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Controlling Courtroom Discourse through Linguistic Manipulation: A Case Study of Criminal Trials at the Kibera Law Courts, Nairobi

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Abstract

This study undertook a critical analysis of linguistic manipulation and power disparities among discourse participants in criminal trials at the Kibera Law Courts, and posited the view that the employment of manipulative techniques by both legal professionals and unrepresented accused persons during hearings is a vital part of the courtroom discourse. The study sought to examine how unequal distribution of power may be used to create an imbalance among court participants, and to exemplify how control is achieved and challenged in the courtroom through linguistic manipulation. Specifically, the study identified manipulative techniques employed by legal professionals to wield dominance and control in criminal trials discussed manipulative strategies employed by lay defendants to achieve control during various segments of criminal trials, and investigated how the power imbalance among court participants is reflected in their ability to employ linguistic manipulation. To achieve these objectives, the study adopted a case study research design. The study adopted both qualitative and quantitative research methods of data collection and data analysis. The data comprised 20 hours of audio-recorded court proceedings of criminal trials heard between August and September 2016. Judgmental Sampling was used to select instances of linguistic manipulation by court participants in the various segments of criminal trials. Data were analyzed and coded using the SPSS Version 22 computer software to generate statistics on the frequency of the occurrence of linguistic features. These statistical results formed the foundation of the discussion of the emerging trends in the analysis chapters. The main theoretical framework informing the study was Critical Discourse Analysis (CDA), which holds that a study of the micro-discourse structures such as lexical choices, syntactic form and pragmatic interpretation in a given context leads to an understanding of the macro-discourse social structures such as power and dominance. The findings of the present study established that both legal professionals and lay defendants employ such linguistic manipulative techniques as "so", summarizers, alternative questions, and interruption to exercise control and dominance of the discourse in criminal trials at an almost equal level and despite their differences in legal knowledge. In addition, it was established that power is not evenly distributed among court participants and that this power imbalance is more prevalent among the officials of the court. The study recommends an undertaking of a similar study using video recording so as to examine the paralinguistic features prevalent in courtroom discourse.

Key words | *Critical discourse analysis, forensic linguistics, courtroom discourse, linguistic manipulation*

Background to the Study

The laws and protocols used in courtroom discourse are more often than not only familiar to legal professionals. The vast majority of lay people are not accustomed to such an environment. They are at a disadvantage both legally and linguistically. Their everyday casual conversational rights of equal access and free negotiation of turns, and turn types, are suspended. They have no control over the talk of the other participants and only very limited control over their own contributions. As such, when differences in pragmatic and communicative styles of speaking are not understood, the right to a fair hearing for accused persons may be compromised (Eades, 2010; Stroud, 2010).

According to Olsson (2004), forensic linguistics is the interface between language, crime, and law. Forensic linguistics studies, analyzes and measures language in the context of crime, judicial procedure, or disputes in law, including the preparation and giving of written and oral evidence in court. It involves the study of any text or item of spoken language which has relevance to a criminal or civil dispute, or which relates to what goes on in a court of law, or to the language of the law itself. This field is relatively recent and has developed from a research- based understanding of language. In countries where evidence of forensic linguists is admissible, experts in forensic linguists are most frequently called in to help a court answer such questions as: what does a given text say 'and who is its author'. In answering these questions, linguists draw on knowledge and techniques derived from one or more of the sub-areas of descriptive linguistics: phonetics and phonology, lexis, syntax, semantics, pragmatics, discourse, and text analysis. Coulthard (2005, p.1).

The present study drew on pragmatic aspects of courtroom discourse, and focused specifically on linguistic manipulation as one of the manipulative techniques used by legal professionals and lay defendants to control the discourse of proceedings in criminal trials in Kenyan courts. Pragmatics plays a significant role in courtroom discourse. According to Yule (1996), pragmatics is concerned with the study of meaning as communicated by a speaker/writer and interpreted between a listener/reader. It entails the use of language within the context of communication. Levinson (1983) refers to pragmatics as the ability of language users to pair sentences with the contexts in which they would be appropriate. Courtroom communication therefore portrays an authentic context whereby the discourse relies greatly on oral evidence given by witnesses, adduced in the form of answers from questions posed by counsel or lay defendants.

1.1 Statement of the Problem

Courtroom discourse is indispensable to the legal process. It is a form of spoken discourse whereby relationships between various participants is expressed through language. Maley (1994), describes courtroom discourse as spoken and interactive. However, this interaction portrays a glaring aspect of power and linguistic inequality between legal professionals and the lay court participants. Mbote and Oketch (2011) observe that in the courtroom, the question of inequality is evident even before the judicial process commences. It is worth noting that whereas legal professionals acquire controlling and manipulative skills through training and experience, for lay defendants, maintaining control over witness testimonies is a difficult task as they must be aware of its purpose in a trial, in addition to adapting their interactional habits to the hostile, intimidating, and formalized environment of the courtroom. In many instances, in Kenyan courts, accused persons appear unrepresented, as most of them are not able to afford the services of legal representatives (International Bar Association, 2010). In other words, they find themselves conducting their own defense, and having to compete in a trial with professionally trained defense counsels. The present study therefore sought to find out whether the linguistic gap that exists between pro se litigants and legal professionals, in addition to the unequal distribution of legal knowledge between the two groups, impedes the unrepresented accused persons from achieving control of courtroom discourse during criminal hearings.

