

**ROLE OF COURTS IN PROMOTION OF GOOD CORPORATE GOVERNANCE
IN KENYA: A CASE OF COMPANIES LISTED IN THE NAIROBI SECURITIES
EXCHANGE**

**BY
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DECLARATION

I declare that the work in this dissertation has not been previously published or submitted elsewhere for award of a degree. I also declare that this my own original work and contains no material written of published by other people except where due reference is made and author duly acknowledged.

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ABSTRACT

Corporate governance environment involves a complex amalgam of both legal and self-regulation. In this regard, there has been a debate on whether courts enforce corporate governance laws mainly through interpreting the relevant legislation and through application of the common law where legislation does not exist. This study sought to determine the role played by the courts in promotion of good corporate governance in Kenya; with a focus on companies listed in the Nairobi Securities Exchange. The study specifically sought to establish the influence of enforcement role, deterrence role and guiding principles of the courts in promotion of good corporate governance in companies listed in the NSE in Kenya. The study adopted a descriptive research design. The target population were 66 senior legal officers in the companies listed in NSE in Kenya. Since the population is small, a census study was adopted whereby the entire population of 66 legal officers formed the sample size for the study. The study collected primary data using a questionnaire. A pilot test was conducted to test for validity and reliability of the data collection tool. The researcher personally administered the questionnaire to the respondents. Both descriptive and inferential statistics was adopted for analysis. The descriptive statistics included frequency distribution tables, mean and standard deviation. The regression model was adopted to establish the relationship between variables. Data was presented using tables, charts and graphs. The study found that the most of the companies listed in the NSE experienced various challenges in corporate governance. Most of the companies used internal mechanisms as a way of addressing the various challenges in corporate governance. The study also found out that courts enforcement measures enhances good corporate governance to a great extent in the listed companies in Kenya. Court deterrence measures and courts guiding principles also influenced good corporate governance in companies listed in the NSE to a great extent. The study concludes that the courts through enforcement measured can promote good corporate governance in the organizations. The study also concludes that courts have the capability to deter any misappropriations by the directors of companies. The courts can promote good corporate governance in companies by enhancing compliance of the laid down practices and also by ordering for the arrests of directors. The study recommends that courts should also be engaged in the enforcement of good governance in the organizations especially where internal mechanisms do not work effectively. The courts should also promote good corporate governance in companies by enhancing compliance of the laid down practice and deter directors from misappropriations in listed companies. The fines given in courts should be adequate to deter directors from misappropriating of company assets.

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DEDICATION

I dedicate this research project to my family members for their love, support, patience and encouragement.

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ACRONYMS AND ABBREVIATIONS

CMA	Capital Markets Authority
NSE	Nairobi Securities Exchange
OECD	Organisation for Economic Co-operation and Development
SOA	Sarbanes –Oxley Act
USA	United States of America

OPERATIONAL DEFINITION OF TERMS

Corporate Governance: is defined as the system of rules, practices and processes by which a company is directed and controlled. It involves balancing the interests of a company's many stakeholders.

Court Deterrence Measures: is a method of punishment in the criminal justice system intended to discourage criminal behavior in the specific individual charged with the crime or to discourage individual criminal defendants from becoming repeat offenders.

Court Enforcement Measures: encompasses measures taken by the courts to ensure observance of law or rather a judicial order forcing/enforcing the law by punishing people who violate the rules and norms governing that society.

Court Guiding Principles: defined as any principles or precepts given by court that guide an organization throughout its life in all circumstances, irrespective of changes in its goals, strategies, type of work, or the top management.

Court: a judicial tribunal presided over by a judge, judges, or a magistrate in civil and criminal cases to administer justice.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Sir Edward Coke famously said that corporations cannot commit treason, nor be outlawed, nor excommunicated, for they have no souls (*Sutton's Hospital Case*, 1612). This sentiment found renewed resonance in the unabashed economic imperatives increasingly advanced in the latter part of the 20th century by commentators such as Friedman (1970) who considered that the only “social responsibility of business is to increase its profits”. Friedman argued that since only people can have responsibilities, a corporation, as an “artificial person”, can only have “artificial responsibilities” (Friedman, 1970). However, today’s environment of high-profile corporate collapses (e.g. Enron and HIH) appears to indicate the public’s desire for corporations to acquire souls. In this regard, there have been attempts to remedy and protect against future corporate excesses (Warren, 2005).

Recent corporate scandals have led to public pressure to reform business practices and increase regulation. Of course, dishonesty, greed, and cover-ups are not new societal concerns. Indeed, much of the existing system of corporate regulation emerged in response to vagaries of the late 1920s especially in the United States and the subsequent stock market crash. What has changed in recent years, though, is the frequency and public salience of corporate scandals (Coglianese, Healey, Keating & Michael, 2004). The public outcry over the recent scandals has made it clear that the status quo is no longer acceptable: the public is demanding accountability and responsibility in corporate

behavior. It is widely believed that it will take more than just leadership by the corporate sector to restore public confidence in the companies and ensure their ongoing vitality. It will also take effective government action, in the form of reformed regulatory systems, improved auditing, and stepped up law enforcement (Coglianese *et al.*, 2004).

According to Gupta and Sharma (2014), corporate governance refers to the code of conduct through which companies are directed and controlled. Whether the company follows the stakeholder model (where all the stakeholders are considered equally important) or follows the shareholder model (where more importance is given to shareholders as they are the owners of the company), the practice of corporate governance is increasingly becoming vital. The OECD principles (2004) also define corporate governance as involving a set of relationships between a company's management, its board, its shareholders, and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined (OECD, 2004).

Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring (OECD, 2004). The presence of an effective corporate governance system, within an individual company or group and across an economy as a whole, helps to provide a degree of confidence that is necessary for the proper functioning of a market economy. Corporate governance does not only

refer to the legal restraints but also to the norms of so-called “best practice” as well as the attempts of organisations themselves to formulate codes of business ethics (Farrar, 2003).

Historically, corporate governance emerged in developed jurisdictions as a mechanism to address the incongruence between the interests of investors and management. It was intended to ameliorate the problem of agency costs (Lau, 2005). It was contemplated that precepts of corporate governance would facilitate the alignment of interests of agents and their principals. Codes of corporate governance first emerged in countries with dispersed share ownership and were intended to make corporate boards of directors more professional, effective and accountable in the discharge of their responsibilities. Evidence from developed jurisdictions suggests that the effectiveness of these codes is largely dependent on the underlying legal and regulatory framework (Gakeri, 2013).

The last decade has seen corporate governance emerge in business literature as a major area of interest. Unfortunately, this development was triggered by numerous corporate scandals which set the stage for the development of guiding principles in countries and supranational organizations such as the OECD (Organization for Economic Development and Cooperation). Supranational organizations such as the OECD released its guiding principles in 1999 and revised them in 2004. At national level, in the USA (United States of America) the collapse of Enron give birth to the Sarbanes –Oxley Act (SOA) in 2002 and in South Africa the Kings Committee on Corporate Governance has continued to make notable inroads as an innovator at the forefront in international governance. These codes therefore suggest that even though corporate governance is based on individual

legal, historical and cultural systems, certain universal principles of governance do exist (Khouza & Adam, 2005).

There is a linkage between good governance and law and thus, good governance is not something that exists separately from the law. It is entirely inappropriate to unhinge governance from the law (Institute Of Directors in Southern Africa, 2009). Corporate governance mainly involves the establishment of structures and processes, with appropriate checks and balances that enable directors to discharge their legal responsibilities. In assessing the standard of appropriate conduct, a court will take into account all relevant circumstances, including what is regarded as the normal or usual practice in the particular situation. Criteria of good governance, governance codes and guidelines will be relevant in the determination of what is regarded as an appropriate standard of conduct. The more established certain governance practices become, the more likely a court would regard conduct that conforms with these practices as meeting the required standard of care. Corporate governance practices, codes and guidelines lift the bar of what are regarded as appropriate standards of conduct. Consequently, any failure to meet a recognised standard of governance, albeit not legislated, may render a board or individual director liable at law (Institute of Directors in Southern Africa, 2009).

Farrar (2003) noted that the law has experienced various “paradigm shifts” over time which has inevitably impacted on the role of the courts. There are at least two other factors which have added to the complexity: the process of rapid change and a global trend towards self-regulation. This trend has been overshadowed however by the high-

profile corporate collapses of the last few years which have raised serious doubts about the ability of business to self regulate (Farrar, 2003).

1.1.1 Corporate Governance in Kenya

Before liberalization of Kenya's economy in the 1990s which institutionalized privatization of government corporations, accountability in the public sector was largely anathematic (Dignam, 2000). The culture of nepotism, clientelism and corruption was pervasive. Lack of accountability in the public sector was replicated in the private sector (Day, 2004). Furthermore, inefficiency had been institutionalized. This was further compounded by the absence of a corporate governance framework. With senior government officials owning shares in the few publicly held companies, the government was not fervent on enforcing securities laws. The boards of directors of many listed company consisted of friends, relations and political associates of government officials (Gakeri, 2013).

Kenya experienced corporate collapses over the past years. It bears to remind that in the 80s more than 33 banks collapsed and other parastatals such as Kenya Co-operative Creameries (KCC), National Housing Corporation (NHC) etc, few followed suit in the past decade (Musikali, 2007). The Centre for Corporate Governance (CCGC) in its foreword highlights that in the light of the collapse of big corporations especially the parastatals with the negative social and economical consequences for the Kenyan public, corporate governance became a major policy priority.

The situation was exacerbated by the fact that the Nairobi Securities Exchange (NSE) was under the control of family owned and managed stock brokers whose driving force

was business not regulation. Consequently, the NSE had a cordial relationship with listed companies and seldom invoked regulatory sanctions for non-compliance with Listing or Membership Rules. Privatization of government enterprises introduced new dynamics into the market place, for instance, new companies floated securities and the public subscribed for them with enthusiasm. These companies were subsequently listed on the Nairobi Securities Exchange. The establishment and subsequent inauguration of the Capital Markets Authority (CMA) in 1990 did not fundamentally alter the corporate governance landscape in the country.

