

**TRAINING AS A MINIMUM REQUIREMENT TO IMPORVE COURT
INTERPRETATION IN KENYA: A CASE STUDY OF MILIMANI CHIEF
MAGISTRATE'S COURTS**

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**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENT FOR THE AWARD OF THE DEGREE OF MASTER OF ARTS IN
INTERPRETATION**

CENTRE FOR TRANSLATION AND INTERPRETATION

UNIVERSITY OF NAIROBI

DECEMBER 2015

DECLARATION

This dissertation is my original work and has not been submitted for examination in any other university.

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This dissertation has been presented for examination with our approval as the university supervisors.

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DEDICATION

To all those who continue to hope for a better Kenya and work towards a brighter future for our
nation.

ACKNOWLEDGEMENTS

I am forever grateful to the Lord for giving me the opportunity, the will and strength to make my dream of becoming an interpreter come true.

Without the constant encouragement and support from my mother, Ms. Anne Wambui Gachagua, this would not have been achievable.

I thank all my lecturers at the Centre of Translation and Interpretation who dedicated their time and effort to make me an interpreter. A special appreciation to Dr. Ndongo-Keller who went over and beyond her call of duty to ensure that the class of 2015 excelled.

My deepest gratitude to Mr. Josephat Gitonga who has read through every single draft without tiring. Your encouragement and passion for the topic spurred me on every step of the way.

I thank Dr. Erick Omondi my supervisor for his guidance and for introducing me to academic writing.

Without the cooperation of the team at the Milimani Chief Magistrate's Court this research would not have been possible. I thank each and every one of you.

ABSTRACT

The purpose of this study was to investigate if training of court interpreters in Kenya would improve the quality of interpretation in Kenyan law courts. Court interpretation in Kenya is a constitutional right. However, previous studies show that court interpreters are largely unqualified and as a result many errors are being made by the unqualified court interpreters.

The study had 4 main objectives: to find out the standards set for court interpretation in Kenyan Law Courts, to establish the guidelines that determine who can be a court interpreter in Kenyan Law Courts, to determine what effect court interpretation has on the judgment rendered by the court and to examine if training or lack of it determines the quality of interpretation rendered. This explanatory research aimed at linking poor performance by court interpreters to lack of training. The research was qualitative and the data collection methods used were observation and interviews. The researcher chose to carry out a case study of Milimani Chief Magistrate's Court. The findings which would be taken to be representative of all Kenyan courts. All data was recorded, transcribed and analyzed.

The data was presented descriptively and all findings were presented in relation to the research questions set at the beginning of the study. The findings of the study were: there are no set standards on court interpretation in Kenya, the current minimum qualification for court interpreters is knowledge of two languages, court interpretation directly affects the decision made by the courts and training of court interpreters would improve the standard of interpretation in the Kenyan courts.

The main recommendations were: training and certification be expected as the minimum standard for all court interpreters, the courts guidelines stipulate that only trained interpreters interpret in the Kenyan courts, an official database of all trained court interpreters be maintained for the court's use, all parties in the legal system be sensitized on the effect of interpretation on the court's decision and more research on other language combinations be carried out as this research dealt only with Kiswahili-English court interpretation.

ABBREVIATIONS

USA- United States of America

FCICE- Federal Court Interpreter Certification Examination

ICCPR- International Covenant on Civil and Political Rights

ICTR- International Criminal Tribunal for Rwanda

DEFINITION OF CONCEPTS

- Bilingual – one who expresses himself fluently in two languages.
- Fair Trial- court processes that are unbiased and certain.
- Judgment – judicial decision given by a court.
- Legalese – specialized legal language or legal jargon.
- Lower Courts – All courts that are under the jurisdiction of the High Court.
- Monolingual – one who expresses himself fluently in one language only.
- Passive language- a language that can be fully understood but not actively used.
- Working language- the language that one uses actively and is often used in their line of work.

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CHAPTER 1

INTRODUCTION AND BACKGROUND TO STUDY

1.1 Introduction

This study examined if training of Kiswahili-English court interpreters in Kenyan courts would improve the quality of services rendered to the courts.

This chapter serves as an introduction to the study having the background of the study, its objectives and the existing literature upon which this study was built. This study's impact on the Kenyan judicial system as well as its contribution to the academic field was discussed. In this chapter, the methods used to collect and analyze data as well as any limitations to the research were outlined.

1.2 Background of Study

For communication to take place in any sphere of life, the message is encoded by the sender, transmitted through a channel, decoded by the receiver who will then give feedback. When the message is encoded in a language that the receiver cannot understand, an interpreter acts as the mediator to encode the message into a code (language) that the intended receiver can easily decode and understand.

In a monolingual courtroom communication is straight forward and such courtrooms do not have a formal mechanism to appoint interpreters for those who do not speak the language (Berk-Seligson, 2012). However in a multilingual scenario such as the Kenyan courtrooms, interpretation is an important element in the communication process. The presence of a court interpreter ensures

that there is communication between all the legal actors. Interpretation to the target language should be as nearly equivalent in meaning to the source language as possible (Berk-Seligson, 1988). If the interpreter does not aid in communication either due to misinterpretation or by leaving one of the parties out of the legal process, the goal of interpretation will not be met.

In Kenya, interpretation in the courtroom faces major challenges due to lack of trained court interpreters. In the absence of formalized standards, court interpreters are forced to come up with their own standards of interpretation. Joshua Fishman in (González, Vásquez, & Mikkelson, 2012) says that the professionalization, regulation and certification of the interpreter role constitute a modern bureaucratic effort to overcome the potential abuses of the interpreter's role.

One must bear in mind that the interpreter is not just an individual with knowledge of two languages, he is a professional who ought to be accurate, impartial, maintain confidentiality, offer interpretation and not advocacy while ensuring that all his work serves the interest of the court (González, Vásquez, & Mikkelson, 1991).

(Kiguru, 2009) describes an interpreter in the Kenyan court as playing multiple roles; advisor to the witness, fetching the files for the magistrate, consulting constantly with the prosecutor, announcing the arrival of the magistrate to the court, writing the bail bond on the back of a paper and passing it to the judge for it to be signed as well as many other activities outside his scope as an interpreter.

Like in any other profession, for an interpreter to act as described by Gonzalez et al, minimum professional standards have to be set. In addition to this, the need for professional training and certification for those who act as interpreters must be emphasized and required of all court interpreters.

This study is as a result of the researcher's deep interest in court interpretation. While looking at how court interpretation is carried out in Kenya, the researcher found that interpretation is provided for but not controlled. It is not regarded as a professional service but as one of the duties that are carried out by officers of the court. During a preliminary interview on June 4th 2015 with Ms. Gitari an advocate, the researcher learnt of a matter before one of the courts in Nairobi. The accused was said to have taken part in poaching of wild animals. The main witness was a Chinese national who could only speak Chinese. An interpreter was assigned by the court to facilitate communication between the witness and the court. However an observer from the court's gallery later pointed to the attorney that what the interpreter told the court was not an accurate representation of what the witness said. The court had to find another individual to take over as the witness's interpreter. This misinterpretation, according to the researcher, was as a result of the arbitrary manner in which court interpreter was assigned by the court. With further research, it emerged that at times it was the up to the court clerk or a lawyer who has knowledge of both English and Kiswahili (or the language that needs interpretation) to interpret and at times the judge would speak both languages interchangeably in order for the party that does not understand English or Kiswahili to follow the court proceedings.

1.3 Statement of the Problem

Currently, courts in Kenya do not use qualified court interpreters. Due to lack of qualified interpreters, an accused person who does not speak English (which is the working language of the court) is left vulnerable to misinterpretation which leads to miscarriage of justice. This research sought to establish if the current system of the arbitrary assigning of court interpreters compromises the delivery of justice as a result of miscommunication in the court which is what

the judge or magistrate relies on to render a judgment. This study investigated if instituting a control system for interpreters and interpretation within the courts would ensure fair trial.

Chapter 2 of the Constitution of Kenya states in Articles 7(1) and (2) that Kenya's official languages are English and Kiswahili and the national language is Kiswahili. These languages are taught at both primary and secondary school levels. However due to differences in the languages used in daily communication, many Kenyans are more comfortable using one language over the other and very few can be termed as perfectly bilingual. Those who receive professional training may become more comfortable using English as this is the medium of instruction in most institutions of higher learning. As a result, Kiswahili becomes more of a passive language for them. At the same time, there are those who use Kiswahili more often and are therefore more comfortable communicating in Kiswahili even though they understand English. A third category consists of Kenyans who speak neither English nor Kiswahili and who communicate solely in their mother tongue.

Anybody appearing before a lower court in Kenya is at liberty to address the court in either English or Kiswahili because they are both official languages (Bwonwong'a, 1994). Section 198 (4) of the Criminal Procedure Code states that English and Kiswahili shall be the official language of communication in the country's lower courts while English is the language of the High Court (The National Council for Law Reporting, 2015). It is important to note that training of lawyers, magistrates and clerks in Kenya is carried out in English and this is therefore their working language.

The officials of the court who understand both English and Kiswahili often interpret for the witness or the accused person who does not have sufficient understanding of English. The challenge is that these officials are not trained interpreters and this study aimed to determine whether interpretation

by these officials jeopardizes the quality of communication in the court and consequently affects the quality of justice rendered. In cases where a witness or an accused person speaks in his mother tongue, the court employs an interpreter who is chosen in an arbitrary manner and this study investigated if this compromises the delivery of justice.

1.4 Research Questions

1. Are there clear guidelines for court interpretation in the Kenyan judicial system?
2. What are the minimum qualifications for court interpreters in the Kenyan courts?
3. Does misinterpretation of court proceedings influence the judgment made by the court?
4. Would training improve the quality of interpretation in the courts hence improve the quality of justice?

1.5 Objectives

1. To establish the current court interpretation standards in Kenyan Law Courts.
2. To establish if there are set guidelines that determine who can be a court interpreter in Kenyan Law Courts.
3. To determine whether the interpretation given in a court has an effect on the decision made by the court.
4. To examine whether training or lack of it determines quality of interpretation.

1.6 Justification of Study

This study determined if the legal and court interpretation currently offered in Kenya assures delivery of justice as is required by law for all who go through the judicial system. It questioned the credibility and effectiveness of court interpretation. In a country that has as many languages as

Kenya, the question of who a court interpreter is and what his minimum qualifications should be cannot continue to be ambiguous.

The findings of this study will contribute to the framework and guidelines that would guide court interpretation. Guided by the constitutional right to fair trial and fair administrative action, the study explored how the efficiency and procedural correctness of the legal process is affected by use of untrained interpreters.

This study will enrich scholarly work as it will create awareness on the need to train court interpreters in Kenya.

1.7 Scope and Limitation of Study

This study was conducted at the Milimani Chief Magistrate's Courts which are lower courts in Nairobi County. The researcher focused on interpretation between the two official languages English and Kiswahili.

The study was conducted in September 2015. The researcher attended 16 cases. At the onset of the study the researcher had set out to attend a minimum of 10 court proceedings either taking of pleas, mentions, hearings or judgments. The researcher set the minimum number of court sessions to be attended at 10 to ensure that all data collected during would be unbiased and an accurate representation of court proceedings

1.8 Literature Review

As a mediator, the court interpreter has the ability to foster communication or cause communication breakdown. Due to the sensitive nature and the seriousness of court proceedings, an interpreter must foster communication at all times otherwise the course of justice will be diverted. Joshua Fishman grew up in a neighborhood full of immigrants who could not speak

English. He noted that when he interpreted, he could influence the outcome of the communicative process by emphases and modifications that he himself introduced into the ongoing flow of communication as he interpreted (González, Vásquez, & Mikkelsen, 2012). This is true of all interpreters. As a mediator one can add, omit or alter parts of the message that will completely distort the message delivered. It is for this reason that the role of a court interpreter ought to be defined and controlled.

These errors have been observed in the Kenyan courtrooms. Kiguru is cognizant of the power held by the court interpreter especially when the judge or magistrate and the prosecutor do not speak the language of the witness or the accused person (Kiguru, 2009). In these situations he noted that there were many errors being made by the court interpreters. In (Kiguru, 2010) he discussed the major errors and their effect on how the court would understand what had been said. He discussed grammatical errors, lexical errors, distortions and omissions. The seriousness of the courtroom communication can be seen in the example given below. The misinterpretation of one word by the interpreter quoted in (Kiguru, 2010) led to the prosecution's claim that the witness had perjured himself.

Example 1:

COUNSEL: Can you confirm or deny to this court that you have previously been charged with the offence of stock theft and convicted.

INTERPRETER [in Gĩkũyũ]: No wĩre igoti nĩma kana tĩma atĩ nĩũrĩ wathitangĩrwo mahĩtia ma kuiya ng'ombe na ũkiohwo? (Can you tell the court whether it is true or not true that you have previously been charged with the offence of stealing cows and jailed?)

WITNESS [in Gĩkũyũ]: Nĩmaheni, ndiohirwo. (It is a lie, I was not jailed)

INTERPRETER: It is not true, I was not convicted.

The witness was answering the question correctly but the interpreter was relaying a message that the witness did not intend. The misinterpretation of the single word as “jailed” instead of “convicted” had a major effect on the running of the case and the fate of the witness.

Kiguru’s findings were built on by (Owiti, 2015) who further classified these errors to omissions, additions and misinterpretations. Owiti followed a case in Nyando Magistrate’s Court, An interpreter who was also the court clerk was unable to work around the challenges posed by lack of equivalence in the Dholuo language. She concludes that a lot is lost in the process of interpretation in the Kenyan courtroom. Based on Kiguru’s & Owiti’s finding, this study aimed to determine if the same meaning loss happens in Kiswahili-English interpretations as well and if training would ensure fair trial.

