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RESEARCH TOPIC

**AN ASSESSMENT OF THE DEEDS REGISTRATION SYSTEM IN ZIMBABWE: A
CALL FOR REFORMS.**

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APPROVAL FORM

The undersigned certify that they have read and recommend to the University of Zimbabwe for acceptance, research project titled AN ASSESSMENT OF THE DEEDS REGISTRATION SYSTEM IN ZIMBABWE: A CALL FOR REFORMS. Submitted in partial fulfilment of the requirements for the Masters of Laws.

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DECLARATION

I GARIKAYI MHISHI, do hereby declare that this dissertation is a result of my own investigation and research, save to the extent indicated in the acknowledgment, references and comments included in the body of the research, and that to the best of my knowledge, it has not been submitted either wholly or in part thereof for any other degree at any other University.

...../...../.....

SIGNATURE

DATE

DEDICATION

This is dedicated to you, **John Murambiwa Mhishi**, my late father. I have fulfilled your desire. It would have been a very special event if you could have been in flesh to see this achievement. I believe you are in the safe hands of the Lord Almighty. May your soul continue to rest in peace until we meet again.

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CHAPTER 1

1.1 Introduction

Deeds registration system can be described as the process of recording legally recognized interests (ownership and/or use) in landed property.¹ The origins of the deeds registration system in Zimbabwe can be traced to the early Germanic era.² It is from this period of human development that the concept of deeds registration emerged, as it is known today and with subsequent modifications. The deeds registration system in Zimbabwe is largely paper-based unlike other countries that have computerized their deeds registration systems. However, some measures have been taken to computerize the current manual system to enable electronic deeds registration.³ In spite of these measures, the electronic system of title registration has not yet been fully implemented.

The processes of deeds preparation, lodging, examination, registration, searching and storing are still being done manually notwithstanding the advancement in technology. The phenomenal advances in information communication and technology (ICT), have brought about new opportunities and methodologies in which various tasks and duties in all spheres of human endeavour are being carried out.⁴ These changes include, the way in which various stakeholders involved in conveyancing and deeds registration processes communicate with each other, the way in which they handle business transactions, agreements and also how they store data.⁵

The changes in the deeds registration systems during the past years have led to electronic deeds registration systems, which were never imagined by the creators of the

¹ Jacob Arie Zvenberg, Systems of land Registration-Aspects and effects. Page 2, accessed from www.ncgeo.nl/51Zevenberg.

² Mhishi M L A *Guide to the Law and Practice of Conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 2.

³ Nyamukondiwa W 2018-02-09 *The Herald. Business* 1.

⁴ Fombad. A Botswana Perspective, *International Journal of legal information* vol 32:1 p112.

⁵ Amadi Echedu 2013 An analysis of conveyancing business process in South Africa.170

paper-based approach.⁶ Countries like Ireland,⁷ England,⁸ Australia and New Zealand⁹ are among some of the countries that have reformed and designed their deeds registration systems in such a way as to enable conveyancers, officials in the deeds registries and other stakeholders involved, to carry out their professional duties electronically. As alluded to, Zimbabwe has not adopted any of the changes in the electronic transfer registration, therefore, it has achieved very little in this regard, hence the call for reforms in the deeds registration system.

1.2 Background

Deeds registration system is the process of recording title in the deeds office after an examination of the documents by the Registrar of Deeds.¹⁰ In the case of *Sackstein NO v Van de Westhuize and Anor*,¹¹ it was held that the transfer of immovable property takes place by means of registration in the Deeds Registry office. The same sentiments were shared in the case of *Simpson v Klein and Ors*.¹² Therefore, deeds registration is concerned about the transfer of rights in property from a person to another and recording and securing property rights.

The early Germanic customs attached valuable importance of title over the land.¹³ The land was viewed as a valuable asset which separated the rich from the poor.¹⁴ They distinguished the formalities between a valid acquisition system of immovable property and that for movable property. This difference was dictated by the fact that possession was not a practical method of establishing ownership nor was the subsequent system of title deeds without registration free from defect.¹⁵ With time the scrutiny became thorough before registration and this was done to avoid future title disputes and to avoid double

⁶ Gose J 2008 A Real Estate Conveyancers from Livery of Seisin to Electronic.33

⁷ "E-Conveyancing and Tittle Registration in Ireland" <https://www.clarupress.ie/shop/eco>.

⁸ "Modernizing the Home moving process" www.conveyancingassociation.org.uk

⁹ Lanyon *Electronic Conveyancing in Australia and New Zealand: Issues for Lenders*. 203

¹⁰ Deeds Registries Act [Chapter 20:05]

¹¹ *Sackstein NO v Van de Westhuize and Anor*1996 (2) SA 431at 432.

¹² *Simpson v Klein and Ors* 1987 (1) SA 475.

¹³ Mhishi M L A *Guide to the Law and Practice of Conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 2.

¹⁴ *Zandberg v Van Zyl* 1910 AD 302-308.

¹⁵ *Zandberg v Van Zyl* 1910 AD 302-308.

sales. Hence, the deeds registration system was developed with the main objective premised on giving notice to the public and securing ownership in land and other salient real rights in the property.¹⁶

The current manual conveyancing and recording of title in Zimbabwe has several drawbacks which were pointed out by different scholars. Some of them include, but not limited to, low efficiency and ineffectiveness.¹⁷ With the increasing technological advancement that is taking place in the digital world which is mainly focusing on speed and efficiency, the paper-centric type of deeds registration system is rendered archaic. Hence, the call for reforms in the deeds registration system in Zimbabwe.

Electronic deeds registration entails that registration, preparing and lodgement of real property documents and settlement of funds in land transactions can be executed electronically. It essentially places the whole system of transfer of title in land entirely on an electronic hub and moves away from paper based approach.¹⁸ Therefore, an electronic registration of deeds is a development that reinforce along with it the innovation which comes with the economic base structure that will meet the changes in the deeds registration sector. In that sense is a promising industry and one of the main sectors that support and promote as a mechanism for revitalization of the deeds registration system.

1.3 Problem Statement

The deeds registration system in Zimbabwe has remained largely manual and paper-based despite the high levels of computerisation in other countries like Australia, New Zealand, and England.¹⁹ The physical exchange of paper documents at settlement, the physical lodgment of documents with the registries to effect changes on the title register and manual registration is still required to complete the transfer of property. Such interaction has its own challenges such as time consuming and expensive. The subsystems involved, such as deeds drafting, lodging, deeds examination, recording, and

¹⁶ Mhishi M L A *Guide to the Law and Practice of Conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 2.

¹⁷ Amadi Echedu 2013 An analysis of conveyancing business process in South Africa.170

¹⁸ McNight Reddy Charlton Solicitors and European Trademark Attorney: Introduction of E-conveyancing to Ireland 2019.

¹⁹ Lanyon *Electronic Conveyancing in Australia and New Zealand: Issues for Lenders*. 204

approval are fragmented and separated systems from each other. This disconnection creates numerous delays and gaps in the system. The fragmentation limits access to data to only one user at a time manually, despite the fact that multiple users are able to access the same data electronically and simultaneously.

The loopholes in the deeds registration system laws have also promoted fraudulent activities. There are gaps that exists in the deeds registration system which have been exploited by fraudsters. Shameless individuals have potentially put the whole process of private ownership of immovable property and the registration of title into disrepute. The system of deeds registration in Zimbabwe is designed to guarantee security to every titled owner.²⁰

1.4 Research Objectives

The aim of this study is to assess or outline the deeds registration system in Zimbabwe. To this end, the first objective of this research is to identify difficulties or challenges that are being faced in the deeds registration of title.

This dissertation will also explore the legal regimes which have electronic deeds registration systems and find out how they have implemented such systems. Finally, the dissertation will suggest reforms that need to be taken in Zimbabwe to achieve an efficient and effective deeds registration system which is at par with modern trends.

1.5 Research Question(s)

I pose the research question of this dissertation against the background of the leakages, gaps and loopholes in the deeds registration system. The central research question of this dissertation is whether or not there inadequacies or shortcomings in the system of deeds registration which call for reforms.

1.6 Synopsis of the Study

²⁰ Mhishi L A *Guide to the Law and Practice of Conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004)1.

This study is divided into five chapters. **Chapter One** introduces the study by highlighting preliminary aspects such as the background of the deeds registration system, it also includes a problem statement, research objectives and research questions. Also, it covers the synopsis and summary of the chapter.

Chapter Two focuses on literature review. It discusses the various elements and general principles of the law and practice of deeds registration system in Zimbabwe. The Chapter further examines the evolution of the deeds registration system in the country.

Chapter three is on the research methodology. It shows the research method employed in the study and the sampling technique in gathering the much needed data.

Chapter four shows the data presentation which will provide a comparative analysis. It will further show various reforms that Zimbabwe have taken and need to take towards attainment of an electronic registration system. It further provides how Zimbabwe can utilize the information gathered from other jurisdictions which have electronic deeds registration system. It will also show how Zimbabwe can achieve a digitized deeds registration system based on evaluation of the findings from the comparative study of other jurisdictions which have the electronic system.

Chapter five concludes the study by giving a conclusion and recommendations on the way forward, based on the above research, as well as suggested areas for further research, if applicable.

1.7 Summary

The thesis outlines the deeds registration system of Zimbabwe. The legislative reforms like the Amendment No. 8 of 2017 and other statutes that have been promulgated in paving way for a digitized deeds registration system will be analyzed. Other jurisdiction that have implemented the electronic deeds registration system we will be consulted. The reforms that Zimbabwe can employ to achieve the electronic deeds registration system will be provided.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

Deeds registration system is a technical area with specific legislation, rules, and procedures. It is based on juristic and long-standing practices and procedures that have been established and have been followed for over centuries.²¹ These procedures and practices are of esteem value because of the guarantee they have to secure title. Real rights in landed property are best protected through registration in the deeds office. The title registration system in Zimbabwe is paper-based. The Zimbabwean deeds registration system like the South African system, can be traced back from the Germanic customary law. It is this Germanic customary law with subsequent developments which was later initiated into Zimbabwe.

In Zimbabwe, deeds registration process is governed by the **Deeds Registries Act** [Chapter 20:05] hereinafter referred to as the Act and the **Deeds Registries Regulations**, SI 236 of 2018, hereinafter called the Regulations. These are some of the major pieces of statutes which govern the rights in land.

The deeds registration system is based on the principles of private law, which accommodate and give effect to statutory, case and common law in so far as it relates to vested ownership in land and other real rights. According to Mhishi L, the rationale behind

²¹ Mhishi M L A *Guide to the Law and Practice of Conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 1.

the deeds registration system is to provide an efficient system of registration calculated to give and afford security of title to land and other limited rights in land.²² The system of deeds registration in Zimbabwe is designed to guarantee security to every titled owner.²³ This security of title is important in the modern economy as it is of value to the owners, financial institutions and investors. Section 71 of the Zimbabwean Constitution,²⁴ hereinafter referred to as the Constitution, guarantees the right to property. Property can only be protected by a regime of laws, norms, and rules known as 'property rights' which are transferred through conveyancing process. The Constitution gives the burden on the State for the protection of title. Thus, section 71(3) provides that no one may be arbitrarily deprived of their property. The reliance placed on ownership by registration was aptly summarized in the South African case of *Freys (Pty) v Ries*²⁵ where it was stressed out that as far as the effect of registration of real rights in ownership is concerned, there is no doubt that they are best secured by its recording in the deeds office.

Therefore, to fully understand the deeds registration system that applies to Zimbabwe, there is a need to trace it from its inception. This chapter presents the history and evolution of the deeds registration system as it is known and practiced in Zimbabwe. The preliminary point is a brief background of the dawning of the system which will be historically traced from its origins. Deliberations would be made of the deeds registration system as it existed in the Germanic Customary law era, the Netherlands and its arrival with the Dutch Settlers in South Africa. This would be followed by an exegesis of an outline of the deeds registration system in Zimbabwe starting from the settlement of the white Settlers up to the current day. The subsequent amendments and the proliferation of technology in the deeds registration system will also be included.

2.2 Historical Background of the Origins of Deeds Registration

²² Mhishi M L A *Guide to the Law and Practice of Conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 1.

²³ Mhishi L A *Guide to the Law and Practice of Conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 1

²⁴ Section 71 of the Constitution of Zimbabwe Amendment (No. 20) 2013.

²⁵ *Freys (Pty) v Ries* 1957 (3) SA 575 at 582.

The system of deeds registration emerged some centuries ago. The system can be traced back to the ancient religious text such as that found in the Old Testament in Jeremiah 32:9 -15 which provides as follows;

so I bought the field at Anathoth from my cousin Hanamel and weighed out for him seventeen shekels of silver. I signed and sealed the deed, had it witnessed, and weighed out the silver on the scales. I took the deed of purchase, the sealed copy containing the terms and conditions, as well as the unsealed copy.... In their presence I gave Baruch these instructions; this is what the Lord Almighty, the God of Israel, says; Take these documents, both the sealed and unsealed copies of the deed of purchase, and put them in a clay jar so that they will last a long time. For this is what the Lord Almighty, the God of Israel, says; Houses, fields, and vineyards will be bought in this land.²⁶

It is clear that in those early times, for transfer of ownership in the land to take effect there was need for documents to be signed and they were kept as evidence for transactions that have taken place and also as proof of ownership.

According to Newall D,²⁷ the origins of the deeds registration system emerged in the ancient times where ownership in both movables and immovables could be maintained only by continued possession based on might. He further argues that with the development of civilized societies, the State through the courts' system, societies became well accustomed and protective over rights of its citizens, especially property rights.

Therefore, to ensure the security of such rights a mechanism had to be formulated for acquiring and establishing proof of ownership in the event of disputes. Regarding movable property, the only satisfactory proof of ownership was possession, with the result that even today in spite of a great deal of legislation to the contrary, still possession by a person of movables raises the presumption that he is the owner.²⁸ In case of landed property, historical authorities indicated that possession was not a practical method of

²⁶ Jeremiah 32:9 -15 New International Version Bible

²⁷ Newall D *Law and Practice of Deeds Registration' with precedents* 2d ed (Butterworths, Durban 1964).

²⁸ *Zandberg v Van Zyl* 1910 AD 302 308.

establishing ownership, nor was the subsequent system of title deeds without registration free from defects.²⁹ Therefore, registration of immovable property in the deeds registry without any deficiency was *bona fide* proof of ownership.

The origins of the South African deeds registration system like the Zimbabwean system is deeply entrenched in the Germanic customary law.³⁰ Thus, according to Mhishi L,³¹ the deeds registration in Zimbabwe can also be traced in the Germanic customary law. It is this Germanic customary law system that was later on deposited into Zimbabwe from South Africa. Thus, the Zimbabwean deeds registration system is a manifestation of the system that was applicable during the Germanic customary law epoch with few modifications. The early Germanic customs attached valuable importance of title over the land. It distinguished the formalities between a valid acquisition of immovable property and that for movable property. This difference was dictated by the fact that possession was not a secure method of establishing ownership in land, thus the subsequent system of title deeds without registration free from flaw was infallible.³² This was done to avoid title disputes and double sales. Hence our system of deeds registration in Zimbabwe was ultimately developed with the main objective premised on giving notice to the public and securing ownership in property.

In terms of the Germanic customary law, for a transfer of land to take place, the parties would gather on the land that is the subject of the sale and in the presence of some witnesses. The action of giving the transferee documents in the presence of witnesses (*traditio per cartam*) was thus a sufficient condition for its legal validity.³³ The transferor would declare his intention to transfer his right to the land. This was known as *traditio* or *sala*. Thereafter, the transferee would be placed in possession of the property or land (*investitura*) which constituted the handing over of a blade of grass or clod symbolising the land. This was followed by the solemn departure of the transferor symbolized by the

²⁹ *Marcus v Stamper & Zoutendyk* 1910 AD 78.

³⁰ Silberberg & Schoeman's *The law of property* 3rd ed (Butterworths South Africa 1993).

³¹ Mhishi M LA *Guide to the Law and Practice of Conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 2.

³² *Zandberg v Van Zyl* 1910 AD 302-308.

³³ Felcenloben D Property Records and Methods of Determination of Property Borders from the Earliest Times to the Middle Ages in Europe *Geodesia et Descriptio Terrarum* 12 (2) 2013 15.

throwing away of a thing, for instance, a twig, a practice known as *effisticatio*.³⁴ Sometimes there was an act (*deed*) that was a written document in Latin that described the conveyancing from the seller to the buyer. The document would provide the events of the transfer ceremony, testifying that it took place and specified the boundaries of the sold property. It should be noted that, if these formalities were not observed, the process was void *ab initio* therefore, ownership could not pass.³⁵

Subsequently, the deeds registration system was further developed to a new version called the *coram iudice loci*, which was a transfer held before the Court of place where the land was situated.³⁶ The transfer was through handing over of a document containing an explanation for the conveyancing by the transferor (*tradition cartae*) which was usually accompanied by the traditional modes of transfer. The sale had to be publicly proclaimed on three Sundays in church inviting all interested parties to lodge complains which they might have.³⁷ It should be noted that all such complaints were to be lodged within a period of one year. This was done in public to avoid land being sold twice and to avoid selling someone's land that he or she had already entrusted rights of ownership and possession.³⁸ The case of *Houtpoort Mining and Estate Syndicate v Jacobs*³⁹ also outlines the traditional methods of transfer of land where Wessels J highlighted that in,

"In Roman law, we find nothing about registration in the transfer of land. In Western Europe, however, a custom sprang up in many places which required the seller and purchaser to appear before some official to state in the presence of witnesses that a sale of land had taken place. The transaction was then noted in a book kept especially for the purpose. The custom prevailed throughout the greater part of the Netherlands and was in the time of Grotius regarded as an inveterate custom. In

³⁴ Mhishi M LA *Guide to the Law and Practice of Conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 2.

³⁵ Felcenloben D Property Records and Methods of Determination of Property Borders from the Earliest Times to the Middle Ages in Europe *Geodesia et Descriptio Terrarum* 12 (2) 2013 15.

³⁶ Silberberg & Schoeman's *The law of property* 3rd ed (Butterworths South Africa 1993) 89.

³⁷ West A *The Practitioner's Guide to Conveyancing and Notarial Practice* (LexisNexis South Africa 2013) 2.

³⁸ West A *The Practitioner's Guide to Conveyancing and Notarial Practice* (LexisNexis South Africa 2013) 2.

³⁹ *Houtpoort Mining and Estate Syndicate v Jacobs* 1904 TS 105 108.

many parts of the Netherlands, in addition to the registration, the sale had to be publicly proclaimed on three Sundays or three church days."

It is this Germanic customary deed registration process with advanced modifications that were deposited in the Netherlands, later into South Africa and finally in Zimbabwe.

2.2.1 Historical Developments in the Netherlands

In the Netherlands, the *coram judice loci* system of transfer of land rights was made known and application of the *placaat* issued by Charles V on 10 May 1529.⁴⁰ The *placaat* provided *inter alia* that all conveyancing and registration of deeds and the mortgaging of land had to take place before a Judge (Schepenen). Additionally, it provided for the keeping of registers of the title of all land transactions. The *placaat* also facilitated the levying of public revenue to transfer of land, it removed uncertainty in regards to boundaries of land transferred and also prevented the deceiving of purchasers by the suppression of information as to encumbrances on the land.⁴¹ Thus any sale of land which was contrary to the dictates of the *placaat* was treated as null and void.

Accordingly, for it to bind third parties, the immovable property had to be transferred formally before the court of the land where the property was situated which was termed transfer *coram judice loci rei sitae*.⁴² It is beyond a reasonable doubt that the development of the deeds registration process in the Netherlands was fundamentally motivated by the inadequacies of the Germanic customs which was inadequate in ensuring security of rights over a title. The court was now not only the adjudicator of land disputes, but it was also the place where the transfer and title recording process was done. The involvement of courts led to just, fair, meticulous and professional management of the whole process. The *coram judice loci rei sitae* system provided more security to the title. It was premised on the concept that the same piece of land should not be sold twice to different

⁴⁰ Mhishi M L A *Guide to the Law and Practice of Conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 2.

⁴¹ Matome MR *Conveyancing Law for Paralegals and Law Students* 1st edition (South Africa 2013) 6.

⁴² *Houtpoort Mining and Estate Syndicate v Jacobs* 1904 TS 105 108.

purchasers, and also that persons who had any claim upon the land might assert these claims before the purchaser took ownership of the said property.⁴³

In 1560 Phillips II, issued a *placaat* which required the secretary of each city or district to keep a register of all transfers of immovable property and creation of limited real rights to land.⁴⁴ This marked the conception of the deeds registration system as we know it today. The provisions for the registration, transfers of immovable property and the keeping of registers were entrenched and expanded by sections 37 and 38 of the **Political Ordinance of 1 April 1580**.⁴⁵ Later various edicts were promulgated which levied taxes on the transfer and registration of immovable property. Fortuitously, this was the origin of our modern-day payment of transfer duty in immovable property. With regards to the issue of the publication of banns under Dutch practice, this influenced the modern practice of publication in the government gazette and local newspapers and also allowing third parties to lodge complaints.⁴⁶ According to the Dutch practice, the transfer took place with the compilation and presentation of title deeds in duplicate to the court that had jurisdiction over the area where the land was situated.⁴⁷ The original copy of the title deeds which were sealed with wax, written in big letters was handed to the court receiver. The registration of the transfer took place when the secretary of the court entered a copy of the title deed into the protocol register of the court thus, completing the registration of the transfer. When the Dutch colonized settled in the Cape Colony they brought over from Holland their system of deeds registration. The same system which was in place at the Cape was later superimposed to Zimbabwe.