1.2 Objectives of the Study

The study was guided by the following specific objectives:

a) To identify manipulative linguistic techniques employed by legal professionals to wield control and dominance during various segments of criminal trials in Kibera Law Courts.

b) To discuss manipulative linguistic techniques employed by lay defendants to achieve control during various segments of criminal trials in Kibera Law Courts.
c) To examine how the power imbalance among court participants is reflected in their ability to employ linguistic manipulation in various segments of criminal trials in Kibera Law Courts.

1.3 Research Questions

The study sought to answer the following research questions:

i. What manipulative linguistic techniques are employed by legal professionals to wield control and dominance during various segments of criminal trials in Kibera Law Courts?
ii. What manipulative linguistic techniques are employed by lay defendants to achieve control during various segments of criminal trials in Kibera Law Courts?
iii. How is power imbalance among court officials reflected in their ability to employ linguistic manipulation in controlling courtroom discourse in various segments of criminal trials in Kibera Law courts?

1.4 Justification of the Study

The study contributes to the body of local research in the field of forensic linguistics. In particular, it sheds light on how forensic linguistic expertise can demystify the linguistic gap and power disparities between lay court participants, legal professionals, and court officials in criminal proceedings. By carefully examining the use of language in courtroom discourse among these participants, the study helps raise awareness of the central role that language plays in leading to just outcomes within the criminal justice system.

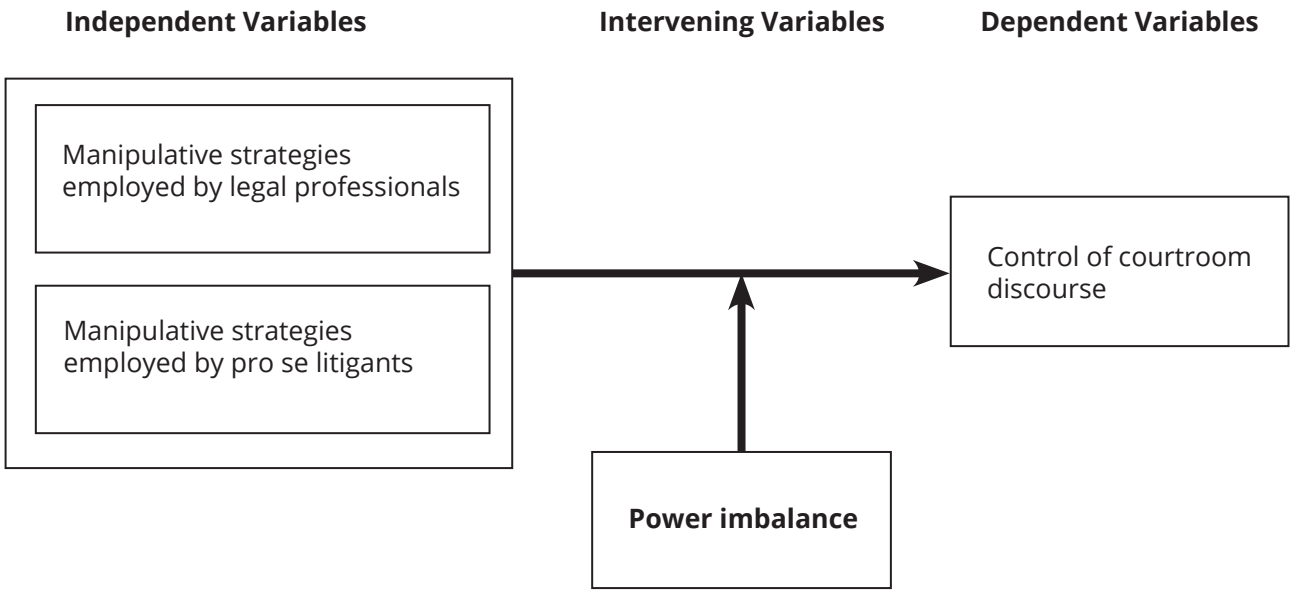
1.5 Significance of the Study

This study could be of great help to legal communities in raising awareness of the significance of the linguistic features prevalent in courtroom discourse and the capacity of linguistic manipulation to influence the court's interpretation of witness evidence, thereby often contributing to the outcome of criminal trials. The study could also be of significant help to both the linguistic and the legal fraternity in enabling them to jointly formulate measures that would incorporate linguistic aspects into the training of legal language so as to enhance fair hearings for all. The findings of the present study will be valuable to the researchers who may find useful research gaps that may stimulate interest in further studies into the future of forensic linguistics in Kenya.