The mission to institutionalize principles of corporate governance in Kenya culminated in the promulgation of the Guidelines on Principles of Corporate Governance for Public Listed Companies in 2002 (Du Plessis *et al.*, 2005). Interestingly, adoption of these Guidelines was not motivated by any corporate scandal. The Guidelines are a carbon copy of the Hong Kong, Singapore and Malaysian Codes of Corporate Governance which are replications of the United Kingdom's Combined Code (Mohd-Sulaiman, 2010). Analogous to these jurisdictions, Kenya adopted non-statutory Guidelines and implemented the "explain or comply" enforcement paradigm. No attempt was made to align them with local circumstances and institutions (Miles, 2007). It is important to underscore the fact that a corporate governance system is a complex mix of institutions, including the legal framework which militates against wholesale transplantation (Ntongho, 2009).

The Guidelines encourage listed companies to embrace a positive corporate culture of accountability and responsiveness to the interests of investors. The fact that non-

compliance with the Guidelines is largely inconsequential was intended to engender them to listed companies. The Guidelines provide an array of mechanisms to enhance corporate governance (Dine, 1994). To reduce the overconcentration of power in the hands of one person, the guidelines provide for the segregation of the office of the chairman of the board from that of the chief executive of the company. Viewed panoramically, the Guidelines were a positive addition to the country's corporate governance architecture (Gakeri, 2013).

1.1.2 Courts in Kenya

Kenya is a country in which the Judiciary of Kenya is the system of courts which interprets as well as applies the law. The courts under the new Constitution (2010) operate at two levels, namely; Superior and Subordinate courts. The entire court system is divided into a hierarchical system wherein the superior courts consist of Supreme Court, Courts of Appeal, High court, Industrial court, and court to hear matters concerning the environment, and the use of, occupation of and title to land. The subordinate courts are made up of Magistrate court, Kadhi court, Court Martial, and any other court or local tribunal established by an Act of Parliament others (Judiciary of Kenya, 2014).

The courts have power to hear and determine disputes, primarily of criminal and civil nature. Criminal cases are those in which the State prosecutes a person or an organization for committing an act which is not in the interest of the public, and therefore considered to be an offence against the State. Civil cases originate from a person who seeks redress for a private wrong such as breach of contract, trespass, or negligence; or to enforce civil

remedies such as compensation, damages or to stop some action (Judiciary of Kenya, 2014).

1.1.3 Courts and Good Corporate Governance

The Court has jurisdiction to grant appropriate relief in matters of corporate governance or violation of the constitution brought before it. In the case of Okiya Omtatah Okoiti & 3 others v Nairobi City County & 5 others [2014], the court declare that the purported appointment of directors of the Nairobi Water and Sewerage Company pursuant to the purported elections at the Annual General Meeting of the Company held on 26th March 2014 is unlawful, unconstitutional and null and void for being carried out in violation of the provisions of the Constitution, the Water Act, the Companies Act and the 5th respondent's Articles of Association. The judge squashed the appointment of the directors of the Nairobi Water and Sewerage Company in contravention of the Constitution, the Water Act, the Companies Act and the 5th respondent's Articles of Association and directed that the appointment of the directors of the Nairobi Water and Sewerage Company be carried out afresh in accordance with the law.

It is increasingly becoming evident that a country's legal system plays a significant role in determining the success of its corporate governance system. Through research it has been shown that good corporate governance is more likely to be associated with countries with a strong legal system. Unfortunately, during the most recent move towards fostering corporate governance, Kenya has adopted a code of corporate governance that has been borrowed from presumably more developed countries with little thought being given to

the underlying conditions of the market in which this code is to be enforced (Njoroge, 2009).

1.2 Statement of the Problem

The issue of whether the courts can change corporate behaviour is viewed against the backdrop of the current corporate governance environment which increasingly involves a complex amalgam of both legal and self-regulation (Farrar, 2003). Ndlovu et al. (2013) acknowledged that courts are a last resort for shareholders when issues of corporate governance arise. They revealed that courts have resources to handle cases and apply legal concepts to enforce the law. Shareholders' interests in an organization need to be protected. According to Millstein *et al.* (2005) investor protection requires both law and the effective enforcement of law.

Kenya has also experienced corporate collapses and various efforts to improve corporate governance practices, including disclosure, have been developed. Much has been done to improve the legal and regulatory framework. The key regulators have recently reviewed and continue to improve their specific frameworks. The Capital Markets Authority, Central Bank and the Retirement Benefits Authority particularly stand out in this regard. Professional associations such as the Institute of Certified Public Secretaries of Kenya (ICPSK), the Law Society of Kenya (LSK) are equally important given that they continue to enhance good governance practices (United Nations Conference on Trade and Development, 2003; Atieno, 2009).

The Companies Act, however, is still a serious bottleneck. It is terribly outdated and badly in need of reforms (Atieno, 2009). This is particularly serious as it is in many ways

the foundation on which the other laws are built. Fortunately, the Government recognized this; and a task force was set up to study the act and make recommendations as to its review. The task force completed its task and what remains is implementation of its recommendations (UNCTAD 2003). Enforcement remains the primary problem in Kenya. The capacity of regulators to enforce compliance with the law is terribly weak. They lack the resources both human and material to be effective and are largely perceived as ineffective. The Office of the Registrar General is particularly constrained and is unable to enforce many of the most basic requirements. The same applies to most professional, trade and business associations (Kiare, 2007). According to authors such as Atieno (2009); Musikali (2008), the Companies Act is in dire need of improvement and is one of the bottlenecks of poor governance; and that decent legal and enforcement must prevail.

The above studies acknowledge that there is need for a decent law and increased enforcement. While there has been continuous review of the laws governing companies in Kenya, enforcement is a problem. It is against this background therefore that the study seeks to determine: whether courts play any role to in promoting good corporate governance, and if yes, what do the courts actually do to promote good corporate in companies in Kenya?

1.3 Objectives of the Study

The general objective of the study was to determine the role of the courts in promotion of good corporate governance in Kenya. A case of companies listed in the Nairobi Securities Exchange. The following are the specific objectives:

- i. To establish the influence of court enforcement measures on promotion of good corporate governance in companies listed in the NSE in Kenya.
- ii. To determine influence of court deterrence measures on promotion of good corporate governance in companies listed in the NSE in Kenya.
- iii. To examine the influence of court guiding principles on promotion of good corporate governance in companies listed in the NSE in Kenya.

1.4 Research Questions

The study sought to answer the following questions:

- i. What is the influence of court enforcement measures on promotion of good corporate governance in companies listed in the NSE in Kenya?
- ii. How do court deterrence measures influence promotion of good corporate governance in companies listed in the NSE in Kenya?
- iii. What is the influence of court guiding principles on promotion of good corporate governance in companies listed in the NSE in Kenya?

1.5 Justification of the Study

Corporate governance codes play an increasingly important role as a regulatory tool and part of a country's corporate governance system. In many jurisdictions, listed companies are now required to publish a statement as part of their annual report indicating whether they comply with the corporate governance code in force in their jurisdiction and provide an explanation if they deviate from the code's requirements.

The effectiveness of this so-called ‘comply or explain’ principle, and generally of regulating by means of soft law, has been discussed extensively in the law and finance literature. However, remarkably little is known about the role of the courts (as an authority to adjudicate legal disputes between parties and administrative matters in accordance with the rule of law) on promoting good corporate governance. The regulatory goal of corporate governance codes is to strengthen the accountability of managers. In Kenya, a number of companies have collapsed due to poor corporate governance practices, and enforcement has been identified as a he primary problem. This study therefore seeks to establish the role played by the courts in promotion of good corporate governance in Kenya.

1.6 Significance of the Study

The study may be of significance to the following:

The study findings may act as a guide to the judiciary and more specifically to the judges and magistrates as the study may provide an insight on how the courts have fared on in promoting good corporate governance in Kenya. The study also highlighted the shortcomings of the courts, for instance in interpreting the relevant legislation on corporate governance and hence put pressure on other arms such as the legislature in improving corporate governance laws and strengthen the legal system in a bid to promote good corporate governance in the country.

The study may awaken and enlighten the government on the needed reforms on the Companies Act, which has been highlighted as a serious bottleneck to best corporate governance practices in the country. Corporate governance system is a complex mix of

institutions, including the Judiciary and the legislature. The study may also be of benefit to professional associations such as the Institute of Certified Public Secretaries of Kenya, the Law Society of Kenya, Capital Markets Authority among other since they also have a role to play in promotion of good corporate governance in the country.

The study may be of value to the shareholders of the companies in Kenya, because ownership of shares confers primary and secondary rights; and they participate in company affairs and decision making. By knowing the roles that the Kenyan courts plays in promoting corporate governance, the study may enlighten the shareholders and give them an avenue to arrest any malpractices or poor governance in their companies and ensure that “best corporate governance practices” are adhered to, through courts intervention.

To researchers and scholars/academicians, the study may contribute and add value to the existing knowledge on the role of courts in promotion of good corporate governance. Findings and recommendations obtained from this study may be significant to such scholars for citation and references purposes. Moreover, the study may act as a basis for further research to future researchers who may seek to expound more knowledge on the area under study.

1.7 Scope of the Study

The study was limited to companies listed in Nairobi Securities Exchange in Kenya. The study specifically targeted the legal officers in the 66 companies listed in the NSE. The study collected primary data from the sampled respondents using a questionnaire.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter presented the literature review. The chapter covered the theoretical review which discusses the theories that guides the study. The chapter also covered the empirical review where existing empirical evidence is discussed. The chapter ended with a conceptual framework which entails the schematic diagram that shows the relationship between the independent variables and dependent variable.

2.2 Theoretical Review

The theoretical review sought to establish some of the theories that are attributed by other researchers, authors and scholars and are relevant to promotion of good corporate governance. The study was guided by Agency Theory and Stewardship Theory.

2.2.1 Agency Theory

The theory of Agency was developed by Jensen and Meckling (1976), and has been widely adopted. According to Jensen and Meckling (1976), Agency theory is based on the separation of ownership and control of economic activities between the agent and the principal, various agency problems may arise, such as asymmetric information between the principal and the agent, conflicting objectives, differences in risk aversion, outcome uncertainty, behavior based on self-interest, and bounded rationality.

