cases in the different categories was obtained, assigned numbers, then numbers written in pieces of papers folded and put in a container then picked randomly. The randomly

picked cases were then interviewed via telephone calls, questionnaires were then administered to those that were reachable.

3.7 Sources of Data

Secondary and Primary sources of data were utilized. Secondary data was collected from Court files and Register(s) for the year 2013. Primary data was sourced from 86 victims whose cases were dismissed in the year 2013 and from 10 Key Informants who included Magistrates, Advocates, Prosecutors, Police Investigating officers, and Court Clerks.

3.8 Data Collection Methods and Tools

Interviews and Questionnaires were used to collect primary data. The advantage of using the questionnaire method is that saves time, is economical and easier to administer (Kothari, 2003). Structured interviews helped to gain useful insights during interview situations. Semi-structured questionnaires were administered to the main respondents who were the witnesses. The questionnaire had a short introductory part with easy questions in order to put the respondents in a relaxed and less suspicious mood. This was followed by questions containing important variables which were put forward to the respondent. These were constructed in a simple and clear language in order to avoid ambiguities.

Interview guides was developed to assist during interviews with the key informants namely Magistrates, Advocates, Court Prosecutors, Police investigation officers and Court clerks. It employed both structured and unstructured questions. Structured or closed ended questions are those which gave respondents a limited number of answers from which to choose from. Unstructured or open ended questions are those that give the respondents the freedom to decide on the form, detail and length of their answers. These helped to gain more insight and knowledge to the study phenomenon some of which was not anticipated, from the respondents.

3.9 Data Analysis

This study employed descriptive statistics to analyze the data obtained. The researcher ensured that all questionnaires are completely answered. The information was categorized in topics. The Statistical Package for Social Sciences will was used for analysis of data

(SPSS). Descriptive analysis for Percentages and frequency distributions were used. Qualitative data was coded and organized into themes and will use description of behavior and context in which it occurs. Quantitative data will use percentage (%) means frequency. Qualitative data was partly be used to generate quantitative data.

3.10 Ethical Considerations

Dismissal of the criminal cases in Kenyan courts remains both a disturbing and emotive issue to general population and has placed the criminal justice systems in an awkward situation. Hence the need to ensure that respondents and any other person volunteering information about the Country's judicial process is accorded protection, safety and confidentiality during the study. Although the questionnaires have spaces for respondents to identify themselves, it is their prerogative to insert his or her name or not. If one decides to insert his/her name it is only valid for the purposes of processing and no other purpose whatsoever. Respondents were also given the freedom to choose whether or not to participate. Where the respondents had no capacity and freedom to make such choices Caretakers and guardians were consulted.

CHAPTER FOUR
DATA ANALYSIS, PRESENTATION AND INTERPREATION

4.1 Introduction

This study investigated factors influencing dismissal of criminal cases in Kenyan courts using Mavoko law courts as the Case study. The chapter analyses data using descriptive statistics. The results are presented in order of the objectives that is; to find out whether corruption of witnesses influences dismissal of criminal cases, to assess the extent to which lengthy trials influence dismissal of criminal cases, and to establish how intimidation of witness during the trial of criminal cases influence dismissal of criminal cases.. The study involved the collection of data through the use of questionnaires and a face to face interview Telephone interviews were later used to make clarifications from Key Informants during data coding.

4.2 Response Rate

Out of the 86 questionnaires that were issued, 70 were returned. Out of the returned questionnaire, only 56 were fully filled and merited inclusion in the study. This represented a response rate of 65%. The response rate was considered adequate.

Table 4.1 Response Rate

| Household Heads | Frequency (n) | Percentage (%) |
|------------------------|----------------------|-----------------------|
| Spoilt | 14 | 35 |
| Valid | 56 | 65 |
| TOTAL | 86 | 100 |

Source: Field findings

Table 4.1 illustrates that out of a total of 86 which were issued 70 were returned out of which fourteen were considered spoilt on account of lack of answers to some questions, leaving 56 usable responses. Based on the total number of responses received the response rate was 65%, which compared well with other previous empirical studies where the average response rate was 50% and was considered appropriate.

4.3 Characteristics of the Respondents

This section described the basic characteristics of the respondents included in the study and showed how and why they were appropriate as study samples.

4.3.1 Gender of Respondents

The study looked into the gender of the respondents in order to establish whether gender had a significant effect on the dismissal of cases. The responses are presented in Table 4. 3 below

Table 4.2 Gender of Respondents

| Gender of the respondents | Frequency (n) | Percentage (%) |
|----------------------------------|----------------------|-----------------------|
| Male | 33 | 58.93 |
| Female | 23 | 41.07 |
| TOTAL | 56 | 100.00 |

Source: (Field findings, 2016)

Table 4.3 illustrates that the respondents were 23(41%) female and 33(59%) male. This study finding implies that the majority of the respondents were men and that the majority of criminal cases involved men. However there is a significant rise in women participants in criminal cases.

The concept of presumption of innocence of accused as well As detained persons is based on the rather obvious fact that, it is the courts that have been empowered to settle disputes among Citizens and disputes between the state and the citizens. Until a court of law finds any person guilty or unless, and until any person pleads guilty before such court, that person shall be presumed innocent and is entitled to be treated as such.