1.6 Scope and Delimitation of the Study

The preference of Kibera Law Courts over other law courts of the Nairobi County as a study area for the present study is because the Kibera Law Courts try the largest number of cases involving lay persons who are linguistically disadvantaged by reason of illiteracy and indigence Kenya National Commission on Human Rights (KNHCR, 2012). According to the Kenya Law Report (2014), the Kibera courts handle an estimated 17,000 cases annually but only about 14 to 15,000 of the cases are determined. In light of this, the study restricted itself to spoken discourse used in the courtroom by analyzing the linguistic manipulation strategies employed by legal professionals and lay defendants to control the discourse in various segments of court proceedings, in view of the research questions. In addition, given the fact that evidentiary rules forbid the communication of substantial information through the use of gestures alone, Conley & O'Barr (1990), it was convenient to ignore the use of gestures in courtroom interaction without compromising the informative content of the data, since the focus of this study was on the verbal interaction in criminal trial proceedings.

1.7 Conceptual Framework



The study had two independent variables, namely, manipulative strategies employed by legal professionals and manipulative strategies employed by pro se litigants respectively. These in turn contributed to power imbalance among court participants as an intervening variable. As a result, dominance and control of courtroom discourse was achieved.

Review of Empirical Studies

2.1 The evolution of CDA

Critical discourse analysis (CDA) is a rapidly developing area of language study that draws its tenets from a variety of theories, notably from the Halliday's Systemic Functional Linguistics (SFL). SFL regards languages as constituting 'social semiotic' systems or 'meaning potentials' that have evolved to enable human beings to exchange three fundamental types of meaning: ideational, interpersonal, and textual functions (Fairclough and Wodak, 1997). For Halliday, language is not an autonomous system but part of the wider socio-cultural context that aims at assessing language from the micro and macro levels, specifically interpreting linguistic processes from the standpoint of the social order. (Halliday, 1978).

According to him, the ideational function can be viewed as the potential meaning that is functionally determined by the need of speakers and writers to simultaneously represent experience. The interpersonal function enables them to manage their relationship with their co-participants, while the textual function enables them to produce dialogue or monologue, whether spoken or written, which is cohesive and coherent, as the realization of these meta-functions can be discerned both at the micro and macro levels of clause structure (Halliday and Hasan 1985).

Generally speaking, CDA is viewed as an approach which consists of different perspectives and different methods for studying the relationship between the use of language and social context. It aims to derive results which are of practical relevance to the social, cultural, political and even economic contexts (Fairclough & Wodak, 1997). CDA also aims to raise awareness concerning the strategies used in establishing, maintaining, and reproducing asymmetrical relations of power as enacted by means of discourse. Key figures in the genesis of CDA such as Fowler (1996), Chouliaraki, and Fairclough (1999), directly claim Halliday's framework as the intellectual underpinning for their analyses. As such, an understanding of the basic claims of Halliday's grammar and his approach to linguistic analysis is essential for a proper understanding of CDA (Wodak 2001).

2.2 Pragmatics and forensic linguistics

The origins of forensic linguistics can be traced to the works of Professor Jan Svartvik (1968) in his book "The Evans Statements: A Case for Forensic Linguistics". He presented an analysis of a series of four statements dictated to police officers at Nottinghill Police Station by a young man Timothy John Evans, wrongfully convicted of murdering his wife and baby in 1952. He analyzed Evans's alleged confession for register, concluding that the confession contained many examples of policeman's register. He demonstrated that the statement was unlikely to have been taken down verbatim from Evans and this helped prove his innocence, and led to his subsequent posthumous pardon in 1966. Jan Svartvik's work attracted a number of forensic linguists, among them Malcolm Coulthard, who analyzed a similar case 46 years later. His analysis of witness statements and police statements (Coulthard, 1993), made a major contribution to the posthumous overturning of Derek Bentley's conviction for murder in 1998. This validated forensic linguistics as a discipline and added greatly to its growth and application as a method of resolving serious crimes.

Salient to studies in forensic linguistics is the investigation of the employment of pragmatic aspects prevalent in spoken discourse. Pragmatics can be defined as the study of meaning in context dependent on the intentions of the participants in a communicative event Yule (1996). He observes that context is a major factor in Pragmatics. It influences what people say, how they say it, and how others interpret what they say. Pragmatics has therefore played a crucial role in the development of Forensic Linguistics. Coulthard (2005), notes that the forensic linguist is "concerned not with deciphering words, but rather with their interpretation.". The meaning of phrases or even individual words can be vital in some trials. Perhaps the most famous British example comes from the 1950s, the case of Derek Bentley, whose friend Chris had a revolver in his hand and was heard saying "Let him have it, Chris". Shortly afterwards, Craig fired several times and killed a police officer. There was a long debate in court over the interpretation of Bentley's ambiguous utterance, which was resolved in favour of the prosecution's incriminating interpretation, "shoot him" rather than the defense's mitigating "give him the gun"; this made Bentley an accessory to murder, for which he was convicted and later hanged (Coulthard, 1993). Previous studies on Kenyan courtroom discourse have focused on language use by lay defendants in the evidentiary stage of the proceedings/ the examination phases. (Kiguru, 2014; Ogone, 2008; Satia, 2013).

