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**COURTROOM INTERPRETATION FROM DHOLUO TO  
ENGLISH: A STYLISTIC AND PRAGMATIC ANALYSIS**

**BY**

**BEATRICE OWITI**

**A THESIS SUBMITTED TO THE UNIVERSITY OF HUDDERSFIELD  
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR  
THE DEGREE OF DOCTOR OF PHILOSOPHY**

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THE UNIVERSITY OF HUDDERSFIELD**

For Suzanne, Sandra, and Ronnie with love

## Abstract

Earlier studies on interpretation such as Garcés (1996) and Hale (2004) show that interpreters often make the mistake of conveying only the semantic meaning; ignoring, misunderstanding or simply not conveying the pragmatic meaning of utterances. Other studies have also touched on issues of the classification of the types of errors made during interpretation Mead (1985), Karton (2008) and Kiguru (2008); they do not, however, provide a good understanding of errors that lead to stylistic and pragmatic modifications in interpretation from and to indigenous African languages. Research on interpretation in Kenyan courts is limited and there is none that examines Dholuo-English interpretations. Consequently, there is a need to have a broad and deep understanding of the stylistic and pragmatic meaning of modifications involving Dholuo-English data. The literature reviewed includes literature on courtroom interpreting and literature on meaning shifts in the courtroom. This study investigates courtroom interpretation using critical stylistic tools to determine the stylistic and pragmatic changes and their impact on ideation and interpersonal communication in the Target Text. The critical stylistic tools used from Jeffries (2010) are: presenting other people's speech and thoughts, presenting actions and state, as well as naming and describing. In the data analysis, for presenting the speech of others, I use the reported speech categories by Short (2012) to examine fidelity to the text, for the description of actions and states I ground my work in the transitivity model by Halliday as explained by Simpson (1993) and for naming and description I use Halliday's Functional Grammar to describe the Noun group. For analysis of pragmatic modifications during interpretation, the research is grounded in Austin's (1962) Speech Act Theory and Grice's (1975) Cooperative Principle. The data analysed consists of 12 court cases. The data collected is analysed using qualitative methods of analysis in order to determine inferences, give explanations and make conclusions. The results show changes in the Target Text which include: modifications to adhere to felicity conditions, passivisation to conform to how Dholuo reports speech from senior people, misreporting while using direct speech, distortion of facts, expansion of meaning, vagueness, changes to the verb processes, use of explanations, use of euphemisms that obscure meaning, changes in the tone of the source text and changes in the pre and post modifications of nouns that cause meaning loss. Reasons for these changes are: culturally bound words and phrases, legal jargon which has no Dholuo equivalents, specialised Kenyan English vocabulary, the nature of courtroom interpretation, the additional duties courtroom interpreters in Kenya carry out, as well as lack of training. This research uncovered a new role for interpreters in the courtroom of striving to maintain the dignity of the court as well as a new feature of adherence to felicity conditions in judgements.

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To all of you I say: *Erokamano*.

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## **Explanation of Terms**

Chang'aa: A homemade alcoholic drink

Matatu: Public service vehicles

Meaning Loss: A TL message which deviates from the SL message in terms of meaning and style results in lack of equivalence which this study equates to meaning loss in interpretation.

Name\*: when the name of a person is followed by a star, the name has been altered to protect the identity of the person mentioned

## **Abbreviations**

Acc: Accused person

Comp: Complainant

CS: Charge sheet

Int: Interpreter

Mag: Magistrate

Pro: Prosecutor

Prob: Probation officer

RT: Researcher's translation

SL: Source Language

TL: Target Language

ST: Source Text

TT: Target Text

*If you talk to a man in a language he understands, that goes to his head. If you talk to him in his own language, that goes to his heart.*

Nelson Mandela

## **CHAPTER ONE**

### **INTRODUCTION**

#### **1.1. Background to the Study**

In the recent past, studies have been carried out on courtroom interpretation and its characteristics see (Gumperz, 1982; Shuy, 1993; Gonzalez et al, 1991; De Jongh, 1992,; Styler, 1993; Moeketsi, 1999; and Berk-Seligson, 2002). Gumperz, (1982), Shuy (1993) and Gonzalez et al (1991) carried out their studies in the United States of America whereas Styler's and Moeketsi's studies were carried out in South Africa. Gonzalez et al concentrated on describing what courtroom interpretation should entail, while Shuy and Gumperz examined court cases where interpretation was not well executed, resulting in miscarriage of justice. Styler for his part examined the difficulty of interpreting from English into the indigenous South African languages. A number of empirical studies have raised important questions about the notion of neutrality (Metzger, 1999), invisibility (Angelelli, 2001) and the influence that interpreters have on interactive discourse in interpreted interactions (Metzger, 1999; Roy, 2000; and Wadensjö, 1998)

Few studies have been carried out on meaning shifts that arise during courtroom interpretation see (Mead, 1985; Karton, 2008; and Kiguru 2008). These latter group of studies examine meaning shifts which they show manifest themselves in interpreter errors. Even though these studies help in the classification of the types of errors made during interpretation, they do not provide a clear linguistic analysis of data to determine and explain the changes that occur in interpretation both stylistically and pragmatically. Consequently, there is a pressing need for additional studies to deepen our linguistic understanding of how the stylistic and pragmatic changes are realised, their consequences as well as their causes.

Gonzalez et al argue that a court interpreter is tasked with “interpreting the original source material without editing, summarizing, deleting or adding, while conserving the language level, style, tone, intent of the speaker to convey what may be termed as legal equivalence of the source message” (Gonzalez et al, 1991, P.16). Gonzalez et al's postulation about what courtroom interpreting should entail, though demanding, nevertheless underscores the

importance of interpretation in courtroom processes. However, given structural differences between languages, the complexity of interpretation and the diversity of linguistic and cultural interaction in courtroom interactions, there are very high chances of loss and distortion of meaning. The exact points at which loss in meaning may occur, and the exact issues that may lead to these losses are varied. These may include but are not limited to the interpretation of foreign, legal and cultural concepts, especially where there is a possibility that a concept expressible in one language may be lacking or is not directly expressible in another language in the exact way that it is in the source language. The mechanics of realizing equivalent or near equivalent meanings in target contexts is as intriguing as it is complex. One obvious aspect of that complexity has to do with interpretation shifts. This study is thus interested in examining the changes occasioned by interpretations of courtroom discourses.