4.3.2 Marital Status

The respondents were required to state their marital status. The objective was to find out if there was a relationship between the marital status and criminal cases at Mavoko law courts. Table 4.3 shows the data collected;

Table 4.3 Marital Status

| Marital Status | Frequency(n) | Percentage (%) |
|-----------------------|---------------------|-----------------------|
| Single | 13 | 23.21 |
| Married | 32 | 57.14 |
| Divorced | 11 | 19.64 |
| TOTAL | 56 | 100 |

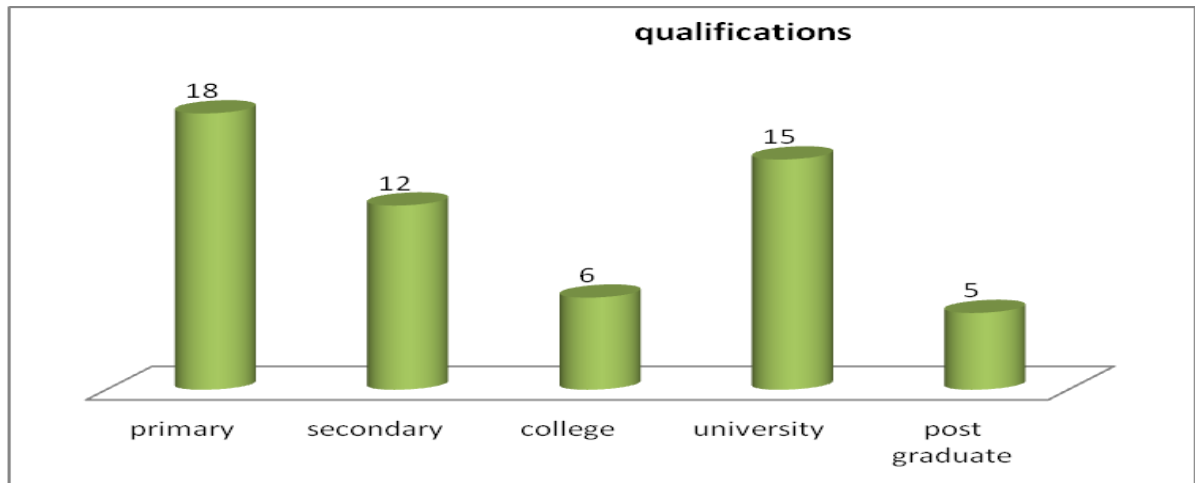
Source: (Field findings, 2016)

According to table 4.3 the highest number of respondents was that married 32 (57%), this was followed by the single 13 (23%), and that those who were divorced were 11 (20%)

4.3.3 Academic Qualifications of the Respondents

The study sought to find out the qualifications of the respondents.

Figure 4. 1 Academic Qualification of the respondent (N= 56)



According to figure 4.1 18(32%) were primary school dropouts followed by 15(27%) university graduates. Next were secondary school leavers at 12(21%). Those who were college graduates were 6(11%) post graduated were 5(10%) of the respondents. Although academic qualifications are more or less distributed across academic levels, the emphasis on primary school drop outs implies that low levels of academic qualifications are related to crime.

4.3.4 Age of the Respondents

The study sought to find out the age of the respondents. The responses are presented in the Table 4.4 below;

Table 4.4 Age of the Respondents

| Age of the respondent | Frequency (n) | Percentage (%) |
|------------------------------|----------------------|-----------------------|
| 18-24 years | 17 | 30.36 |
| 25-30 years | 22 | 39.29 |
| 31-35years | 10 | 17.86 |
| 36-40years | 2 | 3.57 |
| Above 41years | 5 | 8.93 |
| TOTAL | 56 | 100.00 |

Source: (Field findings, 2016)

According to table 4.4 the highest number of respondents were those of the age bracket of 25-30 with 39%, this was followed by the age between 18-24 years at 30%, and that of 31-35 years at 18%, while the least was those 36-40 years with 4%. Those over 40 years were 9%. The fact that about 87 percent of the respondents were aged between 18 and 35 years.

4.3.5 Religion

The study sought to find out the religious diversity of the respondents. The following responses were recorded.

Table 4.5 Religion

| Religion | Frequency (n) | Percentage (%) |
|-----------------|----------------------|-----------------------|
| Christian | 39 | 69.64 |
| Muslim | 11 | 19.64 |
| Hindu | 0 | 0.00 |
| Others | 6 | 10.71 |
| TOTAL | 56 | 100.00 |

Source: (Field findings, 2016)

Table 4.5 illustrates that the majority 39 (70%) were Christian while 11 (20%) were Muslim. According to the study findings 6 (10%) belonged to other religions while none was Hindu. Religious differences can either be a source of creativity and enlarged perspectives, or they can be source of difficulties and criminality. There is however no literature to support the finding that religion could be closely related to crime and dismissal of court cases.

4.3.6 Employment

The study sought to find out the employment status of the respondents. The following responses were recorded.

Table 4.6 Employment

| Response on Employment | Frequency (n) | Percentage (%) |
|-------------------------------|----------------------|-----------------------|
| Yes | 31 | 56.00 |
| No | 15 | 44.00 |
| TOTAL | 56 | 100.00 |

Source: (Field findings, 2016)

Table 4.6 illustrates that the majority 31 (56%) were unemployed while 15 (44%) agreed that they were in employment. According to the study findings there is reason to belief that involvement in crime was due to unemployment.