2.3 The general trial process

Generally, a trial comprises two major stages: the procedural stage and the evidentiary stage respectively. In a typical criminal trial, the procedural stage refers to the general procedures that take place in a hearing from the plea taking to the judgment and resulting in either an acquittal or conviction and sentence (Laws of Kenya, 2006). The evidentiary stage of a trial comprises the segments of the three phases of witness examination. These are conducted through a series of questions and answers. The examination in-chief or direct examination is the stage of adducing evidence from witnesses by the prosecution in proof of its case (Evidence Act, S. 145). In this segment, prosecutors obtain evidence from their own witnesses who in turn give what is known as the evidence in-chief. Thereafter, the adverse party has a right to examine that witness in a segment referred to as cross-examination (Evidence Act, S.145). The cross-examination segment is conducted by a defense counsel where the accused is represented, or accused persons themselves where they appear pro se.

After the cross-examination, the prosecution may examine the witness again with a view to clearing any ambiguities that may have arisen during the cross-examination. This examination is referred to as re-examination (Evidence Act, S. 145). The re-examination segment is a second chance in the prosecution's case, which permits the possibility of rehabilitating a witness whose credibility has been damaged on cross-examination, in addition to getting clarity on new matters that have arisen for the first time (Sopinka et al., 1992).

2.3.1 Trial in an adversarial court

In the adversarial legal system, the criminal trial process comprises two major cases: the prosecution case and the defense case respectively. Both cases may be framed by opening and closing arguments, but this is optional. The prosecution then calls all its witnesses and adduces evidence in support of the charge through the examination in-chief or direct examination. In Kenyan courts, direct examination in criminal trials is conducted by a court prosecutor, whose role is to represent the 'state' by making the court understand facts of a case so that it can make an informed decision. Thereafter, the witnesses are

subjected to cross examination by the accused person or his advocate. If the prosecutor finds it important, a re-examination takes place. When the evidence of the witnesses for the prosecution has been concluded, and the court considers that there is no evidence disclosing that the offence has been committed, the court enters a finding of "no case to answer. However, if it considers that there is enough evidence on the face value (*prima facie*) that an accused person may have committed an offence; the court informs the accused person of his right to address the court either personally or through an advocate in his defense.

Once the prosecution has closed its case, the accused person or his advocate may open his case stating the facts or law on which he intends to rely. The accused person may then give evidence on his own behalf and he or his advocate may cross-examine his witnesses. After the cross-examination, he may sum up his case by presenting his closing address (Laws of Kenya, 2005).

2.4 Power in the Courtroom

According to Maley (1994), "Power is exercised primarily by those who have the most right to speak, choose, control, and change topics". It is worth noting that the justice system of a country is a powerful institution; therefore, mere membership of legal professionals in this system vests power on them, enabling them to take the greater control of the courtroom discourse (Walker, 1987). This therefore implies that in the courtroom, communication is significantly affected by those with the ability to dominate and control the discourse (Wang, 2006). For instance, the judge/magistrate holds most control over the interaction, through a number of performatives such as making rulings or passing verdicts (Carter & McCarthy, 2006). Equally, counsels have powerful discursive resources to influence witnesses and the court. By conducting witness examination, they control what witnesses testify by challenging, blaming, suggesting, or directing the witness testimony (Ringed, 1999). This is in line with the observation by Conley (1978), Eades (2008), and O'Barr (1982), that lawyers are acutely aware of the power of the words they use as a means of assertiveness during a trial procedure, as they are aware that the court's decision is largely reliant on the counsels' ability to convince it. They are therefore keen to employ all possible tactics to convince the court so as to ensure the case takes the direction of their choice.

Language is one of the means through which inequality in the distribution of power is created and perpetuated (Fairclough, 1999). Language in the courtroom may therefore be described as an asymmetrical discourse between court officials and parties to a case (Coates, 1995). Therefore, in an adversarial legal system, power asymmetry is reflected by the competing goals among the discourse participants (Haile, 2004).