2.2.2 Historical Developments in South Africa

In South Africa, with the allocation of land in the 17th Century at the Cape, the deeds registration system which was similar to the one in Holland was applied.⁴⁸ According to Jones, the South African history of colonization and expansion northwards determined

⁴³ *Houtpoort Mining and Estate Syndicate v Jacobs* 1904 TS 105 108.

⁴⁴ Matome MR *Conveyancing Law for Paralegals and Law Students* 1st edition (South Africa 2013) 9.

⁴⁵ Matome MR *Conveyancing Law for Paralegals and Law Students* 1st edition (South Africa 2013) 9.

⁴⁶ Deeds Registries Act [Chapter20:05].

⁴⁷ Matome MR *Conveyancing Law for Paralegals and Law Students* 1st edition (South Africa 2013) 10.

⁴⁸ West A *The Practitioner's Guide to Conveyancing and Notarial Practice* (LexisNexis South Africa 2018) 2.

the underlying of our system of registration,⁴⁹ which basically has its origins in a *placaat* of Charles V of Holland in 1529. The *placaat* provided that every sale or hypothecation of land, houses, tithes or other immovable property must take place before a judge. Judges were called “*Schepenen*.” There were, however, no judges like what was in Holland, however, there were two Commissioners who were appointed by the Court of Justice, were appointed, before whom deeds were executed.⁵⁰ These were referred to as the Commissioned Gentlemen.⁵¹ According to Silberberg and Schoeman’s,⁵² although it is generally contentious, it is commonly accepted that the law of the Prince of Holland was applied at the settlement of the Cape of Good Hope. It is these colonialists who brought with them the Dutch version of the European legal tradition known as *ius commune*, which acknowledged and upheld private individual ownership of land and transfer of land as was practiced under the Germanic law involving formalities and adherence to publicity requirements. This system of transfer was deposited in South Africa and it was further assimilated into Zimbabwe.

According to Jones,⁵³ it can be noted that the early South African system of deeds registration was due to the Dutch imperialists who moved to the Cape of Good Hope. This is so because the concept of private ownership of land was alien to the indigenous South Africans. In the words of Wessels J in *Houtpoort Mining and Estate Syndicate v Jacobs*, he acclaimed that;⁵⁴

"The system of registration was afterward by various placaats extended to hypothecations, servitudes, and other burdens. When the Dutch settled in the Cape Colony, they brought over from Holland this system of registration, and the titles to land granted by the governors were registered before the commissioners of the court of justice. No sales in land and servitude imposed thereon were

⁴⁹ Jones Nel *Conveyancing in South Africa* 4th edition (Juta & Co Ltd 1991) 3.

⁵⁰ Jones Nel *Conveyancing in South Africa* 4th edition (Juta & Co Ltd 1991) 3.

⁵¹ West A *The Practitioner's Guide to Conveyancing and Notarial Practice* (LexisNexis South Africa 2018) 2.

⁵² Silberberg & Schoeman's *The law of property* 3rd edition (Butterworths Durban 1993) 90.

⁵³ Jones Nel *Conveyancing in South Africa* 4th edition (Juta & Co Ltd 1991) 2.

⁵⁴ *Houtpoort Mining and Estate Syndicate v Jacobs* 1904 TS 105 108.

recognised unless they were registered against the title before the commissioners.”

Initially, before 1686, deeds registration was non-existent in South Africa.⁵⁵ The origin of the South African deeds registration system was initiated by *Simon van der Stel* in 1686 when he issued a resolution and a proclamation in that same year whereby, he made it mandatory for all land in South Africa to be registered.⁵⁶ All landowners were given two months to register their titles. Thus, failure to adhere to the directive meant that their rights to the land was going to be forfeited to the state.⁵⁷ This led to the formation of an official register of titles in South Africa. The *placaat* made no precise provisions which related to the conveyancing and registration of mortgage bonds. In 1714 another *placaat* was issued which incorporates all bonds, it further recognized that all bonds had to be submitted for registration to establish a proper register of all bonds.⁵⁸ Therefore, all bonds which were not submitted for registration meant that the bondholders would lose such preference which they had against their creditors.

The system was later reformed that from 1823 onwards, the parties to a transaction would appear before the State secretary who was now the official conveyancer by that time. The State secretary supervised all the preparation of deeds of transfer in the land. He or his deputy introduced the seller to the court then the Clerk of the Court furnished the court brief with the main concepts of the deed.⁵⁹ The deed which was prepared in duplicate was then handed to the judges, who in turn briefly perused the contents and thereafter placed their signature thereon, which gave the deed legal certainty.⁶⁰ This system was later changed, transfer of rights in land was no longer going before the judges.⁶¹ This marked a new transition with the introduction of the office of the Secretary which was now dealing with all forms of deeds registration. The office of the Secretary comprised of two clerks, of which one of them was responsible for receiving the applications of persons

⁵⁵ Matome MR *Conveyancing Law for Paralegals and Law Students* 1st edition (South Africa 2013) 10.

⁵⁶ *Malan and another v Ardconnel Investments (Pty) Ltd* 379/86.

⁵⁷ Matome MR *Conveyancing Law for Paralegals and Law Students* 1st edition (South Africa 2013) 10.

⁵⁸ West A *The Practitioner's Guide to Conveyancing and Notarial Practice* (LexisNexis South Africa 2018) 1.

⁵⁹ West A *The Practitioner's Guide to Conveyancing and Notarial Practice* (LexisNexis South Africa 2018) 1.

⁶⁰ Matome MR *Conveyancing Law for Paralegals and Law Students* 1st edition (South Africa 2013) 10.

⁶¹ West A *The Practitioner's Guide to Conveyancing and Notarial Practice* (LexisNexis South Africa 2018) 2.

who wanted to transfer their rights in land.⁶² The application forms were to be accompanied by the original deed of grant or the existing deed of transfer. The clerks did not possess any legal knowledge to perform their functions, hence there was no requirement for or any legal knowledge required from the clerk. The clerk was, however, allowed, when in doubt, to refer the matter to the court for assistance or guidance.

The execution of deeds of transfer occurred on Fridays and each deed was accompanied by a receipt from the “Receiver of Tenths in Transfer Duty”, to the effect that last mentioned was duly paid.⁶³ This duty was payable within four months from the date of the transaction, as far as the land transactions in the Cape province was concerned and within six months in respect of all other districts.⁶⁴ Many sales were done on credit which resulted in the creation of bonds. These bonds and the deeds of transfer were prepared in the same office as the Secretary. The mortgage bonds were, however, not endorsed against the title deeds of the property concerned.

The office of the Registrar of deeds was first instituted in 1828 by the **Ordinance No. 39** of 1828. The Registrar took over the office of the Secretaries and Commissioners of the court of justice. The ordinance combined the preparation, execution, and registration of deeds of transfer and bonds in one office which was newly created and it was occupied by the Registrar of Deeds.⁶⁵ The office fee was charged for the three duties which were preparation, execution, and registration of a deed of transfer or mortgage bond. All these three duties were done in the office of the Registrar and his assistances. Later the members of staff in the office of the Registrar who were responsible for the preparation of deeds were dismissed and this duty was, in terms of Ordinance No. 14 of 1844, assigned to advocates or other persons appointed in terms of the said Ordinance. This was the beginning of the office of the Conveyancer as we know it today. Since then conveyancers monopolized the preparation of all documents that are attested in the Deeds Office. Currently, in South Africa, it is only Conveyancers who are practicing within

⁶² Matome MR *Conveyancing Law for Paralegals and Law Students* 1st edition (South Africa 2013) 10.

⁶³ West A *The Practitioner's Guide to Conveyancing and Notarial Practice* (LexisNexis South Africa 2013) 2.

⁶⁴ West A *The Practitioner's Guide to Conveyancing and Notarial Practice* (LexisNexis South Africa 2018) 2.

⁶⁵ Matome MR *Conveyancing Law for Paralegals and Law Students* 1st edition (South Africa 2013) 10.

that province where the property is situated who may prepare all documents related to real and limited real rights in land for its registration.⁶⁶

The first **Deeds Registry Act**⁶⁷ which had twenty-three sections was promulgated in 1891. This **Deeds Registry Act** provided for the practice and procedure which was supposed to be followed in the conveyancing of all real rights and other limited real rights for it to be accepted for registration in the Deeds Registry at Cape Town. In terms of section 4 of the **Deeds Registry Act**, judges of the High Court had the capacity to make rules and regulations that maintains order and that manage the land and debt registers.⁶⁸ These regulations were later on promulgated and came into effect on 1 January 1892. The regulations covered many Deeds Registries which included Cape Town, Kimberley, and King William's Town and many others.⁶⁹ The examination of deeds became more important given the increased number of legislation being passed which was later consolidated into the consolidated **Deeds Registry Act**.⁷⁰ It was subsequently repealed and replaced by the **Deeds Registry Act** of 1937. The current South African deeds registration system has had a long history and the present **Deeds Registries Act** 47 of 1937 is still being supplemented and amended, to keep in line with modern developments.⁷¹ It is through this meticulous and thorough work performed by the Deeds Registrars, the conveyancers and other stakeholders that resulted in the public gaining trust and confidence in the conveyancing and deeds registration system. This deeds registration system was later imported to Zimbabwe.

2.2.3 The Deeds Registration System in Zimbabwe

Pre-colonial Zimbabwe did not have an organized system of deeds registration system as we know it today.⁷² The deeds registration system and the occupation of Zimbabwe is

⁶⁶ Section 15 of the Deeds Registries Act 47 of 1937.

⁶⁷ The Deeds Registries Act of 1891 South Africa.

⁶⁸ Matome MR *Conveyancing Law for Paralegals and Law Students* 1st edition (South Africa 2013) 11.

⁶⁹ West A *The Practitioner's Guide to Conveyancing and Notarial Practice* (LexisNexis South Africa 2018) 2.

⁷⁰ Deeds Registry Act of 1918 South Africa

⁷¹ Matome MR *Conveyancing Law for Paralegals and Law Students* 1st edition (South Africa 2013) 12.

⁷² Mhishi L A *Guide to the Law and Practice of Conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 4.

therefore, also underpinned by the colonial history.⁷³ It is imperative to point out that the law of deeds registration in Zimbabwe was adopted from South Africa. Also, our **Deeds Registries Act**⁷⁴ was almost a replica of the **South African Deeds Registries Act** of 1937.⁷⁵ The law that was applicable at the Cape of Good Hope at the 10th of June 1891 was the law that was superimposed onto Zimbabwe in the early stages of colonization of this country. This is evidenced by section 192 of the current Constitution of Zimbabwe⁷⁶ which stipulates that the law to be administered in Zimbabwe is the law that was in force at the effective date, as subsequently modified. The law that was in force at the effective date is the law that was applicable at the Cape of Good Hope by the 10th June 1891 as provided by the repealed Lancaster House Constitution.

The coming of the British settlers in 1890, also brought the notion of private ownership of land which was non-existence and alien to the indigenous Zimbabwean people. Before 1890 Zimbabwe had no notion of private ownership of land and as a result, its registration never existed. This was due to the culture of nomadism and communal ownership of land. As result security of ownership was not an issue and registration to confer the same was non-existent and unnecessary. The private ownership of property came with the British Settlers which resulted in the process of registering deeds. Thus, the idea of private ownership acquired the ascendancy over the concept of community ownership. This initiated the importation and introduction of a new system of deeds registration in Zimbabwe from South Africa.

Since the deeds registration system was an alien specie in the country, there was no surveyed land before the coming of the settlers. The BSAC conferred upon itself the rights over all land and the initiative of registering land through the issuance of grants and conditions of title. The BSAC Government Notice Survey Department No. 1 of 1894 schedule A, provided that any person who shall be entitled to receive a grant of land may upon payment of the stamp on land grant or quit-rent for the year, obtain a provisional

⁷³ Walker RS "Rhodesia: The Zimbabwe of Southern Africa" 1975

⁷⁴ Deeds Registries Act [Chapter 20:05].

⁷⁵ Mhishi M L A *Guide to the Law and Practice of Conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 4.

⁷⁶ The Constitution of Zimbabwe Amendment No. 20 of 2013

title deed. All applications were lodged to the Administrator who was empowered to either amend or repeal the provisions of the Survey Regulations.⁷⁷

The first Deeds Registry to be established in the country was found at then called Fort Salisbury now Harare as from the 8th May 1894 in terms of the proclamation, No 2 of 1894. The second Deeds Registry was established at Bulawayo in 1895. These two are still the only Deeds Registries that serve the whole country. In these Registries, the deeds were lodged, registered and stored and searched manually in physical registers. Since then, nothing much has changed, as the processes from preparation, lodging, attesting and deeds searches are still being done manually to the inconvenience of the deeds staff, conveyancers and the transacting public at large. With the advent of information and technology, Zimbabwe remained behind despite the few various technological systems which is in place to communicate such as emails. There are also statutory provisions for an establishment of an electronic system of deeds registration, however, it is yet to be implemented.

The rationale behind the deeds registration system in Zimbabwe is to offer a guarantee of efficient and sufficient title and security to land and rights in the land.⁷⁸ This is in line with section 71 of the Constitution which grants the fundamental right to property. The Constitution provides that no one may be deprived of property except in terms of the law and that no such law may allow arbitrary deprivation of property. This means that the security of title attached and afforded to the owner of a registered piece of land is of great significance. Section 3(1) of the Act established the Deeds Registries Offices at Harare and Bulawayo. Any process of registration of deeds or documents relating to immovable property is effected in one of these Deeds Registries offices of the area in which the property is situated, as defined in the schedule to the **Deeds Registries Act**.

In Zimbabwe, deeds registration processes start with land survey. If there was no title to that land, therefore, general survey had to be done to afford title to demarcated piece of

⁷⁷ Mhishi M L A *Guide to the Law and Practice of conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 12.

⁷⁸ Mhishi L A *Guide to the Law and Practice of conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 6.

land. The whole unsurveyed land in a country its ownership is vested in the State through a certificate of State title. Thus, the first title to private ownership of land is a deed of grant from the State after a survey and the production of a diagram of the said demarcation. Where there's no deed of grant, that land is known as unalienated State land. Section 2 of the **Deeds Registries Act** defines "unalienated state land" as to mean

"...State land in respect of which no title Deed, other than a Certificate of state title, exists."

For each piece of land to be registered in the deeds office as a separate entity the land must be surveyed and reflected on a separate diagram which must be approved by the Surveyor-General. The preparation of diagrams and plans is governed by the provisions of the **Land Survey Act** in Zimbabwe. A diagram for the sake of registration of any property is described in section 2 of the **Land Survey Act** as

"a diagram which has been signed by a person recognized by law as a land surveyor and which has been approved or certified by the Surveyor-General..."

If there are variances between a deed and diagram, the description in the deed must prevail.⁷⁹ The Conveyancer prepares in duplicate the necessary documents which he lodges manually in one of the deeds registry with jurisdiction for registration. Municipalities need to provide rates and municipal figures and the Revenue Services attend to taxes that may be payable for the transaction. The Master of the High Court only becomes involved if the transactions concerned involve the property of the deceased or insolvent person. Not all of the entities have direct contact with each other although all the participants have a vested interest in the registration of the property. Many of the stakeholders such as estate agents and mortgage originators only receive their commission after registration has taken place.⁸⁰ According to section 5 of the Act, the Registrar has a duty to examine all documents lodged with his or her office. If they comply with the law then he or she will accept them for registration. If they do not comply with the

⁷⁹ Mhishi L A *Guide to the Law and Practice of conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 6.

⁸⁰ Amadi-Echendu A P *International E-Conveyancing Strategies: Lessons for South Africa* (LLD thesis University of Pretoria 2016).

law, then he or she is mandated to reject them or call for further evidence as prescribed by section 6 of the same Act. The registration is completed upon the affixing of the Registrar's signature as provided for in terms of section 10 of the Act.

The registration of immovable property is not a mere matter of formality but rather it is a matter of substance as it confers real rights upon those whose names have been registered. This was aptly stressed in the case of *Chapeyama v Chapeyama*,⁸¹ wherein the court held that registration in immovable property in terms of the **Deeds Registry Act** is not a mere matter of form but conveys real rights upon those whose names the property is registered against. Therefore, the **Deeds Registration Act** prescribes that the rights to land are only transferred through a process of registration whose preparation and execution requires professional services of a Registrar as well as a conveyancer.⁸²

In many parts of the world, land is a limited resource and valuable. Thus, ownership of land and landed properties tend to be generally protected through a meticulous capturing process, recording and storage of appropriate data and information. The deeds registries in Zimbabwe are responsible for capturing data as well as its storage. This is done manually. There is need for reform in order to save time, cost, accurate recording, easier storage and retrieval of information, many jurisdictions have reformed and introduced the use of technological devices. This has resulted in introduction electronic deeds registration.

2.3 Positive and Negative Deeds Registration Systems

Deeds registration is the system under which titles to land are recorded.⁸³ There are two basic divisions which are namely; positive and negative deeds registration system and these have co-existed for decades.⁸⁴ In the negative system of registration ownership, the transaction itself is recorded and with a positive system, it is the title that is recorded.

⁸¹*Chapeyama v Chapeyama* 2000 (2) ZLR 103(SC),

⁸² Mhishi L *A Guide to the Law and Practice of conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004) 1.

⁸³ Brennan G *The impact of eConveyancing on Title registration* (Springer International Publishers) Switzerland 2015 p 115.

⁸⁴ Brennan G *The impact of eConveyancing on Title registration* (Springer International Publishers) Switzerland 2015 p 115.

The positive system involves a preceding examination by a public official to verify the legality of the rights to be conferred. In the absence of a deeds registration system, legal experts are often commissioned to conduct searches to trace the root of the title in landed property transactions to verify that the property is not subject to any undisclosed encumbrances which is different with the negative system.

2.3.1 Registration of deeds (negative system)

In jurisdictions where the negative system dominates, there is little government or public officials' involvement in the processes. With this system, there is no State guarantee of the security of title, for example, countries like the Netherlands. The deeds of transfer are registered more or less on face value and without any continuity and completeness of records. It is the deed that is registered and not the title. To prove title in a given piece of land, searches must be done in the deeds registry in respect of the names of all persons who had property rights in the land and the delivery of the title is not without risks. Silberberg notes that it;

*“remains a negative system in principle where legal certainty is granted to original holders of rights, and third parties cannot without qualification rely on the correctness of the data reflected in the registers”.*⁸⁵

This connotes that the negative system as a result of its complexity in terms of registration and legal uncertainty creates problems. The negative registration system does not give protection to third parties, regardless of the fact that they acted in good faith. According to Silberberg,

*“if a third party acting in good faith, accepts incorrect data in the deeds office as correct and acts upon this information he will normally enjoy no protection (apart from the possible application of the doctrine of estoppels and apart from any delictual remedies he may have”.*⁸⁶

⁸⁵ Silberberg & Schoeman's *The law of property* 3rd ed (Butterworths South Africa 1993).104

⁸⁶ Silberberg & Schoeman's *The law of property* 3rd ed (Butterworths South Africa 1993).99

This system of deeds registration has the disadvantage that it provides legal uncertainty to third parties in the sense that it is not possible for them to make verification as to ownership of the land before transfer of rights is done. It however gives legal certainty to third parties as far as holders of real rights towards the land in question are concerned. The conventional, or negative system, operates within the normal rules of the law of property so that no right can be conferred by a deed which is invalid.⁸⁷ Registration, although it is not a sufficient step for the creation of a real right, there must also be a valid deed granted by a person with title to grant. This has led to a creation of a maxim called *nemo dat quo non habet* which means that a person cannot transfer right he does not have or transfer rights more than he have. Title thus, flows from the register only in the sense that registration marks the final stage in the process of transfer; and the registration of title which is forged or granted a *non domino* confers no right at all. Void titles, in short, are not cured by the act of registration.⁸⁸

2.3.2 Registration of title (positive system)

A positive system confers the right in question by the very act of registration, and without regard to the validity of the underlying title.⁸⁹ In a positive system, the entire process is under the purview of the central government. The identity and size of the land is unambiguous and unquestionable. The title is undeniable and guaranteed. There is security, completeness of records, precision, simplicity, effectiveness, and applicability for the purpose and protection of people's rights in the land.⁹⁰ Thus the registration of a title which is forged or granted a *non domino* confers ownership in just the same way as registration of a title which was granted by the true owner and properly executed. Title flows from the register and the register, by definition, cannot be wrong. At worst, a title on a positive register is voidable, that is to say, subsistent but challengeable. It cannot be void. A positive system is thus one which turns void titles into voidable titles. Conversely,

⁸⁷ Discussion paper on Land Registration: Registration, Rectification and Indemnity. p 3 www.scotlawcom.gov.uk

⁸⁸ SCOTTISH LAW COMMISSION Discussion Paper No 125, pg 2

⁸⁹ Discussion paper on Land Registration: Registration, Rectification and Indemnity. Page 3.