4.4 Intimidation of the Witnesses on Case Dismissal

Objective one of the study sought to establish the influence of the intimidation of the witness on the dismissal of the criminal cases, the data related to this objective are presented in the following sections

4.4.1 Aspects of Witness Intimidations

The researcher sought to establish from the respondents on the various aspects of the witness intimidations, the data collected are presented in the Table below 4.8 (SD = Strongly Disagree, D= Disagree, N= Neutral, A= Agree, SA= Strongly Agree)

Table 4.7 Factors influencing Witness Intimidation

| Statement | SA | A | N | D | SD | Total | | Mean |
|--|----|----|---|----|----|---------|----|------|
| | | | | | | Percent | N | |
| Intimidation denies critical evidence to police investigators and prosecutors | 9 | 11 | 7 | 17 | 12 | 100 | 56 | 4 |
| Its undermines the government's ability to protect and represent citizens | 0 | 6 | 4 | 18 | 27 | 100 | 56 | 3.9 |
| Intimidation is known to occur in areas more typically associated with high rates of crime | 0 | 3 | 0 | 13 | 40 | 100 | 56 | 2.9 |
| Offenders can create a general atmosphere of fear and non-cooperation with the Criminal Justice System | 0 | 4 | 3 | 8 | 41 | 100 | 56 | 3.9 |
| Intimidation discourages victims from reporting crime and from giving evidence | 0 | 0 | 3 | 14 | 39 | 100 | 56 | 2.7 |

Table 4.8 above shows that majority of the respondents agreed that intimidation denies critical evidence to police investigators and prosecutors as was shown by a mean score of 4.0, others also reported that Offenders can create a general atmosphere of fear and non-cooperation with the Criminal Justice System as was shown by a mean score of 3.9, others also agreed that intimidation undermines the government's ability to protect and represent citizens in the judicial systems as was shown by a mean score of 3.9. A few of the respondents also maintained that intimidation is known to occur in areas more typically associated with high rates of crime and that intimidation discourages victims from reporting crime and from giving evidence these were shown by a mean score of 2.9 and 2.7 respectively. This findings are further corroborated with the findings from a majority of key informants who opined that intimidation of witnesses is rife within the criminal justice system. Key Informants; Magistrates, Prosecutors, Court Clerks, Investigators and Advocates interviewed were categorical that witness intimidation often affects the quality of evidence presented in court since they can alter their testimonies or fail to turn up for hearings leading to stalling or/and dismissal of cases for lack of sufficient evidence. In a telephone interview, a key informant said;

Sometimes our hands are tied, we really have to go by the law, if the prosecutor brings a weak case, we are forced to dismiss on the basis of the evidence adduced before us.

By implications, these findings reveals that intimidation denies critical evidence to police investigators and prosecutors, undermines the government’s ability to protect and represent citizens, intimidation is known to occur in areas more typically associated with high rates of crime, offenders can create a general atmosphere of fear and non-cooperation with the Criminal Justice System and that intimidation discourages victims from reporting crime and from giving evidence.

An interview with the Court magistrates also revealed that intimidation includes threats against a witness and victims of crimes. These findings echoed by (Voruz, 2005) who alludes that the problem of intimidations problem strikes at the root of the criminal justice system since it denies critical evidence to police investigators and prosecutors, thus undermining the government’s ability to protect and represent citizens.

4.4.2 Judicial System and Protection of Witnesses

The study sought to ascertain from the respondents on whether judicial system has guaranteed human life in full conformity with the international standards with regard to the protection of witnesses from intimidation, data related are presented below;

Table 4. 8 Judicial System and protection of Witnesses

| Response on Judicial System and Witness protection | Frequency (n) | Percentage (%) |
|---|----------------------|-----------------------|
| Strongly Agree | 6 | 10.7 |
| Agree | 9 | 16.0 |
| Neutral | 7 | 12.5 |
| Disagree | 16 | 28.5 |
| Strongly Disagree | 18 | 32.1 |
| TOTAL | 56 | 100.00 |

Source: (Field findings, 2016)

Table 4.9 above shows that 18 (32.1%) Strongly disagreed, 16 (28.5%) disagreed, 9 (16.0%) agreed, 7 (12.5%) were neutral while 6 (10.7%) of the respondents strongly disagreed that judicial system has guaranteed human life in full conformity with the

international standards with regard to the protection of witnesses from intimidation. These findings therefore implies that judicial system has not guaranteed human life in full conformity with the international standards with regard to the protection of witnesses from intimidation based on the above revelations.

An in depth interview with a court advocate revealed that the aim of the judicial court aim is to professionalize prosecution services in the process of creating confidence among citizens in the administration of justice, these findings however contradicts those from the literature reviewed that Director of Public Prosecutions take over the conduct of criminal proceedings and he may tell him to offer no evidence. In the exercise of these powers, he is not subject to direction by his ministerial colleagues or to the control and supervision of the courts. By implication, the judicial system as practiced, does not guarantee human life and by implication would account for dismissal of certain cases without due consideration of the process.

4.4.3 Witness intimidation and Service Delivery

The study sought to ascertain from the respondents on whether Witness intimidation affects Service Delivery with regard to the judicial processes, data related are presented below.

Table 4.9 Witness intimidation and Service Delivery

| Response on Witness intimidation and Service delivery | Frequency (n) | Percentage (%) |
|--|----------------------|-----------------------|
| yes | 46 | 82.1 |
| No | 10 | 17.8 |
| TOTAL | 56 | 100.00 |

Source: (Field findings, 2016)

Table 4.10 above reveals that majority 46 (82%) of the respondents were of the opinion that Witness intimidation affects Service Delivery with regard to the judicial processes, only 10 (18%) of them were not of the same opinion. These findings are further supported by assertions from key informant interviews that suggests that witness intimidation may

account for dismissal of cases; both from the prosecutor and the accused. From the findings imply that Witness intimidation affects Service Delivery with regard to the judicial processes.

