

The Pragmatic Impact of Grammatical Structures in Courtroom Interpretation and Translation

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Courtroom interpretation and translation require a nuanced understanding of not only vocabulary but also the pragmatic impact of grammatical structures. This paper examines the pragmatic impact of grammatical structures on interpretations in the Kisii Law Courts. Using data collected from actual proceedings, the paper analyzes how seemingly minor grammatical differences can have significant consequences for the accuracy and fairness of the legal process. By applying Mey's (2001) Pragmatic Act Theory (PAT), we analyze how modal verbs, passive voice and nominalisation function within the context of the courtroom, influencing the interpretation of witness testimonies, judge's instructions, and lawyer's arguments. Specifically, we explore the use of passive voice within the context of PAT, analyzing how these choices interact with the social context and speaker intention. We will also examine the pragmatic effects of passivisation on agency, responsibility, and the focus of witness testimony, examining how they shape the understanding of events and culpability. It is crucial for court interpreters and translators to accurately convey the intended meaning and effects of pragmatic acts in court proceedings.

Keywords: Pragmatic Act Theory, court interpretation and translation, passive voice, nominalisation, modal verbs

Introduction

The courtroom is a unique social and linguistic environment where precise communication and clarity are paramount in determining legal outcomes¹. In this setting, the accuracy and clarity of interpretation can significantly influence legal outcomes and ensure that justice is administered fairly. When legal proceedings involve multiple languages, the role of the interpreter or translator becomes crucial. Interpretations play a crucial role in ensuring fair trials for participants who do not share the language(s) of the court. They provide a vital link that enables participants in proceedings to understand and participate fully in the judicial process. However, the act of interpretation goes beyond simply transferring literal meaning. It involves conveying the nuances, context, and cultural subtleties of the spoken word, which are crucial for ensuring that all parties fully understand the proceedings and can

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¹ Coulthard & Johnson (2007); Kibee (2016); Guillén-Nieto & Stein (2022).

participate effectively. Grammatical structures often carry subtle nuances that can significantly alter the intended meaning. This deeper level of interpretation is essential for maintaining the integrity of the judicial process and safeguarding the rights of non-native speakers. Grammatical choices made by the interpreter can subtly influence how the interlocutors perceive the weight and intent of spoken words. The way an interpreter chooses to construct sentences, emphasise certain words, and convey tone can significantly affect the understanding and interpretation of legal testimony and arguments. These nuances are critical in a courtroom setting, where the precise meaning and implications of language can impact judicial outcomes. This paper examines the pragmatic impact of grammatical structures on interpretations in the Kisii Law Courts, utilising the framework of Mey's² Pragmatic Act Theory (PAT). By applying this theory, we will analyse how modality, nominalisation and passivisation function within the context of the courtroom, influencing the interpretation of witness testimonies, judge's instructions, and lawyer's arguments. Specifically, we will explore how modal verbs influence the interpretation of obligation, possibility, and certainty in courtroom exchanges, considering their role within the power dynamics and social hierarchy of the courtroom setting. Furthermore, we will examine the pragmatic effects of passivisation on agency, responsibility, and the focus of witness testimonies, analysing how they shape the understanding of events and culpability. By analysing these aspects through the lens of PAT, this paper aims to shed light on the nuanced interplay between grammar, social context, and meaning in the courtroom setting of the Kisii Law Courts.

Literature Review

Modal Verbs, Pragmatics, and Legal Discourse

Modal verbs are important linguistic tools in legal settings because they help frame the terms of legal arguments and demarcate the boundaries within which legal decisions are made. Their precise interpretation can affect the outcome of legal proceedings by clarifying the extent of duties, rights, and prohibitions. Available studies emphasise how modal verbs shape the interpretation of legal documents and courtroom interactions, conveying obligation, permission, possibility, certainty, and necessity³. Furthermore, these investigations underscore the broader significance of modal verbs in legal contexts by highlighting how they contribute to the construction of legal norms and the articulation of judicial reasoning. By examining the usage and function of modal verbs, researchers can better understand the dynamics of legal language and its impact on the administration of justice. This understanding is essential for both legal practitioners, who must navigate and construct clear and persuasive legal arguments, and for scholars, who seek to analyse the subtleties of legal language and its effects on legal outcomes.

A significant body of research has focused on the linguistic features of legal English, with particular emphasis on mood and modality. These studies have

²Mey (2001).

³Huddleston & Pullum (2002).

explored how these grammatical elements contribute to the characteristic formality, precision, and objectivity of legal language. Additionally, the prevalent use of the "shall" construction in legal texts has attracted considerable scholarly attention. From a cross-linguistic and cross-cultural perspective, researchers such as Kimble⁴, Calboli⁵, Foley⁶, Garzone⁷, Gotti⁸, and Williams⁹ have examined the functions and implications of this construction in legal discourse. It is apparent that these studies fail to show how mood and modality impact the pragmatic aspects of court interpretation and translation. Mood and modality choices in legal communication influence the pragmatic functions of court interpretation and translation, and impact on the administration of justice. The present study explores the pragmatic functions of legal language, focusing on how mood and modality contribute to legal communication.

The translation of modal verbs in legal contexts has been a significant focus of scholarly investigation. Researchers have explored the complexities and challenges these verbs present when translating between specific language pairs. Zhangjun & Jiang¹⁰ have made notable contributions to understanding these difficulties, highlighting the nuanced interpretations required to accurately convey legal meanings across different languages. Their work underscores the importance of precision in legal translation, where the slightest misinterpretation can have substantial implications. As such, ongoing research continues to explore effective strategies for translating modal verbs to ensure clarity and accuracy in legal documents.