⁹⁰ West A *The Practitioner's Guide to Conveyancing and Notarial Practice* (LexisNexis South Africa 2018) 3.

it holds nothing for titles which are good already and, since most titles are good, it does not usually matter whether a registration system is positive or negative.

The Australian system, called the Torrens systems, (*named after the founder thereof*) is the best-known branch of the system of registration of title. Under a positive system, the title is registered with a built-in State trust and warranty that the information furnished by the Deeds Registry is accurate.⁹¹ Consequently, a *bona fide* acquirer can rely on the information of the Deeds Office with regards the acquisition of title. The true owner may lose his rights if he does not apply for rectification before the *bona fide* acquirer obtains ownership. Since the State assumes responsibility for incorrect registration, it takes extensive measures to avoid incorrect registration. The process involves lengthy examinations and general retardation of the registration process.

2.3.3 The Zimbabwean system

The Zimbabwean deeds registration system is said to be *sui generis*. This is so because of its amalgamation of both the positive and the negative systems. Although the system has both elements, it has more characteristics of a positive system than the negative system as evidenced by section 5 of the **Deeds Registries Act**. This section places a duty to the Registrar of Deeds to examine and register all deeds and documents that relate to land and to reject any if they do not comply with the relevant legislation. Section 84 also holds the government accountable and liable for damages that may be sustained by any person due to *malafide* act or omission by the Registrar. Thus our system guarantees the right to protection of property.⁹² All these sections denotes the applicability of the positive system in our deeds registration system.

Also, our deeds registration system adopted some elements of the negative system of registration. This favours the true owner rather than the *bona fide* acquirer of the property. Section 84 of the **Deeds Registries Act** expressly excluded liability of the State or its officials for incorrect registration unless it is a *mala fide* act or omission. Furthermore, in several instances, the Deeds Registry records do not reflect the true legal position

⁹¹ West A *The Practitioner's Guide to Conveyancing and Notarial Practice* (LexisNexis South Africa 2018) 3.

⁹² Section 71 of the Constitution of Zimbabwe Amendment (No.20) Act 2013

pertaining to a particular plot of land. First, real rights and ante omnia ownership may be acquired by various modes that are not reflected in the Deeds Office, for example, prescription, expropriation, statute, or as a result of marriage in community of property. In all these instances, the owner can undermine a genuine possessor who has acquired property from the person registered as owner in the Deeds Registry.

2.4 Deeds Registration in other jurisdictions

3.4.1 Canada deeds registration system.

Ontario is one of the primogenital jurisdictions in the world to firstly adopt innovation and develop their deeds registration system through the Electronic Land Registration System, based on a register of rights the “*Land Titles*” system. Therefore, literature of on the oldest system was necessary to look at. The development of the deeds registration services in Ontario began in the late 1980s with the conversion of the old record of deeds into electronic form.⁹³ Ontario is recognized and is acknowledged as the most progressive deeds registration solution currently in operation across the world. It is referred by other jurisdictions as the best system for example, in Ireland, Ireland's Law Reform Commission acknowledged the Ontario model as the best approach to deeds registration system.⁹⁴ The Ontario deeds registration system is the closest “*end-to-end*” comprehensive deeds registration system solution that is currently in existence with functional models such as property registration, solicitor communication facilities, online searches, online mapping functions and dealings with financial institutions.⁹⁵ Thus many scholars have recognized Ontario as the oldest and most developed operating system of deeds registration in the world and it was the first jurisdiction to introduce full and comprehensive electronic deeds registration.⁹⁶

⁹³ Arruñada B “Electronic Titling: Potential and Risks” 2010 *New Zealand Law Journal* p 115-120.

⁹⁴ The Law Reform Commission “e-Conveyancing: Modelling of the Irish Conveyancing System” 2006 *The Law Reform Commission* p. 8.

⁹⁵ The Law Reform Commission “e-Conveyancing: Modelling of the Irish Conveyancing System” 2006 *The Law Reform Commission* p.89

⁹⁶ Low Rouhshi “Maintaining the Integrity of the Torrens System in a Digital Environment: A Comparative Overview of the Safeguards Used within the Electronic Land Systems in Canada, New Zealand, United Kingdom, and Singapore” 2005. 11 *Australian Property Law Journal* 155-178.

3.4.2 Australian Deeds Registration System.

The Torrens title system works on the principles of the maintenance of a public register of titles and interests on deeds. It provides assurance that once land is registered, a title or interest cannot be defeated and there is a guarantee of compensation in the event of that the transaction was tainted with fraudulent or erroneous registration.⁹⁷ Each region or province in Australia has its own land registration practices and procedures, all these provinces conform to the Torrens system for deeds title registration.⁹⁸ The conveyancing system's regulatory and administrative responsibilities are province-based in Australia. However, its main key participants, for example, major banks and independent mortgage processors are increasingly national in their operations. Each state in Australia has its own land registry in accordance with jurisdiction-specific legislation and practices managed by a Registrar who is responsible for the administration of the titles register.⁹⁹

The main reforms to the development of a more advanced and comprehensive version were initiated by the *Electronic Conveyancing (Adoption of National Law) Act of 2012*. This piece of legislation created the rights to lodge documents electronically and to create a mutually accessible electronic workspace for stakeholders involved in the transfer of land, although the Registrar still maintained the central role and responsibility of ensuring that the integrity of the register is sustained.¹⁰⁰ Part III of the ***Electronic Conveyancing (Adoption of National Law) Act of 2012*** established the Electronic Lodgment Network (ELN), which is famously known by the acronym of Property Exchange Australia (PEXA).¹⁰¹ This system was a product of the work of Property Exchange Australia Ltd incorporation with the government of Australia. The Property Exchange Australia runs the national property exchange in the whole of Australia. The system is established and

⁹⁷ Low, Kelvin F.K. "The nature of Torrens indefeasibility: Understanding the limits of personal equities." *Melb. UL Rev.* 33. 2009: p. 205.

⁹⁸ Eugene C. "E-conveyancing in Australia: An important step along the journey to E-government." 2011 *JL Inf. & Sci.* 21.

⁹⁹ Marwick, Brian. *A Collaborative Framework to Support a National Land Information Infrastructure in Australia*. The University of Melbourne, Department of Infrastructure Engineering, 2013.

¹⁰⁰ Section 7 and 8 of the *Electronic Conveyancing (Adoption of National Law) Act 2012*.

¹⁰¹ New South Wales Land and Property Information, *NSW Participation Rules for Electronic Conveyancing*, 6th September 2013.

supported by extensive legislative provisions which provide the legislative framework, operating requirements and the Participation Rules.¹⁰²

3.4.3 The Deeds Registration in New Zealand

The use of information communication and technology services has expanded over the past decades to engross almost every human endeavour. The literature of the growing use of the internet has resulted in the development of computer-based registries and online deeds registration systems were explored. The deeds registration system which is found in New Zealand is almost an imitation to that in Ontario, Canada. The New Zealand's national transition, from a manual paper-based system to a simple and effective computerized system, began in April 2000 in Otago, with the introduction of the Land Online system which was administered by Land Information New Zealand (LINZ).¹⁰³ This system contained automated title records, instruments, and plans.¹⁰⁴ In 2002, the **Land Transfer Act 1952 (NZ)**¹⁰⁵ was amended to support the introduction of electronic lodgment for title transactions with remote electronic lodgment of all documentation for conveyancers and surveyors, with registrars, electronic registration of all transactions commenced in 2003.¹⁰⁶

In New Zealand, the Land Information system since 2003 has been an online registration system for title transactions known as the e-dealing system.¹⁰⁷ The e-dealing system allows conveyancers to lodge documents of transfer, mortgage, and discharges for registration in electronic form through the internet.¹⁰⁸ The electronic deeds registration

¹⁰² New South Wales Land and Property Information, *NSW Participation Rules for Electronic Conveyancing*, 6th September 2013.

¹⁰³ Greenwood J and Jones "Automation of the Register: Issues impacting on the integrity of title", Taking Torrens into the 21st Century" 2003 A conference to mark the 50th anniversary of the Land Transfer Act 1952, Faculty of Law, University of Auckland, 19-21.

¹⁰⁴ The Land Transfer Act 1952 (NZ) was amended in 1998 to enable the register to be held and maintained in electronic form: Land Transfer (Automation) Amendment Act 1998 (NZ).

¹⁰⁵ Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (NZ).

¹⁰⁶ Information about the Landonline project can be obtained from their website - <http://www.landonline.govt.nz>.

¹⁰⁷ Muir R "E-conveyancing in New Zealand: Progress to Date and Future Developments" 2007 *Registering the World Conference, Dublin*.

¹⁰⁸ Muir R "E-conveyancing in New Zealand: Progress to Date and Future Developments" 2007 *Registering the World Conference, Dublin*.

processes allow the creation, certifying and signing, settling and releasing, lodging and recording of electronic title.

3.4.4 The Deeds Registration System of England and Wales

With the proliferation of the internet in the 21st century, England and Wales also took the initiative to modify their deeds registration processes. The literature on the English system is almost similar to that of Australia. The England Land Registry took the bold decision to reform its deeds registration like many other jurisdictions. The legislative transformation from paper-based to the electronic-based system was necessary for the establishment of the electronic version. Legislation laid the foundation for the improved deeds registration system. In February 2017, the Land Registry consulted¹⁰⁹ different stakeholders on changes to the Land, Registration Rules 2003 (the LRR 2003). The aim was to introduce new digital services that would permit the use of electronic documents with a digital signature for deeds transfers and registration. The new system provides that before an individual can apply a digital signature to an electronic document, he or she must confirm their identity through the GOV.UK.VERIFY service.¹¹⁰

The VERIFY service is used as a gateway for online access to many government services and companies such as Barclays. This is done by verifying the individual's identity by checking their personal details against records held by credit agencies, mobile phone providers and HM Passport Office etc.¹¹¹ The VERIFY service is integrated with the Land Registry's network to provide a high level of identity assurance and to counter the risk of fraudulent transactions. HM Land Registry has become the world's leading electronic land registry in terms of speed, simplicity and an open approach to data.¹¹²

¹⁰⁹ <https://www.gov.uk/government/consultations/proposals-to-amend-the-land-registration-rules-2003>

¹¹⁰ <https://www.gov.uk/government/publications/introducinggovukverify/introducinggovuk-verify> https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639781/HM_Land_Registry_Annual_Report_2016_2017_web_version.pdf

¹¹¹ <https://www.gov.uk/government/publications/introducinggovukverify/introducinggovuk-verify> https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639781/HM_Land_Registry_Annual_Report_2016_2017_web_version.pdf

¹¹² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639781/HM_Land_Registry_Annual_Report_2016_2017_web_version.pdf p 4.

2.5 Electronic Deeds Registration System

Electronic deeds registration system can be described as the process whereby the preparation and lodging of all documents related to the transfer of rights in land and examination, recording, searching and storing of title deeds are done electronically. In other words electronic deeds registration incorporates electronic conveyancing and electronic deeds registration. These terms according to Sneddon¹¹³ it does not have a precise meaning but it incorporates a number of activities in their processes which ranges from recording, searching, lodging and transferring interests in land which may be effected using electronic communications and electronic processing. However, the terms electronic conveyancing and electronic deeds registration have been all attempted to be defined by the Law Society of Ireland. It argues that the terms prescribe a secure, paperless, electronic, end to end, pre-sale to post-completion, conveyancing and deeds registration processes.¹¹⁴ According to the England Law Commission¹¹⁵, electronic conveyancing is a modern system for deeds registration where each stage of the process can be completed electronically rather than manually. Electronic conveyancing does not mean the ancillary use of computers by different participants in the conveyancing process.¹¹⁶ However, it means that the total conveyancing process from the time when instructions are received to the time of registration of title, all takes place in a single, secure, unified and paperless system.¹¹⁷

Electronic deeds registration on the other hand, can be described as the process that is done by the Registrar of deeds in examining, recording and storing title of ownership in landed property electronically. According to section 90 of the Deeds Registry Amendment of 2017, it states that the Registrar may establish an electronic registry for the purposes of digitizing every register, deed, document or other record under his or her charge and

¹¹³ Sneddon, M. 'Risk Assessment and Management in Electronic Conveyancing' Registering the World Conference Dublin.

¹¹⁴ Law Society of Ireland "e-Conveyancing: Back to Basic Principles. Vision of an Electronic System of Conveyancing ('eVision')" March 2008 p. 1.

¹¹⁵ Land Registry Report, 2001

¹¹⁶ Brennan, Gabriel, 'The impact of e-conveyancing on Title registration: A Risk Assessment' <https://books.google.co.zw/bks?isbn3319103415> p. 74

¹¹⁷ Brennan, Gabriel, 'The impact of e-conveyancing on Title registration: A Risk Assessment' <https://books.google.co.zw/bks?isbn3319103415> p. 74

to further establish a computer system for applying information technology to any process or procedure under this Act. Thus, a computerized deeds registration system has the ability to record title, store and retrieve it if need arises electronically.

Stakeholders in the electronic deeds registration system are able to communicate and transact with each other securely without fear and share information electronically. The system enables title deeds and all related documents to be signed with electronic signatures. The electronic deeds registration system involves the provision of a social hub for the settling property transactions with the appropriate deeds registry and meeting all associated duty and tax regulations electronically. This reduces delays and cost, thus saving time and money, it also brings greater transparency and certainty, thus reducing the anxiety and fraud for people buying and selling landed property.¹¹⁸

2.5.1 Stages in the implementation of electronic deeds registration system.

For the above electronic processes to be realized, there are certain stages that must be taken into consideration before it become feasible. There is no universal approach in the implementation of reforms that gives birth to the electronic system, however, there is a general trend that has been followed by different jurisdictions over the years to achieve electronic deeds registration. The general trend include, firstly, the converting of all paper title records in the Deeds Registries into an electronic format which will be held in central databases like what was done in New Zealand. Secondly, there is need to link all the stakeholders involved in the deeds registration processes through a central online portal or hub. Every participant and the public at large must be able to have access of the central portal, however only selected stakeholders will be able to effect changes in the system. The last stage is to enable the deeds registries officials to access lodged documents electronically and examine, register and store the same electronically.

These stages were fully elaborated by Libbis as follows:

¹¹⁸ Rajasekhar PV "e-Conveyancing: Challenges and Ambitions International Conference on Enhancing Land Registration and Cadastre for Economic Growth in India" 2006, *Hotel Taj Palace, New Delhi*.

*"From the early 1980s different jurisdictions have been converting their manual title records to electronic systems. Late in the 1980s, some jurisdictions introduced remote electronic searches of their electronic title records. From the early 1990s, there were proposals for a fully electronic process to prepare and lodge instruments affecting title records. Through the 1990s deregulation of financial markets and increasing competition in the mortgage industry together with the development of the internet, electronic payment systems, and electronic commerce generally led to an interest in a more convenient and efficient way of completing property conveyances. With the new century, it was only a matter of when electronic conveyancing would become (sic) a reality and how it would be achieved."*¹¹⁹

Therefore, it can be generally said that electronic deeds registration reforms the manual conveyancing and deeds registration processes from the antiquated paper-based system of transfer and recording of title to a modern electronic deeds registration system. The electronic systems of title registration and transfer can be seen in several jurisdictions around the world which include but not limited to New Zealand, Canada, Australia, Netherlands and the United Kingdom.

2.5.2 Advantages of electronic deeds registration

The traditional deeds registration system was and is still based on the manual system. The manual system is synonymous with delays, inefficiency, uncertainty and the system require a degree of professional supervision frequently which is uneven when compared to the economic benefits produced. The manual system has also become increasingly complicated and form ridden.¹²⁰ It is more apparent that the paper-based system is inefficient and out of date in keeping with the demands for social institutions of reasonable effectiveness,¹²¹ and there is general agreement among competent dis-interested observers that if the procedures are left unmodified, they will break down of their own

¹¹⁹ Libbis, S. "E-Conveyancing Sans Frontiers; The Development of an Electronic Conveyancing System for Australia" 2007 Registering the World Conference Dublin p. 3

¹²⁰ Payne John C "Crisis in Conveyancing" 1954 *The, 19 Mo. Law Review*.

¹²¹ Aigler "Title Problems in Land Transfers" 1945 24 McH. BAR J. 202, 213.

weight. The most fundamental critiques of the manual deeds registration system are not based on the rules of law governing the formal transfer of landed rights; however, it is upon the operational requirements created by other apparently disassociated legal norms.¹²²

Furthermore, the delay in the transfer has financial and emotional repercussions.¹²³ In Australia, when they had the paper system, participants' often complained of emotional stress due to prolonged processes before settlements.¹²⁴ The crux of this predicament has led to either reform of the ancient paper-based system of deeds registration or it was swept aside entirely in favour of the innovative electronic deeds registration system. In either way, the changes brought many advantages in the deeds registration system. The electronic deeds registration system like any other technological progression evident in the contemporary epoch, it is bound to carry a multitude of advantages with it. Some of the advantages are provided below.

2.5.2.1 A paperless system

Electronic deeds registration allows all communication between conveyancers, lenders, deeds registrars and all other members involved to be done electronically. The participants will be connected to a common social hub which extinguish the use of paper in the whole system. Conveyancers are able to lodge their deeds and related documents electronically and also the deeds registry officials will examine the documents in their electronic form and register the same on an electronic register. The paper-based deeds registration process in many jurisdictions suffers from many bureaucratic delays which are based on analogical paper-based documentation systems.

Thus, the paper based system is not adapted to deal with the modern societal demands and needs as there is now increased volumes, diversity of transactions and market expectations for speed and transparency.¹²⁵ A deed search for example, which should be

¹²² Payne John C "Crisis in Conveyancing" 1954 *The, 19 Mo. Law Review*.

¹²³ Payne John C "Crisis in Conveyancing" 1954 *The, 19 Mo. Law Review*,

¹²⁴ PEXA_PwC_E-Conveyancing_Report_May15

¹²⁵ Clark Eugene Journal of Law, information and Science "E Conveyancing in Australia: An important step along the Journey to E government 2011 JLawinfosci 5; 2011 2 (1) Journal of law and information science.

a relatively simple process, can take hours because of the strenuous effort needed to pore through paper files to locate the needed documents. Thus, with the paperless system the process will be quick and would be done with a few clicks on a computer increasing efficiency and convenience. Thus, the ability of electronic deeds registration system to store and retrieve documents electronically saves time and space.

Title deeds are very important documents that their safe keeping must be absolute. A paperless system has an electronic database of all title deeds that will be secure from damage. Also, electronic deeds registration has a specific platform that provides a template for each necessary document and all that would be required would be entry of the relevant details for a specific transaction depending on the system adopted. This would greatly reduce the amount of time taken by conveyancers to complete each step of the conveyancing process required of them, and also lessen the amount of information requiring verification as the system would be able to check certain details automatically. An electronic system will extinguish the use of paper in its whole operations. Thus, trees will be saved and title deeds protected as they will be no paper use in the system like the Property Exchange Australia system which is paperless.

2.5.2.2 Cost saving efficiencies and convenience of settlement.

Greater convenience and efficiency can be achieved through sharing of information, setting financial aspects of transactions without cheques or settlement meetings electronically. Efficiency and convenience is brought by the use of internet and computers in deeds registration processes. To conveyancers, convenience is brought by able to prepare and lodge their documents electronically in the comfort of their offices. The same can be said for deeds registries officials who will be able to examine, record and search title deeds with a single touch on the computer. Therefore, the electronic system will eliminate the time and cost involved in instructing staff and agents and their attendance at the physical settlements and lodgments at deeds registries.¹²⁶

¹²⁶ www.nationalconveyancing.co.au/Benefits

Furthermore, the availability of online settlement will also save the costs of attended settlements and eliminates the need for proper financial transactions and losses that come when a settlement falls through.¹²⁷ It also eliminates the geographical barrier to attend physically the deeds office. It closes the gap between settlement and lodgment resulting in fewer priority issues arising from conflict between unregistered interests. Rajasekhar¹²⁸ also subscribes to the view that electronic title registration shortens the time of registration from days to minutes.