The above mentioned studies established that errors are made and that the court clerks are often the court interpreters. But do the interpreters understand that they ought to deliver interpretation free of these errors? (Matu, Odhiambo, Adams, & Ongarora, 2012) Addressed this question in their research. They looked at the role of the interpreter paying special attention to how interpreters viewed their role in regards to accuracy, omissions and impartiality. Their study was focused on Dholuo-English court interpreters in Nyanza province. Their findings set the tone for this study. They concluded that the interviewed interpreters understood their role as information conduits (in keeping with Gonzalez et al) and were careful to avoid any inaccuracy, omissions and partiality while interpreting. This study indicated that untrained interpreters do know what they ought to do but are unable to deliver due to lack of training.

Court interpreters in Kenya often are untrained court clerks. These interpreters are important in ensuring clear communication in court however due to the errors they commit they could easily jeopardize the delivery of justice especially when they are the only individuals who speak the

language of the accused in the courtroom. The interpreters may be aware of what is expected of them as concluded by (Matu et al, 2012) but in the absence of training, court interpreters are under qualified for their jobs. This was the conclusion of the research carried out by (Onsongo, 2010) who found that most interpreters are not qualified for the job.

This study aimed to establish if training of interpreters will do away with the unprofessional and inaccurate interpretation in the Kenyan courts. (Gile, 2009) Says that training of both interpreters and translators is useful for anyone who wishes to be a professional interpreter to achieve his full potential. He holds that training helps interpreters develop their potential more rapidly than through field experience and self-instruction that involves a lot of trial-and-error.

(Gile, 2009) Points out the social and professional functions of training. Training helps raise the professional standards in the marketplace which will in turn raise the social status of interpreters.

The unprofessionalism in court interpretation in Kenya can therefore be eliminated by advocating for training of court interpreters and expecting this as a minimum standard for all interpreters.

1.10 Theoretical Framework

1.10.1 Organizational Theory's Rational System Perspective

An organization is an assembly of people working together to achieve a common goal. The Kenyan Judiciary is an organization that works together to achieve its mission which is “To deliver justice fairly, impartially and expeditiously, promote equal access to justice, and advance local jurisprudence by upholding the rule of law”.

The Organization Theory is made up of many approaches as to how an organization ought to be structured and organized. Among these is the Rational Perspective theory. It advocates for clear definition of roles and specific goals for the organization to run rationally. A rational organization is one that is characterized by standardized behavior and stable expectations.

Organizational theory's Rational System Perspective is based on two key elements:

- Goal specificity: tasks are guided by certain guidelines to work towards the organization's common goal.
- Formalization: organizational behavior is regulated and standardized so that outcome is predictable.

The Kenyan courts' mission is delivery of justice to all. However, there are no set guidelines on court interpretation to ensure that all interpretation within the courts contribute to this organizational goal. For court interpretation to work towards achieving the goal set by the larger organization, its goals and guidelines have to be clearly outlined. Outlining of goals and expectations will result in consistent output that is predictable.

The Rational Perspective Theory for the purpose of this study will be used to answer the questions: are there any guidelines on court interpretation? Is court interpretation regulated and standardized? Are there formalized expectations from interpretation?

This theory advocates for specifying of goals and outlining guidelines for these goals to be achieved. The rationalization of goals will result in standardized organizational behavior that leads to stable expectations. This theory guides the research questions of the study. Relying on this theory, training will be considered as a tool that should be used to specify the goal of interpretation, to formalize expectations and standardize the outcome.

1.10.2 Language Expectancy Theory

The Language Expectancy theory is based on the expected deviation from the set language rules and normative language use due to societal forces. These deviations influence how the language is perceived and whether the audience is persuaded by the language or not. This theory argues that there are certain expectations of language that have already been created in certain settings. (Dillard & Pfau, 2002)

The language used in a courtroom is an example of the socially expected deviations from standard language. This is commonly known as legalese or legal jargon. As stated in (Berk-Seligson, 1988) language is an important tool in controlling the courtroom. The language of the court is different from what is used in ordinary conversation. For this reason a magistrate or a lawyer is expected to speak in “legal language”. This is what determines the persuasiveness of the court setting.

An interpreter can therefore not interpret in such a setting without understanding legalese which can only be achieved by training. Because the language used in a courtroom is a deviation from standard language, a person who is bilingual will still not be able to effectively work in the courtroom without specialized legal training and an understanding of the judicial process. Based on the Language Expectancy theory this study illustrates that specialized language training is necessary for court interpreters.

1.11 Research Hypotheses

This study will strive to test the following hypotheses:

1. There are no clearly outlined guidelines to determine who can be a court interpreter.
2. The interpretation given in a court of law directly influences the decision of the court.
3. Training has a direct impact on the quality of interpretation in a court of law.

CHAPTER 2

STANDARDS OF COURT INTERPRETATION IN THE WORLD

2.1 Introduction

It has been established that those who carry out court interpretation in Kenya are not qualified interpreters. This chapter considers court interpretation in the world and notes how professional and efficient interpretation has been ensured by training of court interpreters and by setting standards that must be attained by all court interpreters in various judicial systems and international courts. The standards of court interpretation in this chapter will be compared those. Elements from these international systems that can be applied for more efficient court interpretation will be discussed.

2.2 The Universal Right to a Court Interpreter

In 1948 the world came together, under the leadership of the United Nations, to put in place measures that would protect the basic rights common to all human beings. These rights were enshrined in the Universal Declaration of Human Rights, a document that was adopted by the United Nations on 10th December 1948.

One of the basic human rights provided for by the Universal Declaration of Human Rights is the right to a fair trial under Article 10 that states; “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” (United Nations, 2015)

As a minimum, (Doebbler, 2006) says the right to fair trial includes the following fair trial rights in civil and criminal proceedings:

1. The right to be heard by a competent, independent and impartial tribunal
2. The right to a public hearing
3. The right to be heard within reasonable time
4. The right to counsel
5. The right to interpretation.

These laws are binding to member states that are party to the International Covenant on Civil and Political Rights covenant. The Republic of Kenya acceded to the ICCPR in 1976 and consequently provides for the right to a fair trial in its constitution. The Bill of Rights cites the right to a fair trial as one of the rights and fundamental freedoms provided for all Kenyans.

This study focuses on the right to interpretation as a key element to the right to a fair trial. The Kenyan constitution in Article 50 (2) reads “Every accused person has the right to a fair trial, which includes the right (m) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial” (National Council for Law Reporting, 2010). Article 14(3) (a) of the International Covenant on Civil and Political Rights provides that in the determination of any criminal charge against him, everyone shall be entitled “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”. Kenya upholds this provision in its courts by ensuring that anyone who appear before the court is provided with an interpreter who will interpret the proceedings of the court into a language he understands.

2.3 Standards and Guidelines for Interpreters

Following the provisions of the ICCPR different countries have come up with measures to ensure that interpretation as a basic right to fair trial is provided for. For this study two judicial systems shall be discussed: the South African judicial system and the USA judicial system. These two countries have set different standards for their court interpreters leading to more efficiency in their courts.

The standards and guidelines that control the assigning of court interpreters in the United Nations International Criminal Tribunal for Rwanda (ICTR) will be discussed in this section. A look at this court will show that requirement of training for effective interpretation applied to international courts ought to be applied to local courts as well.

2.3.1 Legislative Guidelines by the Court Interpreters Act of the USA

A constitutional guarantee to a court interpreter is the strongest commitment a state can make in this regard. (Berk-Seligson, 2012) In the absence of a constitutional provision for interpretation, statutory provisions are made in different states in the USA all based on the 1978 the Court Interpreters Act which states that “The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.” (Legal Information Institute, 1992)

This Act gives the power to the Director of the Administrative Office to certify qualifications of certified interpreters when the need for certified interpreters in a certain language is determined by the courts. This led to the creation of the Federal Court Interpreter Certification Examination program (FCICE) to define criteria for certifying interpreters qualified to interpret in federal courts and to assist the Director of the Administrative Office of the U.S. Courts (AO) in maintaining a list of federally-certified court interpreters.” (Matthew, 2013) This examination is a quality control

mechanism to ensure that those who interpret in the judicial setting are qualified in order to aid in the court process.

Other than the certified interpreters the Act provides for other interpreters known as otherwise qualified interpreters. These are interpreters who are not certified by the FCICE. Despite the lack of certification, there are strict guidelines in place to regulate who can be classified as an otherwise qualified interpreter. One has to have documentation and authentication and meet the criteria prescribed by the Administrative Office.

In keeping with the Rational Perspective theory, this goal specificity and formalization of the roles aids in the achievement of organizational goals. The guidelines of the qualifications necessary for any court interpreter ensure high quality service is offered in keeping with the main goal of justice delivery.

Some statutory provisions are quite vague leaving the application up to the presiding judge while some are specific and assure high quality interpretation (Berk-Seligson, 2012). The state of California goes beyond setting legislation and regulation to establishing a program to train and test court interpreters. The Judicial Branch of California requires that all spoken language interpreters meet annual renewal and continuing education and professional assignment requirements established by the Judicial Council of California in accordance with California Government Code 68562 (Judicial Council of California, 2015). The State of Indiana requires that all court interpreters pass an exam with vocabulary, criminal procedure and court interpretation ethics among other conditions. This ensures that the interpretation offered is of high quality and interpreters have guidelines to regulate their work in the courtroom. Court interpreter training ensures that the court interpreter is well prepared for the language of the court. Not only is the

court interpreter required to be proficient in their working languages they receive training in court procedure and legal language.

2.2.2 Training and Certification as a Guideline in South Africa

Court interpretation was in the spotlight in South Africa during the much publicized trial of Oscar Pistorius in March 2014. The trial was marred by claims of substandard interpretation by the three interpreters who interpreted from Afrikaans into English one of whom was corrected severally by the witness who felt that his interpretation of what was said was inaccurate. According to an article written by Ilse de Lange on 29th March 2014 for The Citizen newspaper in South Africa, the South African Department of Justice reported that they were satisfied with the work done by the interpreters but the public expressed their dissatisfaction with the level of interpretation.

South Africa is a multicultural country with 11 official languages which are Afrikaans, English and nine indigenous languages: Ndebele, Northern Sotho, Sotho, Swazi, Tsonga, Tswana, Venda, Xhosa and Zulu. In 1997 the Department of Justice in South Africa in collaboration with two workers' unions came up with a campaign to train court interpreters and professionalize interpretation in order to improve the quality of interpretation services rendered. This involved training of the interpreters who were already in service and setting qualifications standards for those who would join the profession (Inggs, 1998). In reaction to this, several institutions of higher learning came up with specially designed courses for court interpreters ranging from diplomas to a Bachelor of Arts degree in legal and court interpretation. Even in absence of legislation protecting the interpreter (Moeketsi, 1999) as an individual the training of interpreters and the requirement of certification for all court interpreters without doubt improves their services to the court.

When organizational expectations of the court interpreter towards the accused, witness, magistrate, lawyer and other court officials are defined, any deviation from the set organizational behavior

will lead to corrective measures being taken. As per the Rational Perspective theory, formalization of roles and expectations leads to stable expected behavior.

2.2.3 Interpreter Training at the International Criminal Tribunal for Rwanda

The standards set for court interpreters at an international tribunal can be seen by looking at court interpreters at the United Nations International Criminal Tribunal for Rwanda (ICTR). In (Ndongo-Keller, 2013) the recruitment process is shown to be centered on training and examination. Once the prospective interpreters are recruited, they are trained in translation and interpretation skills which include sight translation, consecutive interpretation and simultaneous interpretation, as well as terminology, language and grammar after which they are tested again. Those that pass the interpretation test go through further training which then allows them to work as the court interpreters. The training takes place over a period of nine months which is still termed as too short to allow genuine training. “Training cannot be rushed just as justice cannot be rushed.” (Ndongo-Keller, 2013).

2.3 A Look at Court Interpretation in Kenya

Kiswahili-English interpretation in Kenya is often left to the court clerk. As explained by (Kiguru, 2009) the court clerk who understands English, Kiswahili and mother tongue is expected to offer interpretation to the courts among his other duties. Interpretation in Kenyan courts is a constitutional provision and its presence in the courts undisputed but as seen in the research carried out by (Onsongo, 2010) who studied the untrained interpreters being used in Kenyan courts, most interpreters are underqualified for the job.

....some interpreters demonstrate a tremendous lack of professionalism by initiating conversations with witnesses, speaking to them in an inappropriate tone, commanding witnesses to answer questions and summarizing statements made by respondents or

witnesses. In addition to these, there were instances when it was observed that interpreters failed to correct their own mistakes, suggested answers to witnesses or the accused, objected to questions or at times reprimanded witnesses or accused persons. (Kiguru, 2009)

The above description of the behavior of a court interpreter within the courts in Kenya is an absolute deviation from what is the defined role of an interpreter as an impartial person essential to judicial proceedings to ensure that all parties present follow the trial's progress despite their language orientation. (González, Vásquez, & Mikkelson, 1991).

Lack of laid out guidelines and set objectives as proposed by Organizational Theory's Rational System Perspective leads to a vacuum in expected behavior. In South Africa the failure to meet set standards is easily identified once the expected standards are established. In the USA the legislation checks the quality of interpreters and even goes as far as to grade the level of interpreters. This establishes professionalism and increases their productivity as interpreters.