4.4.4 Initiatives to Curb Intimidations on Witnesses

The study sought to ascertain from the respondents on the initiatives that would help curb intimidation of witnesses in Kenya, data related are presented in the table Overleaf:

Table 4.10 Initiatives to curb intimidations on witnesses

| Anti-Witness intimidation Initiatives | SA | A | N | D | SD | Total | | Mean |
|--|----|----|---|----|----|---------|----|------|
| | | | | | | Percent | N | |
| Having suitable 'application mechanisms | 19 | 13 | 6 | 10 | 8 | 100 | 56 | 4.1 |
| Having in place independent and professional judiciary | 26 | 13 | 4 | 4 | 7 | 100 | 56 | 3.7 |
| Easy access to litigation | 31 | 10 | 1 | 8 | 6 | 100 | 56 | 3.8 |
| Having a reliable enforcement agencies | 33 | 11 | 3 | 9 | 0 | 100 | 56 | 2.8 |
| Access to power and economic resources | 0 | 0 | 3 | 14 | 39 | 100 | 56 | 3.6 |

Source: (Field findings, 2016)

Table 4.11 above reveal that majority of the respondents strongly agreed that having suitable application mechanisms would help reduce witness intimidations as was shown by a mean score of 4.10, further others also agreed that Having a reliable enforcement agencies reduce witness intimidations as was shown by a mean score of 2.89, also a good number agreed that Having in place independent and professional judiciary, Easy access to litigation and Access to power and economic resources would help reduce witness intimidations as was shown by a mean score of 3.79, 3.87 and 3.69 respectively. These findings are supported by the interviews from key informants, in an interview, a discussant said;

Our biggest problem is lack of adherence to the constitution that guarantees witness protection. Enforcing a mechanism that would ensure witness protection would not give room for the need for the witnesses to withdraw from a case and the consequent dismissal would not materialize.

By implication having suitable application mechanisms, having in place independent and professional judiciary, Easy access to litigation, having a reliable enforcement agencies and access to power and economic resources would help reduce witness intimidations within the court process. An interview with the Court prosecutor revealed that the court necessitates the use of interpreters with a frequency that creates ample occasion for misinterpretations and risks of injustice. Connie (2006) observes that in recent past accessing the formal judicial system for ordinary citizens has been a challenge as evidenced with the many unreported crimes and large backlog of cases in courts but maintained that reforms have been initiated.

4.4.5 Individual Factors on Witness Intimidation

The study sought to ascertain from the respondents on individual factors that can promote witness intimidation, data related are presented in the table Overleaf:

Table 4. 11 Individual Factors on Witness Intimidation

| Individual factors on intimidation | Frequency (n) | Percentage (%) |
|---|----------------------|-----------------------|
| Economic factors | 51 | 91.0 |
| Level of education | 44 | 78.5 |
| Social factors | 39 | 69.6 |
| Gender of the witness | 38 | 67.8 |
| Age of the witness | 43 | 76.7 |
| Political affiliations | 22 | 39.2 |
| Ethnicity | 12 | 21.4 |

Source: (Field findings, 2016)

Table 4.12 above shows that majority 51 (91%) of the respondents reported that Economic factors can promote witness intimidation, 44(78.57%) Level of education, 39(69.64%) Social factors, 38(67.86%) gender of the witness, 43(76.79%) Age of the witness, 22 (39.29%) Political affiliations, while 12 (21.43%) reported ethnicity. This findings were further supported by revelations from the key informants, it was revealed that individual factors do influence case dismissal, an individual who has low level of education may not interpret the law efficiently and can easily be duped by unscrupulous lawyers. By implication, economic factors, level of education, social factors, and gender of the witness, age of the witness, political affiliations and ethnicity are among individual factors promoting witness intimidations.

These findings were echoed by the report from the police investigation officer who in an interviewed maintained that susceptibility of persons to intimidations were subject to varied factors which were demographic, the officer mentioned socio economic status, age and gender as major components that attributed mostly to possibility of intimidation among the witnesses. From the literature reviewed (Schiff, 2007) maintained that Witnesses of crime in the community may not be threatened directly, their fear of reprisals is such that they are discouraged from reporting crime and/or from giving evidence.

4.4.6 Court related Factors on Witness Intimidations

The study sought to establish from the respondents the extent to which the following Court related factors; Weak administrative structures, Lack of operational Autonomy and lack of independence of the Judiciary promote intimidation of witnesses, the related data are presented in table 4.13 below:

Table 4. 12 Court related factors on Witness Intimidations

| Response | Frequency (n) | Percentage (%) |
|-------------------|----------------------|-----------------------|
| Very large extent | 32 | 57.1 |
| Large extent | 12 | 21.4 |
| Moderate extent | 4 | 7.1 |
| Less extent | 5 | 8.9 |
| Very less extent | 3 | 5.3 |
| TOTAL | 56 | 100 |

Table 4.13 above shows that majority 32 (57%) of the respondents agreed to a very large extent that Weak administrative structures, Lack of operational Autonomy and lack of independence of the Judiciary promote intimidation of witnesses, 12 (21.43%) reported Large extent, 5 (8.93%) Less extent, 4 (7.14%) Moderate extent, while 3 (5.36%) reported Very less extent. These findings therefore implies that Weak administrative structures, Lack of operational Autonomy and lack of independence of the Judiciary promote intimidation of witnesses.

4.5 Lengthy Trials on Case Dismissal

Objective two of the study sought to establish the influence of the lengthy trials on the dismissal of the criminal cases, the data related to this objective are presented in the following sections

4.5.1 Factors Promoting Lengthy Trials

The study sought to ascertain from the respondents on the Factors Promoting Lengthy Trials, data related are presented in table 4.14 below:

Table 4.13 Factors Promoting Lengthy Trials

| Information | Frequency (n) | Percentage (%) |
|---|----------------------|-----------------------|
| Failure by the police to Bond witness | 34 | 60.7 |
| Shoddy investigations | 43 | 76.7 |
| Lack of sufficient evidence | 26 | 46.4 |
| Delays by Court to dispense Justice | 41 | 73.2 |
| Probation services | 39 | 69.6 |
| Ineffective law enforcement agencies | 32 | 57.1 |
| Failure by the police on their professional roles | 43 | 76.7 |
| Courts follow legal rules and procedures than only professionals can understand | 31 | 55.3 |
| The court system is often intricate and complex | 33 | 58.9 |
| lack of basic technology | 12 | 21.4 |
| in-adequate storage facilities for both finalized and active cases causing files to be heaped in registries | | |
| with no proper order | 19 | 33.9 |
| file misplacement | 37 | 66.0 |
| witnesses who may end up absconding in the subsequent hearing dates | 41 | 73.2 |

