

# CONTEMPORARY DIPLOMATICS OF THE HIGH COURT OF ZIMBABWE LEGAL RECORDS AND THE PRESERVATION OF THEIR AUTHENTICITY IN THE DIGITAL ENVIRONMENT

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# MAIN ARGUMENT

- ▣ The importance of Archives as keepers of original, authentic, reliable and genuine documents
- ▣ Archives used as admissible evidence in Courts of Law
- ▣ Therefore the importance of archival institutions in maintaining this status quo
- ▣ Then that is why we talk of contemporary diplomatics as a science that can detect the violation of the originality, genuineness and authenticity of archival documents

# Introduction

- ▣ Archives are concerned with the authenticity and originality of their holdings
- ▣ This also applies to National Archives of Zimbabwe (NAZ) and the departments or agencies whose records are at NAZ
- ▣ The evidential value of High Court records
- ▣ Examples being the Deceased estate and civil records
- ▣ Used for settling deceased estate and civil disputes
- ▣ Also used for genealogical purposes (Family trees) and citizenship issues

# Background to the study

- ▣ While government departments are moving from paper to electronic records most of the business is still done in manual way
- ▣ Computerisation programmes are slow and done in a piecemeal fashion and necessitated by backlogs in High Court, legal records sometimes going missing etc.
- ▣ The result being incomplete records finding their way into NAZ thereby compromising their authenticity and reliability

# Background continued

- ▣ In all these digitisation discussions diplomatics of records in the envisaged digital system is never mentioned or even taking note that the intentional misfiling or destruction of records in the traditional environment can be worse in the digital setup.

# Respect de fonds and Diplomatics on paper records at National Archives of Zimbabwe

- ▣ The importance of the respect de fonds principle: it enables the archivists to be able to preserve the organic nature of archives as evidence of transactions
- ▣ This is mainly done through the maintenance of unbroken provenance for the records
- ▣ Unbroken provenance somehow guarantees that the records have been kept without alienation, damage, improper or unauthorised alteration and destruction thereby assuring their integrity

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- ▣ The transfer of records ownership procedures are stipulated in NAZ Act 1986
- ▣ When the legal records such as civil cases and deceased estate files cease to be current there are deposited at the NAZ
- ▣ During that period the NAZ only act as only the custodian of these records on behalf of the High Court
- ▣ However after 25 years from their date of creation they become public archives and being the property of NAZ
- ▣ So if this unbroken chain of records ownership from the High Court to NAZ is maintained these records are viewed as reliable, authentic

# Limitations of this respect de fonds approach

- ▣ It is not always the case that if the chain of ownership of records is unbroken then the integrity of records is guaranteed
- ▣ History has proven otherwise, for example there is the case of the Constellation ship/vessel
- ▣ Carter also wrote about John Drewe, a con man who inserted fraudulent documents in the archives of British art institutions in order to create provenances for forged art works

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- ▣ At the National Archives of Zimbabwe the shortfalls of the respect des fonds in authenticating records is sometimes taken for granted because it is always assumed that any file from archives purports to be what it is. So even when the researcher having a photocopy photocopied at NAZ and bearing a NAZ stamp stating that the record is from NAZ he or she is good as having the original and can use it for evidential purposes.

# Digital diplomacy at National Archives of Zimbabwe (NAZ)

- ▣ NAZ is yet deal decisively with e-records
- ▣ Loopholes of the NAZ Act of 1986 when it comes to electronic records
- ▣ Policy paucity when it comes to the management of e-records means that most of the nation's memory is not properly archived
- ▣ There are many causes of this loss of digital information for example archivists are not well equipped with skills of managing digital information

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- ▣ This picture shows governments like Zimbabwe are generating countless of e-records; the question then that comes into mind is whether contemporary diplomatics accorded to paper-based records is also given to these e-records or nothing much is done about their integrity and authenticity?

# When should NAZ intervene in the management of e-records

- ▣ Two schools of thought in regard to when archival institutions should intervene in the management of electronic records (UBC-MAS and Pittsburgh approaches) and their implications to the authenticity of documents
- ▣ Simply put is that NAZ has delegated its role to the creating agencies when it comes to the management of e-records
- ▣ It may be subscribing to records continuum approach not for theoretical reasons but mainly because of its unable-ness to manage e-records

# Lessons to be learnt by NAZ and concluding remarks

- ▣ Whilst advantages of online government transactions are always positively mentioned and encouraged the shift towards the importance of preserving and maintaining the integrity of records is needed
- ▣ Archives should play a major role in making sure that e-records are properly preserved in government departments
- ▣ Monitoring of e-records should be done earlier that is in the creation stage than to wait for the end of the life cycle of a record

THANK YOU