LINGUISTIC CHALLENGES FACED BY THE INTERPRETER IN PRESENTATION OF LITIGANTS EVIDENCE IN KERICHO COUNTY, KENYA

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Abstract: A court interpreter is a very important official when it comes to a legal setting. This is because the legal language used in a court is either English or Kiswahili. This being the norm, there are cases where an individual cannot use either hence the need for an interpreter. For the evidence to be presented and fair judgment to be passed the interpreter acts as a go-between, between the litigant and the magistrate bringing the relation amid the court language and presentation of evidence. This study did an investigation on the linguistic challenges faced by the interpreter in the presentation of litigants’ evidence in Kericho county, Kenya. Kericho being multicultural poses a challenge to its inhabitants due to the various language speakers who have legal needs like the Kipsigis, Dholuo, Akamba, Kikuyu, Abagusii, and Arabic. The objective of the study was to identify the linguistic challenges faced by the interpreter in the presentation of litigants’ evidence in Kericho County, Kenya. The study adopted the use of a case study design to determine the linguistic challenges and communication strategies of a court interpreter in a courtroom discourse. The main focus of the study was the Kericho Resident Magistrate Court as it is at the center of all the six constituencies and also is the only court that offers an interpretation. The study employed the relevance theory (RT), speech acts theory (SAT), information processing theory (IPT) and Language Expectancy Theory (LET) which aided in the description and analysis of the linguistic challenges and communication strategies of a court interpreters in courtroom discourse. The study produced both qualitative and quantitative data. For quantitative data, the analysis was done through descriptive statistics using SPSS version 23 where frequency percentages and averages were used. Qualitative data were analyzed thematically. The data were presented on tables, percentages, and graphs. The target population of the study was all the interpreters, litigants and court clerks. Purposive sampling was employed to identify the participants in Kericho Law Court to suit the researcher's need. It was found out that communication strategies used in court affect the evidence presented by the litigant. Also, lack of competence in the source language and target language, the level of education and years of experience have an effect on the presentation of evidence which leads to unfair judgment. It was noticed that pronunciation problems and litigants’ speed of speech are the main linguistic challenges faced by the interpreters and that circumlocution and use of ideal languages should be discouraged.

Keywords: Evidence, Interpreter and litigants

Introduction

Every culture or profession has a language that is unique to it like law, medicine, engineering, and business therefore it creates a dissimilarity between them. In a social and cultural setting people have a problem of communicating efficiently due to the uniqueness of every language, hence there must be a way in which people understand and use it so as to be able to come to an understanding. Since not every person can speak Kiswahili or English in Kenya, judgment that could have been passed impartially can be hindered leading to a need by interpreters to find ways of using their language skills to present evidence. Age, culture, and level of education have an effect on effective communication therefore the need to use interpreters although they are mostly unqualified but still they can do the interpretation. Kericho is a cosmopolitan county this making it multi-cultural. In this case, there is need for legal assistance when cases arise and an interpreter comes in. A court interpreter is a very important official when it comes to a legal setting. This is because the legal language used in a court are English and Kiswahili but there are cases where an individual cannot use either therefore the need for a court interpreter. Language is essential in creating effective communication between people thus there must be a means
used so that each can understand and use it well so that they can be in agreement. Therefore, for every communication to be effective language must be embraced. In the subordinate courts where various cases of different magnitude are dealt with this can be a challenge as the litigants can come in and cannot express themselves in either language or the magistrates presiding the case cannot understand the language used by the litigants and yet legally a litigant has a right to use a language they are comfortable in and so this creates a barrier amongst them leading to the need for an interpreter to be involved so as to create an understanding in the court.

Theoretical Review

This study fell under a number of fields. These are linguistics (pragmatics and sociolinguistics), communication, (human communication), among others. The study adopted the relevance theory as its theoretical framework. This explained the analytical framework that was used in the study to be able to explain the interpreter's language and presentation of litigant's evidence in the resident magistrate court in Kericho County, Kenya. Relevance is an instance of the application of the pragmatic maxim which says the meaning of a concept is the sum total of its implications for possible observations and actions as used in the relevance theory of meaning developed by Peirce which can also be put in the same category as the relevance theory of Sperber and Wilson (2005). Pragmatics is the view on how context contribute to meaning. This is so because utterances can be ambiguous or ambivalent. Hence a pragmatic theory should explain the difference between literal and non-literal interpretation.

The relevance theory was principally propagated for the purpose of communication in context as seen by Peirce but according to Sperber and Wilson (2005) they see it as a context changing potential. That is relevance of something changes the context in which it is being used. Practical meaning confirms understanding of something depends on how we view it hence influencing the outcome which can either be correct or wrong depending on how one sees it. From the relevance theory the inferential model of communication involves attempts to share, distribute and recognize acts of intention, emotion and other modalities delivered in communication. It aims at providing a theory of communication that can be used for reference for pragmatics in linguistics thus is fully dependent on one's psychology. There is a close connection between Pierce's philosophy and the ideas in pragmatics.

According to relevance theory, any external stimulus or internal representation which provides an input to cognitive processes may be relevant to an individual at some time. Utterances raise expectations of relevance not because speakers are expected to obey a Co-operative Principle or some other communicative convention, but because the search for relevance is a basic feature of human cognition, which communicators may exploit. Hence we can say that the theory is testable in real life situation like in the study of the court interpretation session.

The assumptions of the relevance theory are; better understanding of information is a mental process hence making the information relevant and the other deals with utterance interpretation which according to Grice (2009), to be able to understand a person's message, one to draw a meaning from the speakers intended message. This assumption make the theory relevant for the study as it focused on the interpreter inferring from the utterances made by the litigant in court.