According to Jensen and Meckling (1976), the principals (the shareholders) can assure themselves that the agent will make the optimal decisions only if appropriate incentives

are given and only if the agent is monitored. Incentives include such things as stock options, bonuses and prerequisites which are directly related to how well the results of management's decisions serve the interests of shareholders. Monitoring consists of bonding the agent, systematic reviews of management prerequisites, financial audits, and placing specific limits on management decisions. These involve costs, which are an inevitable result of the separation of corporate ownership and control. Such costs are not necessarily bad for shareholders, but the monitoring activity they cover needs to be efficient.

In contrast, Demsetz (1983) and Fama and Jensen (1983) suggest that the primary monitoring of managers comes not from the owners but from the managerial labour market. It is argued that management control of a large corporation is completely separate from its security ownership. Efficient capital markets provide signals about the value of a company's securities and thus about the performance of its managers. If the managerial labour market is competitive both within and outside the firm, it will tend to discipline the manager. Therefore, the signals given by changes in the total market value of the firm's securities become very important. Kaplan and Reishus (1990) find evidence consistent with this argument: directors of poorly performing firms, who therefore may be perceived to have done a poor job overseeing management, are less likely to become directors at other firms. On the other hand, reputational concerns do not correct all agency problems and can, in fact, create new ones

Various governance mechanisms have been advocated which include monitoring by financial institutions, prudent market competition, executive compensation, debt,

developing an effective board of directors, markets for corporate control, and concentrated holdings. However, developing an effective board of directors remains an important and feasible option for an optimal corporate governance mechanism (Bonazzi & Islam, 2007). The design of mechanisms for effective corporate control to make managers act in the best interest of shareholders has been a major concern in the area of corporate governance (Allen & Gale, 2001), and continuing research in agency theory attempts to design an appropriate framework for such control.

Agency theory guided this study by helping understand that separation between ownership and control of corporations characterizes the existence of a firm. In agency theory, a well-developed market for corporate controls is assumed to be non-existent, thus leading to market failures, non-existence of markets, moral hazards, asymmetric information, incomplete contracts and adverse selection among others.

2.2.2 Stewardship Theory

Stewardship Theory has been framed as the organizational behavior counterweight to rational action theories of management (Donaldson & Davis, 1993). This theory holds that there is no conflict of interest between managers and owners, and that the goal of governance is, precisely, to find the mechanisms and structure that facilitate the most effective coordination between the two parties (Donaldson, 1990).

Stewardship Theory holds that there is no inherent problem of executive control, meaning that organizational managers tend to be benign in their actions (Donaldson, 2008). The essential assumption underlying the prescriptions of Stewardship Theory is that the behaviors of the manager are aligned with the interests of the principals. Stewardship

Theory places greater value on goal convergence among the parties involved in corporate governance than on the agent's self-interest (Van Slyke, 2006).

Steward theorists such as Schoorman and Donaldson (1997) argue that even when the interests of the principal and agent are not aligned, the steward will still place high value in cooperation than in defection an argument which is underpinned by game theoretical models because cooperation rather than defection gives higher payoffs in the long run. The steward perceives that the utility gained from interest alignment and collaborative behavior with the principal is higher than the utility that can be gained through individualistic, self-serving behaviors (Davis *et al.*, 1997). Stewards are motivated by intrinsic rewards, such as reciprocity and mission alignment, rather than solely extrinsic rewards. The steward, as opposed to the agent, places greater value on collective rather than individual goals; the steward understands the success of the company as his own achievement (Pastoriza & Ariño, 2008).

Stewardship Theory informs the study and helps understand the existing relationships between ownership and management of the company. This theory arises as an important counterweight to Agency Theory. Stewardship theory assumes that the manager is a steward of the business with behaviors and objectives consistent with those of the owners. The theory asserts that managers of a firm are not motivated by personal needs and desires, but rather see themselves as stewards with the same motives and objectives as the owners of the firm.

2.3 Empirical Review

Empirical review is a synopsis of other research in an interdisciplinary field of research. Much of this is usually achieved by reference to previous reviews of research studies (Goodwin, 2005). This section reviews literature on the role of the courts in promotion of good corporate governance in Kenya. The literature was reviewed based on the following sub-sections: court enforcement measures and promotion of good corporate governance, court deterrence measures and promotion of good corporate governance, court guiding principles and promotion of good corporate governance.

2.3.1 Court Enforcement Measures and Promotion of Good Corporate Governance

Millstein *et al.* (2005) in their study on enforcement and corporate governance established investor protection requires both law and the effective enforcement of law. However, they found out that in many developing countries, neither the quality of the law nor its enforcement are adequate. As to law, few developing countries have, for example, an enforceable concept of the fiduciary duties that controlling shareholders, directors and managers owe to investors – particularly to minority shareholders. As to enforcement, few developing countries have adequate courts, judges and public enforcement agencies, and the means for shareholders to institute legal actions on their own. The authors recommended that, to join the global capital market, developing countries will need to attend to these deficiencies.

Ndlovu *et al.* (2013) did a comparative analysis of the corporate governance practices in multinational and domestic banks in Zimbabwe. The study revealed that the awareness on the importance of sound corporate governance practices was of substandard levels for

both bank categories. Domestic banks, in particular, had more shortfalls compared to multinational banks. Results further revealed that domestic banks did not represent shareholders' interests in their corporate governance practices and their levels of compliance to Reserve Bank of Zimbabwe's corporate governance requirements was still lacking. The authors acknowledged that courts are a last resort for shareholders. Enforcement of laws via courts assumes that: courts have resources to handle cases in a timely way, and judges understand the banking sector and new legal concepts well enough to enforce the law.

Berglöf and Pajuste (2005) conducted a study to determine the extent to which rules and regulation relating to corporate governance disclosure are being implemented and enforced in individual corporations in Central and Eastern Europe. The paper examined a sample of 370 companies listed on stock exchanges in Central and Eastern Europe. The study established that large numbers of laws and regulation on corporate governance have been adopted over a very short time period, with courts and enforcing agencies struggling to keep pace with the speed of transformation in the law on books. Some countries could rely in part on earlier legal traditions and even legal texts, but to a considerable extent the new laws have been imposed from the outside as part of the EU accession process or copied from the United Kingdom or the United States. The study also found out that ensuring the implementation and sustained enforcement of these laws is another challenge facing the Central and Eastern European countries, requiring backing from the political process.

2.3.2 Court Deterrence Measures and Promotion of Good Corporate Governance

A report by OECD (2003) on corporate governance in Asia also asserts the importance of courts in enforcing and promoting corporate governance. The paper argued that the development and maintenance of a robust corporate-governance framework calls for the commitment of numerous persons and institutions throughout society. Legislatures, regulatory bodies, courts and self-regulating professional organisations must establish, monitor and enforce legal norms actively and even-handedly. The paper also asserted that the credibility and utility of a corporate-governance framework rest on its enforceability. Court systems should therefore strengthen their expertise and capacity to adjudicate corporate-governance disputes efficiently and impartially, including through establishment of specialised commercial courts and promotion of alternative dispute resolution. Both agencies and courts should develop procedures that are objective, understandable, open and fair. In addition to enforcing the law, public decision-making should inform the future behaviour of market participants and enforcement agents as well as generate public confidence in the state's commitment to the rule of law. In this regard, it is important to stress the interaction between effective market discipline and self-discipline. The role of policy-makers is not only to enforce current laws but to promote institutions that facilitate market discipline (OECD, 2003).

In addition, Musikali (2008) reviewed the Law affecting Corporate Governance in Kenya. He revealed that, through there is increasing evidence that a country's legal system plays a significant role in determining the success of its corporate governance system; Kenya's weak legal system is likely to affect the country's quest for good

corporate governance. He further revealed that, although it is possible to argue that enforcing the law that is currently in place would improve corporate governance to an extent and that reviewing the current law without improving the environment in which it operates is likely to have a limited impact on corporate governance, implementing effective laws is a fundamental requirement for establishing a successful corporate governance system. A review of the current system of companies' legislation to reflect the market conditions in Kenya today is way overdue. He recommended that the current standard of director liability needs to be revised to a dual standard of liability. Adopting a dual standard of liability such as that of the United Kingdom would encourage entrepreneurship while facilitating accountability. For the dual standard of liability to be effective in achieving good corporate governance, it is necessary to increase the criminal sanctions within the Companies Act and the Penal Code to a level that reflects the business world today (Musikali, 2008).

2.3.3 Court Guiding Principles and Promotion of Good Corporate Governance

There are a number of case studies that justifies the role of courts in promoting corporate governance. For instance, In *Regentcrest plc v Cohen* Jonathan Parker J, when dealing with the duty to act bona fide in the best interests of the company, said that if the directors give unequivocal evidence that they had honestly believed that they had acted in the best interests of the company, and if that evidence were accepted, then there had been no breach. The new duty would seem to attract the same approach (Keay, 2010). Nevertheless, courts will not accept without question a director's statement that he or she acted in good faith, and where it is patent that the act complained of led to significant

detriment to the company a director will have, according to Jonathan Parker J in *Regentcrest plc v Cohen*, a more difficult task in convincing the court that he or she honestly believed the action to be in the best interests of the company. The judge hearing the case simply might not believe the evidence of the directors as to his or her state of mind. This is, arguably, consistent with what Harman J said in *Re a Company* where his Lordship said that: “It is, in my judgment, vital to remember that actions of boards of directors cannot simply be justified by invoking the incantation 'a decision taken bona fide in the interests of the company'” (Keay, 2010).