Kenya's untrained interpreters may be compared to the otherwise qualified interpreters in the USA system. However unlike untrained interpreters in Kenya, the otherwise qualified interpreters are controlled by the guidelines of the Interpreters Act of 1978 and professional standards they are expected to meet before they are court interpreters are clearly stipulated. In the same way, all Kenyan interpreters ought to be controlled and expected standards set. There is no doubt that those who have worked for longer as court interpreters have acquired some skills that allow them to perform their job better, however the need for professional training cannot be overlooked as was observed in South Africa where all the interpreters including those already in service received training in order to professionalize interpretation.

Kenya needs to consider legislation that controls court interpretation as well as court interpreters' qualifications, training and certification to raise the standards of interpretation in Kenyan courts. Once these checks and balances are instituted for court interpreters then the same standards should apply to all interpreters in the legal system.

These standards will, if adhered to, ensure that every individual gets a fair trial and fair administrative action which is their universal right.

2.4 Conclusion

The judicial systems in the USA, South Africa have two characteristics in common that ensure quality court interpretation. These characteristics are applicable to the Kenyan judicial system and if applied would greatly improve the standard of court interpretation in Kenya.

Both South Africa and USA have clearly set out guidelines and minimum qualifications that have to be met before one can be a court interpreter. For the USA to be a certified court interpreter one has to pass the certification exam, to be an otherwise qualified interpreter the criteria set by the Administrative Office has to be met. To be a court interpreter in South Africa, one has to go through court interpretation training and be certified.

Both judicial systems are cognizant of the impact that the interpretation given in the courts has on the court's decision. This realization leads to setting of high standards to be achieved by the interpreters to assure fair trial and justice delivery.

“If interpretation is inaccurate, defendants may misunderstand what is taking place, or the evidence heard by a judge and jury may be incomplete, distorted, or significantly changed. What the interpreter says in English following a witness' testimony in another language is what is heard by the judge and jury as evidence, and it is what is recorded in

the record of the proceedings..... Court interpreters also must preserve the nuances and level of formality (or informality) of the speech (also known as the “register”).” (National Centre for State Courts, 2014)

These key elements contribute to the efficiency of interpretation in these judicial system. The training standards at the ICTR indicate that court interpretation is specialized field that requires intensive training for optimum performance.

The USA judicial system has a database of trained court interpreters to ensure the sustainability of professionalism in court interpretation. This practice would tie with the ICTR proposal that a pool of trainers for continuous training be developed as a resource for the ICTR.

If these practices were applied to the judicial system in Kenya, they would greatly improve the quality of interpretation rendered and to a great extent do away with the errors that were noted by previous studies and the unprofessionalism that has this far been associated with interpretation in the Kenyan courts.

CHAPTER 3

DATA COLLECTION AND DATA COLLECTED

3.1 Introduction

In this chapter the research design of this research will be described as well as the framework around which the study was carried out. This study mainly relies on primary data and the data collection methods of court observation and interviews will be discussed in detail. The data collected from this research will be reported.

3.2 Framing of the Research

This research was carried out in the month of September 2015 at the Milimani Chief Magistrate's Court in Nairobi, Kenya. These are subordinate courts presided over by magistrates as established under Article 169 of the Constitution of Kenya. Milimani Chief Magistrate's Court were the focus of the case study and any findings in this court were seen to be representative of other Kenyan courts.

During the research, it was mentioned severally that the languages used in other law courts are significantly different because Milimani Chief Magistrate's Courts are in Nairobi, the capital city and commercial center of Kenya therefore mostly English and Kiswahili are used. Courts in other regions receive many cases that have witnesses and defendants who speak in their native language. For purpose of this study, the interpretation practices will be taken to be the same no matter what languages are being interpreted.

3.3 Research Design

“A case study is one in which the researcher explores in depth a program, an event, an activity, a process, or one or more individuals. The case(s) are bounded by time and activity, and researchers collect detailed information using a variety of data collection procedures over a sustained period of time” (Creswell, 2003). This research was a case study of court interpretation at the Milimani Chief Magistrate’s Court. It explored court interpretation in these courts in depth over a period of one month using both courtroom observation and interviews as data collection tools to collect detailed information on court interpretation.

“Explanatory research focuses on ‘why’ questions.....Answering ‘why’ questions involves developing causal explanations. Causal explanations argue that phenomenon Y is dependent on variable X” (De Vaus, 2001). This explanatory research considered training and professional standards as the variables that directly impact the efficiency of court interpretation in Kenya.

3.4 Population and Sampling

Case study analysis are said to be focused on a small number of cases to provide insight on a larger population. When the sample size is large, case selection is handled by randomization and is fairly representative of the overall population on any given variable (Gerring, 2007).

The cases attended at the Milimani Chief Magistrate’s Court were selected randomly and taken to be representative of the larger population. The interviewees were randomly selected from the court officials of the cases attended.

3.5 Data Collection Method

This study relied on primary data sources through court observation and interviews.

The researcher attended court sessions at Milimani Chief Magistrate's Court to get firsthand understanding on the working of the courts. The observations made during the court attendance were noted. Audio recording of the court sessions were done. The recorded material was transcribed and used for analysis.

Court officials were interviewed after the researcher had attended court sessions. These interviews aimed to answer questions on the current practice of the courts and whether there is need for standardization and set guidelines. The interview questions were based on the research questions and objectives, however questions were specific to what was observed in the court room. The interviews were recorded and transcribed for analysis and for future reference.

Secondary data was used to build the argument of the study. Previous studies done in relation to interpretation in Kenyan Courts were made reference to.

3.6 Data Collected

This section contains the data that was collected by use of the data collection tools selected for this study.

3.6.1 Court Observations

Court observations were done for the researcher to fulfill objective one of the research: to determine if there are any evident guidelines that regulate the use of court interpreters in the courtroom. The researcher observed the procedure followed by different courts when the need for interpretation arose to determine if there was consistency within the various courtrooms attended.

A total of 16 court sessions, all summarized below, were attended. Notes of what was observed were taken during the court observations. The notes were referred to during the interview of the court officials after the court proceedings.

Case 1

The main witness in this case chose to address the court in Kiswahili. Despite the presence of a court clerk who is often the court interpreter, the magistrate and the lawyers decided to speak in Kiswahili. It was however noted that Kiswahili was only used when speaking to the witness, any other conversation in the courtroom even when directly related to the witness was in English. The defense lawyer requested to address the witness in English and this request was denied by the magistrate who stated that the witness had indicated that he preferred the use of Kiswahili.

Example 2:

Witness: Mwambie atumie Kiswahili.

(Ask him to speak in Kiswahili)

Defense Lawyer: I am not comfortable with Kiswahili but I will try.

Magistrate: It is one of the official languages. The witness has requested that it be used.

Defense Lawyer: But your honor, if the witness has no problem understanding English....

Witness: Mwambie atumie Kiswahili.

(Ask him to speak in Kiswahili.)

Magistrate: Use Kiswahili.

The defense lawyer went ahead to use Kiswahili but he often interjected his speech with English words. This led to lack of communication between the lawyer and the witness. Kiswahili which ought to have aided their communication did not. The lawyer interjected his speech with so many Kiswahili words that the witness could not follow his line of questioning often asking what certain English words that had been used meant.

Example 3:

Defense lawyer: Kwa hivyo unasema hatuwezi rely kwa hii statement?

(Are you saying we cannot rely on this statement?)

Witness: Rely ni kusemaje?

(What does the word 'rely' mean?)

As seen in example 4 below the defense lawyer at times was unable to communicate with the witness and asked the magistrate how to frame the question.

Example 4:

Witness: Nimeshakwambia

(I have already told you)

Defense lawyer: lakini unaweza onyesha hii koti nini to implicate Mr. Kinyanjui?

(But what can you show this court to implicate Mr. Kinyanjui?)

Magistrate (to the lawyer): Just ask the question.

Defense lawyer (to the judge): I want to ask if he has any proof. Perhaps you can direct me on how to ask the question.

Magistrate: Use the word “ushahidi”

(Use the word evidence.)

When the defense lawyer spoke Kiswahili the witness was able to respond to the questions asked. However when the lawyer, who is a circumstantial bilingual, used code switching in his speech the witness would at times not understand and the lawyer had to rephrase the question until he found the exact word he was looking for. (Crystal, 1987) Defines code switching as alternating between two languages by a bilingual who can communicate in varying extents in the second language. It was confirmed that the lawyer speaks Kiswahili but because his working language is English fluent communication in Kiswahili in the courtroom setting was a challenge. (See appendix 6).

A police statement was part of the evidence produced before the court. When asked about it, the witness said that what he said is not what was written in the statement. He had told the police officer what had happened in Kiswahili, the police officer had written what was said in English and asked the witness to sign the statement. The effect of this claim on a case was discussed during the magistrate’s interview. (See appendix 3). This incidents highlights the significance of interpretation not only in the court but in the legal system.

The researcher notes that when another witness who addressed the court in English took the stand, the same defense attorney was seen to be more comfortable and was able to communicate with ease (refer to appendix 6). This may indicate that the lawyer needed to make use of court interpretation when addressing the first witnesses.

Case 2

This was a case before the criminal court. The defense lawyer was examining an expert witness who was a doctor. The lawyer chose to speak Kiswahili and he addressed the court as well as examined the witness in Kiswahili. Communication was taking place among all the parties of the court despite the use Kiswahili.

Example 5:

Defense lawyer: Hiyo ni muhuri yako?

(Is that your stamp?)

Expert Witness: Yes it is.

Defense lawyer: Unasema hayo majeraha ni ya siku mbili. Unajuaje ni ya siku mbili na sio wiki moja?

(You are saying that those wounds were inflicted two days ago. How do you know that it is two days and not one week?)

Expert Witness: According to what the complainants said...

Defense Lawyer: Hao ndiyo walikueleza?

(They are the ones who told you?)

Expert Witness: According to what they said, the test confirmed

Defense Lawyer: Kwa hivyo kama hawakusema ukweli hauwezi jua kama ni ya siku mbili ama siku tatu?

(If they are not telling the truth you are not able to determine if they were inflicted two or three days ago?)

Expert Witness: Inategemea.

(It depends)

Lawyer: Inategemea na nini?

(It depends on what?)

It is evidenced by the responses given by the witness that he understood what the defense lawyer was asking. At some point the witness even spoke Kiswahili in response to the lawyer's question. There was no need for interpretation because all the parties could understand and follow the proceedings. This shows that interpretation is not needed in every courtroom in which two languages are spoken. It is only done when the communication between parties is not taking place and a mediator is needed.

Case 3

This was a request for adjournment by the prosecution. All the parties addressed the court in fluent English. No interpretation was needed. The excerpt below can be used as an example of the legal language used specifically in court according to the Language Expectancy theory.

Example 6:

Defense Lawyer: Your honor I am opposed to an adjournment. I would like the court to note that witnesses one and two were questioned before this court. The prosecution was given all the time that they required to produce any other documental evidence. Your honor it is a clear indication that that the prosecution is trying to delay this matter. And procedurally, there is no position to

recall a witness from the said document. The prosecution was given the last adjournment. And they are taking us two years or one year back. Your honor I am opposed to an adjournment. I am saying that the court proceed.

The language used by the lawyer is not the standard language used in daily life but a variation unique to the legal system. Specialized training is needed for one to effectively interpret it.

Case 4

The complainant in this case was a senior advocate of the high court. The case was against one accused person present in the courtroom and another who was still at large. The questioning by the prosecution was a conversation between equals and the language chosen by the complainant as she addressed the court showed that she was familiar with the courts proceedings.

Example 7:

Complainant: This is a matter against the accused present and another party not in court. I understand that I cannot retrieve the matter on a later date but after consideration, I no longer wish to pursue the matter against the accused present.

This is a scenario where the officers of the court are able to speak legalese without denying the parties in court their right to be linguistically present. This court session acts as an example of perfect communication in the courtroom. Not only are all the parties using the same language (English), they are using the same language variation (legalese) and therefore the prosecutor and defense attorney are free to control the courtroom with language without leaving any party out of the legal process as described in (Berk-Seligson, 2012).

Case 5

This was a case against a witness accused of possession and trafficking of narcotics. The witness who took the stand was the arresting officer and a key witness for the prosecution. The accused did not have legal representation. The presiding magistrate first confirmed that the accused was comfortable with the proceedings being carried out in English. The accused indicated that he understood English and was comfortable with the proceedings being carried out in English.

The researcher noted that the accused person took notes as the prosecution examined the witness. As the accused examines the witness, we see that all the questions are informed by what the witness and the prosecutor had said. This highlights the need for the accused person who does not speak English to be linguistically present in the proceedings (González, Vásquez, & Mikkelsen, 1991). This linguistic presence allows the accused to be present enough in the trial that he can examine the witness. The ICCPR Article 14 (6) provides that anyone who stands accused in a court has the right to examine or have examined on his behalf the witnesses against him. The questioning by the witness below shows us that the accused was accorded this right.

Example 8:

Accused: When you say you found the prisoner in Mlolongo police station, which prisoner are you referring to? Wasn't the person you found in Mlolongo a suspect?

Witness: Yes he was in fact a suspect.

Example 9:

Accused: Did you recover stones of bhang or rolls of bhang? The report says stones and what you present before the court today are rolls. Am I right to say that these do not belong to the suspect?

The accused was able to argue his case before the court. Had he not been able to follow the proceedings he would not have been able to present a counterargument to the evidence given by the witness.

Case 6

The accused was said to have committed forgery. The witness was a senior officer in the bank from which the accused was said to have committed a forgery. The proceedings were carried out in English after the magistrate had established that the accused was comfortable with the use of English. The accused was not represented by legal counsel. Below are the questions posed by the accused to the witness.