2.5.2.3 Automated Compliance and Verification

The establishment of an electronic deeds registration system has an advantage of automated compliance and verification checks. Graham¹²⁹ claims that there is clearer and quicker interaction with quicker responses for users in getting information from the electronic system and automated compliance and verification. There is increased efficiency and reduce time spend in perusing over paper documents checking for compliances. Also, transparency is increased, thus, each stage of the deeds registration process it is quick and easy to see whether the parties to the transaction are meeting their requirements and obligations before settlement.¹³⁰ Greater transparency is available as one will be able to see the status of all documents in the transaction.

The electronic system, notifies immediately if there is any discrepancy to both the Deeds Registry and other parties as they will all be part of the electronic platform and appropriate action can be taken quickly to ensure compliance. With an electronic deeds registration system, it would be possible to prevent fraud and double sales if all agreements of sale of property are electronically processed as the system would immediately point out that an agreement has already been concluded with regards to a particular property.

¹²⁷ Clark Eugene Journal of Law, information and Science "E Conveyancing in Australia: An important step along the Journey to E government 2011 JLawinfosci 5; 2011 2 (1) Journal of law and information science.

¹²⁸ Rajasekhar E-conveyancing – Challenges and Ambitions, 2006

¹²⁹ Brennan Gabriel, The impact of e -conveyancing on Title registration: A Risk Assessment. <https://books.google.co.zw/bks?isbn3319103415>. p 74.

¹³⁰ Clark Eugene Journal of Law, information and Science "E Conveyancing in Australia: An important step along the Journey to E government 2011 JLawinfosci 5; 2011 2 (1) Journal of law and information science.

2.5.2.4 Reduced Risk of Document Loss

With an electronic system, there is far less likelihood of documents going missing or being damaged due to poor storage facilities.¹³¹ Electronic documents are not prone to the risks of destruction, damage or theft that applies to paper documents. Therefore, once created and backed up electronically, the documents will last essentially forever. Graham¹³² also claims that there is clearer and quicker interaction with quicker responses for users in getting information from the electronic system and reduced risk of document loss. Electronic documents they can be digitalized thus they can be stored on storage facilities like cloud which provides backup against file loss.

Unlike paper documents there is no need of storage rooms that will be full of paper files, electronic storage can be done on a single or more soft or hard drives, thus space saved. With the paper-based documents, back up of the copies of deeds is often difficult if not impossible which is different from electronic data. Paper documents are vulnerable to any type of destruction and they may get lost or mixed up in deeds searching processes. Additionally, payments for misplaced documents and lost title deeds within the storage facilities are additional costs.¹³³ Also the warehouses for storing these documents is often expensive to construct and maintain. Therefore, electronic title deeds will eliminate all the possibilities for title loss.

2.5.2.5 Greater Access to Deeds Registry

In Zimbabwe there are only two Deeds Registries, one in Harare and the other one in Bulawayo. Consequently, those in other parts of Zimbabwe must either liaise with conveyancers in the two cities, or travel personally for them to lodge the documents with the relevant Deeds Registry or to follow up on matters with the Registrar. This inevitably causes delays in travelling and there is also travelling cost incurred in order to effect

¹³¹ Brennan, Gabriel, The impact of e-conveyancing on Title registration: A Risk Assessment <https://books.google.co.zw/bks?isbn=3319103415> page 74

¹³² Brennan Gabriel, The impact of e-conveyancing on Title registration: A Risk Assessment. <https://books.google.co.zw/bks?isbn=3319103415>. p 74.

¹³³ Anthea P Amadi –Enewedu et al ,Mediterranean Journal of Social Science MCSER Publishing “ E conveyancing strategies : Lessons from South Africa .MSCER Rome Italy, Vol no 10 June 2014

deeds registration transactions. Thus, a digitized system will break the long-distance barrier as conveyancers will be able to lodge any document anywhere in the country as long as they have access to the internet. Therefore, those in other towns and cities would be able to experience similar advantages as their counterparts in Harare and Bulawayo.

The two registries will be enough to serve the whole country if electronic deeds registration is implemented. This will have a positive effect not just on the conveyancing sector but on commerce in general.

2.5.2.6 Increased Transparency

One of the main advantages of the electronic deeds registration system according to Heim Sandberg,¹³⁴ is that the system has greater transparency. The introduction of an electronic system increased transparency as information as to the status of property and transactions in relation to property will be on a more accessible platform.¹³⁵ The current system is very daunting to most lay persons, who do not even know where exactly the Deeds Registry is located and how it functions. With an electronic system, users will be able to closely follow their transactions and ask any questions they may have as to what exactly is going on. Thus, fraud and double sales of land which was now rampant in the country can be reduced.¹³⁶ The availability of this information has the potential to remove risk and cut out delay.¹³⁷

2.5.2.7 High level of security

Comprehensive electronic system is sufficiently secure and reliable. There are concerns which were being raised amongst many stakeholders about security in the manual deeds registration system. Electronic systems of deeds registration were developed with its fulcrum being premised on the security of every transaction and the security of every title that follows thereafter. Thus, electronic systems raise security issues that are very

¹³⁴ E- land Conveyancing and Registration – Vision and Risks

¹³⁵ The Twenty first Century Estate Agent

¹³⁶ *Zavazava v Tendere* HH 740-15

¹³⁷ Brennan, Gabriel, 'The impact of e-conveyancing on Title registration: A Risk Assessment' <https://books.google.co.zw/bks?isbn=3319103415> p 74

different from traditional paper systems. Technology also offers new ways of protecting the security and integrity of data and transactions, which are key on easy transacting and it is expected to be more secure than the traditional paper system.¹³⁸ Therefore, the electronic version of deeds registration will reduce fraud and double sales which has become a menace in the deeds registration system of Zimbabwe.

2.5.2.8 Electronic deeds search

The large number of paper title records and ancillary documents, the primitive way of arrangement and indexing makes the search for title deeds and other documents in the deeds registries extremely difficult, costly and time consuming.¹³⁹ Thus, electronic deeds search provides innovation which transforms the title search system. Electronic title search provides for an updated register that can retrieve any title searched within seconds.¹⁴⁰ Thus, time will be saved as the registries officials do not need to go to storage rooms and peruse every file until they find the deeds that are being asked for. Countries like Zimbabwe which have two registries can utilise electronic deeds search as an advantage. Thus, stakeholders can be able to search title of a certain property without visiting the deeds registries physically. All those in around cities of Harare and Bulawayo can easily access the deeds registries using the internet and search any title they need without any hindrance. Therefore, it can be argued that introduction of electronic deeds search will change and reform our deeds registration system.

Therefore, it can be summarised that the introduction of electronic deeds registration has radically reshaped the process of deeds registration, not only to work better but to work in a way which can be handled by everyone. The effects of technology are fully explained by the joint report on Deeds Registration by the Law Commission and Land Registry of England that;

“Dealings with land cannot remain unaffected by the general development of electronic commerce...The public rightly seeks a more expeditious and much less

¹³⁸ Brennan, Gabriel, The impact of e-conveyancing on Title registration: A Risk Assessment <https://books.google.co.zw/bks?isbn 3319103415> page 74

¹³⁹ HM Land Registry and Law Commission Report 1998

¹⁴⁰ HM Land Registry and Law Commission Report 1998

*stressful system of dealing with land...Nevertheless, however inevitable it may now seem, there is a legitimate public expectation that the change to an electronically based system for dealings with land will produce clear and demonstrable benefits.*¹⁴¹

2.6. Summary

In conclusion, the deeds registration system of Zimbabwe can be traced its origins from the Germanic Customary law. The deeds registration processes were later developed and designed in a way that is secure, systematic and comprehensive when it comes to the protection of title to deeds. The system was later on deposited in Zimbabwe by the coming of the Settlers. Zimbabwe's deeds registration system has remained paper-based despite the adoption of modern innovation by other jurisdictions. The introduction of technology has radically improved the whole process to save time, cost, accurate recording, easier storage and retrieval of information. It should be noted that each jurisdiction has its own way of introducing a comprehensive system of electronic deeds registration. There were reforms especially in the legal fraternity which initiated all the events that followed. There is no universal formula of applying and introducing electronic version of deeds registration. Therefore, Zimbabwe must assess and analyze its requirements and needs before it can introduce electronic deeds registration.

¹⁴¹ HM Land Registry and Law Commission Report 1998

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

As described in Chapter One, the primary objective of this study is to investigate how to improve the efficiency and effectiveness of the deeds registration system in the country. The present chapter discusses and provides an outline of the research methodology that was used to collect, manage, analyze and present the data gathered from the research. The principal part of this chapter is mostly concerned in showing how the research was carried out to gather reliable, valid and sound data that has value-addition in the implementation of an efficient deeds registration in Zimbabwe. Therefore, this entails deliberating and scrutinizing the research instruments on how the data was gathered, examined, analysed and deduced in this thesis.

The thesis is based on both field research as well as a desktop research methodology. The primary data was collected through the employment of interviews in the field research. The desktop research was mainly based on library and internet materials which were a guide to critically analyze the major barriers to an efficient deeds registration system implementation in Zimbabwe like an electronic version. The chapter further outlines the research strategy that was employed and the research tools that were used to reach the research objectives, the data collection method, the data analysis methods, data authenticity and creditability, delimitations of the study and ethics.

3.2 Research Design

For any meaningful research to be conducted, the researcher has to submit to the dictates of a chosen research design and stand guided by the adopted research design. The research design refers to the science and art of planning and the procedure for conducting research studies in order to get the most valid and accurate findings.¹⁴² Research design can also be described as the arrangement of conditions for collection and analysis of data

¹⁴² Vogt W P et al When to Use What Research Design 1993 New York, United States.

in a manner that aims to combine relevance to the research purpose with economy in procedure.¹⁴³ In other words, it is the conceptual structure within which research is conducted. It constitutes the blueprint for the collection, measurement and analysis and deducing of data. As such the design includes an outline of what the researcher will do from writing the hypothesis and its operational implications to the final analysis of data. The research designs are procedures for collecting, analyzing, interpreting and reporting data in many research studies.¹⁴⁴

According to Page and Meyer,¹⁴⁵ the design is usually comprised of the translation of the research questions into research variables. They further demonstrated the process by listing down the following stages;

- Translation of research questions into research valuables,
- Choosing an appropriate sampling and data collection technique,
- Choosing appropriate analysis methods and,
- Deciding on time frame and budget.

The importance of research design was interrogated by Collis and Hussey in which they argued that it will give you a detailed plan which you will use to guide and give focus on the research.¹⁴⁶

Generally, the design which minimises bias and maximises the reliability and validity of the data collected and analysed is considered a good design. The best research design in any investigations must offer the lowest experimental error. Similarly, a design which yields the highest information provides an opportunity for considering many different aspects of a problem is considered the most appropriate and efficient design in respect to many research problems. Thus, the question of a good research design is mainly related to the objective and the nature of the research problem being studied.

¹⁴³ Claire Selltiz and others, *Research Methods in Social Sciences*, 1962, p. 50

¹⁴⁴ Creswell, J. W., & Plano Clark, V. L. (2011). *Designing and conducting mixed methods research*. 2nd ed. Thousand Oaks, CA: Sage

¹⁴⁵ Page and Meyer *Applied research design for business and management* 2006.

¹⁴⁶ Collis, J. and Hussey, R. (2003), *Business Research: A Practical Guide for Undergraduate and Postgraduate Students*, Palgrave Macmillan, Houndmills, Basingstoke, Hampshire.

This research employed both qualitative and quantitative research methodology. Saunders et al¹⁴⁷ argue that there are two main types of research designs which are, positivist and phenomenological. These approaches are also known as quantitative and qualitative research methods respectively. The qualitative research methodology was defined by Van Mannen¹⁴⁸ as an umbrella term covering an array of interpretive techniques which seek to describe, decode, translate and otherwise come to terms with the meaning, not the frequency of certain more or less naturally occurring phenomena in the social world. The qualitative method in the same regard, it is considered as an ideographic research, thus, it provides for the study of individual cases or events and its abilities to understand different people, meanings and events.¹⁴⁹ On another hand, quantitative method is mainly concerned on the objective measurements and the statistical or numerical analysis of data collected through polls, and surveys, or by manipulating pre-existing statistical data using computational techniques.¹⁵⁰ The quantitative research design focuses specifically on gathering numerical data and generalizing it across all groups of people and relate it to a certain situation. Consequently, quantitative research deals with numbers, logic, and an objective position and detailed convergent reasoning rather than divergent reasoning. Thus, the researcher combined these two methods in order to come up with a comprehensive research.

3.2.1 Quantitative Research Methodology

The positivist research design has its main emphasis premised on the quantitative nature of the study. It makes use of methods which allow for the measurement of variables within a collection of individuals or groups and the interrogation of numerical data by statistical analysis.¹⁵¹ The fundamental characteristics of the quantitative design are that the

¹⁴⁷ Saunders, M., Lewis, P. and Thornhill, A. (1997) "Research Methods for Business Students, Pitman Publishing, London, UK

¹⁴⁸ Van Manen, M. (1997). *Researching lived experience: Human science for an action sensitive pedagogy* (2nd ed.). London, ON: Althouse Press. p 520.

¹⁴⁹ [Klein](#) H & [D. Myers](#) (1999). A Set of Principles for Conducting and Evaluating Interpretive Field Studies in Information Systems. *MIS Quarterly*, vol. 23 no. 1, pp. 67–93

¹⁵⁰ Babbie, Earl R. *The Practice of Social Research*. 12th ed. Belmont, CA: Wadsworth Cengage, 2010; Muijs, Daniel. *Doing Quantitative Research in Education with SPSS*. 2nd edition. London: SAGE Publications, 2010

¹⁵¹ *Civil and Environmental Engineering: Concepts, Methodologies, Tools, and Applications* Concepts, Methodologies, Tools, and Applications.

researcher deals with real facts and knowledge as being received in the field.¹⁵² Basing of field studies the researcher was able to have credible evidence as he observed the field study on his own. In this research, the researcher chose to work with a noticeable social reality whose result could be analyzed empirically to produce quantifiable statistics. Further, the use of the positivist approach was because of its advantageous support in knowledge sharing of primary information. The researcher, largely adopted the quantitative research method to improve meticulousness through quantitative and reliable measurement and regulating data. In this study, the research was based on conclusions of the results from the views of respondents from the deeds registrars and their supporting staff, conveyancers, financial institutions and the public at large. The following are the advantages and disadvantages of the quantitative approach.

3.2.1.1 Advantages

- There is a clear theoretical focus of the research
- The data can be easily compared.
- The research is controlled by the researcher.
- Data is collected from targeted respondents.
- Economical collection of large amounts of data.
- The data collected is mainly credible

3.2.1.2 Disadvantages

- Often does not discover the meanings people attach to social phenomena,
- Weak understanding of the social process,
- Inflexible-often direction cannot be changed once data collection has started,
- Respondents may not disclose full information on the subject.

3.2.2 *Qualitative Research Methodology*

¹⁵² Rubin, D.B. (1987) Multiple Imputation for Nonresponse in Surveys. John Wiley & Sons Inc., New York. <http://dx.doi.org/10.1002/9780470316696>.

Qualitative research is a type of research design that collects and works with non-numerical data and that seeks to interpret meaning from the data that help understand social life through the study of targeted populations or places.¹⁵³ Fraenkel and Wallen¹⁵⁴ argued that the qualitative method implies that knowledge is of a softer, subjective and spiritual nature based on personal experience and insight so that it has to be personally experienced. This study did not involve the investigation of individual attitudes or behaviour but it was centered on facts, hence, qualitative research methods were not used directly but were embraced in the quantitative research methods. The qualitative approach was discovered to have the following advantages and disadvantages:

3.2.2.1 Advantages

- Enables researcher to be alive to changes during the research process,
- Good understanding of the social process,
- Facilitates understanding of how and why.

3.2.2.2 Disadvantages

- Data analysis is difficult,
- Data collection can be time-consuming,
- Generally perceived as credible by non-researchers.

These methodologies that were employed in this study has been chosen to best acquire information and deduce conclusions about the establishment of an effective and comprehensive deeds registration in Zimbabwe. The idea of this research has its birth from the developments in the technological advancements which are inevitably and at an unprecedented rate is consuming the manual and archaic title registration system around the globe. The research identified and evaluated the potential benefits and difficulties that are likely to be faced in implementing an effective and advanced title registration in landed

¹⁵³ Crossman A, An Overview of Qualitative Research Methods 2020.

¹⁵⁴ Fraenkel, J. R. & Wallen, N. E. (2003). How to design and evaluate research in education. Fifth ed. New York: McGraw-Hill.

property rights in Zimbabwe. The main purpose was to obtain an insight into the current developments in the deeds registration system in Zimbabwe and abroad to the purposes of proposing the necessary reforms for the efficient establishment of a comprehensive and effective deeds registration system.

3.3 Targeted Population

The targeted population of the study were the role players that are involved in the transfer and registration of landed rights in Zimbabwe. Consideration was done with the Registrar and his staff that are generally and directly charged with the examination, registration and storage management of title deeds and all other related ancillaries in the landed property rights. Also, conveyancers who are responsible in all the preparation of documents that are lodged for registration. Other stakeholders included the financial institutions, Surveyors, town councils, government agencies like the Zimbabwe Revenue Authorities were also part of the targeted population. The study also sought information from relevant departmental heads and project managers within the information communication and technology department in the country. All these private and government agencies have people who are involved in the day to day registration of landed property in the country.

To address the other objectives of this research, the study had to seek foreign literature of countries that established electronic other advanced modern deeds registration. Statutes, articles and journals of countries like Canada, the Netherlands, Australia and England were considered in coming up with this research. The great analysis had to be employed in analysing literature on the establishment of advanced and effective deeds registration systems like an electronic system as well as how it is operating today. A conceptual international framework was put together based on the similarities and differences that were notified in the deeds registration system of the above-mentioned countries.

3.4 Data Collection Methods

Data refer to raw facts without any processing, organizing or analysis, hence, they have little meaning and few benefits to the managers and decision-makers.¹⁵⁵ They are composed of bits of content in either text or numerical format. They are normally structured but do not bear any information to use them in a particular context.¹⁵⁶ It is from this data in which researchers identify and select relevant material for his or her type of the concerned research. The following stages of the data were identified as the point which a researcher must use to identify relevant information for the study;¹⁵⁷

- study concept, indicating key elements, definitions and concepts,
- data processing, containing the data and specifying the content of the information,
- data archiving, indicating procedures to guarantee the preservation of data and confidentiality,
- data distribution, indicating the terms of use and citation,
- data analysis, providing replication codes and publications, and
- data repurposing, indicating the procedures for post hoc harmonization and data transformation.

This research took the most appropriate approach to effectively manage and select relevant information that adequately answers the research questions. To achieve the purpose of the research both the primary and secondary data have been employed to produce a comprehensive thesis. In this study, data collection and analysis were only done using two methods that are primary data, and secondary data that was available from the qualitative and quantitative data collection processes. Primary data was collected through interviews. This thesis analyzes all the chapters with sufficient theoretical analysis and mathematical precision to make it interesting to the readers.

3.4.1 Research Instrument

¹⁵⁵ Mohajan, Haradhan Knowledge Management Strategy to Improve Business Sector 2017.

¹⁵⁶ Mohajan, H.K. (2016), Knowledge is an Essential Element at Present World, International Journal of Publication and Social Studies, 1(1): 31–53.

¹⁵⁷ Osorio, J. (2014), Numbers Under Fire: The Challenges of Gathering Quantitative Data in Highly Violent Settings, Social Science Research Council, Drugs, Security and Democracy Program (DSD) Working Papers on Research Security: No. 6.

A research instrument is a tool that is used for data collection.¹⁵⁸ A good research instrument is synonymous with dependability and validity of the results. A researcher needs an instrument that would permit validation of conclusions about the characteristic of the individuals.¹⁵⁹ Types of research instruments that can be used by the researcher are interviews, observation, experiments and focus group discussion. For this study, the researcher used interviews for primary data collection.

3.4.2 Primary data

According to Merriam,¹⁶⁰ primary data is one that is collected specifically for a project in the field. The data collection included information on the actual processes from the settlements, preparation and lodgment of documents for registration, examination and how transactions in the land are recorded and stored. According to Irwin,¹⁶¹ primary data is information collected specifically for the study and it is expensive to collect, but it is significant. This so because it enables the formulation of structured or unstructured questions specifically designed for the specific topic. In this study, primary data was crucial since it provides in-depth, reliable information which is fundamental to the establishment of a comprehensive and effective deeds registration system. There are three main ways of collecting primary data and these are interviews and observation method. In this study, the researcher used the interview method.

3.4.2.1 Interviews

Interviews are regarded as the most flexible and widely used method for gaining quantitative information about people's experiences and views.¹⁶² Interviews are particularly beneficial in getting the story behind a participant's experiences with the use of the deeds registration system in the country. The interviews can pursue and

¹⁵⁸ Collis, J. and Hussey, R. (2003), *Business Research: A Practical Guide for Undergraduate and Postgraduate Students*, Palgrave Macmillan, Houndmills, Basingstoke, Hampshire.

¹⁵⁹ Saunders, M., Lewis, P., & Thornhill, A. (2003) *Research method for business students*, 3rd edition. New York: Prentice Hall.