An example of change in interpreted courtroom discourse from Dholuo to English and its effects that stands out in the Kenyan situation is that of the S.M. Otieno case of 1986-1987. This was a case of a burial dispute between a widow, Wambui Otieno, and members of her late husband's clan the Umira Kager. Even though the case was carried out in English, the language of the Kenyan courtroom, the Umira Kager clan convinced the court to shift attention to the meaning of the Dholuo noun phrase "*dala*" in relation to the Dholuo noun phrase "*ot*". According to Wambui, her late husband had expressed the wish to be buried at his *home* in Upper Matasia located in Ngong near Nairobi, however, the Umira Kager clan insisted that if the late Otieno had said he wanted to be buried at *home*, this could not be at Upper Matasia for even though the Dholuo Noun Phrase "*dala*" can be translated by the English Noun Phrase *home*, the two are not equivalents. According to the Umira Kager, "*dala*" could only be *Nyalgunga*, which is Otieno's ancestral land, while Upper Matasia, on the other hand, could only be "*ot*". In the course of the case, the court was forced to abandon the meaning of the English noun phrase *home* as it is known for the meaning of the Dholuo noun phrase "*dala*" to cater for the meaning of *home* that Umira Kager insisted could not be translated into English. In connection to the court's stance, the linguist Okoth-Okombo comments

Thus, by engaging in a disputation over the concept of "home" the litigants and their counsels gave it the status of a legal technical term, which it was not (Okoth-Okombo, 1989, P.94)

This statement shows the shifting of meaning of the word *home* from an ordinary term to a technical legal term. The word moved from one register to another thus occasioning the

change of meaning of the word as known to the defendants in this case and by extension to others.

Linguistically, the Dholuo noun phrases *ot* and *dala*, belong to the same semantic field. However, a componential analysis of the semantics of the two words shows how they differ.

<i>Ot</i>	<i>Dala</i>
+ House	+ House
+ Warmth	+ Warmth
+ Any location	+ Ancestral land

Thus when the court decided to adopt the Dholuo meaning of the word *home*, in this case *dala* and not *ot*, there is an addition of the property of ancestral land into the English meaning of the word *home*, which distorts its meaning completely to the defendant who does not speak Dholuo.

Interpretation changes can result in meaning loss when the interpreter fails to conserve the language level, style, tone, intent of the speaker to report what may be termed as legal equivalence of the source message (Gonzalez et al, 1991, P.16). Here I give examples, first of semantic shifts and then of stylistic shifts. In one example, in the Nyando magistrate's court, an elderly woman accused a young man known to her of assault:

Prosecutor (In English): describe to the court what happened

Complainant (In Dholuo): *ne odeya, to omako n'guta to oi koda malich*

**(He strangled me and held my neck and wrestled with me very much)**

Interpreter: he assaulted me your honour

In this illustration, a semantic shift has taken place resulting in meaning loss through summary. The plaintiff actually describes in detail the nature of the assault using an utterance containing three clauses, represented by the following three verb phrases:

1. *Ne odeya*: He strangled me (VP1)
2. *Ne omako n'guta*: Held my neck (VP2)
3. *To oi koda*: Wrestled with me (VP3)

(This example is taken from the criminal case between Solomon Otieno\* and Rita Amondi\* in the Nyando magistrate's court on 18th November 2010. Otieno was accused of assaulting

Amondi at Gem Rae in Nyando district. The names have been altered to protect the identity of the people involved)

In the interpretation however, there is summarizing of the compound sentence with a simple sentence that contains only one Verb phrase (VP), which is not any of those used by the plaintiff. The VP used by the interpreter is *assaulted me*. Even though it summarises the three VPs used by the plaintiff, it creates a meaning shift that leads to the loss of the extent to which the assault took place. In the same example, the three verbs used express different meanings that refer to assault. In using the three verb phrases, the plaintiff wants to express the seriousness of the attack. This seriousness is not properly reported in the interpreter's version. The change from simple layman language to the legal term *assault* also constitutes a register shift.

Stylistic shifts may also happen in courtroom interpretation. They involve the loss of style from the SL into the TL through substitution, addition, creation of logical links and speech summary. In some cases, the interpreter may manage to keep the gist of the message but fail to keep the original style thus creating a stylistic shift leading to meaning loss. An example is given in Kiguru (2008), where an interpreter comes across the Gikuyu idiom “*niointe mburi yake kuguru*”, the literal translation of which is “*had broken his goat's leg*” (Kiguru, 2008, P.56). The expression is used to refer to making a girl pregnant out of wedlock thus the style of metaphor in referring to a girl as *Mburi (Goat)* and pregnancy as *nointe kuguru (break a leg)*. The interpreter reports this simply as “*had made his daughter pregnant*”. Even though the gist is retained, obviously the style of metaphor is lost. In the SL, the idiom *nionite mburi yake kuguru* brings out euphemism in relation to the culture of the SL where a child out of wedlock is considered taboo, but as it is interpreted, the euphemism is lost and thus, the meaning of disapproval of child birth out of wedlock is also lost.

## 1.2. Statement of the Problem

The accuracy of legal interpretation has been a focal point of research, e.g. Gumperz (1982), Gonzalez et al (1991), and Kiguru (2008). Most of these studies seek to ensure that courtroom interpretation is acceptable, reliable, verifiable and testable. These studies have also touched on issues of the classification of the types of errors made during interpretation; they do not, however, provide a good understanding of stylistic and pragmatic changes that lead to meaning loss in interpretation using Dholuo-English data. Consequently, there is need

to have a broad and deep linguistic understanding of the stylistic and pragmatic changes in courtroom interpretation, their causes and their effects on meaning and ideology while interpreting from Dholuo to English. The courtroom is an arena in which judgements are made about people's innocence based on what they and their witnesses have said. It is therefore important for what has been said in one language to be reflected in the same exact way in another language for justice to be upheld. Research has mainly focused on interpretation in the languages that are widely spoken in the world whereas minority languages like Dholuo have not been adequately studied. It is upon this background that my study examines courtroom interpretation from Dholuo to English with an aim of carrying out a stylistic and pragmatic analysis to determine how changes occur and explain their effects on meaning, ideology, and interpersonal communication.

### **1.3. Objectives of the Study**

The study aims to achieve the following objectives:

1. To examine the presentation of other people's speech by identifying, analysing, and explaining stylistic and illocutionary changes that occur in the TT.
2. To identify the processes in the representation of actions/states in Dholuo-English courtroom interpretation and determine the ideational, stylistic and pragmatic modifications in the TT.
3. To identify naming choices in Dholuo-English courtroom and determine the changes that occur between the ST and the TT examining their effects on ideation and illocution.
4. To draw conclusions and inferences and make further research suggestions based on the findings of the study.

### **1.4. Significance of the Study**

The study is useful to interpreters in the courtroom set up, in the linguistics field and elsewhere. This is so because it gives a description of the linguistic modifications that lead to meaning loss in interpretation. The study also examines intercultural communication by explaining the culture- specific terms that cause problems in interpretation and the strategies taken to ensure meaning is retained when passing from the source language to the target language. The research also explains how interpreters can strive to improve their interpretation in the courtroom.