Source: (Field findings, 2016)

From the table 4.13 above, majority of the respondents reported 43 (76.7%) reported Shoddy investigations as a court related factor promoting lengthy trials, 43 (76.7%) also reported failure by the police on their professional roles, 34 (60.7%) failure by the police to Bond witness, 26 (46.4%) lack of sufficient evidence, 41 (73.2%) delays by Court to dispense Justice, 39 (69.64%) probation services, 32 (57.1%) ineffective law enforcement agencies, 31 (55.3%) Courts follow legal rules and procedures than only professionals can

understand, 33 (58.9%) the court system is often intricate and complex, 12 (21.4%) lack of basic technology, 19 (33.9%) no proper order, 37 (66.0%) file misplacement, while 41 (73.2%) reported witnesses who may end up absconding in the subsequent hearing dates as among factors promoting lengthy trials. A telephone conversation by a key informant, a discussant said;

I have an issue with our prosecutors, time and again we have recommended better training for the prosecutors but that has not happened, a case fails right at the investigation stage, if investigations are poorly done, then most likely, the case will fail.

Another discussant opined that delayed trial accounts for cases dismissal, witness fatigue is highly likely in a trial that has taken unnecessarily long. By implication, failure by the police to Bond witness, shoddy investigations, lack of sufficient evidence, delays by court to dispense Justice, probation services, ineffective law enforcement agencies, failure by the police on their professional roles, legal rules and procedures that only professionals can understand, intricate and complex nature of the court systems, lack of basic technology, in-adequate storage facilities for both finalized and active cases causing files to be heaped in registries with, lack of proper order, file misplacement and witnesses who may end up absconding in the subsequent hearing dates are among factors that cause lengthy trial. These findings were in line with those from the literature reviewed (Tapan,1960) maintained that Law courts usually deal with cases brought in by the police or rely on the police to conduct investigations that will help the courts dispense justice. On the other hand courts are dependent on prison and probation services to deter crime and correct behavior of offenders.

4.5.2 The role of Trial Courts

The study sought to ascertain from the respondents on the role of trial courts with regard to the length of the trial, data related are presented below:

Table 4. 14 The role of Trial Courts

| Role of Trial Courts on Length of Trial | Frequency (n) | Percentage (%) |
|--|----------------------|-----------------------|
| Help determine guilt by way of hearing the case | 42 | 75.0 |
| Calling witnesses | 35 | 62.5 |
| Listening to litigation | 41 | 73.2 |
| Try to locate the alleged crime in the continuum of action committed | 51 | 91.0 |

Source: (Field findings, 2016)

From the table 4.14 above, majority 41 (73.2%) of the respondents reported being aware of listening to litigation as a role of the trial Courts, 35 (62.5%) reported calling witnesses, 42 (75.00%) reported helping determine guilt by way of hearing the case, 51 (91.0%) reported that the court try to locate the alleged crime in the continuum of action committed.

From the findings it can therefore be deduced that trial courts helps to determine guilt by way of hearing the case, calling witnesses, listening to litigation and also try to locate the alleged crime in the continuum of action committed. An In-depth interview with the court prosecutor revealed that trial courts serves many functions with regard to the locating the alleged crime in continuum of the actions.

4.5.3 Trial Courts and the Length of Trial

The study sought to ascertain from the respondents on the extent to which trial courts contributes in influencing the length of trial, data related are presented table 4.16 below:

Table 4.15 Trial Courts and the Length of trial

| Response | Frequency (n) | Percentage (%) |
|-------------------|----------------------|-----------------------|
| Very large extent | 32 | 57.1 |
| Large extent | 9 | 16.0 |
| Moderate extent | 6 | 10.7 |
| Less extent | 3 | 5.3 |
| Very less extent | 6 | 10.7 |
| TOTAL | 56 | 100.00 |

Source: (Field findings, 2016)

Table 4.15 above shows that majority 32 (57.1%) of the respondents agreed to Very large extent that trial courts contributes in influencing the length of trial, 9 (16.0%) agreed to Large extent, 6 (10.7%) agreed to a moderate extent, 3 (5.3%) less extent, while 6 (10.7%) agreed to a very less extent. Based on the majority of the respondents trial Courts influence the length of trials of cases. Evidence from the key informant interviews reveal that long trial does contribute to case dismissal, during the trial process, if the prosecution did not have hard evidence, they can be challenged by the accused lawyers and if they are not well prepared it may lead to dismissal of the cases. By implication, efficient trial process that does not drag for long and which also takes into consideration all the evidence will make it difficult to dismiss a case.

4.5.4 Delays within the Court Systems on Trial Length

The study sought to ascertain from the respondents on the elements of delays within the court systems and how they contribute in influencing the length of trial, data related are presented in table 4.17 below:

Table 4. 16 Delays within the Court Systems on Trial Length

| Elements of Delays | Frequency (n) | Percentage (%) |
|---------------------------|----------------------|-----------------------|
| Delays are biased | 44 | 78.5 |
| Delays are arbitrary | 34 | 60.7 |
| Delays are discriminative | 32 | 57.1 |
| Delay are procedural | 22 | 39.2 |
| Delays are human | 48 | 85.7 |

Source: (Field findings, 2016)

From the 4.16 above majority 48 (85.7%) of the respondents reported that delays are human, 44 (78.5%) reported that delays are biased, 34 (60.7%) reported that delays are arbitrary, 32 (57.1%) reported that delays are discriminative, while 22 (39.2%) reported that delays are procedural, from the findings it can be deduced that delays are biased, arbitrary, discriminative, procedural and are also human in nature. Further all the respondents reported that delays in the court systems can lead to the lengthy trial process that can sometimes contributes to the termination of cases. By implication, delay in the court process certainly leads to dismissal of cases because of other related factors vis, witness fatigue among others.