¹⁶⁰ Merriam, S.B. (1998) *Qualitative Research and Case Study Applications in Education*. Jossey-Bass Publishers, San Francisco.

¹⁶¹ Irwin Broken Symmetry Three Essays on the Dynamic Nature of Consumer Preferences

¹⁶² Frances R et al Interviewing in qualitative research 2009 [International Journal of Therapy and Rehabilitation](#) 16(6):309-314

guarantees a piece of in-depth information around a topic.¹⁶³ Interviews were carried out interviewing role players involved in the deeds registration processes such as conveyancers, sellers, buyers, financial institutions, deeds registries officials, government departments involved in the process, technology experts necessary for the establishment of the system and the general public.

The technique of personal interviewing was undertaken to reach the objectives of the study since it is the most versatile and productive method of communication which enabled spontaneity and also provided with observation reactions. This projected method was done with semi-structured face to face questions which was designed to allow other questions that arise during the interviews to be also accommodated. The responses were quite comprehensive as the respondents managed to respond to every question that was asked. The interviews were conducted with both registries offices in the country. Conveyancer's interviews were limited mostly to the respondents who work with the deeds registry in Harare and few in connection with the Bulawayo registry. This was also done with other institutions, individuals and government agencies that are involved in the registration of real property and other ancillary rights.

3.4.3 Secondary data

Secondary data refers to the information gathered and recorded by someone else before the current project.¹⁶⁴ The other information which was used in this thesis was extracted from already existing materials in the transfer and deeds registration field. Secondary data was meant for contribution to the building of a foundation and for background information needed to produce a comprehensive and effective deeds registration system. Since, Zimbabwe does not have an advanced and more inclusive deeds registration system yet, the research relied heavily on journals and articles written on advances of other jurisdictions which some have digitized systems of deeds registration.

¹⁶³ Mc Namara 1999. Cater PhD General Guidelines for Conducting Interviews. Minnesota 1999.

¹⁶⁴ Wegner, Daniel M. & Pennebaker, James W. (Eds.) (1993) *The Handbook of Mental Control*. Englewood Cliffs, NJ: Prentice Hall

In collecting secondary data the researcher used both published and unpublished materials. Published data were extracted from the following sources;

- various publications of local governments which include statutes and government reports,
- publications of foreign governments and international bodies,
- various research scholars, universities, economists,
- books of various local and international authors,
- local newspapers,
- articles and trade journals,
- numerous websites on the internet, and
- public records and statistics, historical documents and other sources of published information.

In terms of the law, the current Zimbabwean law and local case laws were critically explored and analysed to determine how Zimbabwe can reform and establish a more advanced and simple deeds registration system and the problems associated with such establishment. The study analytically evaluated various viewpoints outlined in existing literature and textbooks. To critical explore the concept of modern conveyancing the research borrowed heavily on the foreign literature which explained how the cutting-edge system in deeds registration has been implemented in countries like New Zealand, Australia and England. The researcher has studied research works of various scholars in details during this research work.

The secondary data provide researchers with opportunities to work effectively to test new ideas, theories, frameworks, and models of research design.¹⁶⁵ Secondary data has many advantages as suggested by Zikmund,¹⁶⁶ who argued that secondary data has the following advantages:

- data is already available;

¹⁶⁵ Smith, J.A. and Eatough, V. (2006) 'Interpretative phenomenological analysis', in G. Breakwell, C. Fife-Schaw, S. Hammond and J.A. Smith (eds) *Research Methods in Psychology*, (3rd edn). London: Sage.

¹⁶⁶ [Zikmund](#) W G Business research methods Chicago : Dryden Press, ©1991

- data is highly accessible and
- the data is less expensive to obtain.

However, secondary data has also the following disadvantages:

- data may not be relevant to the current study,
- data may be outdated and inappropriate for the current purpose,
- accuracy of the data cannot be determined because the source may be unknown,
- one may not be able to correct the errors and bias in the data.

Therefore, because of these limitations, the researcher was cautious and relied mostly on primary data as the major source for this study which the researcher was able to control its validity and reliability of data obtained. Although most emphases relied on primary data, secondary data was useful in cases of innovative deeds registration system which is not available in the country currently. Foreign secondary literature had to be employed to explain how the process was implemented in those countries and how does it work.

3.5 Authenticity of the Research

The authenticity of research would mean that the same results will be obtained even if the study is repeated in the same way using the same variables. Cooper and Schindler¹⁶⁷ define authenticity as a characteristic of measurement concerned with accuracy, precision and consistency. To achieve this authentic data, the information in the field was recorded using recording devices and writing down notes during interviews. The researcher was personally involved and responsible for data collection and data-keeping. The authenticity of the research was guaranteed since the researcher conducted his own field study and relied on it for the most of his research.

3.6 Credibility of the Research

¹⁶⁷ Cooper and Schindler 2006:716

The credibility of research can be described as a truthful interpretation of the experiences of participants that they can identify as their own.¹⁶⁸ One of the main requirements of any research process is the reliability of the data and findings. Credibility deals with the consistency, dependability, reliability and repeatability of the same results of any research. The researcher cautiously analysed the data that was gathered from the field and documents to come up to a credible conclusion. Prolonged field engagement was done to build a trust relationship and confidence with the participants so that they feel comfortable to disclose certain information for the credibility of the study. Various steps were taken to ensure the credibility of the results.

Credibility is the strength of the research, therefore, it entails the degree of information gathered if measured how much it is divorced from error and bias. Thus, results yielded must be consistently the same over repeated testing periods. It means that the operation of a study, such as the data collection procedures, can be repeated with the same results every time. Therefore, it is concerned with the consistency, stability and repeatability of the informant's accounts as well as the researchers' ability to collect and record information accurately.¹⁶⁹

3.7 Delimitations

According to Leedy and Ormrod, delimitations are those aspects that the researcher is not going to include in the study.¹⁷⁰ The study was carried out in Zimbabwe including a comparative analysis from selected international jurisdictions.

3.8 Research Limitations

Due to the limited number of current case law and texts on deeds registration, reliance was placed on available literature.

3.9 Summary

¹⁶⁸ Hall, Joanne M. and Patricia E. Stevens. 1991. "Rigor in Feminist Research," *Advances in Nursing Science*, 13(3): p 19

¹⁶⁹ Seltiz et al. *Research Methods in Social Relations* Holt, Rinehart & Winston of Canada Ltd, 3rd edition 1976

¹⁷⁰ Leedy P and Ormrod J, *Practical research: planning and design* Boston Pearson, 10th edition ©2013.

This chapter outlined the research methodology that was employed in this research. The study was conducted using quantitative and qualitative methods. Semi-structured interviews were conducted and the information was gathered from various people and organizations that are involved in the registration and transfer of landed property. The interviews were recorded and transcribed verbatim. The information was analysed to develop a well solid argument about the deeds registration in Zimbabwe. Various books, articles and journals from different countries that have effective advanced deeds registration systems across the globe were also part of this study.

This chapter further dealt with the research strategy, the data collection methods and the data analysis, as well as delimitations and research ethics. Chapter four will deal with the data presentation from the surveys and interviews.

CHAPTER FOUR

PRESENTATION OF FINDINGS. DISCUSSIONS AND ANALYSIS

4.1 Introduction

In the preceding chapter, the research methodology was described comprehensively, which articulated the theoretical position in which the study was based. The chapter included the research strategy, sampling technique, data collection methods, authenticity and reliability of the study, limitations and delimitation, and research ethics that was applied in this study. The purpose of this research was to investigate the current manual deeds registration system in Zimbabwe and suggest reforms which are in line with curbing the inadequacies of the manual system and suggest ways to improve the system. As alluded, information from interviews, textbooks and other sources were analysed and the results are presented in this chapter. This chapter further presents the research findings which are based on field studies and also off field data. The field study participants were composed of government agencies, private entities, conveyancers and the society that forms part of the current deeds registration system in the country. The chosen participants were all from managerial post where they represent their organisations. Each participant's contribution was instrumental in the orchestration of this thesis. All participants' views were carefully analysed and considered and are represented in this study. Also, data that was collected from other sources which were not field study were also considered to come up with this comprehensive work.

Thus, this chapter will elucidate data on the current system and the steps Zimbabwe has taken towards the improvement of the current conveyancing system. It will further evaluate the steps by a comparative analysis with other countries that already have improved deeds registration systems. The comparative analysis will be mainly based on the foundation that is currently laid down in the country and what has been done by other jurisdictions within the field of deeds registration systems. The countries that will be consulted are the aforementioned countries in chapter four which have comprehensive

automated deeds registration systems. Lastly the chapter will draw lessons and findings that can help in achieving a modern and more innovative system.

4.2 Presentation of the data

The real property market field is very important and it contributes significantly to the economy of Zimbabwe in terms of raising revenue. Thus, an increase in the efficiency of the deeds registration system means more revenue will be raised and collected. In pursue of the primary objective of this thesis, the researcher carried interviews in which the responses were transcribed. The researcher confined the transcription by listening to each participant and varying with the typed record of the interview. Also, data from secondary sources were analysed. Content analysis was used to analyse the data that was collected. The collected information was weighed and verified to ensure truthfulness of the information supplied. What emerged from the research includes;

The participant's responded differently to questions that were posed to them in regard to each part of the conveyancing process. The first part to be presented is the part which deals with drafting and lodgement of documentation by conveyancers. However, some participants started by pointing out that the estate agent is the first stakeholder in the conveyancing process arguing that it is the estate agent that put the inputs in the system. The vast of stakeholders identified the estate agent as the one responsible for initiating the conveyancing process by putting the real property on the market. However, others argued that the conveyancing process starts with the conveyancer because he or she is the one that instigates the process of changing rights in real property and not the estate agent. Conveyancers are responsible for drafting all the necessary documentation that is needed to effect changes in real rights in the deeds office.

The deeds registration system in the country is paper based thus, conveyancers they need to print out the paper-based documentation that they would have created electronically using computers. These paper documents are the ones lodged with one of the deeds registries of the country. Many stakeholders argued that this process would be easier and more efficient if conveyancers were allowed to lodge their applications electronically like other jurisdictions like Australia. This must be done however, without

jeopardising the security features of the system. Many advocated for the path that were taken by other jurisdictions in increasing the efficiency of their conveyancing system that is to introduce innovation in the country's deeds registration system. It would improve the process that is carried by conveyancers in the current property process would be a milestone achievement. As a result, it will change the tasks being played by role players such as conveyancers. The researcher observed that the participants were very comfortable talking about this stage. However, the researcher also noted that there was much uncertainty on the role played by secretaries of conveyancers who often do most of the conveyancing work on behalf of their principals. Conveyancers and those in the legal field did not respond well to this issue.

There are only two deeds office in the country, one in Bulawayo and the other in Harare. These two offices service the whole country, thus, geographical problems come into play especially to those that do not reside in these two cities. Therefore, in order to communicate with the deeds registries one has to travel to be in conduct with either one of the deeds office. The issue of decentralisation of the deeds registries was suggested in which some argue that stakeholders do not need to travel long distances to Harare or Bulawayo in order to register real rights in property.

Once the documents are lodged comes the next stage that is examination and registration of the changes in title records. Many stakeholders argued that since we have a legal directive that is the 2017 Deeds Registries amendment which is in place, the country should take it into effect. This was said putting in mind that the examination and registration of the lodged documentation is done manually. Many stakeholders especially in the deeds office argued that there is need to embrace innovation in the examination and registration process since it is taking them a lot of time in to examine and register manually. There are two deeds office in the country, the one in Bulawayo and the other in Harare. The offices are always with backlog due to many applications and the time taken to process the transactions. One of the deeds officials said that it takes about six months for one transaction to be registered. Thus, the time being taken in effecting these changes is too much and have become a major hindrance.

Given that the deeds registration system in the country is paper based, the title deeds are stored and are also issued in paper format. The deeds registries officials highlighted that these paper documents are difficult to store as well hard to find when the deeds search are being conducted. They also highlighted the most critical issue that is of that is of security of the paper documents. They argued that besides being stolen the paper documentation is prone to destruction due to leakages in water pumps or fire and there is no backup of these documents. Thus, it makes the system so susceptible to anything in terms of its security.

The world today stands, not only at the height of globalization and regional integration but, also at the apex of technological and scientific advancement which is making deeds registration of different nations more efficient.¹⁷¹ The advancement in information and technology has instigated the espousal of the improved deeds registration processes across various jurisdictions. Different versions like the electronic version of title registration was conceived and just like any other technological advancement in the modern era, it modernised and brought simplicity, convenience and efficiency in the previously manual deeds registration process. The electronic system was designed to improve the paper-based model and to immerse its inadequacies in title recording and transfer. Zimbabwe and many African countries are still at the infant stage in adopting more efficient and comprehensive systems of deeds registration when compared with other jurisdictions. However, the country has made few strides towards the realisation of a better system of deeds registration than the current, even though there is still more that needs to be done.

4.3 Zimbabwe's progress towards an effective version of deeds registration

The modern epoch of information communication and technology has ushered in the necessity to contemplate the new digitisation of the manual deeds registration process. With modernity and technological advancement, the world is changing into a global community. Technological systems have affected every facet of human endeavour and

¹⁷¹ Ojienda T O *Principles of Conveyancing in Kenya- A Practical Approach* (Kenya 2007) 326.

the deeds registration process was also not spared out by this evolution. According to Professor R.W. Staudt, he states that

*“lawyers for the twenty-first century must learn to use electronic information tools to find the law, interact with governmental agencies, prepare their work and communicate with courts, other lawyers and their clients.”*¹⁷²

To be more precise, the same sentiments were shared by Robbert Abbey and Mark Richards who rightly point out that in the deeds registration processes,

*“the pressure for innovation and change is already here upon us...if conveyancers are to survive, they will need to adapt and change to the needs and demands of society. Information technology must help in this respect.”*¹⁷³

The conveyancers in the country are still using the paper-based system to prepare and lodge the necessary documentation in landed property registration. In the interviews it was noted that the paper-based system has been synonymous with so many causalities because of its retardness, a lot of gaps and the advent of fast and more sophisticated systems. Many countries around the world which include New Zealand and Australia¹⁷⁴ have adopted the automated deeds registration processes. In Africa, there has been few countries that have partially embraced the electronic system of title registration in order to improve their system,¹⁷⁵ however, others like Zimbabwe are still in the process of adopting this digital advancement.

In Zimbabwe there is need for reforms to improve the paper-based system or to change system in total. Conveyancers, deeds registrars and other stakeholders involved in the transfer of landed property rights have pointed the need for reforms in the conveyancing

¹⁷² Staudt R W “The Electronic Law School A 1992 Snapshot of the Center for Law and Computers at Chicago College of Law” 1993 3(6) *Comp & Law* 33.

¹⁷³ Robbert Abbey & Mark Richards *A Practical Approach to Conveyancing* (3rd ed) (Blackstone Press Ltd London 2000) 23.

¹⁷⁴ Low Rouhshi “Maintaining the integrity of the Torrens System in a digital environment: A comparative overview of the safeguards used within the electronic land systems in Canada, New Zealand, United Kingdom, and Singapore” 2005 *Australian Property Law Journal* 11(2): pp. 155-178.

¹⁷⁵ Such as Ivory Coast and Botswana. <https://www.doingbusiness.org/en/data/exploretopics/registering-property/reforms>

and deeds recording processes. There is thread of this need that goes back to 2006 interviews where the most profound lawyer and conveyancer in Zimbabwe Mr L Mhishi argued that automation of our deeds registration system will go a long way in curbing fraud and double sales in landed property. In 2018 the Chief Registrar of deeds in Zimbabwe reiterated the same sentiments when he pointed out that there is a need for acceptance of technology and transform our Deeds Registry offices to digitisation.¹⁷⁶ The same were noted in the interviews that the researcher conducted in coming with this study. There are so many loopholes in the current deeds registration system as demonstrated by the interviews. The leakages that are associated with the current manual deeds registration processes is the main reason that has resulted in calls for reform.

These leakages have been fully utilised by the fraudsters to exploit innocent buyers and sellers of landed property. Thus, the call for reforms in the conveyancing system is desired. The courts also took the initiative in suggesting reforms in the deeds registration system in the case of *Zavaza v Tendere*,¹⁷⁷ where the court aptly held that,

“It would appear that conveyancing laws of this country are not foolproof because fraudsters continue to exploit the weaknesses in the procedure for registration of transfers to defraud innocent property seekers. The leakages in the system have meant that cases of unlawful transfers of immovable property continue to reach the courts with alarming frequency.....There is a pressing need for reforms to be introduced in conveyancing rules in order, not only to modernise the system, but also to render the system foolproof and hopefully protect property owners.”

Therefore, the deeds registration system needs to be reformed. The paper-based system has registration cavity which is the breeding space for innumerable disputes and fraud.¹⁷⁸ Thus, in bridging the gap and modernising the system, Zimbabwe has taken various initiatives which include the legislative reform.

4.4 The Legal framework in improving the deeds registration in Zimbabwe.

¹⁷⁶ Nyamukondiwa W “Online Facility soon” The Herald (Zimbabwe) 9 February 2018 *Business*

¹⁷⁷ *Zavaza v Tendere* HH 740-15.

¹⁷⁸ *TBIC (Private) Limited & Another v Mangenje & 5 Others* SC 13/18.

Zimbabwe like many other jurisdictions is also on the road in reforming its legal structure so that it adheres to the dictates of the new improved version of title registration. It is in the light of this background that triggered the Zimbabwean legal system to be revised so that it lays the foundation for the authorization of the electronic deeds registration system. In 2017 the principal Act, the **Deeds Registries Act**¹⁷⁹ was amended by promulgating the **Deeds Registries Amendment Act** of 2017. This was a starting point in the right direction to an enhanced system of deeds registration. The **Deeds Registries Amendment Act**¹⁸⁰ introduced Part VIII to the principal Act which instigated the electronic registry system. The Part VIII of the amendment Act of 2017 empowers the Registrar of Deeds to establish an electronic Deeds Registry, which is capable of online registration, online deeds examination and electronic storage of records. It further provides for electronic conveyancing that is from the preparation of documents and its lodging being done on an electronic platform which is electronically connected to the Deeds Registry. The amendment in the law was one step ahead towards electronic deeds registration.

The amendment was a reform in the progression to an electronic deeds registration system in the country. Although the electronic Registry is yet to be established, its creation, will result in improvements to the current system in terms of efficiency and security to that effect. The amendment was introduced with the intention of replacing the current manual preparation, lodgement, examination and recording procedures contained in the **Deeds Registries Act**.¹⁸¹ In terms of the amended **Deeds Registries Act** section 90, the Chief Registrar of Deeds

may establish an electronic registry, for which purpose, notwithstanding anything to the contrary in this Act, the Registrar may-

*(a) digitise every register, deed, document or other record under his or her charge;
and*

¹⁷⁹ Deeds Registries Act [Chapter 20:05].

¹⁸⁰ Deeds Registries Amendment Act number 8 of 2017.

¹⁸¹ Deeds Registries Act [Chapter 20:05].

(b) establish and maintain a computer system for the purpose of applying information technology to any process or procedure under this Act, including the despatch and receipt and processing of any deed, return, record, declaration, form, notice, statement or other document for the purposes of this Act.”¹⁸²

The introduction of an electronic registry system would expedite the processing of documents in the Deeds Registries Offices. Thus, all the documents in the Deeds Registries will have to be converted into electronic format. The documents will also be stored in the electronic format which will be easy and fast when it comes to online searches for a title or any encumbrances on the title.

Also, the Registrar will be able to examine deeds and register a title electronically. This online platform will be a sublime proposition considering the fact that we only have two Deeds Registries offices in the country which are not easily accessible. The public will be able to access information in the Deeds Registries anywhere in the country. Conveyancers will also be able to prepare the necessary documentation, sign them using a digital signature, and lodge the draft deeds of transfer electronically within the comfort of their offices. They will be no more physical attendance to the Registrar's office. This will lead to a transient way of attending to a transfer of immovable property in Zimbabwe. Therefore, time and money will be saved thus, instead of physically sending someone with the hard copy of the draft documents, you can simply electronically lodge the draft deed with the Deeds office within a few minutes.

The electronic system significantly reduces the registration time from months into days if not hours. Generally, in Zimbabwe, the registration process takes up to almost two or more months before a property is registered. In other countries, registration would take place within a matter of hours if not days like what is happening in New Zealand.¹⁸³ The changes in the title register will transfer real rights in the property to the new owner. One of the complaints that people have with the current paper-based conveyancing system is the amount of time that is taken in processing a transaction. Many stakeholders argued

¹⁸² Section 90 Deeds Registries Act [Chapter 20:05].