2.5 Distinction between trials with represented accused persons and trials with pro se litigants

One of the major differences between trials with legal professionals and those with pro se litigants is that whereas lay defendants rely on narrative (Baldacci, 2006; O'Barr &Conley, 1985), legal professionals rely heavily on logical and scientific reasoning, with some narrative elements skillfully incorporated to facilitate jurors' understanding (Heer, 2005). Conley and O'Barr (1990) observe that rule-oriented accounts are characterized by attention to contractual details, chronological recounts of events, and documentation, and so conform to the legal system's requirements of relevance and precision. In addition, legal professionals challenge witnesses by asking them closed leading questions and limiting their interactional space (Danet et al. 1980; Harris 1984; Heffer, 2005; Luchjenbroers, 1997; Philips, 1987 and Woodbury, 1984), and coercing them into preferred replies by using controlling pragmatic strategies (Aldridge and Luchjenbroers, 2007; Conley and O'Barr, 1998; Cotterill, 2003; Drew, 1990; Gibbons, 2003; and Matoesian, 2005). Pro se litigants, on the other hand, use too many open questions and their closed questions are not restrictive enough (Tkačková, 2010, 2011). She observes that pro se litigants use narrative devices that are common in everyday interaction, thereby producing relational accounts instead of the narrative devices of rule-oriented accounts that are expected by the judiciary.

Relational accounts assume that the court shares knowledge of the situation, and focus on relationships of the litigants, which is considered irrelevant by the court. In either case, however, defense counsels and pro se litigants strategically employ various linguistic tactics including cantankerous questioning during the cross-examination segment of the trial so as to confuse, coerce, and intimidate the witnesses. They can move from one topic to another with an aim of pinning down their witnesses as much as possible, in order to discredit them by proving the inconsistency of their statements to the court.

They even have the potential to control the way the court should interpret witness responses by skillfully using various manipulative devices in language. By so doing, they control the formulation and interpretation of facts by for instance, violating the normal length of pauses between the turns, and making use of deliberate overlapping or prolonged pauses in order to stress or dramatize facts (Gibbons, 2003).

2.6 Linguistic manipulation

According to Akopova (2013), linguistic manipulation is influence exercised by one person upon another or a group of people through speech and non-verbal means oriented toward achieving a certain goal that constitutes in changing of the addressee's behaviour, perceptions, and intentions in the course of the communicative interaction. Linguistic manipulation is marked by language signs of different levels that help interpret the speaker's intentions. In courtroom discourse therefore, linguistic manipulation occurs where discourse participants employ certain strategies that enable them to achieve their goals without evident detection of the communicative intention: the speaker wittingly chooses such forms of utterances that lack direct signals of his intentional condition. Michelle Aldridge and June Luchjenbroers (2007) refer to linguistic manipulation as the lawyer's tendency to 'insert (negative) information into a witness's testimony through suggestions'. According to their observation, linguistic manipulations can weaken a witness's account by suggesting that he/she is to blame, and/or is lying or perhaps has simply misunderstood the situation'

In an adversarial criminal trial, the main goal of the opposing parties is to win the case rather than discover the truth. As such, each party employs all possible strategies to convince the court of their desired version of events (Cotterill, 2003). In so doing, court participants employ a number of manipulative strategies to achieve their goal in the trial. Gibbons (2003) in his text on power and interaction in court, observes that during a trial, powerful discourse participants use a range of devices with linkages between elements of the communication process and the social context in such a way that one particular interpretation emerges more powerfully; a linguistic phenomenon referred to as 'pragmatics'.

Pragmatics is concerned with meaning in which context plays an essential role. Leech (1983) describes pragmatics as the 'study of communicative meaning in a communicative event.' In courtroom discourse, the process of interpretation of meaning is determined by linguistic evidence adduced orally by witnesses in response to questions posed by examiners who employ various techniques to elicit their preferred version of evidence to persuade or convince the court to accept it. These court participants make deliberate use of language through employing a number of pragmatic strategies so as to ensure that the vital information they intend to communicate is captured by an institutional authority who is vested with power to determine the outcome of a trial (Luchjenbroers, 1993).

2.7 Theoretical framework

The study investigated the use of linguistic manipulation in various segments of criminal hearings at different stages in Kibera Law Courts using Critical Discourse Analysis (CDA), which stems from a critical theory of language that views language use as a form of social practice that seeks to understand how discourse is implicated in relations to power, and how these are reflected in discourse. Fairclough (1992) approaches the analysis of verbal interaction from three dimensions: The first dimension looks at discourse as text and is concerned with the choices interlocutors make about vocabulary, grammar, and cohesive devices. This stage involves a description of the text. The second dimension looks at discourse as discursive practice and it analyzes how people in given social contexts produce, interpret, and transform texts. This stage examines the relationship between text and interaction. The third dimension looks at discourse as social-practice and it views discourse as a product and determinant of ideology. Thus, the ideology at play in a given society is articulated and challenged through discourse. This stage examines the relationship between interaction and social context. CDA therefore seeks to establish connections between properties of texts, futures of discourse practice (text production, consumption and distribution), and wider sociocultural practice (Fairclough 1995), with the aim of analyzing "opaque" as well as transparent structural relationships of dominance, discrimination, power and control as manifested in language.