The role of modal verbs in legal communication has been examined by various scholars from diverse perspectives. Zhangjun & Jiang¹¹ have explored the mechanics of translating modals in courtroom settings and the associated challenges. These modal verbs are essential tools for language users in legal discourse, facilitating the expression of obligation and permission, which are crucial for achieving the speakers' objectives in legal contexts. Additionally, the inherent ambiguity of modal verbs can be strategically employed by legal practitioners to sway cases in their favour¹².

However, these studies primarily focus on broad theoretical frameworks or specific legal systems in predominantly monolingual contexts. There is a notable lack of empirical studies on the pragmatic impact of modal verbs within multilingual legal environments, such as those found in the Kisii Law Courts. This study seeks to investigate how modal verbs are translated and interpreted in real courtroom interactions in Kisii. By doing so, this study aims to contribute a nuanced understanding of the pragmatic challenges and implications of modal verb usage in

⁴Kimble (1992).

⁵Calboli (2001).

⁶Foley (2001).

⁷Garzone (2001).

⁸Gotti (2001).

⁹Williams (2005) (2006).

¹⁰Zhangjun & Jiang (2014).

¹¹Zhangjun & Jiang (2014).

¹²Krapivkina (2017).

legal translations in a multilingual setting, offering insights that can enhance the accuracy and fairness of legal proceedings in such contexts.

Purpose-oriented studies investigating the function of modal verbs in legal discourses assert that modal verbs influence and shape social norms, practices, behaviours, and actions within their respective environments. Cheng & Wang¹³ highlight how modals play a crucial role in legal contexts, not only in facilitating communication but also in guiding and regulating conduct according to established legal standards. However, the study does not address their pragmatic impact, particularly in court translation. The influence of modality on legal communication, especially in multilingual and translation-heavy contexts like the Kisii Law Courts, remains underexplored. This study, which is part of a larger on-going investigation, aims to fill this gap by investigating how the use of modal verbs in translations can affect legal clarity, the perception of authority, and the overall administration of justice in a court setting.

Within the context of courtroom interpretations, the pragmatic impact of modal verbs deserves further investigation. How do modal verbs used by the interpreter influence the interpretation of witness testimonies, judge's instructions, and lawyer's arguments? For example, does the use of "could" to translate a statement originally phrased with "might" affect the perceived likelihood of an event?

Passive Voice, Pragmatics and Legal Interpretation

Passive voice is another grammatical feature that characterises legal discourse¹⁴. Passivisation is a syntactic strategy that allows the interpreter to avoid or suppress the agent in a statement, effectively eliminating or obscuring the identity of the agent¹⁵. Accurate transmission of passive constructions into interpreted renditions is crucial to avoid meaning shifts that could compromise justice and fair adjudication of proceedings¹⁶. This strategy underscores the importance of maintaining the original nuances and intent in legal translations to ensure the integrity of legal processes. Despite the extensive literature on the importance of precision and accuracy in legal translations, there is a notable gap in empirical research focusing specifically on the pragmatic impact of passive voice in court translation, particularly within the context of Kenyan courts. Previous studies have predominantly analysed theoretical frameworks or contexts within Western legal systems. However, the unique linguistic and cultural dynamics present in Kisii Law Courts have not been thoroughly examined.

Research in legal communication suggests that the use of passive voice in legal communication can serve various strategic purposes. It can downplay culpability, obscure agency and responsibility, deflect blame, lessen the impact of an action, and dissociate the speaker from potentially incriminating information. Additionally, it can shift the focus onto the object when it is more important than the subject in a

¹³Cheng & Wang (2015).

¹⁴Jarmołowska (2011); Bulatović (2013).

¹⁵Cortés (2019).

¹⁶Mason (2015).

case¹⁷. These functions highlight the deliberate use of passive constructions in legal writing to shape interpretations and influence legal outcomes. While much attention has been given to the strategic use of passive voice in written legal documents, literature concerning its role and impact in oral legal communication, particularly within courtroom settings is lacking. This research seeks to provide insights into the interplay between passive voice usage and legal strategy in a multilingual judicial context, ultimately contributing to a deeper understanding of how language shapes legal processes and outcomes.

The differences in voice between the source language and the target language create challenges for the interpreter. These challenges arise because each language has its own unique set of rules and conventions for expressing voice, which includes aspects like tone, mood, and emphasis. Kordić¹⁸ argues that while some languages and cultures favour the use of the passive voice, others opt for the use of the active voice. This study indicates that whereas English favours the passive voice, Croatian leans towards the active voice. Accordingly, passive voice in English might be rendered differently in a Croatian, requiring the interpreter to not only translate the words but also to adjust the sentence structure to maintain the intended meaning and impact. The interpreter must therefore possess a deep understanding of both languages to convey the message accurately and effectively, ensuring that the original sentiment and context are preserved. This intricate process demands a high level of skill and adaptability, highlighting the complexities inherent in interpretation.

By analysing the use of passive voice through the PAT lens, we can explore how it interacts with social context and speaker intention within the courtroom setting. Does the use of passive voice when translating witness testimonies shift focus from the perpetrator to the action itself? How might this influence the understanding of culpability by the judge or magistrate?

Nominalisation, Courtroom Discourse and Pragmatics

Nominalisation, the process of converting verbs and adjectives into nouns, is a significant grammatical feature. Despite its regular use in courtroom communication, nominalisation remains a little-studied topic of inquiry.¹⁹ Bhatia²⁰ discusses the pervasive use of nominalisation in legal English. He argues that nominalisation contributes to the formality and impersonality of legal texts, making them more complex and less accessible to laypersons. It is a useful linguistic device used to condense information and enhance textual cohesion.