Example 10:

Accused: Do you know who did the forgery?

Witness: No I do not.

Accused: Would you link me to the forgery?

Witness: No I cannot.

The above brief line of questioning goes to show that the accused had followed the court proceedings and was comfortable with the language in which the proceedings were ran. The accused understood English however this case raises the question of importance of following the proceedings against an individual. The magistrate who presided over this case explained the importance for an individual not represented by counsel to follow the proceedings in a language he understands or for him to get proper interpretation (see appendix 4) because their defense forms part of the argument upon which the court will make its decision.

Cases 7 & 8

These two cases were similar in their communication. Case 7 was against an employee who was accused of fraud during upgrading of the company's system. In case 8, three persons were accused of defrauding a city contractor. In both cases, the proceedings were carried out in English and the accused persons were represented by legal counsel. In both cases the accused persons took the stand and answered the charges against them. These cases fall among those observed that did not need interpretation but set standards for how communication ought to be.

Case 9

The accused persons in this case could not understand English. The court clerk who was also in charge of calling out the case number and providing the case file to the magistrate took up the role of interpreting. This was the same multiplicity of roles noted in the (Kiguru, 2010) study. It was noted that the court clerk did not always interpret what was being said especially when the magistrate was addressing the bench directly. This omission is one of the elements of misinterpretation as classified by (Owiti, 2015). However between her many duties, the court clerk interpreted for the accused person's benefit. The defense counsel was asking the prosecution to provide all the statements relevant to the case.

The court clerk used code switching in absence of the required vocabulary.

Example 11:

Defense Lawyer: So far the prosecution has not furnished us with further statements

Court Clerk: Hadi sasa, bado hawajapata further statements

(So far they have not received further statements.)

The interpreter omitted the ends of some sentences like the example given below.

Example 12:

Defense Lawyer: This is the fifth time we are appearing before the court on this matter of statements.

Court Clerk: Anasema ya kwamba hii ni mara ya tano

(They say that this is the fifth time)

She does not complete the idea expressed by the defense attorney. She says it is their fifth time but for what? The defense lawyer points out that it's the fourth time they are requesting for statements. This is important for the court to note. The omission by the interpreter reduces the seriousness of the matter. The incomplete sentences were probably due to the number of tasks she was performing at a go. In the example 11 above, she says "They have not been given further statements" but she does not say who ought to give these statements.

When the prosecution stands to answer the questions posed by the magistrate concerning the statements, the court clerk summarizes his whole explanation into one sentence indicating that they will be provided with the statements. The dialogue that ensues between the magistrate and the prosecution concerning the witnesses is not interpreted at all. When the prosecution addresses issues of the medical attention received by the accused, then the court clerk interprets this information.

Example 13:

Accused 4: Nasikia vibaya. Nataka kupelekwa hospitali.

(I feel unwell. I would like to be taken to hospital)

Accused 5: Hata mimi.

(Me too.)

Magistrate: They can be taken to hospital.

Interpreter: Koti imeamuru mnaeza enda.

(The court approves your request)

Considering the omissions between the magistrate and the lawyers and the interpretation when the accused persons request to go to hospital, it can be concluded that the court clerk interprets what she believes directly involves the accused persons but not all the proceedings. However, (González, Vásquez, & Mikkelsen, 1991) say that all English communication should be interpreted for the sake of the parties who do not understand English.

Case 10

This was a formal mention. The prosecution indicated that the main witnesses would not be able to attend court on the set date. A dialogue between the prosecution and the judge takes place with interjections by the defense lawyer until the magistrate makes his decision concerning the changing of the hearing date. None of this information was interpreted. During the interview the researcher addresses this by asking the court clerk how she decides when to interpret the proceedings of the court and when not to. (See appendix 2)

Case 11

The court clerk who is also the interpreter calls out the case number and hands the file to the magistrate. This was a hearing to set the date for the trial to commence. The accused person addresses the court in Kiswahili and the magistrate responds to her directly bypassing the court clerk's interpretation. This shows that the magistrate does understand Kiswahili and he can communicate in it. When the prosecution raises an objection to set court date, the magistrate reverts

back to English. He chooses to use the court interpreter when he feels he cannot clearly express himself. The researcher observed that because he choose to speak in language he was comfortable in, the magistrate was able to clearly communicate at all times.

A statement from magistrate addressed to the prosecution denying the prosecution's request citing the long period taken before the case commences taking into account the fact that the accused person was in remand. All this information is not interpreted and only the next date set for the hearing is interpreted into Kiswahili by the court interpreter. This shows that the interpreter only interprets what she feels is relevant to the accused like the date of the next hearing.

Case 12

The prosecution was requesting for an extension before the trial could begin in order to arrest someone else and join the matters before the court. The defense attorneys had no objection to this and even offered a longer time than requested. The magistrate ruled on the extension for the warrant to be executed. No interpretation was offered in this matter because all the parties spoke in English.

Case 13

The accused persons were 4. Two had legal representation, one did not and the other did not appear before the court. The court clerk had to confirm if the missing person was out on bond or did not show up. This is another role played by the court clerk as cited in the interview (appendix 2). Once the magistrate and the court clerk confirm the whereabouts of the fourth accused person, the date for the hearing is set. A warrant is issued for the fourth accused person and the court clerk is tasked with the filling in of the form for the warrant to be effected.

The court clerk has so many other duties to perform other than the interpretation. During the interview (appendix 2) she says that it would be better if another court assistant was assigned the duty of interpreting to ensure that it is devoted to the attention it deserves.

Case 14

The defense requested that the hearing be delayed for 2 hours to allow one of the key witnesses to arrive. The prosecution indicated that they were ready to proceed but they would also be comfortable continuing with the matter at the time requested by the defense. The court clerk only gave a summary interpretation of what the prosecution had said. The interpretation of only what the prosecution said gave the misleading impression that it was the prosecution that had requested for the matter to be delayed for a few hours.

Example 14:

Court Clerk: Kiongozi wa mashtaka ako tayari kuendelea. Kesi yenu itaanza saa nane na nusu.

(The prosecution is ready to proceed. Your case will be heard at 2.30 pm.)

This is misinterpretation by omission. The interpreter's failure to relay proceedings as they go on gives the accused the false impression that the prosecution wants to delay his trial further. The accused needed to understand that it was in fact his lawyer who had requested for the delay for one of the witnesses to arrive.

Case 15

The prosecution was requesting for a later hearing date due to absence of witnesses. This is an excerpt of the court deliberations.

Example 15:

Prosecution: Two witnesses have been bonded for this case; Salif Kandi and Tazmuna Kassam, they however communicated that they have travelled out of Nairobi. They are in Mombasa attending a religious rite under the Chief Kadhi that will end tomorrow at 6.00 pm. We therefore request that we be given another date for the hearing.

Court Clerk: Kiongozi wa mashtaka anaomba kuarishwa kwa hii kesi. Anasema kwamba mashahidi aliyekuwa antegemea kwa hii kesi wako Mombasa wakihudhuria sherehe ya kidini ambayo itakuwa hapo kesho.

(The prosecution requests that the case be adjourned for a later date. She says that the key witnesses for this case are in Mombasa attending a religious rite that will be held tomorrow.)

Prosecution: Your Honor the last time the matter was in court the witnesses were in court.

Court Clerk: Anasema ya kwamba mara ya mwisho kesi ilikuwa hapa kotini mashahidi walikuwa hapa.

(The prosecution says that the witnesses were present in the last court session.)

Prosecution: So this is a very kind request

The interpreter did not interpret the last phrase by the prosecution which was very important. The prosecution was making a request. Because the accused persons had understood that the prosecution wanted a later date, the first accused person spoke in Kiswahili expressing his dissatisfaction with the request for adjournment. He said that the witnesses were always unavailable for the hearings. Because the magistrate understood Kiswahili no interpretation was

done. The second accused also brought up the same issue, citing that perhaps the prosecution had not adduced enough evidence and therefore the charges should be dropped.

The two accused persons were able to understand the proceedings due to the interpretation. The magistrate responded in English and the court clerk interpreted to them. When the first accused insisted on his claims, the magistrate started speaking Kiswahili to the accused persons.

The magistrate made his decision and the court clerk interpreted this decision to the accused persons.

This is an example of how interpretation enables those who do not speak the language of the court to participate in the legal process. The accused persons were able to plead their case because interpretation was offered.

Case 16

The Magistrate asked the witness where he was on 9th September which was the date of the previous hearing. The witness failed to show up in court. The court clerk interpreted this. The accused responded saying that he was sick and he produced the documentation to prove this is shown to the court. The prosecution inspected the documentation and was satisfied with it. The court clerk interprets this to the accused. The magistrate is satisfied that the accused did not skip bail and sets a new date for hearing.

Had the accused person not understood the magistrate's question on his whereabouts on the day he missed his hearing, the accused would probably not have understood how seriously his absence from the court was considered. However because all this was interpreted he was able to show that he was sick and he had not deliberately failed to show up. Interpretation in this case aided communication for the good of the accused.

3.6.2 Interviews

The interview method of data collection was used to accommodate the views of the interviewees in this study who were few. The researcher carried out these interviews to achieve research objectives two, three and four: to find out if there are minimum qualifications for interpreters, to determine if interpretation affects the judgment rendered by the court and to question if training of court interpreters would improve the quality of court interpretation.

The interview questions were based on these three objectives. However the researcher varied the questions during the interview to get information that was relevant to the participants' role in the courtroom.

The interviews were recorded with the permission of the participants and transcribed (refer to appendices 1-6).

Interpreters' Interviews

Two court interpreters were interviewed. The interviews sought to find out what the minimum standards to be a court interpreter are, if they has received any training prior to their role as court interpreters and whether in their experience they felt that training and professionalizing of court interpretation would improve their output. These interviews also explored if the interpretation rendered has any influence on the decision reached by the court. (See appendices 1&2).

Magistrates' Interviews

As the decision makers and the individuals who render judgment in the court, it was important for the researcher to find out from the magistrates whether the interpretation given would affect their judgment. Two magistrates were interviewed to answer this question. Interviews were carried out

after observing the court sessions and the interviews were based on observations made. The magistrates were also asked to comment on the quality of court interpretation currently being offered in the Kenyan law courts. (See appendices 3 & 4).

Court Administrator Interview

As the officer in charge of ensuring that there are interpreters assigned to the various courtrooms whenever the need arises, it was important to interview the court administrator. The aim of this interview was to understand the criteria used to select interpreters and to find out if there are any set guidelines. Questions on interpreter training and certification were also asked. Effective interpreters are regulated by set standards and qualifications. To understand if the practicing court interpreters and the administrative branch of the judiciary saw the need for training and standardization in order for them to be more professional and effective this interview was carried out. (See appendix 5).

Lawyer Interview

Only the lawyer cited in Case 1 above was interviewed. Questions were asked to understand whether he would have preferred the use of an interpreter during his examination of the witness since he had stated to the court that he preferred to use English in his examination. (See appendix 6). This interview also aimed to include the views of those who feel that Kiswahili-English interpretation is not necessary. The researcher used this case to argue that not all bilinguals can interpret.

3.6.3 Secondary Data

The researcher had intended to rely on interpretations carried out in previous cases to draw conclusions on how, if at all, interpretations influence the judgment rendered. However in the

absence of stenographers in Kenyan court, there is no word for word account on what was said in the courtroom. The only reports available were those written by the judges and these did not have a record of what was said by the interpreter but rather what the court understood the meaning to be. The researcher will therefore rely on the responses given during the interviews to draw these conclusions.

3.7 Data Analysis

The observations made during the court sessions were transcribed and analyzed by grouping them into common themes in order to draw conclusions from the court proceedings and the communication process in court. The interviews were transcribed and analyzed.

The qualitative data was interpreted and inferences made. The findings of this research were clarified by connecting the qualitative evidence, the secondary data and the conceptual framework on which it was carried out.

3.8 Conclusion

In this chapter the data collection methods used were discussed. Primary data collected through court observations and interviews, was the main data used in this case study. The court sessions attended and the observations made are summarized in this chapter. The interviews carried out and the summary of data collected from each of the interviews are summarized in this chapter. The full interviews are in the appendices of this dissertation.

All data collected was to explore the cause and effect relationship between training and professionalizing of court interpretation and the accuracy of court interpretation rendered.

CHAPTER 4

DATA ANALYSIS

4.1 Introduction

“Qualitative data is made up of words and observations not numbers. As with all data, analysis and interpretation is required in order to bring order and understanding” (Taylor-Powell & Renner, 2003) In this chapter the data collected was analyzed in response to the research questions set at the beginning of the study. The data collected was all quantitative data. Chapter 3 has provided a detailed presentation of the researcher’s data collection process and the data collected.

4.2 Are There Clear Guidelines for Court Interpretation in the Kenyan Judicial System?

Guidelines are important to determine how any given part of an organization contributes towards achieving the organization’s goal. To determine whether Kenyan courts have set guidelines for court interpretation, the researcher considered when and how interpretation was done in the observed cases.

Of the 16 court sessions attended by the researcher, only 6 involved Kiswahili-English interpretation. This is 38% of the cases attended. 62% of the cases observed did not require interpretation as the only language spoken was English. In one Case 2 however the lawyer addressed the court in Kiswahili but because everyone in court understood both English and Kiswahili, no interpretation was needed. This this case was classified under the 62% that did not require interpretation.

	Number of Cases	Percentage
Interpretation	6	38%
No interpretation	10	62%
Total	16	100%

Table 1: Cases that need interpretation

This data is represented in the pie chart below.