The present study adopted Fairclough's (1992) approach to CDA. In view of the first two dimensions, the texts are examined in a particular social setting (the courtroom) and the texts involve interactants who are classified as lay participants (pro se litigants) and legal professionals respectively. The latter are generally perceived to hold a more powerful position in a

courtroom setting than the latter. In view of the third dimension, the social concepts of power, dominance, and inequality are examined. These social realities are abstract and they find expression at the micro level of discourse which deals with linguistic concepts like grammar, speech acts, style, and rhetoric (Conley & O. Barr, 2005; Jorgensen & Philips, 2002), and van Dijk (2001). For Fairclough, "discourse practice straddles the division between society and culture on the one hand, and discourse, language and text on the other". Hence the CDA framework adopted by Fairclough goes beyond investigating the lexical and grammatical relations of a text, and acts as a possible agent of understanding the attitudinal and social interactions underlying the composition of a certain discourse and as a means of social change. Among the descriptive, explanatory, and practical aims of CDA is the attempt to uncover, reveal, or disclose what is hidden in relations of discursively enacted dominance or their underlying ideologies (Vandijk, 2006). For social power and dominance to be effective, they are often organized and institutionalized. Judicial power is therefore an institutionalized jurisdiction "to determine issues between two parties to a suit before it for decision, to pronounce judgment, and enforce its decisions" (Aikins 2000).

Courtroom discourse which was the focus of the present study consisted of audio-recorded data from proceedings of criminal trials in a chief magistrate's court. The linguistic choices made by the discourse participants constituted the micro level analysis. These choices were identified and then analyzed with reference to the various segments of criminal trials. Their analysis led to a discussion of how the macro concepts of dominance, inequality, and control are evident in the day-to-day verbal interactions in courts. In addition, the present study took cognizance of the fact that power relations are produced, exercised, and reproduced through discourse, and that the professional and institutional power and controlling ability characteristic of courtroom discourse makes it possible for the powerful to dominate over text and talk in the discourse. This is in line with Fairclough's (1995) observation that access to discourse is a salient property of CDA. He observes that it is those who have been vested with institutional power that have the best access to the discourse and can therefore employ devices with texts' position and manipulate them. Such access is defined in terms of their institutional position or function, and their control over or access to specific forms of institutional or public discourse, to sustain and reproduce their power in specific communicative situations.

A fundamental characteristic of court trials is the fact that at certain points during the proceedings, the judge and lawyers have long turns where no one else contributes; for instance, during opening and closing speeches and in summing up. The examination of witnesses on the other hand proceeds through a series of question and answer exchanges. The dialogic questioning of witnesses by lawyers from both sides is the basic activity which dominates the trial and is the mechanism by which the elicitation of the conflicting crime narratives is achieved. Cotterill (2003). Therefore, turn-taking in courtroom settings is strictly pre-specified with turn order and the distribution of turns pre-allocated to speakers with specific roles. For instance, during the examination phases of a trial, witnesses answer questions and are not permitted to offer any other types of contributions, while the prosecutor and counsels ask questions (Atkinson & Drew, 1979).

Methodology

3.1 Research Design and Sampling Techniques

The study adopted a descriptive case study research design where direct observation of court proceedings was employed. Yin (1984) defines a case study as "an empirical inquiry that investigates a contemporary phenomenon within its real-life context. Simons (2009) on her part, observes that a case study is an in-depth exploration from multiple perspectives of the complexity and uniqueness of a particular project, policy, institution, program or system in 'real life'". She describes it as a design frame that may incorporate a number of methods. Both qualitative and quantitative research methods for data collection and data analysis were adopted.

Judgmental sampling was used to select the prevalence of linguistic manipulation by court participants in the various segments of criminal trials. The case study approach was employed to investigate linguistic features in courtroom discourse and enabled the researcher to come up with solutions or recommendations on how to deal with the observed phenomena (Magenta, 2008). Descriptive research is concerned with describing the characteristics of a particular group' (Kothari,

2004). The present study sought to describe courtroom discourse and discover how court participants achieve control and dominance over courtroom discourse and how power is unevenly distributed among court participants. The study also sought to investigate how various court participants employ different manipulative strategies to wield power in court proceedings through linguistic means. These are issues best studied within the framework of a descriptive design using both qualitative and quantitative methods, hence the adoption of this design for the present study. The sampling, collection of data, and their analysis were carried out in ways meant to meet and uphold the standards necessary to ensure validity, reliability, and objectivity of findings (Daly, McDonald & Willis1992; Denzin & Lincoln, 1994; Hewitt 2006).

The case study approach was therefore appropriate in this study as it ensured the in-depth understanding of the interface between language, law, and the realization of fair trials in Kenyan courts.