Methodology

This study employed mixed method research design. Creswell (2008), described the mixed method research design as a method for conducting research that involves collecting, analyzing and interpreting quantitative and qualitative research whose purpose is to combine both designs to provide a better understanding of a research problem. The study therefore employed the case study design which aimed at describing, explaining, and giving opinions on the effects of interpreter's linguistic challenges on presentation of litigant's evidence in the resident magistrate court in Kericho County, Kenya hence being qualitative. The design was seen to be relevant as it allows the use of various data collection methods like observation done over a short period of time. To collect quantitative data the researcher used tables and checklists after analyzing the data and grouping them into themes.
Results and discussions

Table 1: Court Clerks’ and Interpreters’ Perceptions on Presence of Linguistic Challenges

<table>
<thead>
<tr>
<th>Linguistic challenges</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Litigants speed of speech</td>
<td>13 (86.7%)</td>
<td>2 (13.3%)</td>
</tr>
<tr>
<td>Unclear vocabulary</td>
<td>11 (73.3%)</td>
<td>4 (26.7%)</td>
</tr>
<tr>
<td>Ideal language</td>
<td>11 (78.6%)</td>
<td>3 (21.4%)</td>
</tr>
<tr>
<td>Source and target language interpretation</td>
<td>12 (80%)</td>
<td>3 (20%)</td>
</tr>
<tr>
<td>Verbatim Interpretation</td>
<td>12 (80%)</td>
<td>3 (20%)</td>
</tr>
<tr>
<td>Pronunciation problems</td>
<td>12 (85.7%)</td>
<td>2 (14.3%)</td>
</tr>
</tbody>
</table>

Source: Researcher 2020

4.1 Results and Discussions of Court Clerks’ and Interpreters’ Perceptions on Presence of Linguistic Challenges

Court clerks and interpreters were asked to indicate the linguistic challenges that they face when interpreting litigants’ cases. The findings from table 2 show that majority of 13 (86.7%) respondents indicated that litigant’s speed of speech is the main challenge during interpretation. On the other hand, majority of 11 (73.3%) respondents indicated that unclear vocabulary is amongst the barriers faced by the interpreters during interpretation. Furthermore, use of ideal language was realized to be a challenge since, majority of 11 (78.6%) respondents indicated a “yes” answer while 3 (21.4%) respondents indicated “no”. This is in agreement with the study done by Surbhi (2016) who acknowledged that the above are the common barriers during the court interpretation.

Regarding to whether Source and target language interpretation is a linguistic challenge faced by the court interpreters during the interpretation, majority of 12 (80%) respondents agreed by indicating a “yes” answer while 3 (20%) respondents disagreed. On the other hand, majority of 12 (80%) respondents indicated that verbatim interpretation is a challenge faced by the interpreters. When asked whether pronunciation problems is a challenge, majority of 12 (85.7%) respondents agreed by indicating a “yes” answer while 2 (14.3%) respondents disagreed. These findings corroborate the findings of the study done by O’Barr, (2002) who listed the above on his study on communication challenges faced by the interpreter during the interpretation of litigants’ evidence in court.

Table 2: Observation Findings

<table>
<thead>
<tr>
<th></th>
<th>Never</th>
<th>Hardly ever</th>
<th>Sometimes</th>
<th>Frequently</th>
<th>Often</th>
<th>Not applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Litigants speed of speech</td>
<td>-</td>
<td>-</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Unclear vocabulary</td>
<td>-</td>
<td>-</td>
<td>5</td>
<td>-</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Ideal language</td>
<td>2</td>
<td>-</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>Personality bias</td>
<td>3</td>
<td>-</td>
<td>4</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Source and target language competence</td>
<td>-</td>
<td>-</td>
<td>6</td>
<td>-</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Polysemy</td>
<td>1</td>
<td>-</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Context Usage</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
4.2 Results and Discussions of Observation Findings

Form the eight cases that were used during observation, it was observed that litigants speed of speech, lack of vocabulary clarity, use of ideal language, biasness of the personality, source and target language interpretation, polysemy, pronunciation and verbatim interpretation challenges were encountered in the court. This gives an indication that there is a room for improvement in the court so that he litigants will get fair judgment in every case handled. This is in agreement with the study done by Grabau (2006) where he asserted that every litigant has a right to a fair judgment that has been rightfully done basing on the laws governing an institution or a country.

Conclusion

The purpose of this study was to investigate the linguistic challenges faced by the interpreter in presentation of litigants’ evidence in Kericho County, Kenya. From the data collected a conclusion was made that when the interpreter faces linguistic challenges during the interpretation process hence interfering with the judgment being passed as there is a communication breakdown.

On identification of the linguistic challenges faced by the interpreter in presentation of litigants’ evidence it was noticed that litigants’ speed of speech is the main linguistic challenge faced by the interpreters. It was realized that unclear vocabulary, use of ideal languages and pronunciation problems are among the challenges faced by the interpreters as majority of the respondents agreed to that. This makes the information to overlay because turn taking was not adhered to. Some information is omitted or repeated hence the authenticity of the information is lost (Grabau, 2006). Verbatim interpretation and source and target language serve to distort the information interpreters are presenting either by exclusion of important information due to lack of an equivalent word or due to lack of understanding. This interferes with the court process as important information was not be relayed. This affects the litigant as justice will not be served due to misleading or unclear information.

Recommendation

The study recommends the following:

i) A research on interpretation from Dholuo to English has been done and hence this research was done from Kipsigis to English was done. This was meant to ascertain the similarity of the problem so as to improve the communication process in the court therefore other researchers are encouraged to try research in other languages.

ii) During interpretation, interpreters encounter challenges this affecting the communication process and misleading the magistrates hence, a study should be done to identify the consequences that have been brought by the challenges in terms of the judgment passed.

References