An assertion by a director is not impregnable and judges are not prevented from declining to accept it. In *Extrasure Travel Insurance Ltd v Scattergood* Jonathan Crow (sitting as a deputy High Court judge) plainly did not believe the directors when they said that they believed that they were acting in the best interests of the company. The learned deputy judge said: “I am satisfied that the defendants did not think, on 17 August 1999, that the transfer of £200,000 was in the best interests of Extrasure.” He was of view that the directors’ evidence was not plausible, given the surrounding evidence, and he found against them. But it is likely to be difficult to demonstrate, save in cases of really bad behaviour, that the directors have breached their duty of good faith. It is challenging, in most cases, to impugn the actions of someone who is able to state clearly that he or she believed that what was done was for the company’s best. Directors will normally assert that their motives were pure. Courts are going to be rather reluctant to decline to accept evidence given by directors concerning their motives. Paul Davies has opined that it is difficult to say that a director has failed to act in good faith “except in egregious cases or

where the directors, obligingly, have left a clear record of their thought processes leading up to the challenged decision,” and that is probably correct (Keay, 2010).

Nevertheless, there is one situation where reasonableness might be an issue. This is where the director had actually failed to consider whether an action would be in the interests of the company. In *Charterbridge Corp Ltd v Lloyds Bank Ltd* Pennycuik J said that in such a situation the court has to ask whether an intelligent and honest man in the position of a director of the company involved, could, in the whole of the circumstances, have reasonably believed that the transaction was for the benefit of the company (Keay, 2010).

In Kenya, Atieno (2009) conducted a study to examine Corporate Governance Problems facing Kenyan parastatals. The study targeted the sugar industry. The study found out that poor performance of the sugar industry has negatively impacted the Kenyan economy as evidenced by budgetary burdens. Although the initial objective of the sugar industry was to foster regional development and lead to the provision of self-sufficiency in sugar production, it has not lived up to this legacy. Weak governance structures such as opaque board nomination processes, fraudulent transactions, poor remuneration and overlapping regulations have led to inefficiencies in the industry. Unless the current regime governing parastatals is overhauled and parastatals are put on completely new corporate governance architecture, they will continue to be a burden to the public. Given these constraints, the study recommended that there is need to strengthen parastatal boards as they are in the one-tier system. In so doing, Kenyan courts might apply objective standards in accessing directors' liability. Parastatals must also introduce audit

committees to strengthen communication with the internal audit department. A perhaps more imperative step lies in the streamlining of multiple regulations to give parastatals more autonomy and accountability. This is also goes in hand with contemporary industrial imperatives which both the SCA and Companies Act do not provide a good basis for. This will require the scrapping of statutes of the State Corporations Act (Atieno, 2009).

In South Africa, the King Report on Corporate Governance was published in 2002 by the King Committee on Corporate Governance, headed by former High Court judge, Mervyn King S.C. King II, incorporating a Code of Corporate Practices and Conduct, was the first of its kind in the country and was aimed at promoting the highest standards of corporate governance in South Africa (King Committee, 1994/2002). King advocated an integrated approach to good governance in the interests of a wide range of stakeholders. Under compliance and enforcement, the report recommended that the legal mechanisms to be relied on for enforcement of King II and the Code of Corporate Practices and Conduct (the Code) are: existing legal remedies, principally under the Companies Act (dealing with liability of directors and others for the fraudulent or reckless conduct of a company's business) and the common law (King Committee, 1994/2002); Armstrong, Segal, & Davis, 2006).

2.4 Research Gaps

The history of corporate governance systems is now well documented. The past two decades have however, witnessed significant transformations in corporate governance structures, leading to increased scholarly interest in the role of board of directors in

driving corporate performance. Arising from many high profile corporate failures, coupled with generally low corporate profits across the globe, the credibility of the existing corporate governance structures has been put to question. In addition, the efficiency of the prevailing governance mechanisms has been questioned.

Private and unlisted firms face unique governance and internal control challenges. For instance, listed companies and public firms are deeply implicated of inefficiencies, losses, budgetary burdens, and provision of poor products and services. The poor governance in listed companies and public firms has led to collapse of many companies in Kenya. The existing legal framework has been found to be weak in addressing some of these corporate governance problems. Therefore, it is of theoretical and practical importance to examine how other mechanisms can be used to promote good corporate governance. It is against this background there that this study sought to fill that gap by determining the role played by the courts in promotion of good corporate governance in Kenya.

2.5 Conceptual Framework

A conceptual framework illustrates the interaction between independent variables and the dependent variable in the study. It graphically or diagrammatically conceptualizes the relationship between variables in the study (Mugenda & Mugenda 2003). In this study the independent variables are; enforcement, guiding principles, deterrence and prevention while the dependent variable is promotion of good corporate governance. The conceptual frame work is presented in the Figure 2.1.

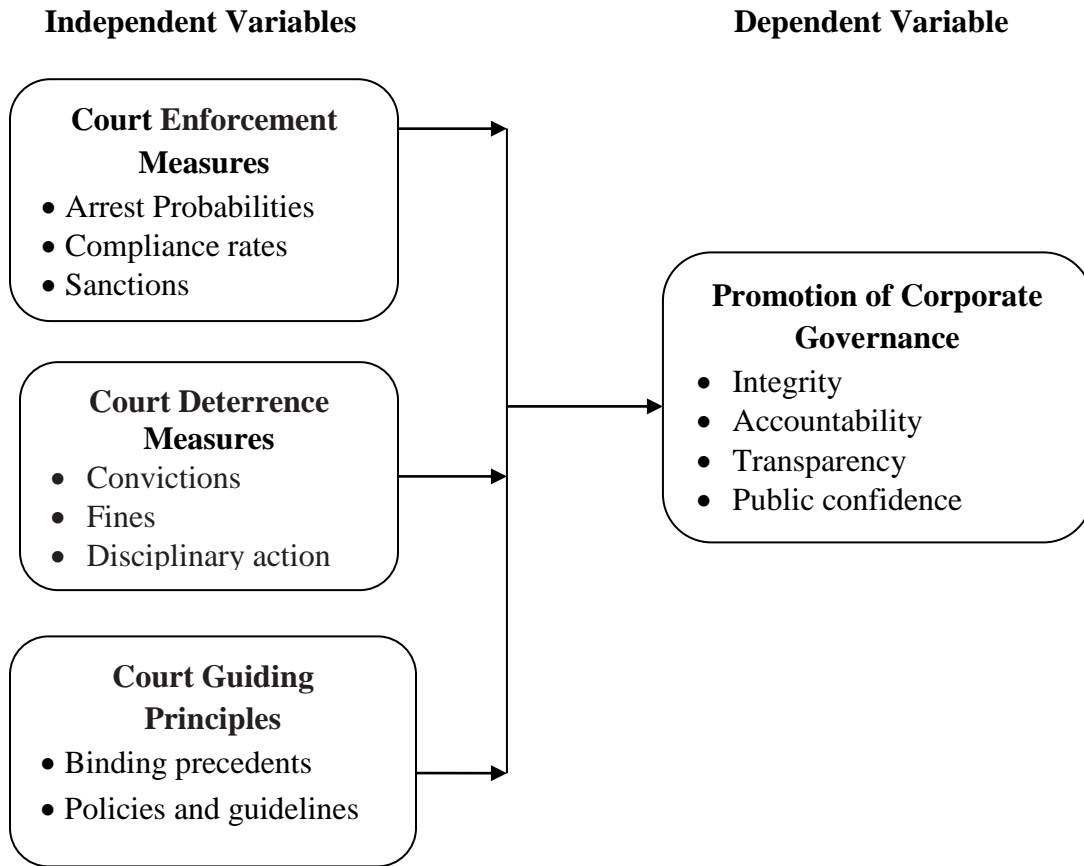


Figure 2.1: Conceptual Framework

2.6 Operationalization of Variables

Table 2.1 presents the operationalization of variables. It shows the variables of the study, the indicators to measure the variables and the scale to measure those variables.

Table 2.1: Operationalization of Variables

Variable/Variable Type	Indicators	Measurement Scale	Level of Measurement
Dependent variable			
Promotion of Corporate Governance	<ul style="list-style-type: none"> • Integrity • Accountability • Transparency • Public confidence 	Likert scale (1 to 5) 5 will indicate strongly agree 1 indicated strongly disagree	Ordinal Scale
Independent Variables			
Court Enforcement Measures	<ul style="list-style-type: none"> • Arrest Probabilities • Compliance rates • Sanctions 	Likert scale (1 to 5) 5 will indicate strongly agree 1 indicated strongly disagree	Ordinal Scale
Court Deterrence Measures	<ul style="list-style-type: none"> • Convictions • Fines • Disciplinary action 	Likert scale (1 to 5) 5 will indicate strongly agree 1 indicated strongly disagree	Ordinal Scale
Court Guiding Principles	<ul style="list-style-type: none"> • Binding precedents • Policies and guidelines 	Likert scale (1 to 5) 5 will indicate strongly agree 1 indicated strongly disagree	Ordinal Scale

2.7 Research Hypothesis

The study sought to test the following hypothesis

- i. H₁: Court enforcement measures have a significant influence on promotion of good corporate governance in companies listed in the NSE in Kenya.
- ii. H₂: Court deterrence measures have a significant influence on promotion of good corporate governance in companies listed in the NSE in Kenya.
- iii. H₃: Court guiding principles have a significant influence on promotion of good corporate governance in companies listed in the NSE in Kenya.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter described the research methodology that was employed in carrying out the study; it also contained the target population, and the sampling design, test of reliability and validity, data collection procedures and data analysis.

3.2 Research Design

Research design is the blueprint that enables the investigator to come up with solutions to problems and guides her/him in the various stages of the research (Nachmias & Nachmias, 2000). The study adopted descriptive research design. Robson (2002) points out that descriptive study portrays an accurate profile of persons, events or situation. Chandran (2004) also states descriptive study describes the existing conditions and attitudes through observation and interpretation techniques. These researchers claim that descriptive research design is one of the best methods for conducting research in human contexts because of portraying accurate current facts through data collection for testing hypothesis or answering questions to conclude the study.

The descriptive design was appropriate for this study since it helped in collecting data in order to answer the questions of the current status and describe the nature of existing conditions of the subject under study. Descriptive research design also facilitated the use of a questionnaire to collect both quantitative and qualitative data for the study. Its advantage is that it is used extensively to describe behavior, attitude, characteristic and values (Mugenda & Mugenda, 2003).