Mattiello²¹ investigates nominalisation in English and Italian legal discourse, particularly the syntactic structure of complex noun phrases in the two languages and identifies their crucial pragmatic functions and effects in a textual dimension and in anaphoric references in both languages. The study demonstrates the massive

¹⁷Eggin (2004); Haigh (2009); Chaemsaitong (2021)

¹⁸Kordić (2020).

¹⁹Bhatia (1983); Jottini (2002); Williams (2008); Haigh (2009).

²⁰Bhatia (1993).

²¹Mattiello (2010).

use of nominalisations in written normative legal texts, in that it is often viewed as an element of interpretative difficulty for the receiver. However, a highly nominal style is bound to create difficulties in the unpacking of such expressions, especially for Bhatia²². While these studies provide valuable insights into the use and impact of nominalisation in legal texts, they predominantly focus on Western languages and legal systems. There is a notable gap in research examining how nominalisation affects court translation in non-Western contexts, particularly in African legal systems.

Nominalisation is a key feature of academic discourses and an important grammatical resource in legal discourses, helping writers construct a specialised lexical register. Wang²³ examined its impact in legal texts from a discourse perspective, discovering that nominalisation aids in the realisation of technicalisation, rationalisation, and interpersonalisation. Specifically, nominalisation aids in the creation of technical words across many disciplines, organises the text using periodicity, and facilitates either alienation or solidarity among language users. Lei and Yi²⁴ also reviewed four types of empirical studies on nominalisation—syntactic structure analysis, pragmatic function analysis, textual dimension studies, and anaphoric reference studies—concluding some limitations in existing research. Their systematic and comprehensive analysis identified nominalisation patterns both quantitatively and qualitatively, but focused primarily on Western languages and legal systems. Additionally, their review did not extensively cover the pragmatic implications of nominalisation in legal translations, particularly in multilingual court settings. This gap is critical because legal translations require a precise and context-sensitive approach to ensure justice and comprehension across different languages. The current study aims to fill this gap by exploring the pragmatic impact of nominalisation in court translation at the Kisii Law Courts, thus contributing to a more comprehensive understanding of nominalisation across diverse linguistic and legal landscapes.

Dealing with nominalised expressions in court translation and interpretation is a challenging task. If not properly handled in translation, they can lead to ambiguities and misunderstandings, obscure meaning and agency, reduce the explicitness of legal language, affect the clarity and precision of legal language as well as complexity of legal texts²⁵. This therefore requires a strategic approach to the translation and interpretation of these linguistic structures to improve clarity and comprehension in legal proceedings to ensure that the intended meaning is conveyed accurately. The key guide towards accurate translation of nominalisations being context and the need for a deep understanding of both the source and target languages²⁶. However, these studies have predominantly focused on broader contexts, or other jurisdictions, leaving a gap in understanding how nominalisations affect legal translations and interpretations within the Kisii Law Courts. The current study offers context-specific

²²Bhatia (1983).

²³Wang (2003).

²⁴Lei and Yi (2019).

²⁵Tiersma (1999); Berk-Seligson (2002); Gibons (2003); Hale (2004); Coulthard & Johnson (2007).

²⁶Huyên (2011).

insights of nominalisations in court translation at Kisii Law Courts, highlighting the unique challenges and strategies pertinent to this setting.

In conclusion, nominalisation plays a critical role in the linguistic landscape of legal discourse, shaping the formality, complexity, and interpretative challenges of legal texts. While existing research has thoroughly examined nominalisation in Western legal systems, there remains a significant gap in understanding its impact in non-Western contexts, particularly in the realm of court translation and interpretation. This study addresses this gap by focusing on the Kisii Law Courts, providing valuable insights into the pragmatic effects of nominalisation in a multilingual legal setting. By exploring the unique challenges and strategies involved in translating nominalized expressions, this research contributes to a deeper comprehension of the nuanced interplay between language, law, and translation in African legal contexts. Ultimately, a more context-sensitive approach to nominalisation in legal translations is crucial for ensuring clarity, accuracy, and justice in court proceedings, underscoring the importance of linguistic expertise in legal settings.

Methodology

The primary data source for this study are recordings of courtroom proceedings from the Kisii Law Courts. With permission from the relevant authorities (the court administration, and NACOSTI through the University of Nairobi, Kiswahili Department), audio recordings of court cases were collected between September 2020 and April 2021 by the first author. A purposive sampling technique was used to select court cases that involve witness testimonies, judge's instructions, and lawyer's arguments. This ensured the data corpus contains relevant examples for analysis.

The collected audio recordings were transcribed verbatim creating a textual dataset for further analysis. A coding scheme was developed to identify and categorize instances of modal verbs, passive voice and nominalisations used in the transcripts. The coding scheme considered the grammatical form, the speaker (judge, lawyer, litigant, interpreter), and the speech act context (e.g., question, statement, instruction). A qualitative thematic analysis approach was used to identify recurring patterns and themes in the use of modal verbs and passive voice across the transcripts. This involved identifying how these grammatical structures shape the interpretation of speech acts within the courtroom setting. The analysis was guided by the principles of PAT, focusing on speech act theory, intention recognition, and context dependence.

Pragmatic Act Theory (PAT)

This paper utilizes Pragmatic Act Theory (PAT) for analyzing the pragmatic impact of selected grammatical structures in courtroom interpretations. PAT emphasizes the importance of "situated speech acts" and the social context in understanding the meaning conveyed beyond the literal words spoken (Mey, 2001).