Secondly, this study is useful for Critical Stylistics. In using Jeffries (2010) for analysis, I determine that whereas Jeffries uses Critical Stylistics to examine the ideological effects, the same tools can be used to analyse the interpersonal effects of stylistics by examining how linguistic choices impact on meaning in context. I use Critical Stylistics to identify ideation in interpreted data comparing stylistic and pragmatic choices in one language to those in another. Through this, I draw conclusions on how and why there is disconnect between the Source Language and the Target Language.

In relation to Speech, Writing and Thought Presentation Model (henceforth SW& TP) (Short, 2012), my study has contributed to how the model can be used to show faithfulness to the original message by presenting both the original message and the presented version through examining interpreted discourse. Leech and Short (2007), Short (2012), and indeed other researchers who use SW & TP lay emphasis on the speech categories and how they determine faithfulness to the original using data from one language. My study explores presentation of speech using two different languages bringing the original speech side to side with the presented speech. Also, most of the data they examine is from prose of which the originator is the author of the text and therefore there is no tangible 'original': it is all in the author's mind. In recognition of this, Short (2012) says: "of course the notion of faithfulness in fiction is a chimera, as just about everything is invented by the author" (Short, 2012, P.20). Even in cases where there is technically an original source like in news reports, the expectations on fidelity to the source text is greater in courtroom interpreted discourse as the TT is supposed to mirror exactly the ST given that conviction or acquittal depends on how one presents their case using language in the courtroom.

## **1.5. Scope and Limitations of the Study**

In this study, I limit myself to presenting other people's speech, transitivity and naming, as realised in the interpretation of court cases involving interpretation from English into Dholuo and Dholuo into English. I focus on investigating linguistic issues of interpretation of actual court cases as collected in three magistrate's courts. I am keenly aware that other than the linguistic aspects of the languages involved, there are several other factors, though not of a linguistic nature, that cause stylistic and pragmatic changes. I do not address those issues,

interesting as they are, as they are not within the purview of this study. Furthermore, I do not engage in speculative interpretations of issues that do not arise in actual interpretation situations. I am also aware that the linguistic issues mentioned in this research may have impacted on some of the rulings made but as this is not a legal study, I limit myself to only focusing on the linguistic part making suggestions that legal studies should address the legal side of these issues.

## **1.6. The Language Policy and Situation in Kenya**

According to Ethnologue (2016), the number of individual languages listed for Kenya are 68 out of which 67 are living and 1 is dead. Webb and Kembo-Sure (2000), on the other hand put the number of languages in Kenya at forty-two (42). The discrepancies in the number of languages comes about as a result of the fact that some languages are considered as dialects of others and therefore classified as such. The Kenyan society is thus linguistically and culturally heterogeneous. In recognition of this, the people of Kenya through the constitution have formulated a language policy that caters for the linguistic rights of the citizens and at the same time fosters national cohesion. The current constitution which was promulgated in August 2010 clearly explains the language policy in chapter II part 7 which states:

1. The national language of the republic is Kiswahili.
2. The official languages of the republic are Kiswahili and English.
3. The state shall-
  - a. Promote and protect the diversity of language of the people of Kenya; and
  - b. Promote the development and use of indigenous languages, Kenyan sign language, Braille and other communication formats and technologies accessible to persons with disabilities (the constitution of Kenya 2010)

In the courtroom, English has remained the official language of the law since Kenya attained independence from the British in 1963 (Mukuria, 1995; and Ogechi 2003). Kiswahili may be used in lower courts but all records of court proceedings are kept in English. These two languages are therefore the predominant languages of the Kenyan law courts. *Part five of Cap. 75 Laws of Kenya* states that: “The language of the high court shall be English and the language of the subordinate court shall be English or Kiswahili” (pg. 73). The Kenyan society is one that as earlier mentioned is linguistically diverse. In recognition of this, *part five Cap. 75 of the Laws of Kenya* provide that: “Whenever evidence is given in a language not understood by the accused, it shall be interpreted for him in open court in a language which he understands”.

The Kenyan situation as the South African situation is interesting in that in both countries, the majority of the population are African indigenous language speakers but English language is the courtroom language. In the South African courtroom, both English and Afrikaans are recognised as courtroom languages. This creates a situation whereby many people who appear in court must seek the services of an interpreter. In Kenya, apart from English being an official language, it is also the language of instruction in school from upper primary in rural areas and from lower primary in urban areas due to the cosmopolitan nature of urban areas where it is virtually impossible to use an indigenous language as a medium of instruction when most students come from different communities. Therefore, many Kenyans who have gone to school have some knowledge of English language, but there are many who either did not go to school so do not speak English or speak English but not to a standard where they are comfortable to use it in the courtroom.

### **1.7. Dholuo: A Brief Description**

Dholuo is the language spoken by the Luo people of Kenya. It is also spoken in Northern Tanzania. The Luo are part of the group of Nilotes whose origin has been located in Wau of Bahr-el-Ghazal province of Sudan (Ochieng', 1985, P.35). Dholuo belongs to the Western sub-branch of the Nilotic branch of the Eastern Sudanic families (Grimes 1996). Of the Nilotic languages of Kenya, only Dholuo belongs to the Western Nilotic group. Dholuo is closely related to the Shiluk, Dinka, and Alur of Sudan and Acholi, Lang'o and Padhola of Uganda. The speakers of this language live in Nyanza province of Western Kenya and in Northern Tanzania. According to the Kenya census of 2009, the Luo were 4,044,000.

Stafford (1967) explains that Dholuo language of Kenya has two main dialects

1. Trans-Yala dialect- spoken in Ugenya, Alego, Yimbo and parts of Gem
2. The South Nyanza dialect- spoken in South Nyanza plus parts of Siaya and Kisumu not included in the Trans-Yala group (Stafford, 1967, P.8).

The two dialects are mutually intelligible but are also distinct enough so that one can identify a dialectical zone of a speaker by how they speak (Okombo 1997). My study ensures that the data collected covers the two Dholuo dialects. The Siaya court covers the Trans-Yala dialect whereas the Kisumu and Nyando courts cover the South Nyanza dialect.

## **1.8. The Thesis Overview**

This thesis is divided into seven chapters. Chapter one is the introduction of the thesis. Chapter two is a critical literature review. In chapter two, I give a description of the different studies carried out and explain what they achieve but at the same time identify gaps that need to be filled by further research. In 2.1, I examine courtroom interpreting. Through this I give a clear explanation of what courtroom interpreting entails and the standards set for it by various scholars. This particular section has two sub sections. The first one 2.1.1 examines the role of the courtroom interpreter including the roles of the interpreter as perceived by others and as perceived by themselves. Examining interpreter roles is important to determine the effect that interpreter roles have on their linguistic performance as interpreters.