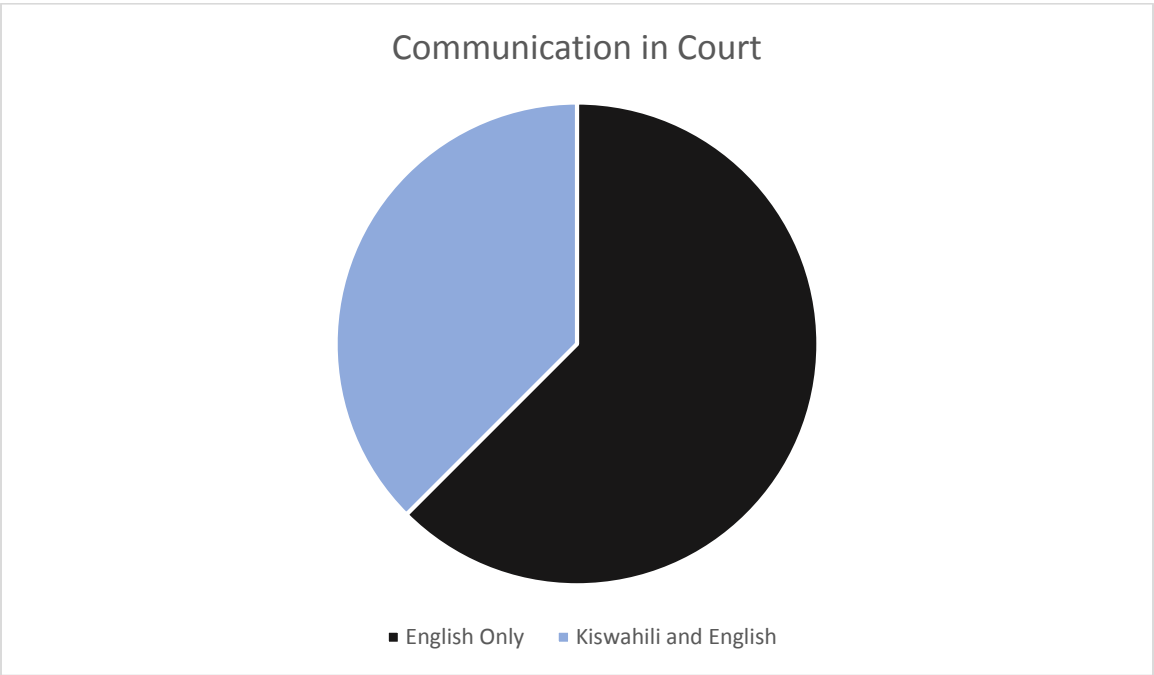


Figure 4. 1 Language Use in Court.

Among the 6 cases that required interpretation, 4 Kiswahili-English interpretations were done by the court clerk while in 2 cases (case 1 & 11) the magistrates opted to use Kiswahili. In Case, 1 the magistrate and the lawyers used Kiswahili to address the witness. In Case 11, the magistrate

addressed the accused in Kiswahili for a short period of time then reverted back to interpretation rendered by the court clerk.

This shows that when interpretation is needed no standard seems to be set with the court clerks acting as the court interpreters 67% of the time and other court officials including the magistrates and lawyers interpreting 33% of the time.

	Number of Times	Percentage
Interpretation by Clerks	4	67%
Interpretation by Other Officials	2	33%
Total	6	100%

Table 2: Who does Court Interpretation?

All the interviewed court officials asked who should do the interpretation said that it was up to the court clerks to interpret. Magistrate 2 said during her interview that it is not up to the court officials to do the Kiswahili-English interpretation since the court clerk is present.

Example 16:

Researcher: Why would you say that there is a need (for Kiswahili-English interpreters) yet most officers of the court including magistrates and lawyers are conversant in both languages?

Magistrate 2: I know we are conversant but we do not interpret to witnesses and accused persons like if I am reading a judgment in English and they don't understand it, I don't have to do it in Kiswahili. It is the work of the court interpreter.

This point of view was also supported by Interpreter 1 and Interpreter 2 who indicated that it was their duty as court clerks to interpret for the court.

Example 17:

Researcher: What is your role in the court? What is your job title?

Interpreter 1: My job title is a court assistant. I do assist in court interpretation for the magistrate and the litigants who are in court.

Example 18:

Researcher: I learnt that in this court and many Kenyan courts, the clerks act as interpreters. Do they have a certain level of language proficiency? Do they need any certification or is it simply expected as long as you are a court clerk?

Interpreter 2: It is expected. Actually you are an interpreter by default. Once you become a court clerk you are an interpreter by default.

From the observations made in the court room and the interviews, the researcher learnt that the court clerk is responsible for all interpretation in the court. However in practice, any of the officials could interpret for the witness or the accused person. This demonstrates a lack of clear guidelines as to who the court interpreter is.

4.2.1 What Interpretation Standards are Observed in the Courtroom?

While attending the court sessions it was observed that the preferred language of the witness or the accused was taken into consideration. The researcher observed that whenever a witness or the accused person took the stand, the magistrate would ask which language they would like to proceed

in. If the witness said that he was not comfortable with English, then Kiswahili was used. This upholds the accused person's right to have a trial ran in a language he understands.

Example 19:

Magistrate 2: That's why I ask and that particular one I asked if he understands English. If he does not understand and the witness can speak Kiswahili then evidence is given in Kiswahili. If the witness is not comfortable again we don't force them so the court clerk intervenes.

In example 19 above, the magistrate was explaining the importance of establishing the medium of communication with the accused. The accused person in this case was not represented by legal counsel and he was the one examining the witnesses. The magistrate explains that as an official language Kiswahili may be used if the accused and the witness are both comfortable. But if one of them is not comfortable then the court clerk intervenes.

Interpreter 2 says in her interview that once an accused person or a witness takes the stand, they must be asked which language they would like to address the court in.

Example 20:

Researcher: How do you decide when to interpret? Are you told beforehand or do you decide depending on the witness?

Interpreter 2: Automatically, when an accused person gets into the dock we are supposed to ask what language to use because the law stipulates it should be in a language they understand best. But by experience when they appear the first time you have to ask. But after handling many cases and those accused persons' cases you will definitely know that these people use this language.

This confirms that the court has a set standard requiring the magistrate to establish which language the witness or accused person prefers to be used during a court trial.

4.3 Are There Minimum Qualification Standards for Court Interpreters in the Kenyan Courts?

Interpretation is only needed when the recipient of the message does not understand the language used by the source. Therefore Kiswahili-English interpretation is not needed in every courtroom that uses both Kiswahili and English as seen in case 2. In Case 2, the lawyer spoke in Kiswahili but because all present parties spoke Kiswahili no interpretation was needed.

In Case 1 when the defense lawyer said he was not comfortable speaking Kiswahili a court interpreter should have been used. In this court the magistrate and the lawyers spoke in Kiswahili but this was only done when speaking to the witness. When the lawyers addressed the court, they did so in English. This contravenes the requirement that anything and everything that is said in English during the course of a legal proceeding should be interpreted for the non-English speaking participant (González, Vásquez, & Mikkelson, 1991)

The communication in the courtroom was not fluent Kiswahili but rather Kiswahili mixed with English words. Each individual has a language preference and this language is often the working language therefore when asked to speak in the second language they often revert to use of their first language. This is known as code switching.

Guadalupe Valdes in (González, Vásquez, & Mikkelson, 2012) says, “It must be recognized by the courts that for many circumstantial bilinguals, code switching is the primary form of communication and that, depending on the topic of conversation, one language may be required over the other for most effective understanding and production.” This is the case with professionals

whose mode of instruction is one language only. Even if they know another language in the professional environment they become circumstantial bilinguals since they did not receive training in the second language. It is for that reason then they prefer one language over another. This can be seen from the Lawyers interview (appendix 6).

Example 21:

Researcher: As you were examining the witness who took the stand at 11.50 a.m. you stated you would prefer to use English as opposed to Kiswahili, do you think your examination was hampered by the fact that you had to use Kiswahili?

Lawyer: I believe I did well, only that you know as lawyers are used to doing everything in English and naturally English is a preferred language and previously the witness had given his testimony in English and it was clear that the witness understands English so I just preferred but still it was ok.

The researcher observed that the lawyer did not do as well as he claims. He mainly relied on code switching and at times there was total breakdown in communication between him and the witness requiring the magistrate's intervention. Code switching was seen in statements like in the example below.

Example 22:

Lawyer: Nataka kuunderstand circumstance.

(I want to understand the circumstances.)

Witness: Circumstance ni nini?

(What does 'circumstance' mean?)

In the above example two out of three words were English words yet the lawyer was supposed to be speaking in Kiswahili in order to be understood by the witness. This should not be an acceptable alternative to court interpretation.

4.3.1 What are the Minimum Standards for Court Interpreters?

Having distinguished between code switching and interpretation, this section examines the standards set for court interpreters. For the purpose of this analysis court interpreters are the court clerks who interpret during court sessions and individuals brought in by the court administrator's office to aid in interpretation when the need arises.

(a) Standards For Court Clerks (In-House Interpreters)

The courts mainly rely on in-house interpreters. According to the court administrator, they are preferred because they understand the working of the court.

Example 23:

Court Administrator: First we have our own interpreters the clerks, if one happens to be a Kikuyu for example then he will interpret from Kikuyu to the official languages. But in such cases, we look in-house, we can send clerks from other courts to where the need is because they understand the court's culture, norms and value system. They have also been sworn to know how to render because they cannot add their own words and cannot prompt the party. They know they should not tone down what a hostile witness has said. To interpret you pretend to be that person, don't add or remove words from his mouth or do some panel beating because you think the witness has not given a good account. No assumptions.

These court clerks are hired on the basis that they understand both English and Kiswahili. Once hired they are expected to perform their role as court interpreters among many other tasks assigned to the court clerk.

Example 24:

Court Administrator:Where we need to provide the interpretation our people use two languages, we do not have the capacity to provide for all languages. We have to go out to look for others. But for us, the clerks have to be proficient in both English and Kiswahili and this is what we look for in our clerks.

No court interpretation training is given once they are recruited. The current minimum standards for court interpretation can therefore be said to be knowledge of the two official languages. Once employed as court clerks then they by default become court interpreters as quoted in example 18 above.

A standard set for in-house court interpreters is that they have to be sworn in by the Chief Magistrate before they take up their role as court clerks.

Example 25:

Researcher: You have become qualified as a court interpreter because of experience.

Interpreter 1: Yes because of experience and also to become a court interpreter you have to be sworn in by the Chief Magistrate and you also have to swear an affidavit which I did long time ago.

This swearing in is to ensure that the rights of the witness are protected and that while interpreting the court interpreter does not alter the statement. However this swearing in could be incriminating

to the untrained interpreter in the event that they do not perform as expected because they have no training yet they are held accountable for what they say in court because they were sworn in.

(b) Standards For Other Interpreters

The courts prefer use of their in-house interpreters but when there is need for interpretation in languages other than those spoken by the in-house interpreters, other interpreters are hired.

Example 26:

Researcher: Most clerks interpret in English and Kiswahili. What happens when you need to bring in other language interpreters for example French, Chinese, Maasai or Kikuyu? How do you recruit interpreters?

Court Administrator: First we have our own interpreters the clerks, if one happens to be Kikuyu for example then he interprets from Kikuyu to the official languages. But in such cases, we look in-house, we can send clerks from other courts to where the need is because they understand the court's culture, norms and value system. They have also been sworn to know how to render because they cannot add their own words and cannot prompt the party..... When we do not have one we source like I did today with the Amharic interpreter needed in Murang'a. But before we send them we have to give them some basic training and guidelines. They are also sworn on court and if they go against what is said they can be charged. They are sworn to render what has been said by the witness

This shows that when an interpreter from outside the court system is needed there is no standard to establish their certification or qualifications. It is up to the recruiter (the court administrator) to ensure that in his own opinion the interpreter is up to the task. The administrator will explain to

the interpreter the working of the court, they will be sworn in and they will proceed to interpret for the court.

Magistrate 2 shares an experience that illustrates this:

Example 27:

Magistrate 2:Even sometimes like for Somali, we have a few interpreters but at times they are not there and they are sourced from outside. Like in anti-terrorism cases they get a lady from Marsabit to come and interpret. People who don't have credentials but are approved by anti-terrorism police. We just accept them. What do we do? We get anyone. Anyone who can speak the language. They don't have to be professionals. If they are conversant with English.

Researcher: There is no certification?

Magistrate 2: They are just sworn, they give us their ID cards and they proceed. In fact there is one case, somebody was charged with being unlawfully present in the country. In mitigation he said he comes from Pakistan and he did not want to go back and he said this in one sentence and the guy (the interpreter) was saying so much like he was his lawyer. He was not his lawyer, he was supposed to have said exactly what had been said. That one sentence is what I want to hear. So we have a problem and they need to address it.

Just like with the in-house court interpreters, these interpreters sourced from outside are not required to show any certification or prove their qualifications before they can interpret for the court. None of the interpreters are offered any training to enable them to perform their task efficiently.

4.4 Does Misinterpretation of Court Proceedings Affect the Decision made by the Court?

The researcher was limited to observing the court processes for a period of one month only. Most trials at the Milimani Chief Magistrate's Court extend over a long period of time, the researcher was unable to follow a case from beginning to end to determine if the outcome of the trial was affected by the interpretation rendered. The researcher was also not able to make reference to past cases to determine if the judgment is affected by interpretation. This is because in the absence of stenographers, the courts notes are taken by the magistrate and when taking the notes he takes down what he has understood. It is therefore not possible to say what the interpreter said and determine whether it had any influence in the decision of the court.