3.3 Target Population

Target population is that population to which the researcher wants to generalize the results of the study. Target population is also defined by Bryman, (2008) as a universal set of the study of all members of real or hypothetical set of people, events or objects to which an investigator wishes to generalize the result. The study targeted one senior legal officer from each of the 66 companies listed in Nairobi Securities Exchange in Kenya.

The sampling frame in this study was 66 senior legal officers in the companies listed in Nairobi Securities Exchange in Kenya. Since the population of 66 staff is small, a census study was adopted whereby the entire population was considered for the study. According to Cooper and Schindler (2007) a census is feasible when the population is small and necessary when the elements are quite different from each other. When the population is small and variable, any sample drawn may not be representative of the population from which it is drawn. Therefore, a census study was deemed appropriate for study; thus all the 66 senior legal officers formed the sample size for the study.

3.4 Data Collection Instruments

The study collected primary data. The data was collected using a questionnaire. The questionnaire had both closed questions. The closed ended questions enabled the researcher to collect quantitative data. The questionnaire was divided into six sections. Section one was concerned with the general information about respondents, while section two to six collected information on the variables under study.

Questionnaires were considered for the study since they provide a high degree of data standardization, they are relatively quick to collect information from people in a non-

threatening way and they are cheap to administer. According to Kombo and Tromp (2006), a self-administered questionnaire is the only way to elicit self report on people's opinion, attitudes, beliefs and values. Mugenda and Mugenda (2003) acknowledge that questionnaires give a detailed answer to complex problems.

3.5. Validity and Reliability

Pilot test will be conducted to detect weakness by testing for validity and reliability of the questionnaire. A pre-test of the questionnaire was conducted prior to the actual data collection. The developed questionnaire was checked for its validity and reliability through pilot testing. The research subjected the questionnaire to 5 legal officers from five selected private companies to participate in the pilot study. According to Mugenda and Mugenda (1999) a successful pilot study would use 1% to 10% of the actual sample size. The three staff shall not be included in the actual study.

Mugenda and Mugenda (2003) defined reliability as a measure of the degree to which a research instrument yields consistent results or data after repeated trials. Reliability test measures the internal consistency of the questionnaire. An instrument is reliable when it can measure a variable accurately and obtain the same results over a period of time. Reliability test helped establish the internal consistency of the instrument. Reliability was calculated with the help of Statistical Package for Social Sciences (SPSS). Cronbach's alpha will be used whereby a co-efficient of above 0.7 will imply that the instruments are sufficiently reliable for the measurement (Schmitt, 1996). The objectives of pre-testing were to correct inconsistencies arising from the instruments, which will ensure that they measure what is intended.

Validity involve how accurately the data obtained represents the variables of the study while reliability refers to the degree to which a research instrument yields consistent results or data after repeated trials to establish its reliability (Saunders *et .al.*, 2007). The term validity indicates the degree to which an instrument measures the construct under investigation. For a data collection instrument to be considered valid, the content selected and included must be relevant to the need or gap established (Saunders *et. al.*, 2007). Validity of the questionnaire was established by the research and supervisor reviewing the items. Before the actual study, the instruments was discussed with supervisors. The feedback from the supervisors and the experts helped in modifying the instruments. This ensured that the questionnaire collects reliable information and also improved the response rate.

3.6 Data Analysis and Presentation

According to Mugenda (2008), data analysis is the process of bringing order, structure and meaning to the mass of information collected. The data collected by the questionnaire was edited, coded, entered into Statistical Package for Social Sciences (SPSS) version 20 which also aided in the data analysis. This study generated both qualitative and quantitative data.

Both descriptive and inferential statistics was adopted for the study. Descriptive statistics included frequency distribution tables and measures of central tendency (the mean), measures of variability (standard deviation) and measures of relative frequencies. The inferential statistics included a multivariate linear regression model which established the

relationship between variables. The analyzed data was presented using tables, charts and graphs.

The study regression model took the form:

$$Y = \beta_0 + \beta_1 \chi_1 + \beta_2 \chi_2 + \beta_3 \chi_3 + \beta_4 \chi_4 + \epsilon$$

Where: Y = Promotion of good corporate governance

χ_1 = Court enforcement measures

χ_2 = Court deterrence measures

χ_3 = Court guiding principles

β_0 = the constant

β_{1-n} = the regression coefficient or change included in Y by each χ

ϵ = error term

3.7 Ethical Issues

The study was guided by the following ethical considerations. The researcher ensured the quality and integrity of the research; sought informed consent from the respondents; and respected the confidentiality and anonymity of the research respondents. This ensured that the participants participated in the study voluntarily. Moreover, the researcher avoided harm to the participants in any way and avoided infringing in their privacy. The research was independent and impartial.

CHAPTER FOUR

DATA ANALYSIS, PRESENTATION, DISCUSSION AND INTERPRETATION

4.1 Introduction

This chapter presents the data analysis and interpretation of the research findings in line with the objectives of the study. The general objective of the data was to determine the role of the courts in promotion of good corporate governance in Kenya. The study focused on the companies listed in the Nairobi Securities Exchange. The analysed data was presented in tables, pies and bar charts.

4.2 Response Rate

Table 4.1 Response Rate

Response Rate	Frequency	Percentage
Responses	52	78.8
Non-Response	14	21.2
Total Sample size	66	100.0

The sample size of the study was 66 respondents who were senior legal officers in the companies listed in Nairobi Securities Exchange in Kenya. A total of 52 questionnaires were successfully filled in time for data analysis, which represented 78.8% of total sample size. According to Mugenda and Mugenda (2003), a 50% response rate is adequate, 60% good and above 70% rated very well. The sample size of 78.8% was therefore considered appropriate to derive the inferences on the objectives of the study.

4.3 Demographic Information

The section presents the demographic information of the respondents. The respondents' demographic information reflects the relevant attributes of the population which forms the basis under which the study can rightfully access the relevant information. The respondents' information captured includes: gender, age, level of education of the respondents, and the number of years worked in the organization.

4.3.1 Gender of the Respondents

This section of the study sought to establish the gender of the respondents who took part in the study. The results are presented in Figure 4.1.

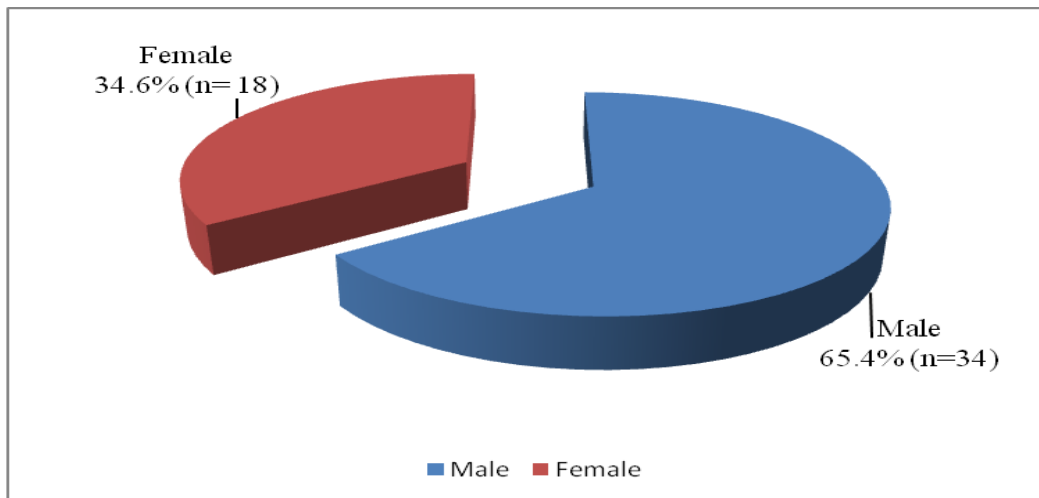


Figure 4.1: Gender of the Respondents

The results in the Table 4.2 above show that a majority of the respondents (65.4%) were male while 34.6% were female. This implies that majority of the legal officers in the companies listed in the NSE were male while approximately a third were female.

4.3.2 Age of the Respondents

The respondents were asked to indicate their age. The respondents' age was captured in structured age brackets. The results are presented in Table 4.2.

Table 4.2: Age of the Respondents

Age in Years	Frequency	Percent
Below 30 years	3	5.8
31-40 years	28	53.8
41-50 years	18	34.6
Above 50 years	3	5.8
Total	52	100.0

Results in Table 4.2 show that the majority of the respondents (53.8%) of the respondents were aged between 31-40 years while 34.6% were aged between 41-50 years. On the other hand, 5.8% of the respondents indicated that they were aged below 30 years and above 50 years respectively. The results show that majority of the senior legal officers in the companies listed in Nairobi Securities Exchange in Kenya were aged between 31-40 years.

4.3.2 Respondents' Level of Academic Qualification

The respondents were asked to indicate the highest level of academic qualification they had attained. The findings are presented in Table 4.3.

Table 4.3: Respondents Level of Education

Education level	Frequency	Percent
Diploma	2	3.8
Undergraduate	30	57.7
Post Graduate	20	38.5
Total	52	100.0

The study results show that majority of the respondents (57.7%) had reached undergraduate level as their highest level of education. On the other hand, 38.5% of the respondents had reached post-graduate level while 3.8% of the respondents indicated to have attained diploma level. From the results, it shows that majority of the respondents were well educated which improves the reliability of the information given.

4.3.3 Duration Worked in the Organization

The respondents were asked to indicate the number of years they had worked in their respective organizations. The findings are presented in Figure 4.2.