In 2.1.2, I examine interpreter competency where there is literature reviewed on how various countries from varied continents ensure interpreter competency. This is juxtaposed against the Kenyan situation with an aim of creating comparisons for the research and of highlighting the importance of proper training of interpreters for better interpretation results. In 2.2, I review literature on shifts in interpretation divided into three sections: 2.2.1: semantic shifts, 2.2.2: pragmatic shifts and 2.2.3: stylistic shifts. These three sections examine literature on shifts that take place during interpretation and use those as a basis for comparison of the results in this study. At the same time this review also helps to identify the gaps filled by my study. The last section 2.3 is the review of the theoretical frameworks in which this study is grounded. The section examines the critical stylistics approach used and then I explain stylistic as well as pragmatic theoretical frameworks through which conclusions about the study were drawn.

Chapter three discusses methodology for this study. In 3.0, I give the introduction and section 3.1 identifies the source of the data. The map of Kenya which identifies the location of the study as Nyanza province is given in 3.2. In 3.3, I explain how the pilot for this study was carried out and 3.4 examines how I gained entry into the field for the study. 3.5 details the procedure for data collection. 3.6 describes the actual data collected which consists of one plea, one withdrawal, one hearing and one judgement from every courtroom in the sample, giving a total of 12 cases from the three courtrooms. In section 3.7, I identify the materials used to collect data and examine the methods of data analysis. 3.8. and 3.9 focus on the transcription justifying the type of transcription used and the transcription format. 3.10 goes on to describe the model for data analysis taken from critical stylistics examining each

practice and explaining how they are used for analysis. Finally, the conclusion of chapter three is made in 3.11.

Chapter 4 examines how other people's speech is presented. 4.0 is an introduction of the chapter. 4.1 examines the adherence to felicity conditions as part of the findings of this study and 4.2 misreporting while using direct speech. In 4.3, I discuss the distortion of meaning that arises when reporting the speech of others. 4.4 examines passivisation in Dholuo-English interpretation and 4.5 discusses the modification of the speech of others to retain the dignity of the court. 4.6 analyses the expansion of the speech of others while the last section, 4.7, gives a conclusion of the chapter.

Chapter five discusses findings about the representation of action/states in Dholuo-English courtroom interpretation. 5.0 is the introduction of the section 5.1 identifies and analyses the changes to the processes and kinds of actions/states. In 5.2, I analyse how distortion of meaning is manifested in the TT through transitivity choices. 5.3 analyses vagueness occasioned by transitivity choices and 5.4 shows how interpreters use explanations and modifications to simplify actions/states. 5.5 examines new actions and states introduced into the TT and 5.6 concludes the chapter

Chapter six presents the last section of the findings of the research. It gives the naming choices in Dholuo- English interpretation. It begins with 6.0 which is the introduction and goes on to 6.1 which examines the use of euphemisms that obscure meanings of names. 6.2 analyses the changes in naming due to lack of equivalents in the TT. 6.3 examines the change of tenor in interpreted names. 6.4 on its part examines changes in pre and post modifications of names and 6.5 examines the changes in naming as a result of local vocabulary. The last section of chapter 6 is 6.6 which gives a conclusion of the chapter.

The last chapter of this thesis is chapter 7. This gives a summary of the findings of the research for each tool of analysis used as well as on other findings related to interpretation. Lastly the chapter also makes recommendations for further studies.

# **CHAPTER TWO**

## **LITERATURE REVIEW**

### **2.0. Introduction**

This section reviews literature for this study and is divided broadly into three sections: courtroom interpreting, interpretation shifts, and theoretical framework. Literature reviewed enables me to identify gaps in existing knowledge, helps me borrow ideas on data analysis as well as acts as a basis for comparison between my study and previous studies.

### **2.1. Courtroom Interpreting**

The term translation “refers to the general process of converting a message from one language to another” and also more specifically to the written form of the process, “whereas interpretation “denotes the oral form of the translation process” (González et al, 1991, P.295). In this study, the analysis is of discourse collected from the courtroom that is translated from English, which is the courtroom language of Kenya, into Dholuo for the sake of people in the courtroom who are not competent in English language. The transfer of meaning from one language to another in the courtroom is usually carried out orally and therefore my study limits itself to interpretation as defined by González et al.

Nida and Taber (2003:33) analysed the translation process from a linguistic point of view and identified three processes that translation goes through which are: 1) Analysis, in which the surface structure (i.e. the message as given in language A) is analysed in terms of a) the grammatical relationships and b) the meanings and combinations of the words 2) Transfer, in which the analysed material is transferred in the mind of the translator from language A to language B and 3) Restructuring, in which the transferred material is restructured in order to make the final message fully acceptable in the receptor language. The stages of analysis referred to as transfer and restructuring by Nida and Taber can be said to exist for the courtroom interpreter too. However, the interpreter in live situations like the courtroom is further burdened with the additional constraint of time. The process of interpretation, unlike translation, has to take place in real time and so the interpreter does not have the luxury of going through the three steps time and time again as the translator would. This may contribute to the meaning changes that are the focus of this study.

Interpretation is not simply about communicating a linguistic code from one language to another; rather, it involves conveying multiple interwoven layers of information, including

verbal and non-verbal codes, feedback mechanisms, cognitive and pragmatic processes, emotional content as well as cultural and contextual information all of which must be conveyed to the recipient in an accessible form (Watermeyer 2011). Interpretation involves much more than words because it occurs in a social, cultural, historical and institutional context. Furthermore, Moeketsi strives to give a working definition of courtroom interpretation to distinguish it from other forms of interpretation. She says “courtroom interpreting is an oral/sign activity that occurs in a live judicial setting or any such setting where conflicts are resolved” (Moeketsi, 2008, P.227). The aim is to facilitate communication in such a way that the judge is able to adjudicate in the matter between the prosecution and the defence in such a way as for the accused person or witness to participate effectively in the case just as if the proceedings were being conducted in his/her own language.

Courtroom interpretation refers to all kinds of legal interpreting; that takes place in the courtroom or in other legal settings such as police departments, prisons and immigration points of entry and exit where legal issues or language and discourse of law may arise. Its basic purpose is to enable adequate and sufficient communication between participants who use different languages. It also provides communicative links between claimants and the adjudicating body, thus enhancing the effective exchange of messages and the success of the legal process. Among those who have studied this form of discourse are Gonzalez et al (1991) who argue that the goal of the interpreter is to produce a legal equivalent message. Legal equivalence in this case is seen as recognition, retrieval and reception of the interpreted message as enabled by Target Language linguistic structure, cues and conventions. However, given the transitional nature of interpretation that emphasizes fidelity of source message, the demands placed on the interpreter are enormous. Gonzalez et al’s argument about legal equivalence is therefore, unrealistically demanding. The import of Gonzalez et al’s assertions to this study is that they provide a good starting ground, something that the Kenyan situation can be juxtaposed against.