¹⁸³ <https://www.doingbusiness.org/en/rankings>

that the advantage of establishing an electronic system is that it would greatly reduce the amount of time taken by conveyancers and deeds officials to complete each step of the conveyancing process required of them, and lessen the amount of information required in verification as the system would be able to check certain details automatically. The title register will reflect the change automatically by substituting the old owner with the new owner in the title. All other transactions involved which include financial obligations, like stamp duty, rates clearance and land tax fees as well as payments between buyers, sellers, lenders, and conveyancers, would be settled through an electronic funds transfer system. To add on, errors with the deeds registries would most likely to be identified at an early stage and corrected, consequently, there would be no delay in the entire conveyancing process.

The proposed system is secure as it gives access to registered users only as provided by section 90(3)¹⁸⁴. The electronic deeds registration network limits the number of people who can manipulate data in the system hence, the access is limited to a few users. A person may only have access to the network under authority given by Registrar through a network access agreement.¹⁸⁵ The Act further affords for the suspension of delinquent members which is another security measure to safeguard against abuse of the system. Restricted access to the electronic registry for manipulation of data in the system like information-gathering and conveyancing work or notarial practice will be subjected to certain precautions against fraud, violations of privacy and other abuses.

This Act¹⁸⁶ was a reaction to the problems which were being experienced in the registration of immovable properties in which properties were being fraudulently transferred and registered which resulted in the loss of property and costly litigation.¹⁸⁷ The electronic Registry will also enable what are called registered users,¹⁸⁸ to access it for research and information gathering purposes. This means that a registered user will

¹⁸⁴ Deeds Registries Act [Chapter 20:05].

¹⁸⁵ Section 93 of the Deeds Registries amendment act, which states that one should apply first to be a registered user

¹⁸⁶ Deeds Registries Amendment Act of 2017

¹⁸⁷ *Machiva v Commercial Bank of Zimbabwe* 2000 (1) ZLR 302 (H).

¹⁸⁸ Section 93 Deeds Registries Act [Chapter 20:05].

be able to access the system anywhere in the world and can discover the title registration details of a certain immovable property.

The amendments also allows the proposed electronic deeds registration system to run concurrently with the current paper-based model.¹⁸⁹ Therefore, if the systems are running, *peri-quasi* or at the same, thus, if either one of the systems collapses, the other one can be utilised to cover for the failure of the other system. Also, this provision gives valuable time which can be utilised by other stakeholders to learn the electronic system. Amble time will result in many stakeholders becoming more conversant and also appreciative to the technological advancement of the electronic version of title registration before engulfing into a fully electronic system. This can be seen from the story of New Zealand which initiate its electronic deeds registration by firstly allowing the paper and automated form to run concurrently before fully adopting the electronic form completely. Therefore, it will be a noble and wiser idea of adopting a transition from the paper-based one to an electronic-based one.

The amendment also introduced digital signatures which means that hacking and account interference will be limited. This reduces the risk of abuse and fraud in that a specific person is liable for their logging in and signatures. Digital signatures are a safe measurer of avoiding fraud in the deeds office. This also mean that hacking and account interference will be limited.¹⁹⁰ This reduces the risk of abuse and fraud in that a specific person is liable for their own logging in and signatures.¹⁹¹ Digital signatures are a safe measurer of avoiding fraud and other abuses in the transfer and registration of deeds. Thus, the Act makes it an offence to use the system without a valid registration licence.¹⁹² The country made further advancement by launching an official website containing information on the list of documents and fees for completing a property transaction, as well as, a specific time frame for delivering a legally binding document that proves property ownership.¹⁹³

¹⁸⁹ Section 90(3) Deeds Registries Act [Chapter 20:05].

¹⁹⁰ Section 94 of the Deeds Registries Act [Chapter 20:05].

¹⁹¹ Section 97 of the Deeds Registries Act [Chapter 20:05].

¹⁹² Section 99 of the Deeds Registries Act [Chapter 20:05].

¹⁹³ <https://www.doingbusiness.org/en/data/exploretopics/registering-property/reforms>

The use of technological systems in the modern-day of doing business has transcended to positive outcomes. Thus, technology must be embraced in all facets of human endeavour. Katsova argued that

*“With the ever-increasing reliance of our society on information technology, it is perhaps not surprising that information technology has been chosen as the means by which it is hoped to modernise conveyancing – hence, electronic conveyancing.”*¹⁹⁴

The same sentiments were echoed by Wylie¹⁹⁵ when he advocated for electronic deeds registration as the only way of achieving this modernity in title registration. In the African continent, almost 71.4% of the Deeds Registries are on the paper-based systems and that has militated against the competitiveness of most of the economies and Zimbabwe is included.¹⁹⁶ Thus, the Zimbabwean legal framework provides a skeleton of a more advanced deeds registration system as proposed.

4.5 Comparative analysis with other jurisdictions.

A thorough examination of the law and practise of deeds registration system in Zimbabwe would clearly reveal many loopholes and disadvantages when juxtaposed to the deeds titling of other jurisdictions in the region and internationally. The Zimbabwean system, just like many other African countries, it is still at the nascent stage when it comes to technological advancement embracement and enhancing their deeds registration system. With the advent of electronic version of deeds registration system, Zimbabwe has reviewed the systems in which it reacted by promulgating a piece of legislation in observance with the new technological developments. The electronic version of deeds registration systems was adopted by different countries indicates that there are various ways and forms of enhancing title registration systems. Almost every country has its own

¹⁹⁴ Kostova T *Moving Towards e-Conveyancing in Ireland: An Analysis* (LL.M. thesis University College Cork Ireland 2010) p. 1.

¹⁹⁵ Wylie J “Keynote address: need for a modern legislative framework” Law Reform Commission Annual Conference 2004. <http://www.lawreform.ie/Annual%20Conference%202004.PDF>

¹⁹⁶ National Assembly Hansard 04 March 2017 Vol 43 No 52 <https://www.parlzim.gov.zw/national-assembly-hansard/national-assembly-hansard-04-march-2017-vol-43-no-52>

variation of the system. Although there is a difference, all the systems maintain certain major similar characteristics. It is from these analogous physiognomies that comparison will be hinged. Therefore, the proposed electronic system in Zimbabwe emulates that of other jurisdictions aforementioned in the previous chapter.

A comprehensive package of legislation is crucial for the successful implementation of an electronic title registration system. Notwithstanding the differences in institutional framework, the initial reform to an electronic system is adequate legislative provisions for example what was done in England and Wales, Australia, the Netherlands and other countries. The Zimbabwean legal provisions that introduce and authorise electronic deeds registration is not comprehensive. Therefore, there is need for the study, consultation of all stakeholders and to make proposal for reform of all the existing legislation related to manual deeds registration. The legislation also gives authority, legitimacy and the legal sanctity to the process of transfer and recording of title.¹⁹⁷

In England and Wales, they engaged in wide consultation which was exceptional which laid the basis for their land law. Extensive documentation of all the issues, in the most simplistic manner, along with a long list of proposals, suggestion, and questions, was prepared and sent to almost everyone who had anything to do with deeds registration in England and Wales.¹⁹⁸ In Zimbabwe when the legislative pronouncement was promulgated, it was done after consultation with interested parties and the public at large. This laid a good foundation of the implementation of the system since everyone will be aware of the proposed electronic version of title registration.

For England and Wales to achieve its primary policy objective, the laws were amended and a substantial part of the **Land Registration Act of 2002** was devoted to electronic deeds registration.¹⁹⁹ The law of England and Wales empowered the Land Registrar to set up a Land Registry Network,²⁰⁰ which is an electronic communication network for

¹⁹⁷ Rajasekhar PV "e-Conveyancing: Challenges and Ambitions" 2006 *International Conference on Enhancing Land Registration and Cadastre for Economic Growth in India* 3.

¹⁹⁸ Rajasekhar PV "e-Conveyancing: Challenges and Ambitions" 2006 *International Conference on Enhancing Land Registration and Cadastre for Economic Growth in India* 3.

¹⁹⁹ Land Registration Act of 2002 part 8.

²⁰⁰ Section 92 of the Land Registration Act of 2002.

registration or execution of electronic property transactions.²⁰¹ As Harpum and Bignell explained, this network could go beyond the legal aspect of the transaction and could cover the whole transaction from the point when a property is put on sale.²⁰² In other words, the network could not only provide information to the interested parties and the Registrar, but also be used to prepare, communicate, and register the title by the parties and the Registrar.²⁰³ The Ontario system in Canada, the landonline in New Zealand, and PEXA in Australia systems, they all first had to align their deeds registration laws to suit the new thrust for the introduction of electronic deeds registration. Thus, legislation lays the foundation for all electronic systems.

To establish an electronic deeds registration system, there is need for transformation of all paper title and related documentation into an electronic form. Zimbabwean legislation provides for the same in section 90(3) of the **Deeds Registries Act**.²⁰⁴ Almost in every jurisdiction with electronic deeds registration processes they started with changing the format of paper-based title records to electronic.²⁰⁵ This is a first step towards making electronic Deeds Registry possible as far as title deeds management is concerned. The country of Botswana can be cited as a regional example which embarked on computerization of deeds records at the Deeds Registry by converting paper records to electronic.²⁰⁶ Therefore, Zimbabwe is on the correct path to electronic deeds registration.

When equated to other countries such as Australia which applies a likely similar system of deeds registration which is the Torrens system, Zimbabwe, its legal aspects of electronic registration are mostly positive as it still keeps the government assurance of a secure title. Thus, any title obtained without defects in the Deeds Registry, its security is guaranteed regardless of it being in electronic form. The system will enable conveyancers to access the deeds office from any place in the country with a personal computer and

²⁰¹ Section 92 of the Land Registration Act of 2002.

²⁰² Harpum C and Bignell J *Registered Land: Law and Practice under Land Registration Act 2002* (Jordan Publishing England 2004) 2.

²⁰³ Harpum C and Bignell J *Registered Land: Law and Practice under Land Registration Act 2002* (Jordan Publishing England 2004) 2.

²⁰⁴ Section 90(3) of the Deeds Registries Act [Chapter 20:05].

²⁰⁵ Examples include New Zealand, Canada, Singapore, Netherlands, Australia and many others

²⁰⁶ Government of Botswana, Botswana's National e-government Strategy, Government Printer, 2011.

connection to an internet line. Similarly, in Australia the Property Exchange Australia system has proved to be the utmost successful system whereby all land transactions are done online. Conveyancers in Zimbabwe should be able to do the same by lodging documents for registration in electronic form and receive them duly registered through the internet. This will ensure that deeds registration systems are simplified and brought closer to the people who require the services, especially in those areas who are far from the two deeds registries in the country. Thus, title procured using the electronic system will also carry the same probative value as the old paper title deeds.

In New Zealand when they adopted the electronic version of title registration, they did it gradually. Firstly, they allowed the paper-based system and the electronic version to run concurrently. After sometime when everyone was well versed with the new electronic system, that's when they provided for mandatory use of the electronic system. The same can be said with regards to the legal structure of Zimbabwe which provides that the present paper-based system would have to run concomitantly with the new proposed electronic system. Thus, the electronic system was optional for some time and then later it came a point when the use of the electronic services has to be compulsory and everyone in the conveyancing and deeds registration process were forced to adopt the electronic version.²⁰⁷ This process can only be realized if the infrastructure is available at various levels of society, this is especially the case for the availability of internet connectivity across the country, as well as access to mobile services.²⁰⁸ In Kenya, the same method was used as it was impossible to convert all paper-documents to an electronic system in one fell swoop.²⁰⁹ Although section 90(3) of the **Deeds Registries Act** provides for concurrent use of paper based system and the electronic system, however, it does not provide for mandatory use which is different from other countries that implemented the system using the same format. An electronic title registration system should be the ultimate goal for Zimbabwe, considering that some jurisdictions have

²⁰⁷ Rajasekhar PV "e-Conveyancing: Challenges and Ambitions" 2006 *International Conference on Enhancing Land Registration and Cadastre for Economic Growth in India* 4.

²⁰⁸ LAPCAS Project Team Quarterly Report for the period 1st October to 31st December 2012, unpublished manuscript.

²⁰⁹ Friedman L N. et al "Implementing an electronic medical record." 2007 *Critical care clinics* 347-381.

managed to dispense with the production of manual paper deeds to land for instance in Australia and New Zealand.

The Zimbabwean law, unlike other jurisdictions like England and Wales, it only constitutes an infinitesimal part of the **Deeds Registries Act**.²¹⁰ Only Part VIII deals with electronic registration of title. Although the law empowers the Registrar of Deeds to establish an electronic deeds registration system in the country, the law has many gaps and loopholes when considered against other jurisdictions that have implemented the same system. The 2017 amendment is not comprehensive as it does not cover the whole aspects of electronic deeds registration. For example, section 5 which provides for the functions of the Registrar, it does not provide for an electronic register on the functions of the Registrar and also, it gives discretion to the Registrar to establish electronic titling.²¹¹ Also other statutes that are related to transfer of land like the **Survey Act**²¹² does not speak of any electronic process, thus, the need to be aligned in line with the dictates of electronic deeds registration. There is a need for a holistic approach to the legislative provisions like what was done in Canada. Thus, Zimbabwe must embark on exhaustive law reform for the establishment of electronic conveyancing and procedures to adapt to the digital economy.

The law in Australia laid down the regulations of electronic dispositions which included that, electronic documents have to stipulate its effective time and date, as well as to include electronic signatures of all the parties by whom it purports to be authenticated,²¹³ every electronic signature had to be certified.²¹⁴ If an electronic document complied with these formalities, it was to be regarded by law as a written deed, signed by each individual and sealed by each corporation.²¹⁵ These formalities are not present in the amendment that establish the Zimbabwean electronic deeds registration law, thus making it difficult to ensure adequate security of the electronic system.

²¹⁰ Deeds Registries Act [Chapter 20:05]

²¹¹ Section 90(1) of the Deeds Registries Act [Chapter 20:05].

²¹² Survey Act (Chapter 20:12).

²¹³ Section 7 Electronic Communications Act, 2000 (defining "Electronic signature").

²¹⁴ Section 7(3) (defining "Certification") Electronic Communications Act, 2000.

²¹⁵ Section 91(4) 91(5) Land Registration Act of 2002.

Also, the Zimbabwean law does not provide for technical support teams like the laws of New Zealand when they implemented their system. In New Zealand they engaged in training people on how to use the system. The law provided for the installations of the prescribed software and hardware which was supposed to be in law firms and deeds registries. This is something that our legislators negated when they promulgated the 2017 amendment.

The Zimbabwean legislative framework of electronic deeds registration process, although it provides the basic elements of the proposed system, it still leaves a considerable gap which need reformation. There is need for a holistic approach to the legislative provisions reform. The statute that introduces electronic deeds registration needs to be revised and amended and all other statutes related to the conveyancing process. The experiences by other countries provide an in-depth knowledge of the possibilities and difficulties of developing electronic systems of conveyancing and with or without exhaustive legislation.

4.6 Lessons and benefits for Zimbabwe

The introduction of an electronic title registration system to enhance the manual paper-based system in the service delivery would be a welcomed development given the inadequacies of the current system. Since the proposed electronic version has not been implemented, Zimbabwe can learn some of the benefits of the system. As a result, there is a potential of expeditious registrations processes of title. Zimbabwe can learn and also benefit from the electronic storing capabilities of an electronic title deeds which does not occupy a lot of space, which is easy to search and provide a backup. It also provides the ability to send documents through an electronic system, thus, the use of paper may be reduced or even eliminated.²¹⁶

Through the analysis of electronic deeds registration processes as conducted by other countries, Zimbabwe can benefit tremendously. This can be seen by looking at the

²¹⁶ Sanderson et al "Managing clinical research permissions electronically: A novel approach to enhancing recruitment and managing consents" 2013 *Volume: 10* <https://doi.org/10.1177%2F1740774513491338>.

benefits that can be drawn from such electronic systems. Gahan lists some of the benefits which include:²¹⁷

- round the clock availability;
- vibrant and faster communication with quicker responses;
- the reduced administrative burden on the customer side;
- higher productivity on the government side because the data can be processed more quickly compared to paper-based forms;
- facilitating information-sharing and analysis of trends; and
- Better-quality national competitiveness.

Other benefits which can be identified include the prevention of multifarious registration which is time-consuming, reduction in the risk of incorrect data, and an increase in transparency of transactions and the opportunity to make all necessary information available to the players of the real estate market internal and external users at one place at the internet.²¹⁸ For Perry, the thrust of the electronic communications revolution²¹⁹ or evolution, which includes electronic conveyancing is towards greater connectivity.²²⁰ Further benefits of electronic deeds registration were well articulated at the *CINDER XVI International Congress on Registration Law* that was held in Spain in 2008.²²¹ At that forum Rätsep set out the following reasons for electronic deeds registration as being the main benefits:

“activities are half-automated which means registration is more efficient and... routine work can be done without human intervention. Texts of entries are composed automatically as they base (sic) on templates. Thanks to digital structured data exchange there are fewer mistakes and less paper. The information system is sustainable and can be easily developed further. It is easy

²¹⁷ Gahan E “Taking full advantage of the possibilities of e-Government” 2008 51 *Public Affairs Ireland* p.15.

²¹⁸ Conclusions of the sessions ‘Conclusions of the sessions’ United Nations Economic Commission for Europe’s Working Party on Land Administration Workshop on the Influence of Land Administration on People and Business 2008 <http://wpla.uredjenazemlja.hr/zapisnik.pdf>

²¹⁹ Widdison R “Electronic Law Practice: An Exercise in Legal Futurology” 1997 60 *Mod. Law Review* 144.

²²⁰ Perry R “E-Conveyancing A critical view” 2003 8(2) *C.P.L.J.* 29.

²²¹ CINDER XVI International Congress on Registration Law held in Valencia, Spain from the 20th to 22nd May 2008. http://www.cinder2008.com/ingles/detalle_ponencia.cfm?id_ponencia=302

to get statistics. You can get land register information everywhere you have internet connection, it is possible to build new online services according to clients' needs and information you get from the register has legal power electronically”²²²

The electronic deeds registration system provides prompt case management, reliability, simplicity, elasticity, and legal security.²²³ For many registries, the move to electronic deeds registration provides the opportunity to fulfil this transitory. Therefore, it is apodictic that truncating the number of procedures promote lucidity and productivity.

Presently there are only two registries, one in Harare and the other in Bulawayo. These two offices are often overloaded. Electronic registration of title will certainly reduce the workload, promote accessibility and efficiency.

4.7 The inadequacies of the deeds registration system of Zimbabwe.

The electronic system of deeds registration is desirable due to the many benefits some of them elucidated above that it provides. However, it must be noted that the system is not easy to establish and maintain. There is a lot of stakeholders and financial difficulties that are considered and consulted before the system may come into fruition. The Zimbabwean operational environment has several inherent weaknesses that have negatively affect the establishment of an electronic deeds registration system²²⁴ or any other improvising way that may improve the system. These may include operational and functionality of the system, privacy and security concerns, legislative and regulatory barriers, deficiency of information communication technology related skills, limited internet coverage, economic barriers among others.

4.7.1 Operational and functionality of the system

²²² Rätsep H “Estonian Land Registration and Experiences in Electronic Conveyancing” CINDER XVI International Congress on Registration Law Valencia Spain (20 – 22 May 2008) http://www.cinder2008.com/ingles/detalle_ponencia.cfm?id_ponencia=297

²²³ Takács E “Land Registration in Hungary, Legal Effects of Registration, Legal Guarantees, Legality Checks” CINDER XVI International Congress on Registration Law Valencia Spain 20 – 22 May 2008 http://www.cinder2008.com/ingles/detalle_ponencia.cfm?id_ponencia=302

²²⁴ Ministry of Information Communication Technology (MICT) Strategic Plan 2010 – 2014

The operation of the current paper-based system has resulted in many stakeholders labelling it as the slowest due to its time delays. The manual system of deeds registration system takes a lot of time that is about to six months for one transaction to be complete. Therefore, the number of properties registered in year is very low and this chase away potential investors who may take a lot of months registering property without any production going on. The process such deeds searching and storage in the country is cumbersome. The manual deeds searching takes a lot of time since one need to approach the deeds office in question personally. The searching of long back files which will be staked in the store rooms will also take time to locate and also to go through page by page of the files. The storage facilities are getting bigger each and every day with property being registered, thus, the need for a larger space of keeping these files and they must secure against any loss. Therefore, the system becomes cumbersome and fragile in security system.

4.7.2 Cadastre

The cadastral system in the country is always updated whenever the size or the boundaries of a certain piece of deeds description changes. This is line with the new boundaries that would have been drawn or from the subdivision. Unfortunately the same privilege is not accorded to the deeds records which remain outdated despite the new changes due to the fact that the deeds are only altered when a change in ownership is effected as being lodged by the conveyancer. Thus without registration of the new owner the title remains the same. Therefore, only real property subdivided, that does not change ownership in property information will not be recorded in the deeds office, only in the cadastre.