4.5.5 Partial Disclosure of Evidence

The study sought to establish the influence of partial disclosure of evidence on case dismissal. The findings reveal that 56 (100%) of the respondents were of the opinion that partial disclosure of evidence can lead to lengthy trials and eventual dismissal of the cases. These findings are supported by revelations from the key informants that opined that unless, full evidence is provided cases are likely to be dismissed. By implication, full disclosure of evidence is the only way a case can be worth full trial and minimizes chances of case dismissal.

4.6 Corruption of the Witnesses on the Case Dismissal

Objective three of the study sought to establish the influence of Corruption of the Witnesses on the Case Dismissal, the data related to this objective are presented in the following sections;

4.6.1 Factors Promoting Corruption of Witnesses

The study sought to ascertain from the factors promoting the Corruption of the witness, data related are presented table 4.18 Overleaf:

Table 4.17 Factors promoting Corruption of Witnesses

| Information | Mean |
|---|-------------|
| poor domestication of international human rights norms | 3.9 |
| lack of political will | 3.0 |
| public's ignorance of rights and the law | 4.0 |
| lack of accessibility to public information | 3.7 |
| archaic laws | 2.9 |
| legal language and practice lagging behind social change | 3.4 |
| conflict between customary and formal law | 3.8 |
| extreme poverty and non-affordability of the legal services | 3.9 |
| impunity of law enforcement officers in their violation of the law | 3.8 |
| poor conditions of work for law enforcement agencies hence poor moral | 3.3 |
| poor management of law enforcement institutions | 3.6 |
| inadequate physical infrastructure | 3.9 |

Source: (Field findings, 2016)

Table 4.17 above revealed that majority of the respondents agreed that public’s ignorance of rights and the law promotes corruption of the witnesses as was shown by a mean score 4.0, poor domestication of international human rights norms shown by a mean score of 3.98, lack of political will shown by a mean score of 3.0, lack of accessibility to public information as shown by a mean score of 3.78, archaic laws, legal language and practice lagging behind social change, conflict between customary and formal law and extreme poverty and non-affordability of the legal services as was shown by a mean score of 2.9, 3.45, 3.8 and 3.9 respectively.

4.6.2 Witness Individual Factors on Corruption

The study sought to ascertain from the respondents on the witness individual factors on corruption, data related are presented below.

Table 4. 18 Witness Individual Factors on Corruption

| Information | Frequency (n) | Percentage (%) |
|------------------------|----------------------|-----------------------|
| Attitude | 23 | 41.0 |
| Personality trait | 34 | 60.7 |
| Gender | 45 | 80.3 |
| Age | 39 | 69.6 |
| Access to information | 49 | 87.5 |
| socio economic factors | 50 | 89.2 |
| Tribe of the witness | 22 | 39.2 |

Source: (Field findings, 2016)

Table 4.18 above shows that majority 50 (89.29%) of the respondents reported that socio economic factors influence individual witness susceptibility to corruption, 49 (87.50%) access to information, 45 (80.36%) gender, 39 (69.64%) age, 34 (60.71%) personality trait, 23 (41.07%) attitude while 22 (39.29%) reported tribe of the witness as an individual factors rendering the witness vulnerable to corruption. From these findings, it can be

inferred that attitude, personality traits, gender, age, access to information, socio economic factors and tribe of the witness collectively influence the corruption of the witnesses. Further respondents 56 (100%) reported that sharing of The Confidential Court report with the criminal greatly contributes to the termination of Cases.

These findings were echoed by those of (Mwaeke, 2011) who cited that corruption within the agencies of the CJS that involved sharing of confidential court reports with criminals. This contributed to non-cooperation by witnesses during trial of criminal cases and led to amongst other things, termination of such cases in Kenyan Courts.

CHAPTER FIVE

DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter presents the discussion of key data findings, conclusion drawn from the findings highlighted and recommendation.

5.2 Summary of the Findings

The findings of the study answered the research questions on factors influencing the dismissal of criminal cases in Kenyan Courts. The discussion and related literature were presented for each of the three variables of the study.

5.2.1 Corruption of the Witnesses on Case Dismissal

On the corruption of the witnesses the study revealed that majority of the respondents agreed that ignorance of rights promotes corruption of the witnesses. Corruption, of not only the witnesses but also for the judicial officers and the police may account for dismissal of cases. It was further revealed that socio-economic factors of individuals may make them vulnerable to corruption and consequent dismissal of court cases.

5.2.2 Lengthy Trials on the Case Dismissal

On the lengthy trials with regard to the intimidation of the witnesses, the study revealed majority of the respondents lengthy trials influences dismissal of cases, witness fatigue was cited as a possibility in a lengthened trial thereby resulting in dismissal of cases. Lengthy trails was revealed could be occasioned by factors such as poor judicial infrastructure that results in witness frustration and eventual case dismissal.

5.2.3 Intimidation of the Witnesses on Case Dismissal

The findings revealed that intimidation denies critical evidence to police investigators and prosecutors. It was further revealed that offenders can create a general atmosphere of fear and non-cooperation with the Criminal Justice System thereby leading to witness withdrawal and subsequent case dismissal. Further the findings also revealed that having a reliable enforcement agencies reduce witness intimidations and the consequent case dismissal.