De Jongh (2008) explains that a defendant’s physical presence in the courtroom is not enough to constitute legal presence. For a defendant to in criminal matters be meaningfully present, everything that is being said in the court must be communicated in a language he or she can understand and it is this concept that is known as linguistic presence. Faithfulness to the source text is especially important because it is the court interpreter’s words in the Target Language that become the official courtroom record. The court officials who do not

understand the Source Language will rely entirely on the recordings made by the interpreter. If the interpreter conveys the wrong information, the accused will be judged on this information and the outcome of the case will therefore have been made in ignorance of the correct information. The tragedy of this is that neither the accused nor the judge will be aware of the wrong information as neither understands the language of the other. De Jongh (ibid) gives the example of Alonzo Juan Raman, case number (2004-34473), in 2006 in Florida. Alonzo thought he had pleaded no contest to stealing a tool box, a misdemeanour, and would receive probation. He instead got fifteen years in prison for stealing a dump truck valued at \$ 125,000 which is a felony. All this was because the interpreter did not provide an adequate interpretation of “tool box” and “dump truck” which were key words in Alonzo’s case. This example serves to illustrate that misinterpretation can result in meaning loss for both the accused person and the judge.

Mikkelson states that “the role of the court interpreter is to uphold human rights and equality before the law” (Mikkelson, 2000, P. 48) He or she is to do this by translating the source language into the target language as accurately as possible as well as ensuring that the person who does not speak the language of the court is linguistically present. The task of the interpreter is therefore enormous as he/she has to make mental choices about the best way to convey the message. He/she has to labour to find equivalents in another language even though direct equivalents are rarely available. This is complicated further by the fact that in the courtroom, the three main stages of interpretation, comprehension, conversion and delivery occur almost simultaneously, putting onto the interpreter additional constraints. It is these sort of constraints that may lead to the interpretation shifts.

The features and characteristics of courtroom discourse impact on interpretation and meaning shifts. Courtroom discourse, as Penman (1987) argues, is highly institutionalized, giving rise to stipulations regarding what, how and to whom things are said. It is as such a regulated speech characterized by the use of honorifics such as “my learned friend”, and “your honour”. International covenants and political rights like Australia Law Reform Commission (ALRC) (1984) provide that:

Everyone shall have the right to freedom of expression and this right shall include the freedom to speak, receive and impart information and ideas of all kinds.

Certain courtroom discourse makes this right difficult to achieve. This literature review is in this respect seeking to understand how the informal, spontaneous, non-institutionalised language of the laypeople is affected by formalism or if its message content is stifled by

institutionalised speech. It further aspires to uncover the salient pitfalls that have adverse effects on interpretation and meaning shifts.

One feature of courtroom discourse that affects interpretation and meaning shift is a feature that usually escapes attention from casual observation yet has fundamental consequences for interpretation of what is said by laypeople or to laypeople. This has to do with power relations among the legal fraternity on the one hand and between the legal fraternity and the laypeople on the other hand. Penman (1987) while exploring discourse relations in courtroom situations contends that the highly ritualised and institutionalized discourse of the courtroom privileges the legal fraternity, who are then able to control and influence courtroom discourse to the great disadvantage of laypeople. For instance, in the process of cross examination where laypeople are involved, the rules of procedure regarding what can be said and how it can be said disadvantage the laypersons and prevent them from full and free expression. The use of closed questions that demand answers to be given in a certain way prevents laypeople from spontaneous and free expression. The use of anecdote, symbolism, proverbs and gestures, that are emblematic of spontaneous speech are severely curtailed. Whereas these are important for full communication, the court treats them as irrelevant. These restrictions have impacts on interpretation and meaning generally. Previous research on discourse has also shown that society, language and law are mutually constructed (O'Barr 1992). These three components are assumed to constitute the legal culture. Courtroom talk is a basic component within a judicial culture and it plays a crucial role. It is also a major type of professional discourse. The talk is not a commonplace verbal exchange as the interlocutors are experts representing some authority on the one hand, and laypeople on the other. This type of discourse displays several features that set it apart from everyday conversation.

Another issue closely related to power relations is the hierarchy of power. The discursal constraints of the courtroom are hierarchically marked in the sense that lawyers acknowledge their subordination to judges whereas laypeople are subordinate to both the lawyers and the judges. This subordination conveys hierarchical power, authority and credibility to the opposing sides, and to their clients. Atkinson (1992) contends that judges on the one hand must convey dominance and control while at the same time appear neutral and objective. Power hierarchies that mark courtroom discourses have definite effects on interpretation. Though Atkinson was borrowing from American experiences, there are some clear parallels to be drawn between the American experience and the Kenyan realities.

The legal interpreter is essential for the non-English speaker. He/she must be able to comprehend and manipulate dialect and geographical variation in the working languages. They must possess a wide range of knowledge, understand both the legal process and related terminology, and understand the various discourse styles used in the courtroom (Benmaman 1999). Also, the interpreter has to show full understanding of the message. This can be influenced by a variety of factors including knowledge of the language, of the subject matter, of the context, of the institutional culture as well as the speaker's own culture. In the courtroom, the consecutive mode of interpreting is used when evidence is being given. The interpreter is thus forced to relay short segments and so cannot rely on whole texts' structure and texture to deduce meaning (Hale 2004).

Interpretation in the courtroom is also affected by extrinsic factors. One of these is the attention that is drawn to the interpreter who should be "invisible" as he/she only represents another person and should speak in the non-English speaker's voice. The attention is drawn to the interpreter by the bilingual participants who monitor the interpreter's renditions and challenge their correctness (Morris, 1995, P.31-34), by lawyers and witnesses who address the interpreter directly instead of directing their answers to the judge or to the lawyer who asked them the question (Berk-Seligson, 2002, P. 61, 151) and by the judges who ask the interpreter to perform tasks officially restricted to judges (Jansen, 1995 P.144).

Another set of extrinsic factors that affect interpretation in the courtroom are the problems of the interpreters. There is the constant need to prove themselves amidst constant suspicion of infidelity to the original text, the extremely high demands placed on them, the inherent complexities of the interpreting process, the inadequacies of the system they work in, the misunderstanding of their role by lawyers, witness and by themselves, the poor working conditions and the low remuneration (Hale, 2004, P.19).

Garcés (1996) suggests that the interpreter is not the author of the message, but must capture the meaning and style of the discourse, search for an equivalent in the other language, and be able to express it, all of which requires a lot of effort in the pursuit of maximum fidelity to the ST, faced with the knowledge that their words can have an influence on the decisions of the jury and of the severe consequences that a misinterpretation can have. They must also preserve the style, the language level, the idiosyncrasies, and the idiomatic language these speakers might use or any other aspect, as well as have the linguistic and cognitive ability to

be able to change registers, styles, content, and languages, since they must interpret from ST to TT and vice versa.