4.7.3 Funding of the system

Setting up an automated deeds registration system is expensive for any country to implement it.²²⁵ Arruñada gives the example of the Victoria system which cost almost \$40-50 million but only registered a single pilot transaction in its first 18 months of operation

²²⁵ Rajasekhar PV "e-Conveyancing: Challenges and Ambitions "2006 *International Conference on Enhancing Land Registration and Cadastre for Economic Growth in India* 4.

because both banks and conveyancers refused to participate.²²⁶ It can be seen from the case study of England and Netherlands that establishing such a system is financially consuming²²⁷ even for an economically stable countries. The chain matrix project and *Home Information Pack (HIP)* initiatives which were developed in England were both shelved after a considerable amount of money was exhausted²²⁸ and later that year the system was put on hold to raise new funds.²²⁹ Zimbabwe is fighting for a stable economy and barely has financial stability or aid to invest towards the setting up of an electronic system. These unstable economic conditions exacerbated by political instability are great challenges to the establishment of the said system. Thus, such a system requires a lot of capital, for establishing, monitoring and maintenance. This will also include having to train many personnel on how to operate and monitor the system.

4.7.4 Legislative barriers

Legislation and regulatory statutory instruments have either a positive or negative impact on the establishment or enhancing a deeds registration system. The legal structure is the foundation for any development or improvement of any conveyancing system. The **Land Registry Act of 2002** of the United Kingdom had to be amended to pave way for the enhancement of an all-encompassing electronic system. In Zimbabwe the law has been amended to accommodate and improve the current system. However, the amendment is not comprehensive, given that it's only an infinitesimal part and it has many loopholes. For example, section 10 of the **Deeds Registries Act** does not provide for electronic register and section 90(3)²³⁰ makes the conveyancing system dual in the sense that it allows the manual-based system to continue to exist without any provision for its termination. It is inconvenient for both the conveyancers and those involved in the system in the event that another party to a transaction may prefer to use the electronic system

²²⁶ Arruñada B Electronic Titling: Potential and Risks New Zealand Law Journal, 2010, April, 115-120.

²²⁷ Arruñada B Electronic Titling: Potential and Risks New Zealand Law Journal, 2010, April, 115-120.

²²⁸ Cross M "Land Registry climbdown is welcome to sign of change" *The Guardian* 19 February 2009 <http://www.guardian.co.uk/technology/2009/feb/19/land-registry-data> and Department for Communities and Local Government *HIPs are history: Pickles suspends Home Information Packs with immediate effect* Press release 20 May 2010 <http://www.communities.gov.uk/news/newsroom/1591783>

²²⁹ HM Land Registry *Report on responses to e-conveyancing secondary legislation part 3* http://www1.landregistry.gov.uk/upload/documents/econveyancing_cons.pdf

²³⁰ Section 90(3) of the Deeds Registries Act [Chapter 20:05]

whilst the other prefers the paper-based system in the same transaction, this provision creates unnecessary obstacles. Also, other statutes that relate to conveyancing were not amended. They are all silent when it comes to reformation of the current system for example the **Survey Act**. Therefore, the current statutes of Zimbabwe do not pave way for an enhanced system of title registration.

4.7.5 Outdated Technologies

The technology used in the deeds registries office is archaic, thus, implementation of an effective deeds registration system becomes difficult. This is so due to the fact that enhanced and modernized system has its major premises entrenched on the use of the internet. Thus, failure to have access of the internet means people will be able to access the system. In the developed countries almost, everyone has unlimited internet access anywhere anytime.²³¹ Whereas in Zimbabwe most people do not have access internet, thus enhancement of the system becomes challenging.

4.7.6 Security features

It is important that the security of the deeds registration system remain intact and maintain its integrity. The current conveyancing system has been a breeding cavity for fraudulent activities. There have been many cases that have gone to court as a result of loopholes in the current system which was also identified by judges who claim that the current conveyancing system is promoting deceitful activities which some time go without recourse. Fraudsters has utilised the loopholes in the deeds registration system of the country to fraud innocent property-owner and buyers.

4.8 Analysis and Findings

The previous part presented and explored the data that were gathered during the data collection processes. The data included responses from respondents, researches from the internet, books and journals and articles from different authors on the subject that is locally and internationally. This part now provides a general discussion and analysis of

²³¹ Law council of Australian policy paper: Electronic Conveyancing fundamental principles.

the data explored in the preceding part. Thus, it summarises the insinuations and the findings of the study. As noted earlier, the deeds registration system in Zimbabwe is characterised by paper-based documentation and manual interlinks, which makes the system tedious and cumbersome. Basing on the analysis of the literature review, the articles, journals and books that was analysed and the field data that was collected, there are certain findings that were identified. The findings of this study are as follows:

Finding 1: The current conveyancing laws are not adequate to secure and maintain title.

Finding 2: The current deeds registration system is slow and takes a lot of time to complete a transaction.

Finding 3: The current conveyancing system is far from modern technologies.

Finding 4: Some participants in the property registration suggests the need of more deeds registries offices.

Finding 5: Many stakeholders in the conveyancing sectors need the improvement of the current and most likely adopting the electronic conveyancing system.

Finding 6: With the introduction of an enhanced type of deeds registration model, certain institutions will be affected by the changes in their business activities.

Finding 7: An enhanced and more improvement is needed in the conveyancing system and it should be introduced in a gradual mode like what transpired in New Zealand.

Finding 8: There is need to improve the availability and access of landed property information and the accuracy of the deeds registration by making it publicly available.

Finding 9: All other statutes that deal with the transfer and registration of landed property rights need to be updated to be in tandem with the amended **Deeds Registries Act**.

Finding 10: There is a need for an integrated information sharing centre whereby collected information onset of the transaction can be verified and made available through the transaction.

Finding 11: There is a need to form a board that will administer the enhancement of the current conveyancing system.

Finding 12: The current security system is less secure as it has been used by many fraudsters.

The overall findings in short is that the current deeds registration system in the current is not secure and there is need for reform.

4.9 Summary.

This chapter presented the data and the findings that were identified from the analysis of the data. The data explored in this chapter most of it were captured from day to day participants of the deeds registration system of the country. Also, foreign literature was also explored to compare with the data gathered in the country. This information was analysed to come with the necessary findings that were instrumental in the legal writing of this thesis. Looking from the Zimbabwean perspective, recommendations for reforms must be made to come with a lasting solution to the deeds registration processes. In New Zealand, England and Australia the electronic system was successfully implemented after many consultations were made. Conversely in Zimbabwe recommendations must be made that provide an exposition to the current melancholia and a pathway to a fecund system. Therefore, chapter five will provide the necessary reforms that must address the challenges being faced by Zimbabwe in establishing the improved system. It will also map a pathway that can be used to navigate until Zimbabwe establishes effective and comprehensive deeds registration unit.

CHAPTER 5

RECOMMENDATIONS AND GENERAL CONCLUSION

5.1 Introduction

The preceding chapters of this thesis have canvassed all the critical issues of deeds registration process in the country and outside the jurisdiction. They further, enquire with the conveyancing society in the country. Given this background and that currently, the land transfer and recording in the country is still manual and it has caused disquietude and tension to all those who are involved because of its ingrained frailty. Therefore, it plausible to curb all these inadequacies by vouchsafing recommendations for the espousal of an effective and comprehensive conveyancing system. The recommendations are capable of facilitating electronic preparation and lodgment of documents, online searches of title, networked communication between the parties, contemporaneous conclusion and registration of title. They would also address the paper-based insufficiencies by plummeting delays, saving time and money and bringing greater transparency and security to the system.

5.2 Overview

The overall objective of the thesis was to assess ways to improve the current deeds registration system in the country. The thesis was guided by the following guidelines, which were to review the legal aspects of conveyancing law and its implications in the transfer of real rights in Zimbabwe. Secondly, to examine the law and procedures involved in conveyancing in Zimbabwe and identify its shortcomings through field study. And lastly, the critical assessment of the legal aspects of the deeds registration system in the country, comparing it with other jurisdictions that have successfully enhanced their deeds registration systems. Conclusively was to draw conclusions on the analysis on how other countries have achieved their systems, and also how can Zimbabwe achieve its own better system.

Chapter one consisted of an introduction which highlighted preliminary aspects such as the background of the deeds registration system, a problem statement which set the

research in motion, research objectives and research questions. It also covered the synopsis and summary of the chapter.

The study examined the literature review in chapter two. It discussed various elements and general principles of the law and practice of deeds registration system in Zimbabwe. The Chapter further examined the evolution of the deeds registration system in the country.

Chapter three outlined the research methodology that was employed in this research. The study was conducted using quantitative and qualitative methods. The interviews were conducted with participants involved in the deeds registration system in the country. The information was analysed to develop a well solid argument about the deeds registration in Zimbabwe. Various books, articles and journals from different countries that have advanced deeds registration systems across the globe were also part of this study.

Chapter four presented the explored data that were gathered during the data collection processes. The data included contribution from stakeholders, researches from the internet, books and journals and articles from different authors on the subject locally and internationally. This chapter provided a general discussion and analysis of the data. Thus, from the analysed data, the chapter presented findings of the study. This chapter laid down the basis for the recommendation which was articulated in the last chapter

Chapter five concluded the study by giving a summary of the issues discussed in the study and provided recommendations. It also showed how Zimbabwe can achieve an enhanced deeds registration system based on evaluation of the findings from the comparative study of other jurisdictions which have advanced system. Lastly, it offered conclusions and the way forward, as well as suggested areas for further research, if applicable.

Many countries across the globe especially developed countries have taken the initiative of advancing their deeds registration process using different methods. In all these methods, they were initiated with one objective in mind that is eliminating the paper-based inadequacies. Kastova argued that,

*“With the ever-increasing reliance of our society on information technology, it is perhaps not surprising that information technology has been chosen as the means by which it is hoped to modernise conveyancing hence, electronic conveyancing.”*²³²

Other authors, which include Wylie,²³³ have also recognised modernisation in deeds registration system can only be achieved by upgrading the existing manual deeds registration process. The application of technology is seen as a means of reforming and simplifying the deeds registration process, improving its efficiency, providing greater transparency and security. The enhancement of the manual system has been described as a comprehensive solution to the inadequacies presented by the current antique paper-based system. Many jurisdictions across the globe which include Australia and Canada have taken the initiative to redefine and re-engineer their deeds registration processes as part of the reform programme to take maximum advantage of the advent of technologies.²³⁴ Kostova applauds this determination because it has made it easier for the transfer and registration of property rights, cheaper and more efficient, noting that great hopes have been invested in the development of an end-to-end fully electronic system of conveyancing.²³⁵

In 2005 the then Irish Taoiseach, Bertie Ahern, accredited that modernisation, simplification and reform of land law and conveyancing were long overdue and that electronic deeds registration would bring this process into the 21st century.²³⁶

“No one could possibly argue against that as being a highly desirable and indeed, essential goal. With all aspects of Irish life enjoying unprecedented modernisation

²³²Kostova, T. Moving Towards eConveyancing in Ireland: An Analysis (LL.M. thesis University College Cork 2010) p. 1.

²³³ Wylie, J. 'Keynote address: the need for a modern legislative framework law Reform Commission Annual Conference (2004) <http://www.lawreform.ie/Annual%20Conference%202004.PDF>

²³⁴ The Law Society of Ireland 'eConveyancing: Back to Basic Principles. Vision of an Electronic System of Conveyancing ('eVision') (March 2008) insists that it would be a fundamental mistake to digitise the current paper-based system. It advocates that the whole process be re-designed and simplified to suit the online environment.

²³⁵ Kostova, T. Moving Towards eConveyancing in Ireland: An Analysis (LL.M. thesis University College Cork 2010) p. 3.

²³⁶ Ahern, B. 'Speech on the occasion of the 30th Anniversary of the Law Reform Commission' Law Reform Commission Dublin (2005) <http://www.lawreform.ie/fileupload/Speeches/30th%20Anniversary%20Taoiseach%20speech%20final%2023%20June%202005.pdf>

that is transport, infrastructure, communications, thus why the legal profession should not allow itself...to, remain in the past."

The same can be said for Zimbabwe. As noted above the current deeds registration system in the country is synonymous with manual interlinks and paper-based documents, which makes it tedious and cumbersome. Given this contextual background, it is imperative at this stage to propose recommendations which make a pathway to a fructiferous effective deeds registration system. Below are some of the recommended reforms.

5.3 Proposed Reforms

5.3.1 Legal reforms

There is a need for a comprehensive law alignment with the dictates of the **Deeds Registries Act**. The Ontario system in Canada, new legislation provisions laid the foundation for the establishment of the electronic system. As was described in England in its preparatory stages that, for the successful implementation of the electronic system, there is a need for modernising the statutes relating to land law and conveyancing processes. The amendment that was done in Zimbabwe in 2017 is not comprehensive as it does not encompass some of the main fundamentals in the establishment of an electronic system. There is need of reforming the existing **Land Registration Acts** and Rules to make it more contemporary and conducive to the dictates and application of technology presently. Legislative reforms legalise the practices of digital signature, electronic documents, electronic transfer and execution of deeds and contracts among other processes.

Although there was a recent amendment of the **Deeds Registries Act**, it is still not adequate. There is need for other laws involved in conveyancing and title registration to be also reformed so that they will be in tandem with the **Deeds Registries Act**. So, there is a need to ensure that all the statutory rules, which will be required to permit the lawful operation of an electronic deeds registration system is in place before establishment of the system. Therefore, there is a need for repealing all obsolete and archaic legislation

and replace it with the law that envisage electronic conveyancing. It is vital to ensure that all land transaction is done within the ambit of the law so that they remain legally valid and acceptable. To avoid any defects in title registration, statutory rules must be complied with and they must be in tandem with the electronic version.

5.3.2 Step by Step Approach

The implementation of the electronic system must be developed and delivered regularly so that people may know how the system operates before everyone is entangled on the train. Therefore, it is imperative not to suddenly switch from a tried and tested system of conveyancing to a new form of title registration in a flash. Thus, Zimbabwe should adopt the electronic system stage by stage as provided in the 2017 **Deeds Registries Act Amendment**. This is what was done in New Zealand. It first provided that the paper-based system and the electronic system should operate concomitantly for a certain period of time until almost every stakeholder was familiar with the electronic system. Then after sometime when everyone was conversant with the system, the paper-based system was abolished and they adopt the electronic system. Our law although provides for concurrent running of the two systems, there will be need to later on abolish completely the paper based when all stakeholders are well versed with the new system.

5.3.3 Decentralisation

In addition, there is a dire need for decentralisation. Presently there are only two registries, one in Harare and the other in Bulawayo and the result is that these two offices are often overloaded, more so considering the manual paper based system by which they operate. Decentralising the registries of the country to the country's other major cities and towns like Masvingo, Gweru, Mutare and Beitbridge will certainly reduce and spread the workload more easily and promote accessibility and efficiency.

5.3.4 Time

Adopt time saving methods to shorten the process and to improve its accuracy and quality. Automation of the system is one of the methods that shortens the time and maintain security of the system. In Australia, they automated their deeds registration

system which has become one of the best system in the world. It saves time, effective and comprehensive, user friendly and yet secure. Thus, Zimbabwe should adopt such kind of systems that saves time.

5.3.5 Training of employees

The current deeds registration system is mainly based on manual processes which means it is labour-intensive. There are many employees that are employed in this system, which means any change especially into electronic format most people would lose their jobs. This period of change over to the electronic deeds registration, the management has to exercise utmost restraint and compassion towards the employees. During this period employees would be weighed down by the fear of losing their jobs, pressure to upgrade or acquire new skills. Therefore, for the successful implementation of the programme depends considerably on how the management can cope with this difficult transition. Thus, there is need to train the officials of the new system before its introduction. However, this is an exercise, worth the pain, in the overall interest of the society.

5.3.6 Stakeholder Relationship Management

It is important to ensure that all stakeholders involved in the transfer of rights in the landed property have and common understanding for the introduction and successful implementation any system. The relationships between the deeds registry, conveyancers and other agencies must be managed through formal instruments. Also, the deeds registries with their role as manager of the programme as prescribed by the Act, must maintain contact with all stakeholders and clearly explain the vision of electronic conveyancing. The stakeholders must be informed regularly of all developments and must be given an opportunity to input their requirements and concerns to the responsible authority. Thus, common understanding and teamwork will make the implementation any system easier.

5.3.7 Embrace innovation

It is recommended Zimbabwean deeds registration system should embrace technology and upgrade to electronic conveyancing. The electronic version of title registration envisages information communication and technology as the major component. Thus, for the efficacious progress and operation of the new and modified information communication and technology-based systems and services there is need of skilled personnel who are well knowledgeable with the equipment and the software. There is a need to ensure that technical solutions envisaged will be viable and will be successfully developed, implemented and operated. The electronic system must be introduced and successfully delivered operationally to the conveyancing community. The system must not be complicated. The system must be designed in a way that it is acceptable and user friendly to the users on the point of service delivery, or else, the whole system will be predestined as a total failure.

5.3.8 Friendly environment

For the successful implementation of any title registration system, there is a need for all internal resources, and external provision of services and expertise to be acquired and readily be available. Therefore, the environment should be friendly enough to attract investors. The necessary hardware and software need to be procured since most of it is manufactured outside the country. For Zimbabwe external sourcing is the most critical factor in the overall success of improving the system. The enhancements of the manual version are expensive and it need constant check-up and upgrading of the system therefore, it is advisable that the supplies come from a reputable supplier who can be readily available to upgrade the system.

5.3.9 Greater Connectivity

The present manual deeds registration has many gaps in the process. This is so because there's is no smooth flow of transactions in the process. There are various processes in the system which are disintegrated. This fracture is apparent due to different processes which use different systems altogether. Thus, greater connectivity would provide an interlinked end to end process that bridge up to the gaps in the registration process. The electronic version of tile registration provides this greater connectivity of various

components of the system on one portal. The system will be operating at a central portal that can be accessed by anyone anytime. The Australian system, the Property Exchange Australia can be cited as an example that connects everyone under a centralized social hub. Taking into account that there are only two Registries offices in the country, electronic connection will come with many advantages. Therefore, it is recommended to adopt the electronic system which reduces the gap between stakeholders involved in the conveyancing and deeds registration process.

5.3.10 Establishment of a commission for electronic registration

The other recommendation that must be consulted in the implementation of an electronic system is the appointment of a board that manages and governs the development of the system. In Australia, New Zealand, England and Wales and other countries which have an electronic system, they established a project board that was mandated for the development and implementation of the electronic version. The board was drawn from different key public and private institutions involved in the transfer of property and its registration. This is also recommended for Zimbabwe, those different stakeholders from different portfolios involved in property transfer and registration must be consulted and appointed to the board. The diversity in the board brings up the day to day problems that are experienced and solutions that are useful for the ignition of the electronic system. The primary task of the project board would be to make a meticulous valuation of a model that is most appropriate for Zimbabwe.

5.3.11 There has to be an e-government strategy.

The government must have an electronic strategy in implementing its policies. Countries across the globe which have an electronic system of title registration, they have an e-government mindset. Thus, the government must be at the forefront in spearheading electronic projects. The government must be willing and focused on the transition to the 21st-century mind-set. In the conveyancing processes, there are many government institutions involved. Therefore, these institutions must be on an electronic platform. Institutions in Zimbabwe involved in the title registration include the City councils, the Revenue authority department and also the deeds Registry office. It is very clear that in

terms of an Information Communication and Technology, e-government strategy it has nothing to do with the law mainly but the government framework towards e-governance.

5.3.12 Surmounting with a transition.

The paper-based system of transfer of title and its registration has many employees involved in the processes. Thus, because of the physical input in the chain, the process is labour-intensive. The transition from such a system which has so many employees must be handled with care. Therefore, this period of adjustment to the system must be managed with utmost restraint and compassion towards the employees. Evolution always comes with unprecedented issues, therefore, fear of the unknown factors which may occur to the employees of losing their jobs thus they may frustrate the transition. Therefore, for a smooth transition, the management has to consider measures that ensure that employment is maintained. This requires training of the staff to be conversant with the new technology so that they will be able to operate the machines and devices. This is a routine idea that is done in almost jurisdictions which introduce the new version of the technology. Therefore, it is recommended that the human resource management must exercise caution and also allow the existing employees to upgrade their knowledge so that they will be well acquainted with the new technology. It would be an added advantage to educate particularly law students in law schools who study conveyancing on information technology skills and also newly graduates for continued legal education run by the Law society of Zimbabwe.

5.3.13 Technical

The proposed system, its major components are technologically advanced. Thus, for it to be successfully implemented there is a need for technological innovation knowledge. Information Communication and Technology ingrain the heart of the electronic deeds registration process. Consequently, technical innovation that is engulfed in the system, it must be able to be implemented and at the same time be able to be operated by non-technicians. The model and its mechanism must be convenient for every role player in the process, they must be consulted in the implementation. Zimbabwe is recommended

to ensure that the technical setup of the electronic system is designed and structured in a way that is conducive and convenient even for a layperson.