5.3 Conclusions

The study therefore makes the following conclusions, and on intimidation of the witnesses the study concludes that intimidation of witnesses does influence case dismissal. On the lengthy trials, the study concludes that failure by the police to Bond witness, shoddy investigations, lack of sufficient evidence, delays by court to dispense Justice, probation services, ineffective law enforcement agencies, failure by the police on their professional roles, legal rules and procedures that only professionals can understand, intricate and complex nature of the court systems, lack of basic technology, in-adequate storage facilities for both finalized and active cases causing files to be heaped in registries with, lack of proper order, file misplacement and witnesses who may end up absconding in the subsequent hearing dates are among factors that cause lengthy trial and consequent case dismissal. On corruption of the witnesses the study concludes that, lack of political will, public's ignorance of rights, poor conditions of work for law enforcement agencies hence poor moral and inadequate physical infrastructure collectively promotes corruption of the witnesses and subsequent case dismissal.

5.4 Recommendations

The following recommendations are made in an attempt to address the factors influencing the termination of the criminal cases.

1. There is need for initiation of government policies to address the existence of cartels that have established networks with courts and the community at large to intimidate witnesses and the whole community against giving evidence in court.
2. The study further recommends the establishment of cooperation between agencies of the Criminal Justice System and other state corporations with related agencies such as the Communication Commission of Kenya (C.C.K) and Safaricom Limited, to enable availing of call records that can help corroborate witness evidence, thus, minimizing cases dismissal chances.

3. The study recommends a provision of a separate waiting area for victims and witnesses during court process to minimize chances of corrupt deals between the judicial team and the witnesses.
4. The government should enhance legislation and increased penalties for obstructing justice through witness corruption and intimidation. Besides, penalties should be served consecutively; in addition, higher bail and tight bond restrictions.
5. To build trust in the Criminal Justice Agencies, the government should do more to fight corruption in courts by criminalizing sharing of confidential court reports with criminals and weeding out corrupt police investigating officers.
6. Indolence of prison officers that leads to unmonitored access of phones to incarcerated prisoners should also be cut at the nib.
7. With regard to Community ties, the study considers Community outreach as critical in establishing a working relationship between CJSA and the community. Through such cooperation, confidence building measures such as victim/witness security and support programs can be mooted.

5.5 Suggestions for Further Research

1. Further Research should be done to examine the Role of the Government in handling Witness Related Issues.
2. Further, research should be done to examine the effect of the problem to the Country for example, in areas such as Policing.

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Appendix 1: Key Informants interview Guide

Introduction

I am Antony Ikunda, a post graduate student at the University of Nairobi, department of Sociology and Social Work. I am conducting a study on Factors Influencing Dismissal of Criminal cases at Mavoko Law Courts Nairobi. I have purposively selected you to participate in my study. I will be grateful at your participation.

All information provided by you during the study will be treated with confidence. The answers will only be used for the purpose of my study.

1. What division of Court do you serve?
2. What is your specialty?
3. How long have you served?
4. Explain factors that determine the successful prosecution of a criminal case.....
5. What factors do you think contribute to dismissal of a criminal case?.....
6. Explain circumstances in which a criminal case may be dismissed.....
7. From your experience in handling criminal cases, what are some of the problems experienced by complainants in seeking
8. From your experience how long does a criminal case trial take and what impact does the length of trial have on the complainant, the defendant and the witness have?.....
.....
.....
9. Please explain how personal characteristic and or socioeconomic status or social class contributes to dismissal of a criminal case

Appendix 2: Questionnaire

Introduction

I am Antony Ikunda, a post graduate student at the University of Nairobi, department of Sociology and Social Work. I am conducting a study on Factors Influencing Dismissal of Criminal cases at Mavoko Law Courts Nairobi. I have purposively selected you to participate in my study. I will be grateful at your participation.

All information provided by you during the study will be treated with confidence. The answers will only be used for the purpose of my study.

SECTION A: PERSONAL INFORMATION

1. Name of the Respondent.....

2. Indicate Your Gender

Male Female

3. Indicate your marital status

Married

Single

Divorced

4. What is your highest academic qualification?

Primary certificate Secondary school certificate

College certificate university degree post graduate b

5. Which is your age bracket?

18-24 years 25-30 years 31-35 years

36-40 years above 40 years

6. Indicate your religion

Christian

Muslim

Hindu

Other (Specify).....

7. Are you currently employed?

Yes []

No []

8. Indicate your social-economic class

High class []

Middle class []

Low class []

SECTION B INTIMIDATION OF THE WITNESSES ON CASE DISMISSAL

9. The following information relate to the intimidation of the witnesses, using a scale of 1-5 where 1-strongly Disagree, 2-Disagree, 3-Neutral, 4-Agree, 5-Strongly Agree. Rate them

| Information on Intimidation | 1 | 2 | 3 | 4 | 5 |
|--|---|---|---|---|---|
| Intimidation denies critical evidence to police investigators and prosecutors | | | | | |
| Its undermines the government’s ability to protect and represent citizens | | | | | |
| Intimidation is known to occur in areas more typically associated with high rates of crime | | | | | |
| Offenders can create a general atmosphere of fear and non-cooperation with the Criminal Justice System | | | | | |
| Intimidation discourages victims from reporting crime and from giving evidence | | | | | |

10. From your Opinion do you think that the judicial system has guaranteed human life in full conformity with the international standards with regard to the protection of witnesses from intimidation?