The researcher therefore chose to determine this by interviewing the interpreters and the magistrates.

Previous researches for example the research by (Kiguru, 2010) show that misinterpretation does take place in the Kenyan courts. During this study the researcher asked the interpreters if they had ever misinterpreted. They both confirmed that they had.

Example 28:

Researcher: Have you heard of any cases of misinterpretation?

Interpreter 1: Yes, it has happened to me. There are instances where you interpret and the magistrate says "No, interpret properly" You tell the magistrate to repeat that line or section and you try to interpret again. I have seen that happen and I have noted that that could lead to a mistrial if the advocate or the accused appeals on that basis, the accused or the client..... the interpretation was not done and he did not understand what was going on in court, whatever judgment had been

passed if at all he had been convicted in the law courts then the High Court can quash the decision, simply because interpretation was not adequate.

Example 29:

Researcher: Have you heard of any cases of misinterpretation in the courts? Either by you or by someone else, that would seem to have compromised the delivery of justice?

Interpreter 2: I must speak for myself. I believe in my case there have been especially with French. At times I feel it's of very low quality and that's why I decided to back to school which is still on going. In Kiswahili at least it is better because if somebody does not get it in Kiswahili we can try and put it in mother tongue but not so for a foreign language. I need to polish it every day.

This shows that misinterpretation does happen in the court. Court room errors as classified by (Owiti, 2015) could also take the form of omissions and additions. Omissions by the interpreter were noted during the observation of cases 9,10,11,14 and 15.

In Case 1, the witness said that he had been misinterpreted and that the statement that had been presented in court was not an accurate representation of what he had told the policeman who took his statement. The statement read that Mr. Karanja was not party to the alleged bribery and the witness insisted that he had been misquoted. Magistrate 1 was asked about the impact of the allegedly misinterpreted police statement in case 1 during the interview. His response shows that this misinterpretation could have an impact on the court's decision.

Example 30:

Researcher: Do such incidences (misinterpreted statements) result in a wrong judgment being rendered because somebody said this and someone else says that they said something else?

Magistrate 1: It could depending.....because often witnesses may come and say that the statements that are attributed to them, as interpreted, are not their statements and you see the moment the witness disowns a statement then the court as far as the evidence of that statement is concerned then that is a lost cause. More so if the witness is a critical witness in the matter and the statement carried a lot of weight in the case. So you find that in that case you will find justice will be miscarried.

Magistrate 2 spoke of the impact misinterpretation would have when the accused person bases his defense on misinterpreted information. The accused person's defense is what the magistrate will base her decision on. Therefore misinterpretation does have an impact on the judgment rendered by the court.

Example 31:

Researcher: Does this (misinterpretation) in your point of view compromise the kind of justice being delivered?

Magistrate 2: It may because it is a very crucial thing. You can imagine if you don't understand the proceedings and you are required to build your defense from when the witnesses are giving evidence and you did not understand. Or maybe it was not interpreted so you did not get it correctly, chances are you will not go far. It is actually prejudicial to the accused.

This means that the accused person relies on the correct interpretation of what has been said in the courtroom to build his defense.

4.4.1 Misinterpretation in Kiswahili-English Interpretation

The uniqueness with interpretation between the two official languages is that most officers of the court understand both languages and therefore if there is a misinterpretation it will be noted and

corrected. Interpreter 1 during his interview said that there were instances when he would interpret and the magistrate would ask him to redo it because it hadn't been correctly done.

Example 32:

Researcher: Have you heard of any cases of misinterpretation?

Interpreter 1: Yes, it has happened to me. There are instances where you interpret and the magistrate says "No, interpret properly" You tell the magistrate to repeat that line or section and you try to interpret again.

Magistrate 1 responded that he had asked an interpreter to repeat what had been said because it had been misinterpreted.

Example 33:

Researcher: Have you had any instances of misinterpretations?

Magistrate 1: Yes I have had very many of them and I am often forced to come in by asking the interpreter to reinterpret the statement.

The intervention of the magistrate when he feels that the message has been misinterpreted is only applicable to the languages that the magistrate understands. When asked if this intervention was possible in interpretation of any other language the interviewed magistrates confirmed that they would have to depend on the interpretation given because that do not understand the source language.

Example 34:

Researcher: This is because you can understand both languages?

Magistrate 1: Yes.

Researcher: So if there was a case, assuming you don't speak Arabic, and the interpreter made the same mistake, you would not know it had been misinterpreted right?

Magistrate 1: I would not know if it was Arabic just for languages that I understand.

Example 35:

Researcher: In your time on the bench are there instances where there has been a case of misinterpretation

Magistrate 2: In Kiswahili?

Researcher: In any language.

Magistrate 2: That's a challenge because if it is in a language we do not understand I wouldn't know. But in those situations we might be lucky. For example while I worked in Kiambu, if the advocate could understand the language, he would point out that the interpretation was not done correctly. And if the prosecutor is Kikuyu and he understands he will alert the court that misinterpretation has been done. Sometimes I chip in and try to explain in Kiswahili if possible. Even here I do it in Kiswahili

As seen in the response of magistrate 2 above, if there is nobody in the court to point out that the interpretation was inaccurate the decision of the court is based on what the interpreter says.

4.5 Would Training Improve the Quality of Interpretation in the Courts thus Improving the Quality of Justice?

The need for Kiswahili-English interpretation within the courts was established. Of the 6 court officials interviewed 5 said that it is important for training to be offered to court interpreters.

	Response
Interpreter Training is Necessary	5
Interpreter training is not Necessary	1
Total	6

Table 3: Is interpreter Training Necessary?



Figure 4. 2 Do We Need Trained Interpreters?

With exception of the lawyer (appendix 6) who stated that all lawyers know Kiswahili and there is therefore no need for trained Kiswahili-English interpretation the 5 other court officials responded yes when asked if there was need for Kiswahili-English interpretation and they responded affirmatively when asked if the Kiswahili-English Interpreters required training.

However the lawyer's response is negated by the fact that he himself did not succeed in interpretation for the court due to the fact that he did not speak fluent Kiswahili but he relied heavily on code switching.

The need for training does not imply that the interpreters do not have knowledge of the language required. Training of interpreters recognizes that interpretation is a skill that goes beyond simply knowing and speaking two languages. This is acknowledged by Interpreter 1&2 and Magistrate 2. Interpreter 1 and 2 say that they had prior knowledge of the languages they interpret but they would still have needed training as interpreters when they were assigned roles as court interpreters.

Example 36:

Researcher: Do you feel that if you received any training at the very beginning in interpretation it would have helped you to perform better as an interpreter?

Interpreter 1: Definitely it's only that it was not done so we really had to do it the hard way and here we are.

Researcher: What are the challenges you have faced due to lack of training at the initial stages

Interpreter 1: There are so many challenges. One is the interpretation itself requires court terminology. We are not trained lawyers and we have to ensure that we understand the legal

system, the languages and ensure you interpret them in a way to ensure that the layman can understand. That is one of the challenges I personally had.

Example 37:

Researcher: Did you get any training in the practice of court interpretation?

Interpreter 2: No. It's just on-job-training. We go for induction for roughly a month but that does not necessarily train you as a court interpreter, it's an on-job-training.

Researcher: When you started working as a court interpreter, did you feel that training would have been important for you to be able to deliver?

Interpreter 2: Very, very, very important because it's like every day you have to teach yourself what to do. Nobody teaches you what to do and yet everybody expects you to be perfect they don't care whether you have received any training or not. Actually many at times I feel I should really have received some training to know what is expected of me.

Magistrate 2 supports the view that knowing two languages does not mean that one can interpret.

Example 38:

Researcher: Why would you say that there is a need yet most officers of the court including magistrates and lawyers are conversant in both languages?

Magistrate 2: I know we are conversant but we do not interpret to witnesses and accused persons like if I'm reading a judgment in English and they don't understand it, I don't have to do it in Kiswahili. It is the work of the court interpreter.

This supports the argument that training for court interpreters even if they know the two working languages is required.

4.5.1 Legal Language Training

The Language Expectancy theory points out that in some social setting, certain language variations are used. In addition to the skill of interpretation, what must also be considered when talking about interpreter training is the fact that the language of the court often differs from the language we use in any other setting. This is not only due to the formal setting of the court but also due to the language specificity of courtroom

O'Bar in (Berk-Seligson, 1988) defines legal language as “The variety of spoken language used in the courtroom that most closely parallels written legal language; used by the judge in instructing the jury, passing judgment, and “speaking to the record” used by lawyers when addressing the court, making motions and requests, etc; linguistically characterized by lengthy sentences containing much professional jargon and applying a complex syntax.” He compares the legal language to standard, colloquial and subcultural varieties which may all be used in the courtroom depending who is being addressed. The training in understanding “legalese” and interpreting it into language that can be understood without changing the meaning is essential to communication in the courtroom and the need for it was pointed out by Interpreter 1 & the Court Administrator.

Example 39:

Researcher: What are the challenges you have faced due to lack of training at the initial stages?

Interpreter 1: There are so many challenges. One is the interpretation itself requires court terminology. We are not trained lawyers and we have to ensure that we understand the legal system, the languages and ensure you interpret them in a way to ensure that the layman can understand. That is one of the challenges I personally had.

Example 40:

Researcher: In regards to English & Kiswahili, would you as the administrator agree that there is need for their training as interpreters?

Administrator: The difficulty comes in when the clerk is subjected to technical jargon. Each profession & discipline has its own jargon, and this clerk who is ordinarily hired after form 4 although now we have those who have received some training, is subjected to this jargon and he is supposed to explain to the party. When we have an expert witness for example in rape cases or assault when we have a medical practitioner, he will use medical terms and expect this clerk to translate it. Because he is the link between the court and the party. There is need for training and an adequate curriculum. So to ensure the quality of language when there is a new magistrate I pose a very sharp and experienced clerk to assist in his court

As the Court Clerks continue to serve as interpreters their confidence in their task and the ease with which the deliver improves. However after 8 years as an interpreter, Interpreter 2 still has a hard time with legal language as shown by the following example from her interpretation in Case 9.

Example 41:

Defense Lawyer: So far the prosecution has not furnished us with further statements

Court Clerk: Hadi sasa, bado hawajapata further statements

(So far they have not received further statements.)

Training in legal language would be an effective way to ensure that no code switching takes place in the courtroom.

4.5.2 Language Proficiency Levels

An interpreter is not just a bilingual but being bilingual is a minimum requirement for any interpreter. It is not enough that the interpreters say that they can speak a certain language. The courts ought to establish that indeed the language can be spoken and to a level that is sufficient for interpretation. As seen in judicial systems like those of the USA and South Africa, it is not enough to say that one is bilingual proficiency tests to establish those claims are administered.

One of the interpreters interviewed indicated that she felt her French language levels were not up to par and she therefore decided to go for more language training. While this personal effort should be applauded, it should be up to the court to decide what language levels are acceptable and not up to the individual.

Example 42:

Researcher: Did you receive any formal training as a court interpreter before you started?

Interpreter 2: Not really as a court interpreter. I think it is just a matter of interest and on job training. For French of course I had to go for classes.

Interpreter 2: I must speak for myself. I believe in my case there have been especially with French. At times I feel it's so low in quality and that's why I decided to back to school which is still on going.

Language is the basis of interpretation. Essentially interpretation is re-expressing what has been said in one language in another language. At its lowest levels of performance it can be performed by persons with minimum knowledge of the language but as requirements become more stringent, as with court interpretation, training is required (Gile, 2009)

4.6 Conclusion

In this chapter the data collected was analyzed answering each of the research questions. It has emerged that the courts in Kenya consider court clerks as the court interpreters, however due to widespread circumstantial bilingualism, some court officials use code switching as a substitute for interpretation which should not be accepted as fulfilling one's right to court interpretation.

It is evident through the interviews carried out that the current minimum qualification for court interpreters is knowledge of the two official language in Kenya. There is no proof either by certification or any control mechanism.

The impact that interpretation has on court interpretation has also been explored. We see that misinterpretation leads to a miscarriage of justice. With Kiswahili-English interpretation the misinterpretation is noticed and corrected but this does not happen with all languages. To ensure that the court interpreters have the skill required for effective interpretation, training is required. Language proficiency tests should also be administered to ensure that the court interpreters are proficient in their working languages.

CHAPTER 5

SUMMARY, FINDINGS AND RECOMMENDATIONS.

5.1 Introduction

This chapter summarizes each of the preceding chapters. Based on the analysis in chapter 4, a findings section will summarize the findings of this study leading to the recommendations of the study.

5.2 Chapter Summary

The purpose of this research was to establish if court interpreter training would improve the quality of court interpretation. The study was as a result of the realization that even though Kenya requires that all who appear before the court and do not understand the language of the court be provided with an interpreter, there were no training being offered for court interpreters and this affected the quality of services offered.

The underlying principle of this study was the Rational Theory's principle that if the organizational goals are set and expectations formalized then there will be expected organizational behavior that contributes to the set goals. The quality of output will as a result increase significantly.

This research established that Kiswahili-English interpretation in Kenyan courts is common with 38% (Table 1) of the attended cases requiring Kiswahili-English interpretation. This study also established that it is often court clerks who interpret in court but many officers of the court who understand both languages choose to speak in Kiswahili when the need arises. The court clerk has to be fluent in both English and Kiswahili in order to be employed as a court clerk for purposes of interpretation. Therefore when referring to court interpreters reference is being made to court clerks.