The data under analysis comprised a total of 20 hours of digital, audio-recorded criminal trial proceedings collected between August and September, in 2016. In order to arrive at a sample for the study, the researcher adopted purposive sampling, i.e. specifically judgmental sampling, which is one of the non-probability sampling techniques. According to Milroy and Gordon (2003 p. 33), 'in most cases, judgmental sampling is more appropriate for linguistic work'. Tong co (2007), defines judgmental sampling as a "non-probability technique where the researcher uses his judgment to select from the population members whom he feels will give him the desired information relevant to the focus of the study." It is a non-random technique that does not need underlying theories or a set number of informants (Bernard 2002, Lewis & Sheppard 2006). This technique is employed especially in practical field circumstances such as courtroom, where the desired population for the study is uncommon or very difficult to locate as the proceedings take place in public spaces, and the intended observations are difficult to predict (Bernard 2002, Karmel & Jain, 1987). Data from this sampling technique represents the judgment of the researcher on excerpts that yield the manipulative strategies that respond to the study questions.

3.2 Methods of data collection and analysis

The study used discourse data obtained from courtroom observations. Where spoken language is the object of study, audio-recording is the favored data collection method, (Eades, 2000; Ferende 2009; Luchjenbroers, 1993), as it guarantees a permanent record of the verbal interaction that can be played back at the researcher's convenience. Discourse between the magistrate, prosecutor, and counsels/pro se litigants, and witnesses were audio-recorded using a wireless microphone system together with a Sony IC Recorder. These recordings constituted the data through which the study's objectives were pursued. Audio-recording accorded the researcher time to concentrate on the flow of conversation in the court proceedings without worrying about making elaborate notes. Alongside the wireless microphone system, the researcher used a Victor Reader stream. The Victor Reader Stream is a digital talking MP3 player used for the blind or partially sighted persons, with recording capability in both wave and MP3 and playback options with ability to connect to the PC wireless, with a synthetic synthesizer option for reading back text files. Observation notes supplemented audio-recordings. The researcher engaged an assistant who used a notebook to capture any relevant information that could be unclear on the audio-recordings by freehand note-taking since the Braille note-taker used by the researcher could cause disruption of the trials as it is noisy. Courtroom observations and audio-recording of court proceedings therefore favored the data collection process in this study.

The data collected was analyzed using the Statistical Program for Social Sciences (SPSS) Version 22 computer software, coded and keyed into the computer to come up with the frequencies of occurrence and percentages of manipulative strategies employed in each of the sampled trials. The researcher therefore used descriptive statistics only to generate numeric data. Tables were generated to simplify the data for presentation of meaningful findings. On the basis of these statistics, it was possible to account for the different strategies used by prosecutors to control the courtroom discourse during the Examination-In-chief and the re-examination segments. Secondly, it was possible to account for the diverse strategies employed by defense counsels and pro se litigants in the cross-examination segments of criminal trials to influence the court's interpretation of evidence adduced by witnesses

Discussion Of Findings

4.1 Manipulative strategies employed by legal professionals

As pointed out in the literature review, a criminal trial has two cases: the prosecution case and the defense case respectively. The prosecution case commences with the Examination-in-Chief, with the cross-examination segmenting between, and ends with the re-examination. The re-examination segment is conducted only in instances where the prosecution needs to get additional evidence from the cross-examination, or when they wish to clarify ambiguous facts.

The Examination-in-Chief is considered a vital segment of any trial, as it forms the basis of the fact-finding process of the evidential rules. In this segment, the story has to be told in very short bits, segmented by questions from the prosecution. Heerey (2000) and Tiersma (1999). According to Beach (1985), it is during Examination-in-Chief that the prosecution seeks to construct a systematic, step-by-step reconstruction of the crime narrative. She observes that it is such an incremental build up, consisting of minute details, that produces the final coherent version of events that the prosecutor seeks to build and is usually achieved by skillfully asking questions that allow the witness more freedom to speak. Witnesses may testify to matters-of-fact, and sometimes they may be called to identify documents, pictures, or other items introduced into evidence. Aust (2000), observes that in this segment, prosecutor-witness interaction is typically collaborative, cooperative, friendly, non-confrontational, and non-coercive. This is in line with Haille's (2004) observation that, during Examination-in-Chief, witnesses are supposed to be given a chance to tell their own stories because the evidence needs to originate from them.

Table 1 | *Manipulative Strategies Employed by Prosecutors*

Manipulative strategies employed by prosecutors	Frequency	Percent
Alternative questions	3.0	25.0
"so" summarizers	2.0	33.3
Reformulation	4.0	16.7
Highlighting	3.0	25.0

Source: Research Findings, 2017

4.2 Alternative questions

One of the manipulative strategies employed by the prosecution to exercise control over witnesses in this phase was the use of alternative questions. What makes this mode of questioning so manipulative is its ability to restrict the witness to only give the information required, as the witness is supplied with alternatives to the expected responses. These responses in-turn, enable the prosecution to ensure that the witness is systematic and consistent with their statement. Since such an approach results in the witness giving only the expected answers by the prosecution, the prosecutor ends up reconstructing the intended version of the crime narrative to convince the court.