Goffman (1981) in his participant framework discussed discourse roles that resonate with the role of the interpreter in the courtroom. His framework encompasses production and reception roles. On production roles, Goffman identifies three distinct roles and those are:

Animator: (The sounding box; someone who gives the voice to the words). He is the talking machine, a body engaged in acoustic activity, or if you will, an individual active in the role of the utterance production (Goffman, 1981, P.144.)

Author: (The agent who scripts the lines). Someone who selected the sentiments that are being expressed and the words in which they are encoded (Goffman, 1981, P.144)

Principal (the party whose position the words affect). Someone whose position is established by the words that are spoken, someone whose beliefs have been told, someone who is committed to what the words say (Goffman, 1981, P.145)

Given these roles as identified by Goffman, the interpreter should act as the animator in that he/she only voices the words that belong to the person who spoke in the SL. The original speaker is therefore the author of the utterance. That means that if the interpreter is translating the utterance of the judge for instance then the judge is the author as he/she scripts the lines and chooses the words in which they are encoded whereas the interpreter only conveys those words to others. In my study nevertheless, I found instances where the interpreters confused their discourse roles with those of the authors and took responsibility for the utterance of others thus playing all three discourse roles at once. The effect of that was loss of meaning.

Thomas (1986) also distinguishes two categories of discourse roles i.e. the producer and the receiver of talk. She further divides these into sub- categories on the basis of the degree of involvement of a person in the speech event. These are:

Author and speaker- originators and the authorities behind an illocutionary act.

Spokesperson, reporter and mouthpiece who are the relayers of an illocutionary act on behalf of the author (Thomas, 1986, P.111)

In my study I found that meaning loss occurred when the interpreter kept on shifting from one role to another in the same utterance. Instead of just relaying what was said by the originators of the message, they tended to put in some aspects of their own thus creating the impression that the message was from the author when it was not.

In discussing the role of the courtroom interpreter, González et al point out what is to be done to retain equivalence; “the court interpreter is required to interpret the original source material without editing, summarizing, deleting or adding while conserving the language level, style, tone and intent of the speaker (González et al, 1991, P.16) but a criticism of this is given by Mikkelson (1999) who points out that the interpreter “must convey the target language message in the target language legal register” (Mikkelson, 1999, P.5) this is so especially because in the courtroom, the legal register will be commonly used by the courtroom professionals such as judges and lawyers. Mikkelson’s concern is whether the legal register of the target language will correspond to that of the source language or whether the target language will have a legal register at all. In this study, I have the same concerns with those of Mikkelson. Dholuo is not known to have any legal register. It was interesting to identify how the court interpreter reported legal phrases such as ‘the right to attorney’ and ‘your honour’. Dholuo is capable of expressing ideas such as breaking the law, stealing, and assault but of course not by use of a register set apart just for the legal process.

Language is also linked to culture. Transferring the same idea into another language may require a shift for cultural reasons. Interpreting culturally bound expressions and ideas through use of idioms, metaphors, proverbs and the like may require the interpreter to make slight adaptations. A concept in one culture may be non-existent in another culture. This may call upon the interpreter to use a more descriptive phrase. In so doing, then there will already be a shift and so equivalence as defined by González et al may be lacking. Even so, the grammar and syntax of the target language may be significantly different from that of the source language and this may also cause differences between the source text and the target text. These are some of the differences this study was interested in unravelling by using the Dholuo-English interpretation as a source of data but the findings can be generalised to interpretations involving other languages as well.

As far as the mode of interpretation is concerned, courtroom interpretation usually makes use of consecutive interpretation. This mode requires that the source language speaker pauses at regular intervals to allow the interpreter to convey the message in the target language. This has the advantage of allowing the interpreter reasonable time to analyse the source utterance, to follow the original speaker’s line of thought better, to understand the message intended and to provide the verbatim interpretation demanded by the law (Moeketsi 2008). The other mode of interpretation that exists is the simultaneous mode where the interpreter listens and speaks concurrently with the primary speaker whose monologue is being interpreted. This mode is

not considered effective for courtroom situations as it may cause confusion for the judge. Cartellieri (1983) opines that in this mode, there is loss of quality of the target language message because of the need to produce the subject matter rapidly whereas in the courtroom, accuracy and completeness are an absolute requirement. During interpretation, the interpreter often uses the first person. Moeketsi (2008) argues that speaking in the third person tends to make a messenger out of the interpreter thus making him/her overly visible and intrusive, something that is not good for the case.

Section 2.1 serves to give a general outlook of courtroom interpretation. In reviewing general literature on courtroom interpretation, I identify the general rules expected of interpreters to ensure proper transfer of meaning from ST to TT. This review also points out the general pitfalls faced by interpreters in the process of meaning transfer. The rules laid out for interpreters in the reviewed studies acted to create benchmarks for successful interpretations. However, my study is able to confirm that some of the expectations as laid out by previous studies are too ambitious and unrealistic in their mainly prescriptive roles. The two subsections that follow discuss specifics about courtroom interpretation including the role of the courtroom interpreter and interpreter competency.

### **2.1.1. The Role of the Courtroom Interpreter**

Many researchers view the interpreter as performing many different roles such as, helper, conduit, or facilitator. Berk-Seligson (2002) reports that in many legal proceedings members of the legal fraternity view the role of an interpreter as being that of an intercultural mediator; or even an advocate. Steytler (1993) for his part believes that the role of the interpreter is to facilitate communication where one party is not conversant in the language of the record. However, most researchers are in agreement that the interpreter has one formal task that is unambiguous: to translate accurately, comprehensively and without bias all communications in court to a language which the accused can understand.

Lebese (2011) comes up with some roles that courtroom interpreters play. One is that interpreters can play the role of being conduits where their main duty is to convert all speech from one language to another. Berk-Seligson (2002) on the other hand points out the role of the court interpreter as a facilitator. Here, the interpreter is seen as an intercultural mediator or advocate. Lee (2009) argues that the interpreter in his/her role should be aware of cultural differences and must show cultural sensitivity. The interpreter also has the role of being a language expert. He/she is supposed to know well the two languages involved in the

communication event. The interpreter has also been viewed as a bridge or a channel. In this role, he/she is expected to interpret accurately, faithfully and without emotional or personal bias. Actually he/she forms a connection between the accused/witness and the rest of the people in the court.

The interpreter also plays the role of replicator. He/she replicates the original source language message in the target language to have the same effect on listeners (Hale 2004). In some instances, the interpreter also takes on the role of the lawyer by simplifying the language of the court proceedings to enable the client to understand the proceedings. The interpreter can also take on the role of a court orderly by physically managing the accused or witness and finally, they also in some instances take on the role of the magistrate by performing the magistrate's duties for example explaining the rights of the accused.