5.3.14 Security Issues

The deeds registration system must always maintain its integrity by securing the process and the title after. Access must not be annoying, time-consuming or difficult, but at the same time, the security of the system must not be compromised. Security must not be cumbersome and should not reduce usability and scalability. The main weaknesses that have been the subject for reform in the conveyancing system is about its security. There has been many properties that were fraudulently transferred and registered. Thus, the Zimbabwean model should improve its security features to curb the unprecedented number of these fraudulent activities. Thus, the system should allow conveyancers only to prepare the necessary documentation for registration and also allow the public to have access in viewing the movement of their transactions.

The concept of digital signatures and passwords should be introduced in conveyancing systems to stricture fraudulent signatures in land transfers and registration. Other various mechanisms includes the employment of the public key cryptography and passwords. These mechanisms are capable of guaranteeing the protection of data thus, giving the system integrity and authenticity. Thus, security is one of the key requirements for all the stages of the conveyancing process.

5.3.15 Deeds registration system should be computer based

The deeds registries play the most fundamental role in the conveyancing process. Thus, the manual data examination, registration, storage and deeds searches processes are all done in the deeds registries. These processes are done manually which pose a great threat to time and space for storage. Thus, paper-based system is seen as old fashioned, inefficient due to the fact time most of the time is lost doing manual searches, examination and registration. A point worth noting is that computerisation of deeds registries would ensures safety of documents, quicker registration and easy storage of title which can easily retrievable when needed with click on the button. The computerisation of deeds

registries can reshape the process of deeds registration, not only to work better but to work in a way which is safe, faster, secure and more efficient.

5.4 Overall Summary

In this 21st century, digitised information seems to be the main focus area of many countries and individual business entities. Many countries have embraced this automated system. Countries like New Zealand, Australia and Canada have done away with manual land titling. In Zimbabwe, the deeds registration system is paper based, slow and insecure. This thesis provided suggestions on ways that can be used to improve the current manual system. There is a legitimate expectation that the enhancement of the paper-based deeds titling basing on the recommendations it would yield many desirable results to the Zimbabwean society.

There are various mechanisms in the institutional framework which were adopted by various countries in the world. As already analysed in the thesis England and Wales, Australia, New Zealand and Canada have comprehensive electronic systems. Regardless of having variances in the mechanisms and models, all these systems were developed with one major premise purposed to curtail, if not to eliminate the inadequacies of the paper-based system by bringing in transparency, accountability and efficiency in land dealings. Therefore, Zimbabwe to achieve the same it must first engage in exhaustive consultations which will lead to the basis of legislative, social and economic reforms. Thus, the whole system should at the end of the day must benefit all stakeholders involved in the process and the public, if the systems is not satisfactory to the users, then the whole system will be deemed to be a failure.

BIBLIOGRAPHY

STATUTES

Constitution of Zimbabwe Amendment (No. 20) 2013.
Deeds Registries Act [Chapter 20:05]
Deeds Registries Amendment Act number 8 of 2017.
Deeds Registries Regulations SI 236 of 2018,
Deeds Registry Act of 1918 South Africa
Electronic Communications Act, 2000 (defining “Electronic signature”).
Electronic Communications Act, 2000.
Electronic Conveyancing (Adoption of National Law) Act 2012.
Land Registration Act of 2002 part 8.
Land Registration Act of 2002.
Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002
(NZ)
Legal Practitioners Act [Chapter 27:07]
Survey Act (Chapter 20:12).

CASES

Chapeyama v Chapeyama 2000 (2) ZLR 103(SC),
Chief Registrar of Deeds v Hamilton-Brown 1969 (2) SA 543 (A).
Freys (Pty) v Ries 1957 (3) SA 575 at 582.
Houtpoort Mining and Estate Syndicate v Jacobs 1904 TS 105 108.
Machiva v Commercial Bank of Zimbabwe 2000 (1) ZLR 302 (H).
Malan and another v Ardconnel Investments (Pty) Ltd 379/86.
Marcus v Stamper & Zoutendyk 1910 AD 78.
Sackstein NO v Van de Westhuize and Anor 1996 (2) SA 431 at 432.
Simpson v Klein and Ors 1987 (1) SA 475.
TBIC (Private) Limited & Another v Mangenje & 5 Others SC 13/18.
The Land and Agricultural Bank of Southern Rhodesia v Jameson 1970 (1) RLR 146
Zandberg v Van Zyl 1910 AD 302-308.
Zavaza v Tendere HH 740-15.
Zavazava v Tendere HH 740-15

BOOKS

C R *Research Methodology; Methods and Techniques* New Age International (P) Ltd., Publishers 2004.

Creswell, J. W., & Plano Clark, V. L. (2011). *Designing and conducting mixed methods research*. 2nd ed. Thousand Oaks, CA: Sage

HM Land Registry and Law Commission 1998

Irwin Broken Symmetry Three Essays on the Dynamic Nature of Consumer Preferences

Jeremiah 32:9 -15 New International Version Bible

Jones Nel *Conveyancing in South Africa* 4th edition (Juta & Co Ltd 1991)

Kleyn D.G. & Boraine A. Silberberg & Schoeman's *The law of property* 4th ed (Butterworths South Africa 1993).104 201

Kostova T *Moving Towards e-Conveyancing in Ireland: An Analysis* (LL.M. thesis University College Cork Ireland 2010)

Kothari C R *Research Methodology; Methods and Techniques* New Age International (P) Ltd., Publishers 2004.

Law council of Australian policy paper: Electronic Conveyancing fundamental principles.

Leedy P and Ormrod J, *Practical research: planning and design* Boston Pearson, 10th edition ©2013.

Leedy, P.D. and J.E. Ormrod (2005). *Practical Research – Planning and design*. (8th Ed.). USA Pearson Prentice

Matome MR *Conveyancing Law for Paralegals and Law Students* 1st edition (South Africa 2013)

Mhishi L *A Guide to the Law and Practice of Conveyancing in Zimbabwe* (Legal Resources Foundation Harare 2004).

Newall D *Law and Practice of Deeds Registration' with precedents* 2nd ed (Butterworths, Durban 1964).

Robbert Abbey & Mark Richards *A Practical Approach to Conveyancing* (3rd ed) (Blackstone Press Ltd London 2000).

Roscoe, J.T. 1975. *Fundamental Research Statistics for the Behavioral Sciences*. (2nd Ed.). New York: Holt, Rinehart and Winston.

Rubin, D.B. (1987) *Multiple Imputation for Nonresponse in Surveys*. John Wiley & Sons Inc., New York.

Sanderson et al “Managing clinical research permissions electronically: A novel approach to enhancing recruitment and managing consents” 2013 *Volume: 10*

Saunders, M., Lewis, P. and Thornhill, A. (1997) “Research Methods for Business Students, Pitman Publishing, London, UK

Seltiz et al. Research Methods in Social Relations Holt, Rinehart & Winston of Canada Ltd, 3rd edition 1976

Silberberg & Schoeman’s *The law of property* 3rd ed (Butterworths South Africa 1993).

Silberberg & Schoeman’s *The law of property* 3rd edition (Butterworths Durban 1993).

Smith, J.A. and Eatough, V. (2006) ‘Interpretative phenomenological analysis’, in G. Breakwell, C. Fife-Schaw, S. Hammond and J.A. Smith (eds) *Research Methods in Psychology*, (3rd edn). London: Sage.

Wegner, Daniel M. & Pennebaker, James W. (Eds.) (1993) *The Handbook of Mental Control*. Englewood Cliffs, NJ: Prentice Hall

West A *The Practitioner’s Guide to Conveyancing and Notarial Practice* (LexisNexis South Africa 2013)

ARTICLES AND JOURNALS

¹ Fombad. A Botswana Perspective, *International Journal of legal information* vol 32:1 p112.

Aigler “Title Problems in Land Transfers” 1945 24 McH. BAR J. 202.

Amadi-Echendu A P *International E-Conveyancing Strategies: Lessons for South Africa* (LLD thesis University of Pretoria 2016).

Anthea P Amadi –Enewedu et al *Mediterranean Journal of Social Science* MCSER Publishing “ E conveyancing strategies : Lessons from South Africa .MSCER Rome Italy, Vol no 10 June 2014

Arruñada B “Electronic Titling: Potential and Risks” 2010 *New Zealand Law Journal*

Babbie, Earl R. *The Practice of Social Research*. 12th ed. Belmont, CA: Wadsworth Cengage, 2010; Muijs, Daniel. *Doing Quantitative Research in Education with SPSS*. 2nd edition. London: SAGE Publications, 2010

Benito Arruñada “Electronic Titling: Potential and Risks” *New Zealand Law Journal*, 2010, April,

Black J & Champion D *Methods and issues in social research* New York : Wiley, ©1976
Blumberg, B, Cooper D.R, & Schindler P.S. *Business Research Methods*, Mc Graw Hill: Berkshire 2005.

Brennan G *The impact of eConveyancing on Title registration* (Springer International Publishers) Switzerland 2015.

Brennan Gabriel, *The impact of e -conveyancing on Title registration: A Risk Assessment*.
Bryan A. Garner (ed) *BLACK'S LAW DICTIONARY* 8th ed (Thomson West, USA, 2004) 358

Christensen, Sharon. "Electronic Land Dealings in Canada, New Zealand, and the United Kingdom: Lessons for Australia" 2004 11 *Murdoch University Electronic Journal of Law*.
Civil and Environmental Engineering: Concepts, Methodologies, Tools, and Applications
Applications Concepts, Methodologies, Tools, and Applications.

Claire Selltiz and others, *Research Methods in Social Sciences*, 1962, p. 50

Clark Eugene *Journal of Law, information and Science* "E Conveyancing in Australia: An important step along the Journey to E government 2011 JLawinfosci 5; 2011 2 (1) *Journal of law and information science*.

Cohen, L., Manion L. (1989). *Research methods in education*. (3rd Ed), London: Routledge.

Collis, J. and Hussey, R. (2003), *Business Research: A Practical Guide for Undergraduate and Postgraduate Students*, Palgrave Macmillan, Houndmills, Basingstoke, Hampshire.

Crossman A, *An Overview of Qualitative Research Methods* 2020.

E- land Conveyancing and Registration – Vision and Risks

Eugene C. "E-conveyancing in Australia: An important step along the journey to E-government." 2011 JL Inf. & Sci.

Felcenloben D *Property Records and Methods of Determination of Property Borders from the Earliest Times to the Middle Ages in Europe Geodesia et Descriptio Terrarum* 12 (2) 2013 15.

Ferber, R and et al "Experiments in Obtaining Consumer Expenditures by Diary Methods," *Journal of the American Statistical Association*, 66 (December 1971), 725–35)

Fraenkel, J. R. & Wallen, N. E. (2003). How to design and evaluate research in education. Fifth ed. New York: McGraw-Hill.

Frances R et al Interviewing in qualitative research 2009 International Journal of Therapy and Rehabilitation.

Friedman L N. et al "Implementing an electronic medical record." 2007 *Critical care clinics* 347-381.

Gahan E "Taking full advantage of the possibilities of e-Government" 2008 51 *Public Affairs Ireland* p.15.

Gose J 2008 A Real Estate Conveyancers from Livery of Seisin to Electronic.33

Government of Botswana, Botswana's National e-government Strategy, Government Printer, 2011.

Greenwood J and Jones "Automation of the Register: Issues impacting on the integrity of title', Taking Torrens into the 21st Century" 2003 A conference to mark the 50th anniversary of the Land Transfer Act 1952, Faculty of Law, University of Auckland.

Hall, Joanne M. and Patricia E. Stevens. 1991. "Rigor in Feminist Research," *Advances in Nursing Science*, 13(3)

Harpum C and Bignell J *Registered Land: Law and Practice under Land Registration Act 2002* (Jordan Publishing England 2004) 2.

[Klein](#) H & [D. Myers](#) (1999). A Set of Principles for Conducting and Evaluating Interpretive Field Studies in Information Systems. *MIS Quarterly*, vol. 23 no. 1.

Kostova, T. Moving Towards eConveyancing in Ireland: An Analysis (LL.M. thesis University College Cork 2010)

Lanyon *Electronic Conveyancing in Australia and New Zealand: Issues for Lenders*. 204
LAPCAS Project Team Quarterly Report for the period 1st October to 31st December 2012, unpublished manuscript.

Law Society of Ireland "e-Conveyancing: Back to Basic Principles. Vision of an Electronic System of Conveyancing ('eVision') " March 2008.

Libbis, S. "E-Conveyancing Sans Frontiers; The Development of an Electronic Conveyancing System for Australia" 2007 Registering the World Conference Dublin p. 3

Low Rouhshi "Maintaining the Integrity of the Torrens System in a Digital Environment: A Comparative Overview of the Safeguards Used within the Electronic Land Systems in

Canada, New Zealand, United Kingdom, and Singapore" 2005. *11 Australian Property Law Journal*.

Low Rouhshi "Issue 2 Special Property Law Edition Article 7 From Paper to Electronic: Exploring the Fraud Risks Stemming From the Use of Technology to Automate the Australian Torrens System" 2009 *Volume 21*.

Low, Kelvin F.K. "The nature of Torrens indefeasibility: Understanding the limits of personal equities." *Melb. UL Rev.* 33. 2009:

Marwick, Brian. A Collaborative Framework to Support a National Land Information Infrastructure in Australia. The University of Melbourne, Department of Infrastructure Engineering, 2013.

Mc Namara 1999. Cater PhD General Guidelines for Conducting Interviews. Minnesota 1999.

McNight Reddy Charlton Solicitors and European Trademark Attorney: Introduction of E-conveyancing to Ireland.

Merriam, S.B. (1998) *Qualitative Research and Case Study Applications in Education*. Jossey-Bass Publishers, San Francisco.

Ministry of Information Communication Technology (MICT) Strategic Plan 2010 – 2014

Mohajan, H.K. (2016), Knowledge is an Essential Element at Present World, *International Journal of Publication and Social Studies*, 1(1): 31–53.

Mohajan, Haradhan Knowledge Management Strategy to Improve Business Sector 2017.

Mugenda, O. M. & Mugenda, A. G., *Research methods: Quantitative and qualitative Approaches*. Nairobi: African Centre for Technology Studies 2003

Muir R "E-conveyancing in New Zealand: Progress to Date and Future Developments" 2007 *Registering the World Conference, Dublin*.

Osorio, J. (2014), Numbers Under Fire: The Challenges of Gathering Quantitative Data in Highly Violent Settings, Social Science Research Council, Drugs, Security and Democracy Program (DSD) Working Papers on Research Security: No. 6.

Page and Meyer Applied research design for business and management 2006.

Patton, M. Q. (1990). Designing qualitative studies [excerpt: Purposeful sampling]. In *Qualitative research and evaluation methods* (2nd ed., pp. 169-186). Beverly Hills, CA: Sage.

Payne John C "Crisis in Conveyancing" 1954 *The, 19 Mo. Law Review*.

Perry R "E-Conveyancing A critical view" 2003 8(2) *C.P.L.J.* 29.

PEXA_PwC_E-Conveyancing_Report_May15

Rajasekhar PV "e-Conveyancing: Challenges and Ambitions "2006 *International Conference on Enhancing Land Registration and Cadastre for Economic Growth in India*.

Rajasekhar PV "e-Conveyancing: Challenges and Ambitions "2006 *International Conference on Enhancing Land Registration and Cadastre for Economic Growth in India*

Sneddon, M. 'Risk Assessment and Management in Electronic Conveyancing' Registering the World Conference Dublin.

Staudt R W "The Electronic Law School A 1992 Snapshot of the Center for Law and Computers at Chicago College of Law" 1993 3(6) *Comp & Law* 33.

The Land Transfer Act 1952 (NZ) was amended in 1998 to enable the register to be held and maintained in electronic form: Land Transfer (Automation) Amendment Act 1998 (NZ).

The Law Reform Commission "e-Conveyancing: Modelling of the Irish Conveyancing System" 2006 *The Law Reform Commission*.

The Law Society of Ireland 'eConveyancing: Back to Basic Principles. Vision of an Electronic System of Conveyancing ('eVision')' (March 2008) insists that it would be a fundamental mistake to digitise the current paper-based system. It advocates that the whole process be re-designed and simplified to suit the online environment.

The Twenty first Century Estate Agent

Van Manen, M. (1997). *Researching lived experience: Human science for an action sensitive pedagogy* (2nd ed.). London, ON: Althouse Press.

Vogt W P et al *When to Use What Research Design* 1993 New York, United States.

Walker RS "Rhodesia: The Zimbabwe of Southern Africa" 1975

Whalan "Electronic Computer Technology and the Torrens System" 1967 40 *Australian Law Journal* 413 and Kirby, M "The computer, the individual and the Law" 1981 55 *Australian Law Journal* 443, 455.

Widdison R "Electronic Law Practice: An Exercise in Legal Futurology" 1997 60 *Mod. Law Review* 144.

INTRERNET SOURCES

"E-Conveyancing and Tittle Registration in Ireland" <https://www.clarupress.ie/shop/eco>.

"Modernizing the Home moving process" www.conveyancingassociation.org.uk

Ahern, B. 'Speech on the occasion of the 30th Anniversary of the Law Reform Commission' Law Reform Commission Dublin (2005)

<http://www.lawreform.ie/fileupload/Speeches/30th%20Anniversary%20Taoiseach%20speech%20final%2023%20June%202005.pdf>

CINDER XVI International Congress on Registration Law held in Valencia, Spain from the 20th to 22nd May 2008.

http://www.cinder2008.com/ingles/detalle_ponencia.cfm?id_ponencia=302

Conclusions of the sessions 'Conclusions of the sessions' United Nations Economic Commission for Europe's Working Party on Land Administration Workshop on the Influence of Land Administration on People and Business 2008

<http://wpla.uredjenazemlja.hr/zapisnik.pdf>

Cross M "Land Registry climbdown is welcome to sign of change" *The Guardian* 19 February 2009 <http://www.guardian.co.uk/technology/2009/feb/19/land-registry-data> and

Department for Communities and Local Government *HIPs are history: Pickles suspends Home Information Packs with immediate effect* Press release 20 May 2010

<http://www.communities.gov.uk/news/newsroom/1591783>

Discussion paper on Land Registration: Registration, Rectification and Indemnity. p 3 www.scotlawcom.gov.uk

Harpum, C. "English experience: title by registration – preparation for e-conveyancing" 2004 Law Reform Commission Annual Conference

<http://www.lawreform.ie/Annual%20Conference%202004.PDF>

Henry, G.T. (1990) *Practical Sampling*, Vol 21. SAGE Publications Ltd., Newbury Park.

<http://dx.doi.org/10.4135/9781412985451>

HM Land Registry *Report on responses to e-conveyancing secondary legislation part 3* http://www1.landregistry.gov.uk/upload/documents/econveyancing_cons.pdf

<http://www.landonline.govt.nz>.

<https://www.doingbusiness.org/en/data/exploretopics/registering-property/reforms>

<https://www.doingbusiness.org/en/rankings>

<https://www.gov.uk/government/consultations/proposals-to-amend-the-land-registration-rules-2003>

<https://www.gov.uk/government/publications/introducinggovukverify/introducinggovuk-verify>https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639781/HM_Land_Registry_Annual_Report_2016_2017_web_version.pdf.

<https://www.gov.uk/government/publications/introducinggovukverify/introducinggovuk-verify>https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639781/HM_Land_Registry_Annual_Report_2016_2017_web_version.pdf.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639781/HM_Land_Registry_Annual_Report_2016_2017_web_version.pdf

Jacob Arie Zvenberg, Systems of land Registration-Aspects and effects. Page 2, accessed from www.ncgeo.nl/51Zevenberg.

National Assembly Hansard 04 March 2017 Vol 43 No 52
<https://www.parlzim.gov.zw/national-assembly-hansard/national-assembly-hansard-04-march-2017-vol-43-no-52>

New South Wales Land and Property Information, *NSW Participation Rules for Electronic Conveyancing*, 6th September 2013.

Nyamukondiwa W “Online Facility soon” The Herald (Zimbabwe) 9 February 2018
Business

Ojienda T O *Principles of Conveyancing in Kenya- A Practical Approach* (Kenya 2007).

Rätsep H “Estonian Land Registration and Experiences in Electronic Conveyancing” CINDER XVI International Congress on Registration Law Valencia Spain (20 – 22 May 2008) http://www.cinder2008.com/ingles/detalle_ponencia.cfm?id_ponencia=297

Such as Ivory Coast and Botswana.
<https://www.doingbusiness.org/en/data/exploretopics/registering-property/reforms>

Takács E “Land Registration in Hungary, Legal Effects of Registration, Legal Guarantees, Legality Checks” CINDER XVI International Congress on Registration Law Valencia Spain 20 – 22 May 2008

http://www.cinder2008.com/ingles/detalle_ponencia.cfm?id_ponencia=302
www.nationalconveyancing.co.au/Benefits

Wylie, J. 'Keynote address: the need for a modern legislative framework law Reform
Commission Annual Conference (2004)

<http://www.lawreform.ie/Annual%20Conference%202004.PDF>