This framework is particularly suited to this study as it allows us to move beyond grammatical analysis and explore how these structures influence the interpretation of courtroom interactions within a specific social and legal setting.

PAT views language as a form of action. When people speak, they perform an act with a specific intention, such as informing, requesting, or persuading (Mey, 2001). In the courtroom, interactants perform speech acts with specific goals in mind. Judges issue rulings and directives that must be followed; lawyers present arguments intended to convince the court of their client's position; and litigants provide testimonies that can affirm or challenge the narratives being constructed in the courtroom. Each utterance is a strategic act designed to achieve a particular objective within the legal process.

PAT emphasizes the importance of recognising the speaker's intention behind their words. This intention goes beyond the literal meaning and considers the speaker's purpose and desired outcome within the specific context. In the courtroom, understanding these intentions is crucial for interpreters, who must accurately convey not just the words spoken, but the underlying purposes and strategies. The failure to capture these nuances can lead to misunderstandings and misrepresentations that affect the fairness and outcome of legal proceedings.

Meaning in PAT is highly dependent on the context in which the speech act occurs. This context includes the social setting, the participants' roles and relationships, and the shared knowledge they possess²⁷. The courtroom has a distinct social context with established power dynamics and specific goals. Understanding this context is crucial for interpreting the intended meaning behind grammatical structures used in courtroom interactions.

The application of PAT to the analysis of courtroom interpretations underscores the complexity and significance of language as a form of action within legal settings. By focusing on the intentions behind speech acts and the social context in which they occur, PAT provides a nuanced framework that extends beyond mere grammatical analysis. It reveals how strategic language use in the courtroom is integral to the functioning of the legal process, influencing the interpretation, fairness, and outcomes of legal proceedings. This study highlights the critical role of interpreters in capturing these subtleties, demonstrating that the meaning conveyed in legal interactions is deeply intertwined with the social and situational dynamics of the courtroom. As such, PAT offers valuable insights into the pragmatic dimensions of legal language, emphasising the importance of context and intention in understanding and interpreting courtroom discourse.

Grammatical Structures, Pragmatics and the Interpretation and Translation of Legal Discourses

Grammatical structures have a significant influence on the interpretation and translation of legal discourses within a court setting, leading to shifts in intended meaning and pragmatic effects. The way sentences are constructed, the choice of

²⁷Mey (2001).

modal verbs and the use of passive or active voice and nominalisation can all alter how a statement is understood and its impact on the listener. In legal contexts, any slight change in grammatical structure can transform the illocutionary force of a statement, altering its intent from a command to a suggestion, from a fact to an opinion, or from a clear directive to an ambiguous remark. Interpreters must navigate these grammatical subtleties to ensure that the original intent and pragmatic effects of the speaker's words are accurately conveyed in the target language.

Modal Verbs, Pragmatics and Meaning Making in Interpreted Courtroom Discourse

Understanding the use of modal verbs is complex because it involves both logical (semantic) meanings and practical (pragmatic) aspects influenced by social and psychological factors²⁸. Any interpretation that fails to consider this duality risks altering the meaning transmitted into the target text. Social and psychological factors, such as condescension, politeness, and irony, can significantly impact the basic semantic meanings of modals in mediated courtroom communication. Therefore, accurately interpreting modal verbs requires a nuanced understanding of both their inherent meanings and the contextual influences that shape their use.

Modal verbs express degrees of possibility, necessity, or obligation²⁹. Modal verbs such as "must," "shall," "may," and "can" carry varying degrees of obligation, permission, and possibility, which can alter the way statements and questions are understood and interpreted in a legal context³⁰. In legal contexts, they can be used to indicate the level of certainty or authority of a statement or requirement, as well as the consequences of non-compliance³¹. In court proceedings, the use of modal verbs contributes to the illocutionary force and perlocutionary effects of speech acts, influencing the perception of the speaker's intention by the recipient. The illocutionary force refers to the intended function of the speech act, such as commanding, questioning, or asserting³². For example, when a judge uses "must" in a directive, it indicates a strong obligation, leaving no room for discretion. Conversely, when an advocate uses "may" while cross-examining a witness, it suggests a possibility or permission, which can subtly influence the witness's response or the perception of their testimony. The perlocutionary effect, on the other hand, is the impact that the speech act has on the listener, which includes their emotional response, belief, or action taken as a result. For instance, an advocate's use of "should" in a closing argument might persuade the judge to view the defendant's actions as ones they ought to condemn, thereby affecting the deliberations and verdict. In the multilingual and multicultural context of Kenyan courtrooms, the interpretation of these modal verbs becomes even more complex. Interpreters must accurately convey both the illocutionary force and perlocutionary effects of the original speech act, ensuring

²⁸Leech (2004).

²⁹Leech (2004); Biel (2014).

³⁰Searle (1969); Bhatia (1983); Leech (2004).

³¹Lundquist (2015).

³²Searle (1969).

that the recipient's perception of the speaker's intention remains intact. This task requires not only a deep understanding of the source and target languages but also an awareness of the legal and cultural subtleties that influence interpretation. This is illustrated in the following example, from the *Republic v. Otwoma, MCSO/18/2020*³³ where the accused could not take plea when he was first presented to court on account of the injuries sustained during his arrest that required medical attention and the court had to make a determination. The suspect was alleged to have participated in the murder of four elderly women;

- Magistrate:* The suspect **shall** be remanded at the Kisii Central Police Station. Since the suspect reported that he is feeling unwell he **can** be taken to Kisii Teaching and Referral Hospital for treatment.
- Interpreter:* Utafungwa katika kituo cha Polisi cha Kisii Central. Pia utapelekwa Kisii Level Six kutibiwa. {You will be detained at Kisii Central Police Station. You will also be taken to Kisii Level Six (Hospital) for treatment}.