The interpreter should adhere to certain standards of interpreting. Some of these are enumerated by Gonzalez et al as:

1. The interpreter shall convey a complete and accurate interpretation.
2. The interpreter shall remain neutral.
3. The interpreter shall maintain confidentiality.
4. The interpreter shall confine himself to the role of interpreting.
5. The interpreter shall be prepared for any type of proceeding or case.
6. The interpreter shall ensure that the duties of his or her office are carried out, under working conditions that are in the best interest of the court.
7. The interpreter shall be familiar with and adhere to all the ethical standards and shall maintain high standards of personal and professional conduct to promote public confidence in the administration of justice (Gonzalez et al, 1991, P.475).

In as much as these are standards expected from an interpreter, there are many circumstances that may arise and prevent the interpreter from meeting these set standards. However, if the process of interpretation is faulty, misunderstandings can easily arise that may also affect the outcome of the case (Matu et al 2012). In the Kenyan courtroom, all records are kept in English which is the official language of the court. The magistrate will therefore heavily rely upon the interpreter's efficiency so as to keep an accurate recording of the proceedings.

Research on the interpreters' perception of their role carried out by Matu et al (2012) shows that:

1. Interpreters felt the need to clarify issues for the Dholuo- speaking litigants.
2. The interpreters did not desire to omit some utterances by the Dholuo speakers.
3. Interpreters often felt the need to interrupt the speaker on the floor.
4. The interpreters make a conscious effort to solve communication problems in court.

The research by Matu et al is important to my study. First of all, this is the only study to have looked at Dholuo-English courtroom interpretation. The location of their study is also Luo-Nyanza in Kenya. My study compares their location of study to my own and learns from them the divisions of courtrooms in Nyanza. From their study, I also gained insight into some of the roles that interpreters perceive to be their roles. Matu et al however do not examine any linguistic aspects of the courtroom interpretation; theirs is based solely on the opinion of interpreters about what they think they ought to do. My study goes further than that by examining naturally occurring data of actual interpretations to determine whether the set standards are adhered to and whether any meaning loss occurs.

Benmaman (1992) argues that the interpreter must give an accurate, unbiased, comprehensive version, true to the speaker's style, level of usage and perceived intent. The speaker's style is a key part of my study. I specifically agree with Benmaman that keeping to the style of the speaker is important for an interpretation to be viewed as faithful. The New Jersey task force of (1984) recognises that interpretation demands a high level of cross cultural awareness and sophistication, including the ability to manipulate dialect and geographical variation, different education levels and register, specialised vocabulary and a wide range of untranslatable words and expressions (Benmaman 1992). In the courtroom, the interpreter must understand the legal process and the legal language which is acutely context specific, and fraught with redundancies, archaisms and intentional ambiguities (ibid: 46). It was interesting in the course of this research to see how the interpreters dealt with legal terms which for the most part do not have any equivalents in the Dholuo language. In recognition of interpreter importance, De Jongh also states that an interpreter must be bicultural as well as bilingual (De Jongh 1992).

The interpretation services in Kenya differ from legal interpreting in the UK and many other countries in that in the UK, public service interpreters, including court interpreters, are all freelance professionals normally listed on the national register and hired on a case by case basis (Ibrahim and Bell 2003) whereas in Kenya, the court clerk also doubles up as the court interpreter as is the case in Botswana as well as Malaysia. The court interpreter is a

government employee who is also responsible for duties in the court other than interpretation. Ibrahim and Bell (2003) enumerate the multiple roles of an interpreter in the Malaysian courtroom which include:

- a. Decide the first business of the day.
- b. Set dates for hearing.
- c. Read and explain the charges.
- d. Interpret the facts of a case and the proceedings.
- e. Explain the nature and consequences of a plea to the accused.
- f. Explain the three alternatives: to plead “guilty” to plead “not guilty” and give evidence under oath or to plead “not guilty” and give evidence while not under oath.
- g. Act as the principal assistant to the magistrate/president/judge.
- h. Assist an accused if she/he is unrepresented.
- i. Maintain discipline and order in the open court.
- j. Mark and keep exhibits.
- k. Do paper work e.g. prepare warrants for commitment, bail bonds, and write up daily, weekly and monthly reports of cases dealt with in their court.
- l. Translate documents.
- m. Act as commissioners for oaths.
- n. Perform any other activities deemed appropriate and necessary by their superiors (Ibrahim and Bell, 2003, P.57).

These duties are the same as those performed by interpreters in the Kenyan courts. This shows the great amount of pressure already on the interpreter which may be a factor that leads to problems when it comes to doing the actual interpretation in the court. In the Nyando courtroom, I witnessed a magistrate shout at an interpreter to do his work when a witness came into the courtroom and did not know where to stand. At that particular time, the interpreter was also busy taking notes on an on-going case.

In Botswana, Thekiso (2001) provides an interesting description of the courtroom interpretation situation. The magistrates and the court personnel mostly understand both English, the language of the courtroom and Setswana, the national language. However, when a witness or the accused does not understand English, an interpretation is done for their benefit. The loss of meaning is therefore not great for the court personnel and Thekiso gives an example of when during his research, a magistrate corrected an interpreter’s version. In Kenya, the situation is different. There are approximately 68 languages in the country and

even though in some cases the magistrate speaks the same language as the person in need of interpretation, this is most often more unlikely than likely.

Some researchers have advocated that the interpreter should be an invisible language facilitator. However, Angelelli (2005) disputes this notion. She says that the interpreter is visible with all the social and cultural factors that allow him/her to co-construct a definition of reality with the other participants to the interaction. She says:

The interpreter is present with all his/her deeply held views on power, status, solidarity, gender, age, race, ethnicity, nationality, socio-economic status, plus the cultural norms and blue prints of those social factors that are used by him/her to construct and interpret reality (Angelelli, 2005, P.16)

This view is enhanced by Angermeyer (2009) in her description of how interpreters behave in the course of their duty. She observes that most interpreters are native speakers of the language they interpret into which is mostly a dominated language and as such, they are often members of the same minority group as the people whom they assist in court. Given this type of situation therefore, they may need to negotiate competing allegiances to communities in contact. This illustrates how the interpreter brings into the interaction a part of him/her. Also, most interpreters tend to view the people they interpret for as clueless and unintelligent as well as ill prepared to meet the requirements of the court. This attitude contributes to the way the interpreter does his/her work. Angermeyer (ibid) observes that when interpreters report speech from English to another less dominant language, they are conscious that their interpretation may be evaluated by the people who speak English, therefore in most cases, they adhere to the norm in English but may fail to adhere to the norm in the other language. This is usually manifested in instances of self-correction when interpreting the English version, something which is absent when interpreting into the less dominant language. In relation to the invisible interpreter, Vilela (2003) describes the notion as a myth and goes on to argue that the interpreter has an impact on the communicative events involved and the presence of the interpreter significantly alters the way the participants interact. In the courtroom, the participants affected include the judge, the witness, the attorneys and the interpreter him/herself.