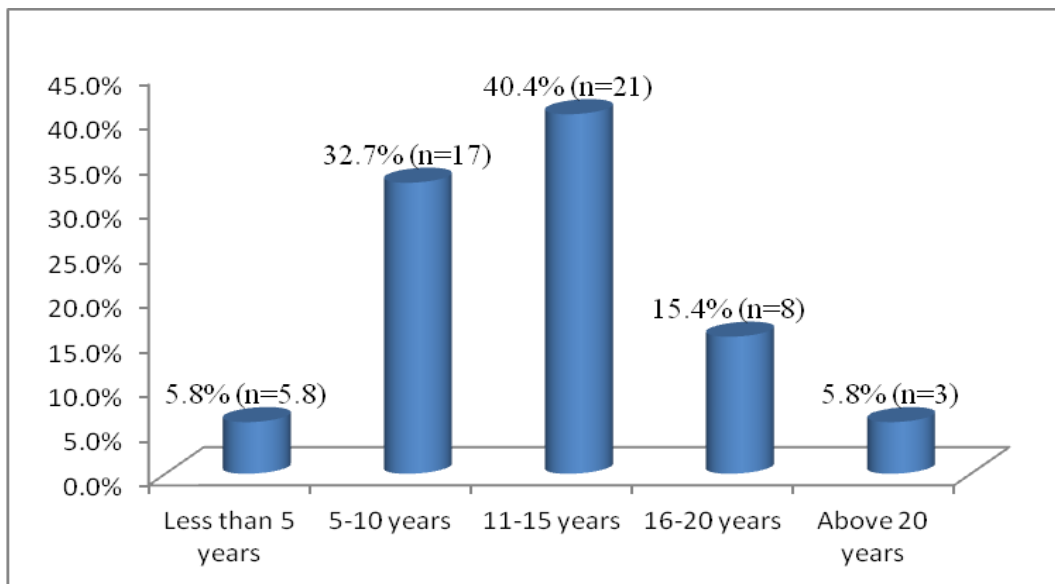


Figure 4.2: Duration Worked in the Organization

The study findings in Figure 4.2 show that the most of the respondents (40.4%) had worked in their respective companies for a period of 11-15 years while 32.7% had worked for a period of 5-10 years. On the other hand, 15.4% of the respondents reported that they had worked in their respective organizations for a period of 16-20 years while 5.8% of the respondents had worked in the companies for a period less than 5 years and

above 20 years. The study results shows that the majority of the respondents had worked in their organizations for the period between 5-10 years and 11-15 years which is long enough to understand the operations of their institutions, and hence they were in a position give reliable information on the role of the courts in promotion of good corporate governance in Kenya.

4.4 Corporate Governance in Companies Listed in NSE in Kenya

In this section, study enquired on corporate governance aspects in companies listed in NSE in Kenya. These included the corporate governance challenges experienced by the companies, the mechanisms used to address the challenges and the extent to which the courts can play a role in promotion of good corporate governance in the companies.

4.4.1 Whether the Companies Experienced Challenges in Corporate Governance

The respondents were asked to indicate whether the organizations had experienced corporate governance challenges/problems. The results are presented in Figure 4.3.

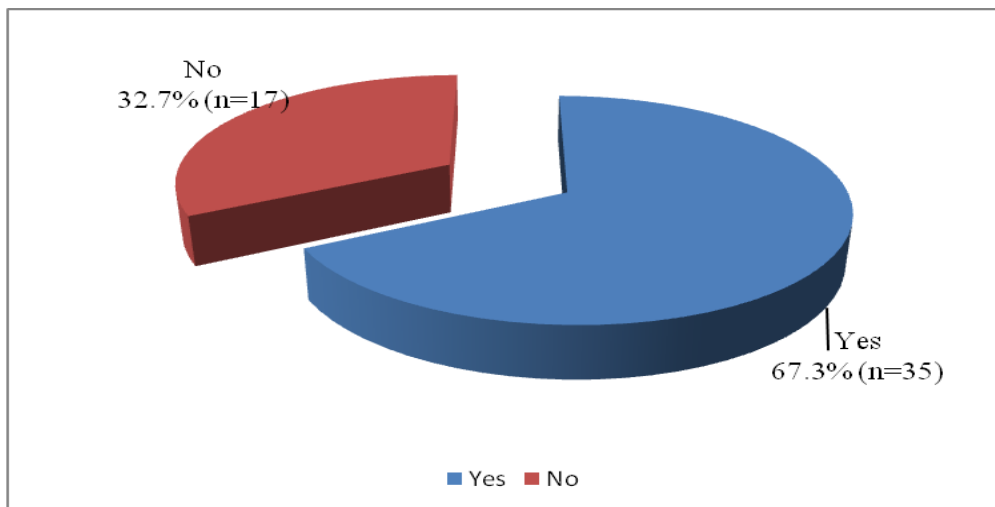


Figure 4.3 Whether the Companies Experienced Challenges

The study shows that majority of the respondents (67.3%) indicated that their companies experienced various challenges in corporate governance while 32.7% of the respondents indicated that their organization had not experienced challenges in corporate governance.

4.4.2 Mechanisms Used to Address Challenges in Corporate Governance.

The respondents were further asked to indicate the various mechanisms adopted by the organization to address the various challenges in corporate governance. The results are presented in Table 4.4.

Table 4.4: Mechanisms Used to Address Challenges in Corporate Governance.

Response	Frequency	Percent
Use of internal mechanisms	32	61.5
Use of the regulatory bodies	8	15.4
Use of Court (legal system)	12	23.1
Total	52	100.0

The study findings show that majority of the respondents (61.5%) indicated the use of internal mechanisms as one of the techniques adopted by the organizations to address the challenges in corporate governance, 23.1% of the respondents indicated the use of courts while 15.4% regulatory bodies as the other mechanisms used to address the various problems in corporate governance in the listed companies in Kenya. From the findings, it can be deduced that majority of the companies listed in the Nairobi Securities Exchange used internal mechanisms to address corporate governance challenges.

4.4.3 Corporate Governance in Companies Listed in the NSE in Kenya

The study sought to determine the level of corporate governance in the companies listed in NSE in Kenya. The results are presented in Table 4.5.

Table 4.5 Corporate Governance in Companies Listed in the NSE in Kenya

Statements on Corporate Governance	Mean	Std. Deviation
Accountability	2.60	0.823
Efficiency and effectiveness	2.71	0.723
Integrity and Fairness	3.06	0.802
Responsibility	3.04	0.766
Transparency	2.46	0.699

The results in Table 4.5 shows that the respondents revealed that the integrity, fairness and responsibility levels among the listed companies in Kenya were good as shown by the mean scores 3.06 and 3.04 respectively. The respondents further revealed that the levels of efficiency and effectiveness (mean score = 2.71); accountability (mean score =2.60) and transparency (mean score = 2.46) in the companies listed in the NSE in Kenya were at a fair level. The findings show that corporate governance aspects such as integrity, fairness and responsibility in the companies listed in the NSE were good. However, accountability and transparency were only at fair level. The findings are in agreement with those of Atieno (2009) who revealed that transparency and accountability are the major corporate governance problems facing Kenyan parastatals. The findings further corroborates with those of Coglianese *et al.* (2004) who revealed that public is demanding accountability and responsibility in corporate behavior.

4.5 Court Enforcement Measures and Good Corporate Governance

This section addresses the first objective of the study which sought to establish the influence of court enforcement measures on promotion of good corporate governance in companies listed in the NSE in Kenya.

4.5.1 Extent the Courts Enforcement Measures Enhance Good Corporate Governance

The respondents were asked to indicate the extent to which courts enforcement measures would enhance good corporate governance in the listed companies in Kenya. The results are presented in Table 4.6.

Table 4.6 Courts Enforcement Measures on Good Corporate Governance

Extent	Frequency	Percent
Very great extent	13	25.0
Great extent	27	51.9
Moderate extent	12	23.1
Total	52	100.0

The study results show that the majority of the respondents (51.9%) indicated that the courts enforcement measures could enhance good governance in the organizations to a great extent and was further supported by 25% of the respondents who reported that the court enforcement measures could enhance good governance in the listed companies in Kenya to a very great extent while 23.1% of the respondents indicated that the court could enforce good governance in the listed companies in Kenya to a moderate extent. As revealed by majority of the respondents, it implies that courts enforcement measures enhances good corporate governance to a great extent in the listed companies in Kenya.

4.5.1 Court Enforcement Measures on Promotion of Good Corporate Governance

The study sought to establish the influence of court enforcement measures on promotion of good corporate governance in companies listed in the NSE in Kenya. The respondents were asked to indicate their level on agreement on the various statements regarding the enforcement role of the courts in the promotion of good governance in the companies listed in the NSE. A five point likert scale was used to interpret the responses whereby the scores of “strongly agree” and “agree” were represented by mean score, equivalent to likert scale (1≤disagree≥2.5).The scores of ‘neutral’ were equivalent to 2.6 to 3.5 on the likert scale (2.6≤neutral≥3.5) The scores of “agree” and “strongly agree” were equivalent to (3.6≤agree≥5) on the likert scale which shows a strong agreement with the statement. The results are presented in Table 4.7.

Table 4.7 Court Enforcement Measures on Promotion of Good Corporate Governance

Statements on Court Enforcement Measures	Mean	Std. Deviation
The courts can promote good corporate governance in companies by enhancing compliance of the laid down practices	4.10	0.569
The courts can promote good corporate governance in companies by ordering for arrests of directors	4.08	0.652
Standards of directors' behaviour are enforced through both criminal and civil sanctions as charges against a director who misappropriates.	3.94	0.725

The respondents agreed that the courts could promote good corporate governance in companies by enhancing compliance of the laid down practices and also by ordering for

the arrests of directors as shown by the mean scores of 4.10 and 4.08 respectively. The respondents further agreed that standards of directors' behaviour are enforced through both criminal and civil sanctions as charges against a director who misappropriates; as shown by the mean score of 3.94.

From the findings, it can be deduced that court enforcement measures promoted good corporate governance in companies listed in the NSE in Kenya. The findings are in agreement with those of Ndlovu *et al.* (2013) who acknowledged that courts are a last resort for shareholders as enforcement of laws via courts assumes that courts have resources to handle cases and enforce the law. This is also supported by Millstein *et al.* (2005) who revealed that good corporate governance protects investor and requires both law and effective enforcement of the law.

4.6 Court Deterrence Measures and Promotion of Good Corporate Governance

This section addresses the second objective of the study which sought to determine the influence of court deterrence measures on promotion of good corporate governance in companies listed in the NSE in Kenya.

4.6.1 Extent to which the Courts Deter Directors from Misappropriations

The respondents were asked to the extent to which the courts deter directors from misappropriations in listed companies in Kenya. The results are presented in Table 4.8.