The magistrate declares that the accused must be held in the Kisii Central Police Station and employs the modal verb "shall" to denote a mandatory action. On the other hand, the modal verb "can" is used to suggest that the possibility of suspect to be escorted to Kisii Teaching and Referral Hospital to seek medical attention. Although interpreter precisely and successfully conveys the core message through the interpreting process, there are minor variances in how modality is expressed. In the first part the modal "**shall**," has been interpreted using the prefix "-ta" in "utafungwa" (you will be locked up) maintaining the sense of a compulsory action. However, the phrase "utapelekwa" which has been used for "**can**" implies a sense of obligation, in contrast to the possibility and permission that is suggested by the phrase "can be taken," which is also interpreted as "utapelekwa" (you will be taken), instead of "umeruhusiwa kupelekwa" (you have been permitted to be taken). Overall, despite some minor linguistic deviations, the interpreter's rendition largely adheres to the original statement's pragmatic meaning, which stipulates that the accused must be detained at the Kisii Central Police Station and that, given his alleged medical condition, he may be sent to the Kisii Teaching and Referral Hospital for treatment. The interpreter retains the imperative tone that the original modal verbs suggested. The English modal verb "shall", is often used in legal texts to indicate a mandatory requirement, whereas "can" indicates possibility. However, in the example above, these two have been assigned a similar rendition in Kiswahili. Such differences in modal systems affect the intended meaning and skopos of legal translation or interpretation, consequently, the interpretation of modal verbs requires careful consideration by the translator or interpreter.

The use of modal verbs in legal texts often results in different levels of obligation, permission, or possibility in court interpretation and translation. Generally, the use of "**shall**" signifies a compulsory obligation, "**may**" implies permission or potentiality, "**must**" denotes a stringent demand, and "**should**" suggests a recommendation. Ensuring the preservation of the legal meaning and intent is of utmost importance

³³*Republic v. Otwoma, MCSO/18/2020*

when translating and interpreting modal verbs. Even minor changes in these words might result in significant negative implications within a legal context. If these levels are not accurately transmitted into the TT, they can lead to pragmatic meaning shifts, as it is in the following example, from *The Republic v. Kingoina, MCCR/19 11/2017*³⁴.

<i>Advocate:</i>	<i>Where did you meet the accused?</i>
<i>Interpreter:</i>	<i>Ulimkuta mshtakiwa wapi? {Where did you meet the accused?}</i>
<i>Witness:</i>	<i>I might have seen him near the bank.</i>
<i>Interpreter:</i>	<i>Nimemwona karibu na benki. {I have seen the accused near the bank}</i>

The modal verb "might" convey possibility or uncertainty. The speaker does not know for sure if he spotted the suspect close to the bank. But depending on the circumstances, this sentence may mean several different things in a legal setting. For instance, the use of "**might**" in the evidence presented by the prosecution against the accused could imply that the witness's testimony is unreliable, which would undermine the case against the suspect, or it could call for additional evidence to confirm the trustworthiness of the witness's testimony. The interpretation chose to use the translation "*nimemwona*," which means "I have seen," instead of the modal in order to show assurance. This is a radical departure from the original. The interpretation makes a clear claim that the accused was seen by the witness close to the bank. The witness's intended illocutionary force is misrepresented by the interpreter's failure to appropriately convey this doubt. This departure from the initial uncertainty could have an impact on how the witness's statement is interpreted and understood in its entirety. The use of the past tense distorts the witness's testimony into being more confident than it was supposed to be because of his uncertainty, which was pertinent to the evidence that was provided.

Modal verbs play a crucial role in conveying legal nuances and obligations within a text. Their interpretation can substantially affect the legal consequences of a statement. They shape the illocutionary force and perlocutionary effects of speech acts, influencing the perception of the speaker's intention by the recipient. Ensuring the preservation of the legal meaning and intent when translating and interpreting modal verbs is paramount. Interpreters must accurately convey the illocutionary force and perlocutionary effects of modal verbs, considering the legal and cultural nuances to maintain the integrity of the original message.

Voice, Pragmatics and meaning shift in Interpretation

In grammar, "voice" refers to the form of a verb that indicates the relationship between the subject of the sentence and the action or state described by the verb³⁵. There are two primary voices: active voice and passive voice. In the active voice, the subject of the sentence performs the action. In the passive voice, the subject of

³⁴*The Republic v. Kingoina, MCCR/1911/2017*

³⁵Strunk & White (2000).

the sentence is acted upon by the verb. The object of the action becomes the subject of the sentence. The choice between active and passive voices in court proceedings significantly impacts the clarity, tone, and emphasis of legal communication. While active voice promotes directness and clarity, passive voice can enhance formality and impartiality. Translating these voices accurately requires a deep understanding of linguistic nuances and legal conventions to ensure the intended meaning is preserved across languages.