Strongly Agree []

Agree []

Neutral []

Disagree []

Strongly Disagree []

11. Intimidation of witnesses has undermined service delivery in our Judicial Systems

Yes []

No []

12. The following relates to the initiatives that would help curb intimidation of witnesses in Kenya using a scale of 1-5 where 1-strongly Disagree, 2-Disagree, 3-Neutral, 4-Agree, 5-Strongly Agree. Rate them

| Anti-Witness intimidation Initiatives | 1 | 2 | 3 | 4 | 5 |
|--|---|---|---|---|---|
| Having suitable 'application mechanisms | | | | | |
| Having in place independent and professional judiciary | | | | | |
| Easy access to litigation | | | | | |
| Having a reliable enforcement agencies | | | | | |
| Access to power and economic resources | | | | | |

13. The following relate to individual factors that can promote witness intimidation, Kindly tick all that you are aware of

| Individual factors on intimidation | Tick appropriately |
|---|---------------------------|
| Economic factors | |
| Level of education | |
| Social factors | |
| Gender of the witness | |
| Age of the witness | |
| Political affiliations | |
| Ethnicity | |

14. The following are Court related factors;

Weak administrative structures, Lack of operational Autonomy and lack of independence of the Judiciary. To what extent do the above factors promote intimidation of witnesses?

Very large extent []

Large extent []

Moderate extent []

Less extent []

Very less extent []

SECTION C: LENGTHY TRIALS ON CASE DISMISSAL

15. The following are factors which promote lengthy trials, Kindly tick all that you have experienced

| Factors promoting lengthy trials | Tick appropriately |
|--|---------------------------|
| Failure by the police to Bond witness | |
| Shoddy investigations | |
| Lack of sufficient evidence | |
| Delays by Court to dispense Justice | |
| Probation services | |
| Ineffective law enforcement agencies | |
| Failure by the police on their professional roles | |
| Courts follow legal rules and procedures than only professionals can understand | |
| The court system is often intricate and complex. | |
| lack of basic technology | |
| in-adequate storage facilities for both finalized and active cases causing files to be heaped in registries with no proper order | |
| file misplacement | |
| witnesses who may end up absconding in the subsequent hearing dates | |

16. The following relates to the roles of the trial Courts with regard to the length of the trials, Kindly indicate all that you are aware of

Help determine guilt by way of hearing the case []

Calling witnesses []

Listening to mitigation []

Try to locate the alleged crime in the continuum of action committed []

17. From your responses above, to what extent to you think the role of the trial Court can contribute to Lengthy trials?

Very large extent []

Large extent []

Moderate extent []

Less extent []

Very less extent []

18. With regard to lengthy trials, Delays are inevitable within the court systems, the following relates to delays in the court systems Kindly indicate whether true or false against each where 1-YES 2-No

| Elements of Delays | 1 | 2 |
|---------------------------|---|---|
| Delays are biased | | |
| Delays are arbitrary | | |
| Delays are discriminative | | |
| Delay are procedural | | |
| Delays are human | | |

19. From your Opinion do you think Delays can lead to Lengthy trial?

Yes [] No []

If (yes) explain.....

20. Partial disclosure of evidence can always lead to lengthy trials

Yes [] No []

SECTION D: CORRUPTION OF THE WITNESSES ON CASE DISMISSAL

21. The following information relate to factors which can promote corruption of the witnesses within the judicial systems, Using a scale of a scale of 1-5 where 1-strongly Disagree, 2-Disagree, 3-Neutral, 4-Agree, 5-Strongly Agree. Rate them

| Information | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|
| poor domestication of international human rights norms | | | | | |
| lack of political will | | | | | |
| public's ignorance of rights and the law | | | | | |
| lack of accessibility to public information | | | | | |
| archaic laws | | | | | |
| legal language and practice lagging behind social change | | | | | |
| conflict between customary and formal law | | | | | |
| extreme poverty and non-affordability of the legal services | | | | | |
| impunity of law enforcement officers in their violation of the law | | | | | |
| poor conditions of work for law enforcement agencies hence poor moral | | | | | |
| poor management of law enforcement institutions | | | | | |
| inadequate physical infrastructure | | | | | |

22. The following are Individual factors of the witness with regard to susceptibility to Corruption, Using a scale of 1 to 5 rate them accordingly to the extent they contribute to corruption of the witness (1- very less extent, 2- less extent, 3- neutral, 4- large extent, 5-very large extent)

| Information | 1 | 2 | 3 | 4 | 5 |
|------------------------|---|---|---|---|---|
| Attitude | | | | | |
| Personality trait | | | | | |
| Gender | | | | | |
| Age | | | | | |
| Access to information | | | | | |
| socio economic factors | | | | | |
| Tribe of the witness | | | | | |

23. Corruption of the Witness leads to sharing of the confidential court reports which leads to the termination of such cases.

Yes [] No []

If (yes) explain.....

Appendix 3: Plan of Work

This study is project to take two month. Presentation of findings of this study will be done on by the last week of the month of October, 2016. The main tasks in the study are outlined in the table below.

| | September 1 st – 30 th , 2016 | October 1 st – 8 th ,2016 | October 8 th – 14 th 2016 | October 11 th -24 th , 2016 | October 15- 30 th 2016 |
|---|---|--|---|---|--------------------------------------|
| Submit research proposal | | | | | |
| Obtain permission to proceed to the field | | | | | |
| Field work-Data collection | | | | | |
| Data compilation/ computation of analysis | | | | | |
| Writing of research paper | | | | | |
| Presentation of study results and defense | | | | | |

Appendix 4: Budget

| | | |
|-------------------------|--|----------------|
| RESEARCH PREPARATION | Purchase of laptop and relevant research software's (SPSS) | 60,000 |
| PROPOSAL DEVELOPMENT | Photocopying, Binding, Typesetting, Materials | 15,000 |
| DATA COLLECTION | Field work, Transport, Stationary, Telephone calls. | 15,000 |
| DATA PRESENTATION | Photocopying, Binding. | 10,000 |
| | TOTALS | 100,000 |