The study was carried out in the Milimani Chief Magistrate's court in Nairobi County over a period of 1 month. To collect data 16 court cases were observed and 6 interviews carried out: 2 Magistrates, 2 interpreters, the court administrator and a lawyer were interviewed.

Chapter one of this study focused on the purpose of the research and what informed the research: the research questions, the objectives, the justification and the hypotheses.

Chapter two discussed court interpretation in the world and what the Kenyan Judicial system should learn from the example of South Africa, USA and ICTR. Guidelines in 2 countries, the USA and South Africa, were examined to see how control systems for court interpretation in these judicial system render interpretation more efficient.

Chapter three detailed the data collection methods and the data that was collected. This chapter recorded the observations made during each court session attended. It also explained the questions each of the interviews aimed to answer. The interviews are found in the appendices 1-6. The chapter also explains the framework and research design that guided data collection.

Chapter four analyzed the data that had been collected. This chapter looked at what the data that had been collected means in relation to the research questions set out at the beginning of the research.

This chapter will build on the preceding chapters and make recommendations.

5.3 Summary of Findings

In response to the research questions of this study, the following are the findings of this study.

5.3.1 Are There Clear Guidelines for Court Interpretation in the Kenyan Judicial System?

The constitutional right to interpretation in Kenya is upheld. The magistrate always asks the language preferred by the witness or accused person.

Interpretation in the court is usually carried out by the court clerk however other officials of the court can choose to speak Kiswahili in order to communicate with the witness or the accused person who does not understand English. This however is only done when addressing the witness or the accused person resulting in his exclusion from all other court communication. This does not meet the objective of court interpretation which is the meaningful participation of all parties (González, Vásquez, & Mikkelson, 1991). It was observed that some officials of the court used code switching as an alternative to interpretation which hinders communication as the witness or accused person does not understand English. (González, Vásquez, & Mikkelson, 2012).

5.3.2 Are there Minimum Qualification Standards for Court Interpreters in the Kenyan Courts?

It was found that the minimum requirement for court clerks who interpret for the courts is the ability to speak both English and Kiswahili. There is currently no test to establish if the clerks are proficient in the languages or not. For other interpreters sourced from outside the judicial system, the minimum requirement is that they speak the language. The court administrator by his own initiative ensures that the interpreters are up to the task. There is currently no certification or qualification requirement to be met by outsourced interpreters or by in-house interpreters.

5.3.3 Does Misinterpretation of Court Proceedings Affect the Decision of the Court?

Misinterpretation has an effect on the decision of the court. This is especially the case when the magistrate making the decision does not understand the language being interpreted. In this instances they rely wholly on the interpreter to give the information that will inform their judgment.

For Kiswahili-English interpretation, the magistrate may intervene because he can understand both languages but the need to intervene would be dealt away with by training of the interpreters.

5.3.4 Would Training Improve the Quality of Interpretation in the Courts thus Improving the Quality of Justice?

The interpreters interviewed indicated that if they had receive training they would have be able to perform their duties better. The research by (Onsongo, 2010) supports this by stating that training of court interpreters would reduce the inefficiency of court interpretation.

Specialized legalese training is also necessary for interpreters. The language in the courts is specialized legal language that an interpreter needs training in for them to be familiar with the concept and have the equivalent word or idea in the target language. This legal training forms part of the training necessary for court interpreters in the USA according to (National Centre for State Courts, 2014). This training would equip interpreters with the vocabulary necessary for the courtroom.

Training would professionalize court interpretation and create a professional identity for those who work as interpreters within the courts (Hale, 2004).

5.4 Recommendations

This study recommends the following changes in regard to court interpretation in Kenya:

1. The minimum requirement of training and certification be expected of all court interpreters. Training offered to court interpreters should include interpretation skill training, legal language training and language proficiency tests.
2. Clear guidelines that require that only trained court interpreters interpret in Kenyan courts be established. Should the officers of the court decide to address the court in Kiswahili (as is their right) then proper Kiswahili should be used and not any form of code switching.
3. An official database of all trained court interpreters be maintained for the court's use. This database will ensure that the services of trained interpreters easily accessible and ensure that their use is sustainable.
4. All parties in the legal system be sensitized on the importance of court interpretation and the effect it has on the court's decisions. Once it is understood that interpretation has a direct bearing in the court's decision, then interpretation standards will be realigned to fit in with the organizational goal of "justice for all."
5. Further research be carried out on other language combination and the need for training for interpreters with other language combinations.

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APPENDICES

APPENDIX 1: INTERPRETER 1 INTERVIEW

Researcher: Good Morning.

Interpreter 1: Good Morning to you.

Researcher: What is your role in the court? What is your job title?

Interpreter 1: My job title is a court assistant. I do assist in court interpretation for the magistrate and the litigants who are in court.

Researcher: Which languages do you interpret?

Interpreter 1: I interpret English, Kiswahili and Dholuo.

Researcher: How would you describe your language levels? Your proficiency?

Interpreter 1: I don't want to say I am in that advanced level. But I know that with the number of cases I have handled, I can interpret in most courts within my jurisdiction.

Researcher: Have you received any training to be able to interpret in a legal context?

Interpreter 1: To be very sincere, for the duration and time I have worked in court and the experience and because I understand all languages in relation to court interpretation, I have been attending court for more than 12 years, I believe I am competent in interpreting court systems

Researcher: You have become qualified as a court interpreter because of experience.

Interpreter 1: Yes because of experience and also to become a court interpreter you have to be sworn in by the Chief Magistrate and you also have to swear an affidavit which I did long time ago.

Researcher: Do you feel that if you received any training at the very beginning in interpretation it would have helped you to perform better as an interpreter?

Interpreter 1: Definitely it is only that it was not done so we really had to do it the hard way and here we are.

Researcher: What are the challenges you have faced due to lack of training at the initial stages

Interpreter 1: There are so many challenges. One is the interpretation itself requires court terminology. We are not trained lawyers and we have to ensure that we understand the legal system, the languages and ensure you interpret them in a way to ensure that the layman can understand. That is one of the challenges I personally had.

Researcher: In your own experience how long did it take you to get to a point where you could say “I am now comfortable as a court interpreter”

Interpreter 1: When it started it was very difficult and I actually remember people laughing at me in court before I got used to it. It is fortunate that I had a very good magistrate who warned people and I still recall her words, “My clerk is new, he’s learning, let us give him his time.” Slowly I developed confidence but it took some time about 2 to 3 months for me be eloquent in interpretation.

Researcher: Do you feel there is a place for training of interpreters in order to avoid misinformed judgments or miscarriage of justice?

Interpreter 1: That is very true, that is very true. Simply because professionalism is very important. I feel that people need to be trained thoroughly for the benefit of both the court and for the decorum of the entire court from the magistrate to the advocates to the litigants or the public so that when interpretation is being done we are at the same level and no misinterpretation.

Researcher: Have you heard of any cases of misinterpretation?

Interpreter 1: Yes, it has happened to me. There are instances where you interpret and the magistrate says “No, interpret properly” You tell the magistrate to repeat that line or section and you try to interpret again. I have seen that happen and I have noted that that could lead to a mistrial if the advocate or the accused appeals on that basis, the accused or the client. the interpretation was not done and he did not understand what was going on in court, whatever judgment had been passed if at all he had been convicted in the law courts then the High Court can quash the decision, simply because interpretation was not adequate.

Researcher: Lastly, do you feel there is a need for setting standards for anybody who should act as an interpreter? If today it was instituted that everybody needs to pass a certain proficiency exam or everybody needs to have certain certification, in your view would this improve interpretation in Kenyan Courts?

Interpreter 1: Precisely. That is my point, I am really in for that. Legal matters are very serious regardless of the charge, be it not wearing a safety belt to murder, interpretation needs to be precise. Because interpretation goes with the decision of the court. Justice is not only conviction, it’s all about understanding the process.

Researcher: Thank you for your time

APPENDIX 2: INTERPRETER 2 INTERVIEW

Researcher: What is your role in the court?

Interpreter 2: I have a lot to do. I run the court generally and this involves many things: picking the files from the registry every morning, coming with them to court, calling them over that is running the cause list then doing the interpretation as you have heard me do, ensuring the parties are well informed about the proceedings of the court and then extracting orders from files, like when you hear us calling an accused person and they are not present, I am supposed to carry out the orders issued by filling in forms and dispatching them to the relevant authority to ensure that they have seen served.

Researcher: This interview is in regard to your role as a court interpreter. Which languages do you work with?

Interpreter 2: English, Kiswahili, French and Kikuyu.

Researcher: How long have you been a court interpreter?

Interpreter 2: 8 years now.

Researcher: Did you receive any formal training as a court interpreter before you started?

Interpreter 2: Not really as a court interpreter. I think it is just a matter of interest and on job training. For French of course I had to go for classes.

Researcher: Did you get any training in the practice of court interpretation?

Interpreter 2: No. It is just on job training. We go for induction for roughly a month but that does not necessarily train you as a court interpreter, it is an on-job-training.

Researcher: Do you often come across cases that need English-Kiswahili interpretation?

Interpreter 2: Yes a lot of them. Actually, half of the cases need English-Kiswahili interpretation

Researcher: When you started working as a court interpreter, did you feel that training would have been important for you to be able to deliver?

Interpreter 2: Very, very, very important because it is like every day you have to teach yourself what to do. Nobody teaches you what to do and yet everybody expects you to be perfect they don't care whether you have received any training or not. Actually many at times I feel I should really have received some training to know what is expected of me.

Researcher: I learnt that in this court and many Kenyan courts, the clerks act as interpreters. Do they have to have a certain level of language, do they need any certification or is it simply expected as long as you are a court clerk?

Interpreter 2: It is expected. Actually you are an interpreter by default. Once you become a court clerk you are an interpreter by default.

Researcher: Do you feel that standards for interpretation that are in other countries and other judicial systems should be applied in Kenya?

Interpreter 2: I'm not aware of those standards but what I know in Kenya is that court is serious business, I believe we ought to have good standards in interpretation because you do not know who is seated here while you are doing your interpretation. Someone could be so good in French, so good in Kiswahili and I appear with my bad French or Kiswahili, it paints a very awkward picture of the court.

Researcher: How do you decide who to interpret for in the court? Are you told beforehand or do you decide depending on the witness?

Interpreter 2: Automatically, when an accused person gets into the dock we are supposed to ask what language to use because the law stipulates it should be in a language they understand best. But by experience when they appear the first time you have to ask. But after handling many cases and those accused persons' cases you will definitely know which people use which language

Researcher: Have there been cases of misinterpretation in the courts? Either by you or by someone else that you have heard, that would seem to have compromised the delivery of justice?

Interpreter 2: I must speak for myself. I believe in my case there have been especially with French. At times I feel it's so low in quality and that's why I decided to back to school which is still on going. In Kiswahili at least it is better off because if somebody does not get it in Kiswahili we can try and put it in mother tongue but for a foreign language it may not be so good. I need to polish it every day.

Researcher: I saw in a previous court case I attended that sometimes the lawyers and the magistrate try to speak in Kiswahili but because it is not their working language it seems to be a bit difficult. Do you think they should be allowed to speak in their working language and a court interpreter be assigned?

Interpreter 2: I believe we should have a professional court assistant doing the interpretation because there are people who really do not understand English and they rely on the good interpretation to understand what they are facing and bearing in mind that a court case touches on the life of a person, interpretation is very crucial.

Researcher: Do you have anything to add in this line of thought?

Interpreter 2: I must say it's a challenging field but with passion you are able to do it. It is challenging because the language of the court is not your usual language, there are things that will not make sense when you interpret them (laughs) you really have to have the passion and the commitment to be able to do it. But in the long run I must say it helps the accused person. Even witnesses. Without it (interpretation) their cases would be messed up. I believe it is one of the most crucial elements in our work.

Researcher: Thank you for your time.

APPENDIX 3: MAGISTRATE 1 INTERVIEW

Researcher: In a legal system that uses both English and Kiswahili do you feel that there is a need for court interpreters?

Magistrate 1: Yes I do

Researcher: I was following the interrogation of the witness who took the stand at 11.00 am where Kiswahili and English were being used interchangeably is this a common occurrence?

Magistrate 1: Yes it is

Researcher: Do you feel that the delivery of justice is compromised when lawyers and magistrates are forced to act as interpreters?

Magistrate 1: Ummm..... Maybe to some extent because we don't have the specific training to interpret

Researcher: So in that line would it be better if people were trained specifically to be court interpreters?

Magistrate 1: I think it would be better that way because they would bring in the skills that are needed for that.

Researcher: There were a few when the lawyer was asking you exactly what to say. He asked you “perhaps you may direct me on how to ask the question” because the witness did not seem to be understanding what was going on. Is this common?

Magistrate 1: Its common you know a lot of the witnesses we get are the ordinary wananchi who have the usual deficiencies in languages and also their literacy levels may not be that high so that happens a lot in the court room.

Researcher: Have you had any instances of misinterpretations?

Magistrate 1: Yes I have had very many of them and a lot of times I am forced to come in by suggesting that the interpreter reinterpret the statement.

Researcher: Is this because you can understand both languages?

Magistrate 1: Yes

Researcher: So if there was a case, assuming you don't speak Arabic, and the interpreter made the same mistake, would you know?

Magistrate 1: I would not know if it was Arabic just for languages that I understand

Researcher: A witness who took the stand at around 11.00 am, claimed that the statement at the police station was not what was being read in court. He said he was misquoted. Is this common?

Magistrate 1: Very common

Researcher: Do you in your capacity as a magistrate think it's a problem with the system or a problem with the interpretation?