Active voice is preferred for its directness, vigour, and clarity³⁶. It is more straightforward than its passive counterpart. It clearly assigns responsibility or action to a subject, which is crucial in legal arguments and judgments, lending vigour to legal arguments by making them more forceful and assertive as can be seen in the following example from *Republic v Oyaro [2022] eKLR*.³⁷

Judge: *The post mortem report indicates that the deceased died as a result of complication of the chest with a sharp forced trauma.*

Interpreter: *Marehemu alikufa kutokana na shida za kifua jinsi uchunguzi wa daktari unavyoonyesha (the deceased died due to chest problems as indicated by the doctor's report)*

The original sentence in active voice places the focus on the post mortem report and the specific cause of death. The agency is clear, suggesting an explicit cause (sharp forced trauma). However, the interpreted rendition in passive voice shifts the focus away from this specific cause to a more generalised cause ("chest problems"). This can diffuse the explicit responsibility and make the statement less direct. The active construction provides a clear, direct description of the cause of death, which is important in legal and medical contexts where specificity is crucial. The passive construction results in a less specific and potentially ambiguous statement, as "chest problems" is a broader term than "complication of the chest with a sharp forced trauma."

The original statement by the judge performs two acts – informing and asserting. It provides specific information about the cause of death and clearly states the results of the post mortem report. However, the interpreted renditions depart from these acts to mitigate and defocus. It potentially softens the harshness of the cause by generalising it and reduces the emphasis on the specific traumatic cause of death, which could be a strategy to lessen the emotional impact.

The shift from active to passive voice in the interpretation has significant pragmatic effects. It changes the focus from a specific, direct cause of death to a more general and potentially less alarming cause. This shift can alter the perceived agency and responsibility, making the statement less confrontational and possibly more palatable for the audience. This change in voice can serve different communicative purposes, such as mitigating the emotional impact while potentially sacrificing specificity and clarity.

³⁶Strunk & White (2000).

³⁷*Republic v Oyaro* (Criminal Case 6 of 2022) [2023] KEHC 21354 (KLR) (21 July 2023)

The ST as uttered by the judge is in active voice. Here, the subject ("the post mortem report") performs the action of indicating. The interpreted rendition on the other hand is in passive voice, which shifts the focus, its subject "*uchunguzi wa daktari*" (the doctor's report) is performing the action of indicating, but this is less prominent. Instead, the focus is more on "*marehemu alikufa*" (the deceased died) and the cause. The action is implied to be performed by "*uchunguzi wa daktari*" (the doctor's report), but it's not the main subject performing the action directly. Unlike the ST where the focus is on the action, the main focus of the TT is on the result "*marehemu alikufa*" (the deceased died), and then attributing this information to the doctor's report. This shift potentially affects how the information is perceived, actually placing more emphasis on the outcome and its medical attribution rather than the reporting process.

As noted earlier, passive voice constructions affect responsibility attribution and ultimately impact the interpretation of evidence and witness statements. In legal discourse, it can obscure who is responsible for an action. Sometimes, passive voice can be strategically used to omit the subject, which might be necessary for various legal reasons, such as when the subject's identity is unknown or irrelevant. A suitable example that illustrates the impact of passive voice on responsibility attribution and interpretation of evidence is found in the traffic case of *Samwel Ochako v. Gerald Oremo, MCCC/790/2019*³⁸ where the respondent during the defense hearing was arguing that the car was damaged during a heated exchange that ensued after the vehicles involved in the accident had collided.

Advocate: *Can you describe what happened to the car?*

Interpreter: *Nonyare koeresa ekiaberete egari? (Are you able to explain what happened to the vehicle?)*

Witness: *Egari nigo yasaretigwe ekeru bare kwomana. (The vehicle was damaged when they were quarrelling)*

Interpreter: *The car was damaged during the altercation.*

Advocate: *Who damaged the car?*

Interpreter: *Ning'o oyesaretie? (Who damaged it)*

Witness: *Aro timanyeti buya, rakini ekeru nayerigereretie konye yasariigwe. (I do not know very well, however when I looked at it, I saw it already damaged)*

Interpreter: *I'm not sure, it was just damaged when I looked.*

Advocate: *Was there anyone around the car when it was damaged?*

Interpreter: *Onde naroo orenge ang'e ekeru yasaretigwe? (Was anyone close by when it was damaged?)*

Witness: *Ee, ko bono tindochi kabisa ng'a ning'o oyesaretgie. (Yes, but then I never actually saw who damaged it).*

Interpreter: *Yes, but I didn't see who actually did it.*

In this example, the use of the passive voice "The car was damaged" ("*egari eyasaretuwe*") in both the English and Ekegusii versions omit the subject who performed the action. This omission affects the attribution of responsibility because it leaves out who actually caused the damage. The witness's statements, in passive

³⁸ *Samwel Ochako v. Gerald Oremo, MCCC/790/2019*

voice, avoids specifying the responsible party, which can lead to ambiguity in legal interpretation. This is a strategic use of passive voice, possibly because the witness genuinely does not know who damaged the car, or they might be avoiding implicating someone directly. In legal settings, this lack of clarity significantly impacts the proceedings, as it obscures accountability and could lead to various interpretations or misunderstandings.

Passive voice constructions allow the focus to be on the action, process or event rather than on the agent or doer of the action³⁹. In passive voice, the syntactic arrangement places the emphasis on the receiver or the process, rather than the agent or the doer of the action⁴⁰. For example, “**The evidence was collected**” is a passive voice construction used by the prosecutor while reading the facts of an assault case in which the accused pleaded guilty. But in the statement the person responsible for collecting the evidence is not explicitly mentioned. On the other hand, the interpreter offers a rendition that expressly mentions who collected the evidence “*Afisa wa polisi akakusanya ushahidi*, (a police officer collected the evidence) effectively shifting from the original passive voice to an active voice construction that explicitly states the agent responsible for the action. The choice of passive voice impacts the attribution of responsibility and influences the interpretation of evidence or witness statements in court proceedings.