Table 4.8 Extent to Courts Deter Directors from Misappropriations

Extent	Frequency	Percent
Very great extent	10	19.2
Great extent	32	61.5
Moderate extent	10	19.2
Total	52	100.0

The study results show that the majority of the respondents (61.5%) indicated the courts deter directors from misappropriations in listed companies to a great extent and was further supported by 19.2% of the respondents who reported that the courts deter directors from misappropriations in listed companies to a very great extent. On the other hand, 19.2% of the respondents indicated that the courts deter directors from misappropriations in listed companies in Kenya to a moderate extent. From the findings, it implies that the courts have the capability to deter any misappropriations by the directors of companies.

4.6.2 Influence of Court Deterrence Measures on Promotion of Good Corporate Governance

The study sought to determine the influence of court deterrence measures on promotion of good corporate governance in companies listed in the NSE in Kenya. The respondents were asked to indicate their level on agreement on the various statements regarding the deterrence role of the courts in the promotion of good governance in the companies listed in the NSE. The study results are presented in Table 4.9.

Table 4.9: Court Deterrence Measures on Promotion of Good Corporate Governance

Statements on Deterrence Role of the Court	Mean	Std. Deviation
Criminal sanctions provide the necessary standard of deterrence to directors to refrain from misappropriation of company assets	3.94	0.639
The fines given in courts adequate to deter directors from misappropriating of company assets	2.81	0.103
Convictions of directors who have misappropriated the company assets deter others and promote good governance	2.92	0.737

The respondents agreed that criminal sanctions provide the necessary standard of deterrence to directors to refrain from misappropriation of company assets; as shown a mean score of 3.94. However, the respondents disagreed with the statement that the convictions of directors who have misappropriated the company assets deter others and promote good governance and that the fines given in courts were adequate to deter directors from misappropriating of company assets; as shown by the mean scores of 2.92 and 2.81 respectively.

The findings show that criminal sanctions were greatly perceived to provide the necessary standard of deterrence to directors to refrain from misappropriation of company assets. These findings are in agreement with those of Musikali (2008) who revealed that the most effective way of achieving good corporate governance is by increasing the criminal sanctions within the Companies Act and the Penal Code to a level that reflects the business world today.

4.7 Court Guiding Principles and Promotion of Good Corporate Governance

This section addresses the third objective of the study which sought to examine the influence of court guiding principles on promotion of good corporate governance in companies listed in the NSE in Kenya.

4.7.1 Extent Court Guiding Principles Influence Good Corporate Governance

The respondents were asked to the extent to which the courts guiding principles promote good corporate governance in listed companies in Kenya. The results are presented in Table 4.10.

Table 4.10: Extent Court Guiding Principles Influence Good Corporate Governance

Extent	Frequency	Percent
Very great extent	8	15.4
Great extent	27	51.9
Moderate extent	15	28.8
Small extent	2	3.8
Total	52	100.0

The study results show that the most of the respondents (51.9%) indicated that the courts guiding principles influenced good corporate governance in companies listed in the NSE to a great extent and was further supported by 15.4% of the respondents who reported that the courts guiding principles influenced good corporate governance in companies listed in the NSE in Kenya to a very great extent. On the other hand, 28.8% of the respondents indicated that the courts guiding principles influenced good corporate governance in the listed companies in Kenya to a moderate extent. However, 3.8% of the respondents indicated that the courts guiding principles influenced good corporate governance in companies listed in the NSE to a small extent. Based on the majority of the

respondents, it implies that courts guiding principles influenced good corporate governance in companies listed in the NSE to a great extent.

4.7.2 Court Guiding Principles and Promotion of Good Corporate Governance

The study sought to examine the influence of guiding principles of the courts in promotion of good corporate governance in companies listed in the NSE in Kenya. The respondents were asked to indicate their level on agreement on the various statements regarding the guiding role of the courts in the promotion of good governance in the companies listed in the NSE. The study results are presented in Table 4.11.

Table 4.11: Courts Guiding Principles and Promotion of Good Corporate Governance

Statements on Court Guiding Principles	Mean	Std. Deviation
The court's precedents effectively guides on the principles of good corporate governance in companies Kenya.	3.58	0.723
The courts clearly interprets the law and gives clear guidance on corporate governance principles	3.56	0.958

The respondents agreed that the court's precedents effectively guided on the principles of good corporate governance and also clearly interpreted the law and gives clear guidance on corporate governance principles in listed companies in Kenya; as shown by the mean scores of 3.58 and 3.56 respectively.

From the findings, it can be deduced that courts guiding principles measures such as courts' precedents and interpretations of the law gives clear guidance on corporate

governance principles which promotes good corporate governance in the companies. These findings are supported by Keay (2010) who provided a number of case studies that justifies the role of courts in promoting corporate governance. The King Report on Corporate Governance in South Africa acts for example incorporates a Code of Corporate Practices and Conduct, which aims at promoting the highest standards of corporate governance in South Africa.

4.8 Regression Analysis Results

A multivariate regression model was applied to determine the relationship between the courts and promotion of good corporate governance in Kenyan companies listed in NSE. The predictor factors were enforcement, deterrence and guiding principles compliance. The results of the multiple regression analysis are presented using the model summary, ANOVA and the model coefficients as shown below.

Table 4.12: Model Summary

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	0.426(a)	0.182	0.130	0.36193

a Predictors: (Constant), enforcement, guiding principles, deterrence

In Table 4.12, the R shows the linear relationship between the dependent and the independent variables in the regression analysis while R-Squared is the coefficient of determination which tells us how the predictors (independent variables) varied with the dependent variable. The results in model summary show the value of the R-squared as 0.182. This implies that the role played by the courts in Kenya (enforcement, deterrence and guiding principles), explained 18.2% of promotion of good corporate governance.

This shows that there is a weak link between the role of courts in Kenya and promotion of good corporate governance in Kenyan companies.

Table 4.13 ANOVA- Analysis of Variance

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	1.395	3	0.465	3.549	0.021(a)
	Residual	6.288	48	0.131		
	Total	7.682	51			

a Predictors: (Constant), Court enforcement measures, Court deterrence measures, Court guiding principles

b Dependent Variable: Promotion of good corporate governance

The study used ANOVA to establish the significance of the regression model to give reliable results. As shown in Table 4.9 below, an F-significance value of $p=0.021$ was established. This shows that the regression model provided has a probability of 2.1% only, of giving us a wrong prediction. This shows that the model had a confidence level of above 95% which was significant in predicting in the model.

Table 4.1.4: Coefficients Results

Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
(Constant)	3.669	0.538		6.819	0.000
Court enforcement measures	0.187	0.072	0.349	2.600	0.012
Court deterrence measures	0.116	0.080	0.191	2.449	0.015
Court guiding principles	0.083	0.072	0.155	1.165	0.250

a Dependent Variable: Promotion of good corporate governance

The results in Table 4.14 show that there is a positive and significant regression relationship between enforcement by the courts and promotion of good corporate governance in Kenyan companies listed in NSE as shown by $\beta = 0.187$, $p=0.012<0.05$. This implies that a unit increase in enforcement would significantly lead to an increase in promotion of good corporate governance at a unit of 18.7%. This study therefore rejects the null hypothesis and accepts the alternative hypothesis that court enforcement measures have a significant influence on promotion of good corporate governance in companies listed in the NSE in Kenya.

The findings also show that there is a positive and significant relationship between deterrence role of the courts and promotion of good corporate governance as shown by $\beta = 0.116$, $p=0.015<0.05$. This implies that a unit increase in deterrence role of the courts would significantly improve good corporate governance in Kenyan companies listed in NSE at a unit of 11.6%.

The study therefore declines the null hypothesis and accepts the alternative hypothesis that court deterrence measures have a significant influence on promotion of good corporate governance in companies listed in the NSE in Kenya.

However, the study found out that there was a positive but statistically insignificant relationship between the guidance of courts on the principles of corporate governance and promotion of corporate governance as shown by $\beta = 0.083$, $p=0.250>0.05$. The study rejects the alternative hypothesis and accepts the null hypothesis that court guiding principles do not have a significant influence on promotion of good corporate governance in companies listed in the NSE in Kenya.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATION

5.1 Introduction

This chapter provides a summary of findings, conclusions and recommendations of the study based on the objective of the study. This entails a synthesis of key issues of the objectives of the study as deduced from the entire research.

5.2 Summary and Discussion of Findings

The objective of the study was to establish the extent to which the role of the courts influences the promotion of good corporate governance in Kenya. The study found that the most of the companies listed in the NSE experienced various challenges in corporate governance. Even though majority of the listed companies in Kenya had enhanced integrity, fairness, efficiency, accountability and the responsibility levels; the study found out that the transparency levels among the listed companies in Kenya were poor. The findings are in line with those of Musikali (2007) and Gakeri (2013) who also established that Kenyan companies have corporate governance problems which had led to corporate collapses over the past years. In regard to this, the public is demanding accountability and responsibility in corporate behavior.

The study also found that most of the companies adopted the use of internal mechanisms as a major way of addressing the various challenges in corporate governance. The other means of addressing the problems in corporate governance in the listed companies in Kenya included the use of courts and regulatory bodies. These findings are in agreement

with those of Njoroge (2009) who reported that in a bid to foster corporate governance, Kenya has adopted a code of corporate governance that has been borrowed from presumably more developed countries to address governance challenges. The Guidelines encourage listed companies to embrace a positive corporate culture of accountability and responsiveness to the interests of investors.

The first objective of the study was to establish the influence of enforcement role in promotion of good corporate governance in companies listed in the NSE in Kenya. The study found out that the courts could enforce good governance in the organizations to a great extent. The courts could promote good corporate governance in companies by enhancing compliance of the laid down practice and also by ordering for the arrests of directors. The study also revealed that the standards of directors' behaviour are enforced through both criminal and civil sanctions as charges against a director who misappropriates. Majority of the respondents were of the opinion that the courts can enforce good governance in the organizations to a great extent. The regression results found out that there is a positive and significant regression relationship between enforcement by the courts and promotion of good corporate governance in Kenyan companies listed in NSE.