The first example is taken from the Examination-in-Chiefof a case where the accused is charged with obtaining money by false pretenses so as to secure a teaching job for the witness. The witness while giving her Evidence-In-Chief indicates that the accused person had started the whole conversation on the subject by calling her on phone. The prosecutor therefore seeks to establish from the witness whether she had called the accused, and for purposes of specificity gives her the choice between the witness calling the accused or the accused calling the witness. The second example is from a case where the accused is charged with forgery of document in order to obtain a business license from an institution that deals with animal health. Among the exhibits produced before the court is a certificate purported to be from the institution in question, where the witness is one of the managers. When giving his Evidence In-Chief, the witness indicates to the court that the documents are not genuine. As such, the prosecution picks the certificate from the other documents and wants the witness to explain what could be wrong with it.

4.3 Manipulative strategies employed by pro se litigants at cross-examination

Since the present study was motivated by the desire to investigate whether unrepresented accused persons were able to compete favourably with defense counsels in criminal trials, it only analyzed data where the pro se litigants succeeded in employing manipulative strategies at almost the same competency level with the defense counsels. It is worth noting that when analyzing these type of strategies, it is possible to observe that an utterance produced in a given segment could generate a number of strategies to bring out various possible manipulative techniques. For this reason, the data under analysis may appear repetitive.

***Table 2** | Manipulative Strategies Employed by Defense Counsels*

Manipulative strategies employed by defense counsels.	Frequency	Percent
Status manipulation	2	7
Nailing down	3	11
Repeating questions	2	7
Alternative questions	2	7
Repetition and re framing	4	14
Evaluative third turns	5	18
Interruption	3	11
'so' summarizers	2	7
Cognitive manipulation	5	18
Total	**28**	**100**

Source: Study Finding, 2017

4.4 Strategies employed by pro se litigants

In an attempt to achieve control during cross-examination, unrepresented litigants were observed to employ the following strategies when they wanted to attack the credibility of the prosecution witnesses.

***Table 3** | Strategies Employed By Pro Se Litigants*

Strategies employed by pro se litigants	Frequency	Percent
Multiple questioning	5	42
Re formulating questions	3	25
Use of third person	4	33
Total	**12**	**100**

Source: Study Finding, 2017

4.4.1 Multiple questioning

Multiple questioning is a strategy employed where a lawyer or a pro se litigant asks a series of questions without giving the respondent time to answer the questions. For pro se litigants, this strategy was found to be employed as a device to confuse the witness and make them admit to the examiner's version of evidence as illustrated in the examples below, taken from the same case as in examples 4 and 5 in 4.3.7, where the accused person has been charged with causing grievous bodily harm (GBH) to the witness. The accused is a woman who had a quarrel with a neighbor. The witness, who is the

complainant, sustained the injuries when he went to mediate between the quarreling neighbors and the accused person hurled a burning stove at him.

Conclusion

The study revealed that during the examination phases, examiners, both legal and lay, as the powerful discourse participants, achieved control and dominance in trials by employing various manipulative strategies to construct a particular version of events and only used witnesses to confirm the facts or fill in the missing gaps in the evidence given. Similarly, magistrates and prosecutors employed manipulative language to exercise their institutional authority to invoke power in the courtroom in both the evidentiary and the procedural phases of criminal trials. The study established that unrepresented accused persons were able to participate in criminal trials at an almost equal level with defense counsels despite their deficiency in legal knowledge, thereby dissenting from findings in previous studies that unrepresented and accused persons are disadvantaged in criminal trials due to their limited legal knowledge. The study also examined the aspect of power imbalance among court participants that was reflected in their ability to employ linguistic manipulation to achieve control of courtroom discourse, and established that power is attributed to the participants according to their institutional identity. It further established that although there is a general assumption that defense counsels could be perceived to be the most powerful among the court officials, they hold the least power as they have no control over the court's decisions in the trials as the court retains the institutional power in determining trials. In light of this view, this study therefore concludes that criminal trials can therefore be said to be generally more pro-prosecutorial. The discussion in the present study has revealed that linguistic manipulation plays a vital role in courtroom discourse. Both legal professionals and unrepresented accused persons depend on their ability to employ linguistic manipulation in order to achieve control and dominance in criminal hearings. The study adopted a critical stance in addressing manifestations of inequality, dominance and power imbalance among discourse participants in criminal trials in Kenya, recognizing that CDA has a concern with representations of societal issues. It demonstrates that despite limited legal knowledge, the linguistic gap and power imbalance do not totally impede the pro se litigants from gaining control of courtroom discourse and conducting their own defense in criminal trials in Kibera Law Courts.

5.1 Recommendations from the study

The study therefore recommends that legal based organizations which offer legal aid to pro se litigants are empowered so as to enable them to train the lay citizenry on how to conduct their defense without getting intimidated by complex courtroom procedures.

Further, the study recommends the formation of an association for the linguistic and the legal fraternity that would formulate interdisciplinary measures incorporating linguistic and legal aspects into the two disciplines demonstrating the significance of an interdisciplinary approach towards initiating the interests of linguists and legal minds in addressing and understanding language related challenges within the judiciary, thereby enhancing the transformation of Kenya's justice system.

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