In legal texts, the use of passive voice, a linguistic construction where the subject of the sentence, the one performing the action, is either not explicitly stated or is positioned after the action. This grammatical structure when it is adopted, it shifts the focus from the doer of the action to the action itself. Its use in court interpretation and translation contexts, introduces a layer of complexity, as it can lead to pragmatic meaning shifts with potential adverse implications for legal proceedings. The use of passive voice has the potential to disguise the agency and responsibility of those involved, which may result in ambiguity or confusion⁴¹. In the present study an example illustrating this phenomenon is in *Samwel Ochako v. Gerald Oremo, MCCC/790/2019*⁴², a traffic case, where the reporting of events was crucial for establishing liability:

- | | |
|--------------|--|
| Advocate: | <i>While driving along Kisii -Migori road when at Itierio junction area you negligently drove the said motor vehicle and permitted it to collide with motor vehicle registration number xxx. Occasioning injuries on the complainant?</i> |
| Interpreter: | <i>Gari lako likagongana na gari lingine sehemu ya Itierio na kusababisha majeraha kwa mlalamishi? {Your vehicle collided with another vehicle at Itierio causing injuries on the complainant}</i> |

In the original statement by the advocate, the active voice is used to attribute responsibility to the respondent for negligently driving the motor vehicle and

³⁹Bhatia (2010).

⁴⁰Nord (1997).

⁴¹Bhatia (2010).

⁴²*Samwel Ochako v. Gerald Oremo, MCCC/790/2019*

causing a collision. The advocate is emphasising the actions of the driver, clearly stating that the driver was the one who negligently operated the vehicle, leading to the collision. The active voice in this context not only identifies the responsible party but also emphasises their agency in the actions described. This grammatical choice is often employed in legal discourse to convey a sense of accountability and to highlight the specific individuals involved in a given event. In contrast, the passive voice might alter this emphasis by de-emphasising the doer of the action and shifting the focus to the action itself, as seen in the interpreted rendition. In the interpretation provided, a shift to passive voice is observed. The interpreter does not directly attribute the action to the subject; rather, it describes the event in a more neutral way.

The pragmatic meaning shift in this case is a shift in emphasis from the advocate's accusatory tone to a more neutral and factual representation of the events. The interpreter's use of the passive voice downplays the responsibility of the subject and presents the information in a less confrontational manner. This change in linguistic structure can affect the perceived tone and level of blame in the interpretation. The passive voice is often used to focus on the action itself rather than the doer of the action, creating a more detached and objective tone.

The nuanced use of voice in legal language can significantly influence how events are framed and understood within a legal context. In this instance, the passive voice obscures the identity of the driver, whose negligence led to a collision with another vehicle leading to the passengers' sustaining injuries, placing the emphasis on the action rather than explicitly identifying the responsible party. This subtle linguistic choice does introduce ambiguity during the translation or interpretation process, impacting the clarity and accountability attributed to the individuals involved. As such, interpreters and translators must navigate these nuances diligently to ensure that the intended legal implications are accurately conveyed in the TL, minimising the risk of misinterpretation or misunderstanding. Pragmatic shifts arising from passive constructions have the potential to significantly influence how events and individuals are perceived within the legal framework.

Nominalisation, Pragmatic Shifts and meaning in Legal Interpretation

Nominalisation, the process of converting verbs, adjectives, or adverbs into nouns⁴³, offers communicators a way to condense ideas and create a more formal tone. It is a common feature in legal discourse that can enhance formality and precision. However, its overuse introduces ambiguity, vagueness, and interpretive challenges in communication. Nominalised phrases often obscure the agent performing the action, making the sentence passive and unclear about who or what is doing what⁴⁴. Additionally, nominalisations can have multiple meanings depending on the context, leading to confusion for the target audience as demonstrated in the following example from a theft case *Republic v. Mwebi, MCCR/18/2020*⁴⁵.

⁴³Fan, Tan & Li (2022).

⁴⁴Strunk & White (2000).

⁴⁵*Republic v. Mwebi, MCCR/18/2020*

Magistrate: Any objection?
 Interpreter: *Unapinga ama unakubaliana?* (Do you object or you agree?).

The question "Any objection?" contains the nominalized form "objection," which is a noun derived from the verb "to object." The use of "objection" here is a clear example of nominalisation. The Kiswahili translation uses the verbs "*unapinga*" (you object) and "*unakubaliana*" (you agree). This is a verbal rather than a nominal form. The translation avoids nominalisation by directly using the verbs. The translation is more direct and explicit, asking the respondent to either confirm or deny agreement directly through action verbs. The interpreter chose a more verbose and explicit construction compared to the more concise nominalised English phrase. The difference might reflect cultural or linguistic preferences. English often uses nominalisation to create more abstract and concise expressions, especially in legal contexts, while Kiswahili favours a more straightforward verbal approach. The translation maintains the functional equivalence of the original message. Even though nominalisation is not used, the essential meaning is preserved, ensuring the respondent understands the question's intent. The provided translation highlights a significant linguistic shift from nominalisation in English to a more explicit verbal form in Kiswahili. This shift reflects differences in how the two languages handle actions and processes. In translating legal or formal speech, such choices can affect the clarity and directness of the communication, but in this case, the functional equivalence is maintained, ensuring that the meaning is clear and unambiguous in both languages.

Nominalisations can make sentences more abstract, which may obscure the specific actions and responsibilities involved. For instance, "the implementation of the order" is less clear than the rendition "*Omo-OCS agaikerania ogochika gwekegambero*" (the OCS implemented the order). The interpretation offered clearly identifies who is performing the action.