The above findings are corroborates with those of Millstein et al. (2005) who conducted a study on enforcement and corporate governance and established that investor protection requires both law and the effective enforcement of law. The results are also supported by Ndlovu *et al.* (2013) who revealed that where good corporate governance is lacking,

courts are a last resort for shareholders. Enforcement of laws via courts assumes that: courts have resources to handle cases in a fair, timely and within the law.

However, there are questions whether developing countries such as Kenya, have quality laws and whether the enforcement are adequate. Millstein et al. (2005) recommends that for enforcement to be effective especially in developing countries such as Kenya, there is need to have adequate courts, judges and public enforcement agencies, and the means for shareholders to institute legal actions on their own. Berglöf and Pajuste (2005) also revealed that effective enforcement requires backing from the political process. A report by OECD (2003) also recommended that court systems should therefore strengthen their expertise and capacity to adjudicate corporate-governance disputes efficiently and impartially.

The second objective of the study was to determine the influence of deterrence role in promotion of good corporate governance in companies listed in the NSE in Kenya. The study found out that the criminal sanctions provide the necessary standard of deterrence to directors to refrain from misappropriation of company assets. The study findings also revealed that the fines given in courts were inadequate to deter directors from misappropriating of company assets. The study further found out that the courts deter directors from misappropriations in listed companies to a great extent. The regression result shows that there is a positive and significant relationship between deterrence role of the courts and promotion of good corporate governance. These findings are supported by a report by OECD (2003) which asserted that the courts has a role to play, not only in enforcing but also putting mechanisms to deter others who may be involved in

malpractices. The role of the courts is not only to enforce current laws but to promote and facilitate market discipline (OECD, 2003).

The third objective was to examine the influence of guiding principles of the courts in promotion of good corporate governance in companies listed in the NSE in Kenya. The study found that the courts gave guiding principles to promote good corporate governance in companies listed in the NSE to a great extent. The study also revealed that the court's precedents effectively guided on the principles of good corporate governance and clearly interpreted the law giving clear guidance on corporate governance principles in listed companies in Kenya. The regression results found out that there was a positive and insignificant relationship between the guidance of courts on the principles of corporate governance and promotion of corporate governance. The study findings are in agreement with those of Keay (2010) who presented case studies that justifies the role of courts in providing guidance on matters of corporate governance especially on the role of directors and repercussion of their actions. The legal decision made by courts of authority, serves as an authoritative rule in future in similar cases.

The role of courts in providing guiding principles is also well elaborated in the King Report on Corporate Governance (2002) in South Africa. Through a High Court judge, the report incorporated Code of Corporate Practices and Conduct, which was the first of its kind in the country that aimed at promoting the highest standards of corporate governance the country. The report recommended that the legal mechanisms to be relied on for enforcement of King report and the Code of Corporate Practices and Conduct.

In Kenya, Musikali (2008) observes that enforcing the law that is currently in place would improve corporate governance to an extent. However, there is need to improve the environment in which the current law operates for the enforcement to have a great impact on corporate governance. Atieno (2009) also recommended that there is need to strengthen parastatal boards as they are in the one-tier system. In so doing, Kenyan courts might apply objective standards in accessing directors' liability. Implementing effective laws is a fundamental requirement for establishing a successful corporate governance system.

5.3 Conclusions

The study concludes that the most of the companies listed in the NSE experienced challenges in corporate governance. While the integrity and responsibility levels in the listed companies in Kenya were good and the levels of efficiency, effectiveness and accountability at a fair level; the transparency levels in the companies listed in the NSE in Kenya were poor. The study also concludes that most of the companies adopted the use of internal mechanisms as a way of addressing the various challenges in corporate governance. The other means of addressing the problems in corporate governance includes the use of courts and regulatory bodies. The study further concludes that the courts could enforce good governance in the organizations to a great extent.

The study also concludes that the courts can promote good corporate governance in companies by enhancing compliance of the laid down practices and also by ordering for the arrests of directors. The standards of directors' behaviour are enforced through both

criminal and civil sanctions as charges against a director who misappropriates. The courts also deter directors from misappropriations in listed companies.

The study further concludes that criminal sanctions provide the necessary standard of deterrence to directors to refrain from misappropriation of company assets. The fines given in courts were also inadequate to deter directors from misappropriating of company assets.

5.4 Recommendations

The study recommends that the companies listed in NSE in Kenya should adopt the use of internal mechanisms and courts in addressing the various challenges in corporate governance. The courts should also be engaged in the enforcement of good governance in the organizations especially where internal mechanisms do not work effectively.

The study recommends that the courts should promote good corporate governance in companies by enhancing compliance of the laid down practice and also by ordering for the arrests of directors. The standards of directors' behaviour should also be enforced through both criminal and civil sanctions as charges against a director who misappropriates. The courts should also deter directors from misappropriations in listed companies.

The study also recommends that the criminal sanctions should provide the necessary standard of deterrence to directors to refrain from misappropriation of company assets. The fines given in courts should be adequate to deter directors from misappropriating of company assets.

The study recommends that the courts should give guiding principles to promote good corporate governance in the listed companies. This should be facilitated by the court's precedents effectively guiding the listed companies in Kenya on the principles of good corporate governance and clearly interpreting the law giving with clear guidance on corporate governance principles.

5.5. Areas of Further Study

This study sought to establish the role of the courts in promotion of good corporate governance in Kenya. The study established that the courts' role in facilitating the good corporate governance in the Kenyan companies was not being fully felt- the contribution was low and therefore most of the companies had not fully realized good corporate governance. The study recommends that a study be conducted, to establish whether there are challenges affecting the effectiveness of the courts in promoting good corporate governance in Kenya.

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APPENDICES

Appendix I: Letter of Introduction

Dear Respondent,

RE: DATA COLLECTION

I am a student at KCA University pursuing a Masters Degree in corporate management. I am conducting a research study on the “the Role Played by the Courts in Promotion of Good Corporate Governance in Kenya” to fulfill the requirements of the award of the above mentioned degree program. Your organization has been chosen to take part in the study.

Kindly respond to all the questions in the questionnaire accurately and honestly as possible. The information in the questionnaire will be treated as confidential and it is for academic purpose only.

Your co-operation is highly appreciated. Thank you

Yours Sincerely,

Orengi Isaac

Appendix II: Questionnaire

Instructions: Please read the answer the questions as appropriately as possible. It is advisable that you answer or fill in each section as provided. Tick () where appropriate.

Section A: Respondents Profile

1. Indicate your gender.

a) Male b) Female

2. Indicate your appropriate age bracket.

a) Below 30 years b) 31-40 Yrs c) 41-50 Yrs

d) Above 50 Yrs

3. Kindly indicate your highest level of academic qualification.

a) Diploma b) Bachelors Degree

d) Masters c). PhD.

d). Other (specify).....

4. How many years have you worked in this organisation? (Tick () where appropriate).

a) Less than 5 Years b) 5-10 Years

c) 11-15 Years d) 16-20 Years

d) Above 20 Years

5. What is your Designation?.....

Section B: Corporate Governance

6a). Has your organization experienced corporate governance challenges/ problems?

Yes No

b). If yes, which mechanisms were used to address the corporate governance challenges/
Problems?

- i). Use of internal mechanisms
- ii). Use of the regulatory bodies (e.g. CMA)
- iii). Use of Court (legal system)
- iv). Others (specify).....

7. How would you rate the following Corporate Governance tenets in your company? Use a scale of 1 to 5 where 1 is Poor, 2 is Fair, 3 is Good, 4 is Very good and 5 is Excellent

Corporate Governance	1	2	3	4	5
Accountability					
Efficiency and Effectiveness					
Integrity and Fairness					
Responsibility					
Transparency					

Section C: Enforcement Role of Courts and Promotion Of Good Corporate Governance

8. To extent do you think the courts can enforce good corporate governance in listed companies in Kenya?

- Very great extent Great extent Moderate extent
- Small extent Not at all

9. To what extent do you agree with the following statements on enforcement role of courts in promotion of good corporate governance in companies listed in the NSE in Kenya? Use a scale of 1 to 5 where 1 is strongly disagree, 2 is disagree, 3 is Neutral, 4 is agree and 5 is Strongly agree

Enforcement	1	2	3	4	5
The courts can promote good corporate governance in companies by enhancing compliance of the laid down practices					
The courts can promote good corporate governance in companies by ordering for arrests of directors					
Standards of directors' behaviour can be enforced through both criminal and civil sanctions as charges against a director who misappropriates.					

Section D: Deterrence Role of Courts and Promotion of Good Corporate Governance

10. To what extent do you think the courts deter directors from misappropriations in listed companies in Kenya?

Very great extent [] Great extent [] Moderate extent []
 Small extent [] Not at all []

11. To what extent do you agree with the following statements on deterrence role of courts in promotion of good corporate governance in companies listed in the NSE in Kenya? Use a scale of 1 to 5 where 1 is strongly disagree, 2 is disagree, 3 is Neutral, 4 is agree and 5 is Strongly agree

Deterrence	1	2	3	4	5
Does criminal sanctions provide the necessary standard of deterrence to directors to refrain from misappropriation of company assets					
Are the fines given in courts adequate to deter directors from misappropriating of company assets					
Do the convictions of directors who have misappropriated the company assets deter others and promote good governance					

Section E: Guiding Role of Courts and Promotion of Good Corporate Governance

12. To what extent do the courts give guiding principles to promote good corporate governance in companies listed in the NSE in Kenya?

Very great extent [] Great extent [] Moderate extent []
 Small extent [] Not at all []

13. To what extent do you agree with the following statements on guiding role of courts in promotion of good corporate governance in companies listed in the NSE in Kenya?

Use a scale of 1 to 5 where 1 is strongly disagree, 2 is disagree, 3 is Neutral, 4 is agree and 5 is Strongly agree

Guidance of Courts	1	2	3	4	5
The court's precedents effectively guides on the principles of good corporate governance in companies Kenya.					
The courts clearly interprets the law and gives clear guidance on corporate governance principles					

THANK YOU FOR YOUR PARTICIPATION