Magistrate 1: I think it's a bit of both. Most police stations do not have interpreters so police are forced to use the little interpretation skill they have to interpret. When they are trying to interpret complex scenarios that require very good grasp of the language then you will find a lot of information is lost in that kind of translation. For the system...ummm... It's also a problem in the system because they do not seem to see the gap, the deficiency and redress it. You don't see much being done in that direction to fix it. But I can tell you it affects the quality of justice rendered a lot.

Researcher: That was going to be my next question. Do such incidences result in a wrong judgment being rendered?

Magistrate 1: It couldbecause a lot of times witnesses may come and say that the statements that are attributed to them, as interpreted, are not their statements and you see the moment the witness disowns a statement then the court as far as the evidence of that statement is concerned then that is a lost cause. More so if the witness is a critical witness in the matter and the statement carried a lot of weight in the case. So you find that in that case you will find justice will be miscarried.

Researcher: In your professional opinion should there be a provision for Kiswahili-English interpretation? Most Kenyans believe that because they can understand both languages, they can interpret.

Magistrate 1: There is. First of all we have made Kiswahili one of our official languages in fact the law allows us, if you can, to make your record in Kiswahili. There would be nothing wrong if I did that. The other thing is a lot of that Kenyans have a basic level of understanding of Kiswahili which cuts across our many communities and identities, Kiswahili is a language that cuts across. Many do not understand English. People who have never gone to school have a level of understanding of Kiswahili. So I think there is a very good case for that because a lot of cases especially in the outlying areas where we have worked, trials are done in Kiswahili almost through and through so you can see the role Kiswahili plays in those cases.

Researcher: Do you think this should extend to taking of statements? Do you think it should extend to this and all other matters that lead to the courtroom?

Magistrate 1: My opinion is that cases start outside the court, actually the trial starts outside the court. What comes here already has a bearing on the outcome and therefore if we are to render quality justice, then that quality should start outside the court and all the way to the end of the trial. That's where it starts so there is a case for that

Researcher: Anything else you can add in regard to this line of thought

Magistrate 1: I think it's a real problem what you are addressing and I can say for a fact that it does affect how we do justice in our courts. Yeah so it is a real problem that you are dealing with.

Researcher: Thank you for your time,

APPENDIX 4: MAGISTRATE INTERVIEW 2

Researcher: In a legal system that uses two official languages, English and Kiswahili, through your experience on the bench do you feel that there is need for trained court interpreters in these two languages?

Magistrate 2: Yes there is a need.

Researcher: Why would you say that there is a need yet most officers of the court including magistrates and lawyers are conversant in both languages?

Magistrate 2: I know we are conversant but we do not interpret to witnesses and accused persons like if I am reading a judgment in English and they don't understand it, I don't have to do it in Kiswahili. It is the work of the court interpreter,

Researcher: I sat in your courtroom on the 8th of September as well as today (17th September). I noticed on both days a case where the accused was acting as his own defense

Magistrate: Not represented by counsel

Interpreter: Yes. Is this common?

Interpreter: Not in this court because most of the cases you get are serious crimes like stealing at least not less than 1 million but even with stealing of less than that amount we still have lawyers. There are very few people without lawyers like the one we had. I don't know if you sat in when evidence was being given by a bank official the accused was not represented and I don't know why maybe he could not afford presentation.

Researcher: In such a case if the accused did not speak English which is the official language of the court, what happens? Is he allowed to speak in Kiswahili and who will interpret for him?

Magistrate 2: If he is giving defense he can give defense in Kiswahili. There will be no need for interpretation because when he is giving defense I translate to English. When he is being asked questions by the prosecutor we do it in English and it is interpreted.

Researcher: And when he is examining what language must he use?

Magistrate 2: That's why I ask and that particular one I asked if he understands English. If he does not understand and the witness can speak Kiswahili then evidence is given in Kiswahili. If the witness is not comfortable again we don't force them so the court clerk intervenes.

Researcher: So the court clerk acts an interpreter when the need arises?

Magistrate 2: Yes.

Researcher: In your knowledge of this situation are the court clerks trained as interpreters?

Magistrate 2: I think we have got some in-house training but I don't think it is in languages.

Researcher: In your time on the bench are there instances where there has been a case of misinterpretation

Magistrate 2: In Kiswahili?

Researcher: In any language.

Magistrate 2: That's a challenge because if it is in a language we do not understand I wouldn't know. But in those situations we might be lucky like I worked in Kiambu and the advocate could understand the language and he would point out that the interpretation was not done correctly. If

the prosecutor is Kikuyu and he understands they will alert the court that misinterpretation has been done. Sometimes I chip in and try to explain in Kiswahili if possible. Even here I do it in Kiswahili.

Researcher: Does this compromise the kind of justice being delivered?

Magistrate 2: It may because it is a very crucial thing. You can imagine if you don't understand the proceedings and you are required to build your defense from when the witnesses are giving evidence and you did not understand. Or maybe it was not interpreted so you did not get it correctly. Chances are you will not go far. It is actually prejudicial to the accused.

Researcher: In your opinion should there be a provision for court trained interpreters other than the court clerks. I have read that in other courts they ask who can speak the language and they act as interpreters. Do you think that the justice system needs to institute a control mechanism for who can act as an interpreter?

Magistrate 2: Yes. So that you won't have court clerks playing the role of interpreters. You know they also do paper work in the registry. So let them do paper work and let's have interpreters who are trained. Even sometimes like for Somali, we have a few interpreters but at times they are not there and they are sourced from outside. Like in antiterrorism cases they get a lady from Marsabit to come and interpret. People who don't have credentials but are approved by anti-terrorism police. We just accept them. What do we do? We get anyone. Anyone who can speak the language. They don't have to be professionals. If they are conversant with English.

Researcher: There is no certification?

Magistrate 2: They are just sworn, they give us their ID cards and they proceed. In fact there is one case, somebody was charged with being unlawfully present in the country. In mitigation he says

he comes from Pakistan and he doesn't want to go back and he said this in one sentence and the guy (interpreter) was saying so much like he was his lawyer. He was not his lawyer, he was supposed to have said exactly what had been said. That one sentence is what I want to hear. So we have a problem and they need to address it.

APPENDIX 5: COURT ADMINISTRATOR INTERVIEW

Researcher: What is the basis of interpretation in Kenyan courts?

Court Administrator: It is hinged on the premise that everybody must be subjected to a fair trial. And that fair trial cannot be achieved if the party only achieves physical presence and not linguistic presence. You know language is our tool of trade, for accountants they pay attention to figures, for us the language is very important. If you misapply the language one thing may mean something else and this affects the rights and freedom for the people. If someone insists I am not at ease with a certain language, it's the court's duty to provide an interpreter when the party is not conversant with the official language in Kenya that is English or Kiswahili. Because we have become part of the global village we have people of various nationalities and languages come to our country for business and trade and in their course of being in the country they may get on the wrong side of the law or have matters of contracts. Therefore for fairness to prevail because we are told justice should not only be done it should also appear to be done.

And that's where my role as a court administrator comes in. People don't know about the administrators. They know about the legal officers but what happens before and after? That's my work. I ensure the files are before the court, the clerks have arranged the court and all the requirements of the court to proceed to enable it to run are in place.

So language interpretation comes in handy. Where we need to provide the interpretation our people use two languages, we do not have the capacity to provide for all languages. We have to go out to look for others. But for us, the clerks have to be proficient in both English and Kiswahili and this is what we look for in our clerks. For what we cannot find in-house we coordinate with the colleges or embassies to get people who are competent. We contact them as the need arises.

Researcher: You have explained that clerks need to be proficient in English and Kiswahili. However do the court clerks receive any training in interpretation?

Court Administrator: The way it is so far I know it has been difficult for them. Apart from the induction they are given which I know is not adequate for about a week and even then it has not been regular. We have had it on and off. So it is majorly through on-job-training and it takes time. Because I have seen that someone may have a Master's degree, very proficient in languages but when it comes to interpretation they might not do it.

Researcher: In regards to English & Kiswahili would you as the administrator agree that there is need for their training as interpreters?

Court Administrator: There are things I have been advocating for. Even our authorities made proposals to the judicial training institute, there is hope that there will be curriculum being developed. They have been lacking a curriculum. With our clerks and Kenya in general interpretation is not well developed yet it is so important. Because I believe many tend to think of the judge or the magistrate and the prosecution for the success of the case but there are so many stakeholders. So clerks may not be appreciated but their role is so critical. For a magistrate to come to a fair decision the clerk has influence on the judgment because if he did not interpret accordingly it will affect the judgment. The difficulty comes in when the clerk is subjected to technical jargon,

each profession & discipline has its own jargon , and this clerk who is ordinarily taken after form 4 although now we have those who have continued a bit more, is subjected to this jargon and he is supposed to explain to the party. And when we have an expert witness for example a medical practitioner in rape or assault cases, he will use medical terms and expect this clerk to interpret it. Because he is the link between the court and the party. There is need for training and an adequate curriculum. So to ensure the quality of language when there is a new magistrate I pose a very sharp and experienced clerk to assist in his court

Researcher: Most clerks interpret in English and Kiswahili. What happens when you need to bring in other language interpreters for example French, Chinese, Maasai or Kikuyu? How do you recruit interpreters?

Court Administrator: First we have our own interpreters the clerks, if they happens to be Kikuyu for example then he will interpret from Kikuyu to the official languages. But in such cases, we look in-house, we can send clerks from other courts to where the need is because they understand the court's culture, norms and value system. They have also been sworn to know how to render because they cannot add their own words and cannot prompt the party. They know they should not tone down what a hostile witness has said. To interpret you pretend to be that person, don't put or remove words from his mouth or do some panel beating because you think the witness has not given a good account. No assumptions. Our clerks have been trained to know this. So we check in other courts if the one can interpret into the language. When we do not have one we source like I did today with the Amharic interpreter needed in Murang'a. But before we send them we have to give them some basic training and guidelines. They are also sworn on court and if they go against what is said they can be charged. They are sworn to render what has been said by the witness

Researcher: You mentioned that you have a database. The people in this database, do they have to pass any exam or show certification of proficiency?

Court Administrator: I have to be proactive and go the extra mile. Ideally we should have in-house when we don't have them we have to go out sometimes we contact the embassies but they give us a lot of difficulties because they think we are giving them some work here. So if not a person from the embassies we ask them for contacts of someone they would recommend and we get them ourselves. So it is me to do due diligence. I insist on meeting them before sending them But sometimes because of logistics like if we need to recruit an interpreter in Nanyuki they have to try and source locally before they ask the registrar for an interpreter to minimize costs. They too have to exercise due diligence. But you cannot say what they do but we see their papers and ensure that when cases become many like French, German & Somali cases in the court we employ people and we send them to other courts when need arises. So French and Somali we have in-house interpreters. For Chinese we get a lecturer from university of Nairobi and Kenyatta University. And we tell them our culture, processes and procedures.

Researcher: As the administrator would you agree with me that setting standards and certification processes would work to streamline the courts?

Court Administrator: That is long overdue. It could have been done like yesterday.

Researcher: Is it feasible for the interpreters in all courts in Kenya to have the same standards?

Court Administrator: Yes. For interpretation in general not just in the judiciary. Also for conferences, research and tribunals. It should not be limited to courts. There should be a curriculum and standards for interpreters and we will be a major beneficiary.

Researcher: Do you have anything to add in regards to interpretation in Kenyan courts?

Court Administrator: I would say for interpreters we need standards which will help us not only in court, although we will be a major beneficiary but also with other sectors and stakeholders because we are now part of the global village and we are interacting with people from all over. Communication is so important for example here in court, you may send someone to the gallows because someone else used the wrong word. I read somewhere that even the way you place a comma makes a difference. And training must be commensurate to pay because a clerk is a professional in his own right. He should have an open career path with progression. So a lot has to be done at the same time training. They need to be motivated.

Researcher: Thank you for your time.

APPENDIX 6: LAWYER INTERVIEW

Researcher: As you were examining the witness who took the stand at 11.50 am you stated you would prefer to use English as opposed to Kiswahili, do you think your examination was hampered by the fact that you had to use Kiswahili?

Lawyer: I believe I did well, only that you know as lawyers are used to doing everything in English and naturally English is a preferred language and previously the witness had given his testimony in English and it was clear that the witness understands English so I just preferred but still it was ok.

Researcher: You seemed more comfortable examining the second witness who was examined in English, is this a correct observation?

Lawyer: I don't think that had much to do with the language, it has also to do with expertise and perhaps the level of education because whereas the first witness was problematic, he was so conscious about what he was saying and it seemed like he had some scores to settle with the accused persons. But now the second witness was objective and was only interested in telling the court the truth and that is why you would see that she could easily understand the questions and answer them and that is why it looks like it was less problematic

Researcher: Is this a situation you frequently encounter? Having examining witnesses in Kiswahili or in other languages other than English?

Lawyer: Actually there are two languages permitted by our courts. The Kiswahili thing regularly pops out and every lawyer here is trained to speak in Kiswahili only that as I indicated earlier, they are more comfortable in English but it doesn't mean they can't express themselves in Kiswahili. Where the case is clear that the witness can comprehend English then we prefer English. But if it is an obvious case that they don't understand then you cannot attempt to speak to them in English. So as long as you achieve your objectives it is okay

Researcher: Lastly in such situations would you prefer the intervention of an interpreter who would have been trained as a court interpreter? Do you think this would help the justice system?

Lawyer: I am not so sure about that. I know the cases where interpreters are required are those where in when the witness or whoever is supposed to give evidence cannot speak English or Kiswahili in which case we need someone who can speak their language to interpret then we can get someone to interpret but if they can speak English or Kiswahili they are our official languages.