The interpreted rendition offered enhances clarity and communicative effectiveness. Following PAT, it focuses on the context-dependent nature of language use, emphasising how speakers and listeners use language to perform various acts within specific contexts⁴⁶. The phrase "the implementation of the order" is an example of nominalisation where the verb "implement" is turned into the noun "implementation." This abstraction potentially obscures the agent responsible for the action, making it less clear who is performing the implementation. In a legal context, such ambiguity might lead to confusion or misinterpretation regarding accountability. In contrast, the interpretation "*Omo-OCS agaikerania ogochika gwekegambero*" (the OCS implemented the order) removes this ambiguity by clearly identifying the OCS (Officer Commanding Station) as the agent. This direct identification aligns with the pragmatic principle of clarity, ensuring that the listener understands who is responsible for the action.

Intentions behind utterances and how they are perceived by listeners is an integral part in understanding what is said by a speaker. In the nominalised form, "the implementation of the order," the intention behind specifying who is responsible is less transparent. This can be problematic in situations where understanding the

⁴⁶Mey (2001).

agent's role is crucial, such as legal proceedings or administrative processes. The interpretation “*Omo-OCS agaikerania ogochika gwekegambero*” makes the intention explicit by attributing the action directly to the OCS. This not only clarifies who carried out the order but also implicitly addresses the responsibility and accountability of the OCS. Such explicitness can reduce misunderstandings and ensure that the intended message is accurately conveyed.

Every utterance performs a specific act within a given context. The nominalised form “the implementation of the order” performs an act of abstraction, potentially distancing the speaker from specifying details. This can be useful in contexts where generalisation is needed, but it can also hinder precise communication. The interpreter’s rendition “*Omo-OCS agaikerania ogochika gwekegambero*” performs a different pragmatic act: it conveys specificity and accountability. By naming the OCS as the agent, the interpretation performs an act of specification, which is crucial in contexts requiring clear attribution of actions. This act of specification enhances the pragmatic function of the utterance by making the communicative intent more transparent.

Social and cultural contexts is another key factor in interpreting utterances. In judicial settings, there is a preference for directness and clarity over abstraction. The interpreter’s choice to specify the OCS as the agent reflects an understanding of the institutional need for clear attribution of responsibility. In courtroom contexts where hierarchy and roles are clearly defined, specifying the agent is essential for maintaining order and accountability. The interpretation aligns with these contextual expectations, ensuring that the message is appropriately tailored to the legal norms.

The employment of nominalisation in legal discourses frequently yields abstract or technical language that poses challenges for comprehension during court interpretation and translation. It is further used to make abstract concepts more concrete. This involves constructing intricate noun phrases, which introduce ambiguity, imprecision, and vagueness. Court interpreters and translators can encounter challenges when working with legal materials due to the presence of nominalisation, resulting in the utilisation of excessively intricate or specialised terminology. This is an important pragmatic meaning shift in court interpretation and translation, as it helps to maintain impartiality and neutrality in the language used to describe the events of the case. For example, in delivering a judgement in an assault case, *Republic v. Kemunto, MCCR/05/2020*⁴⁷, the magistrate said, “the accused person’s actions caused the victim serious harm.” This was rendered by the court interpreter into Kiswahili as “*ulimsababishia mlalamishi majeraha makubwa.*” This is a rendition without the nominalisation that is in the original, which can be translated into English as “**you caused serious harm to the complainant.**” Were the interpreter to preserve the nominalisation, this could have been rendered as, “*matendo ya mshtakiwa yalimsababishia mlalamishi majeraha makubwa.*” The verb “caused” in the target text is translated as “*yalimsababishia,*” which is a simple past tense verb. The nominalisation is not included in this particular translation. However, in the target text with nominalisation, the same verb is translated as “**kusababisha,**” which is the nominalised form of the verb.

⁴⁷*Republic v. Kemunto, MCCR/05/2020*

The use of nominalisation in the original text is to direct the attention of the audience onto the complaint itself. However, the process of denominalisation shown in the interpretation results in a shift of focus, ultimately centring on the complaint. This suggests that the victim's involvement is diminished to that of a mere complainant rather than an active participant in the incident. The significance of this pragmatic meaning shift in CIT lies in its ability to underscore the impact of language choices on the perception and interpretation of evidence presented in court.

Conclusions

The use of different grammatical structures in legal texts thus affect the intended meaning and pragmatic effects of speech acts in court proceedings. Language is a multifaceted and intricate means of communication that undergoes development and transformation within the context of cultural environments, resulting in variations in grammar. The presence of grammatical differences has a substantial influence on the interpretation and translation of legal discourses within a court setting, leading to shifts in meaning and pragmatic implications. Modal verbs and passive voice constructions are important grammatical structures in legal language that shape intended meaning and pragmatic effects. Modal verbs are used to express different levels of obligation, possibility, or advisability, whereas passive voice constructions affect the attribution of responsibility. Differences in grammatical structures across languages can result in pragmatic meaning shifts during interpretation and translation. It is crucial for court interpreters and translators to consider these grammatical complexities to accurately convey the intended meaning and effects of pragmatic acts in court proceedings.

It is important to note that this study focused on a specific courtroom setting (Kisii Law Courts) and language pair Ekegusii-Kiswahili-English. Therefore, the findings might not be generalisable to other legal contexts or languages. We therefore recommend for more research to be conducted in other courts and jurisdictions so as to enable comparisons that can lead more reliable generalisations.

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