In the medical context, the interpreter is expected to remain neutral and transfer information accurately and reliably between the patient and the health professional, avoiding any emotional, physical or verbal interaction with the two parties. The interpreter focuses on the linguistic message only and disregards its social and cultural construction (Hsieh, 2006,

2007). In the medical context, another role of the interpreter is that of a cultural broker. Here, the interpreter mediates between two world views; that of the patient and that of the health professional, and provides a cultural framework for facilitating understanding the message. The interpreter thus assists both parties to negotiate cultural and linguistic barriers in order to achieve a specific communicative goal. In addition, the interpreter may act as a negotiator and advocate for the patient's life world, his or her personal experiences and circumstances (Greenhaigh et al 2006). This can be compared to the courtroom interpreter in that in the courtroom too, neutrality is expected. As in the hospital, the courtroom interpreter is to avoid emotional, physical or verbal interaction with the other parties. In the medical set up, the miscommunication through misinterpretation can result in grave problems such as misdiagnosis, which may even result in death. In the same way, misinterpretation in court may result in miscarriage of justice. These two settings can therefore be a source of comparison of success or failure of interpretation.

Subsection 2.1.1 examined the various interpreter roles uncovered by other researchers. These included roles that those researchers observed the interpreters to play and the roles that the interpreters themselves perceived to play. The review took on a comparative nature giving examples from various countries in different continents of the world. Through this review, I was able to during the course of my study compare the roles that I came across and the ones already identified. Thus I determine that I discovered new roles of interpreters hitherto unmentioned. These are discussed in the results sections of chapters 4-6 of this thesis.

### **2.1.2. Interpreter Competency**

Whereas in 2.1 and 2.1.1 I examined courtroom interpretation and the role of interpreters respectively, in this section, I look at a comparison of interpreters from various parts of the world and the qualifications that they are expected to have in order to perform their interpretation duties well. This is important for my study as it enables me to draw comparisons between the different countries mentioned and Kenya which is the location of the study. Through these comparisons, I can make recommendations on what type of competencies an interpreter ought to have in order to have better results. This is useful if my study is to have any meaningful impact not only in the linguistic world but also in the courtroom. It is Berk-Seligson who draws attention to the importance of interpreter competency by stating

Interpreters generally do the best they can, and are sincere in their effort to be precise and faithful to the foreign language testimony. Yet if they are not highly qualified to do their job, the product of their efforts is bound to be faulty. No amount of oath-swearing can guarantee high quality interpreting from an interpreter who does not have the necessary competency (Berk-Seligson, 2002, P. 204).

In the United States, the court interpreters' act was passed in 1978, after which the administrative office of the country courts initiated a programme for certification of federal court interpreters. This office developed rigorous professional standards and certification procedure which would identify the individuals capable of interpreting. An examination was designed by a group consisting of language specialists, international conference interpreters, court interpreters, and test construction specialists that would make it possible to establish minimum levels of competency and demonstration of required qualifications before an interpreter may be admitted to status as a certified federal court interpreter (De Jongh 1990).

In North Carolina specifically, to become a certified interpreter, one must pass a written and oral examination created by the National Centre for State Courts Consortium for Language Access in Courts and attend an orientation and a skill building workshop. Additionally, the interpreter must pass a criminal background check prior to certification (Kerby et al 2010). There are however instances in the North Carolina state where the language that needs to be interpreted into does not have any qualified interpreter. In such cases, the judge will ask in the courtroom whether there is someone who knows the said language to interpret. Many times it is the relative of the accused or witness and the court is forced to use them despite the obvious conflict of interest (Kerby et al 2010). In Australia, the interpreters are accredited. The National Accreditation Authority for Translators and Interpreters does the accreditation. It also sets the accreditation standards for interpreters and has several levels of accreditation for different languages (Hale 1999).

In a pilot study on the role of court interpreters in South Africa, Lebesse (2011) comes to the conclusion that in South Africa, a legislation that clearly defines the role of courtroom interpreters does not exist. This is the same for Kenya where my study is based. The situation in Kenya is even more complex. The court clerk often also doubles up as the court interpreter. The only qualification that they have is their ability to speak the language of the witness or accused as well as speak English. No training on interpretation whatsoever is provided for the courtroom interpreter in Kenya and the assumption is that if one can speak a language, then

they are automatically able to translate it into another language. This notion is dispelled by Moeketsi (1999a) who states “the dismal performance of the interpreter is as a result of poor training and lack of proper definition of the interpreter role” (Moeketsi, 1999a, P.43). I concur with Moeketsi and add that in Kenya, the training is not poor, rather it is non-existent.

Moeketsi (1999b) examines the South African interpreters’ situation. She explains, that the interpreter is a full time government employee, a civil servant. He/she is assigned to a specific courtroom where he/she works with a particular magistrate. The interpreter and the magistrate normally then establish a working relationship where the magistrate more or less looks at the interpreter as his/her own. The interpreter becomes a personal assistant to the magistrate. He/she often therefore knows the weaknesses and the strengths of that particular magistrate. In the Kenyan situation, the interpreter works with whichever magistrate is presiding over a case at that particular time. He/she too is a civil servant. In the South African courtroom, the interpreter is normally the only person in the courtroom who comes from the same linguistic, social and cultural background as the defendant and therefore will often show empathy. The relationship described here usually has an impact on how interpretation is made as is shown in an example given by Moeketsi (ibid)

Magistrate: Your case is postponed until May 5<sup>th</sup>. You will remain in custody until that day

Interpreter: It means that your case is postponed to the 5<sup>th</sup> of May this year. For now, you will stay inside that is; in jail until that day. Do you understand? You may step down

In this example, the interpreter out of empathy for the defendant tries to put the magistrate’s words into a fuller explanation that he believes can be understood better by the defendant. In so doing, he adds words that the magistrate did not utter and goes against the chief principle of courtroom interpretation where one is to remain faithful to the language used in the source text. This is also a common occurrence in the Kenyan Courtroom. The court clerk is almost always working in a court that is near his/her home town. He/she shares not only the language of the defendant but also their culture, as well as social background and the tendency to empathise therefore arises. This situation is further compounded by the fact that most lay participants who come to the courtroom are overwhelmed by the unfamiliar and overbearing court procedures causing them to panic and rely on the interpreter. Matters are further complicated by those who appear in the courtroom without any legal representation expecting the interpreter to double up as their lawyer as well.

Vilela (2003) also examines court interpreters in Venezuela. In that country, training programs and regulatory frameworks do not exist. The court interpreter takes on the dual role of interpreting in the courtroom as well as serving as social actors. The Venezuelan scenario resonates with that of Kenya in both the lack of training and in the fact that the court interpreters in both countries serve as social actors. Researchers agree that it is essential to have a comprehensive training but it is mandatory to have instructions on standards of conduct and good practice in educating interpreters (Mikkelson and Mintz, 1997, and Moeketsi and Wallmach, 2005).

Lipkin (2010) brings to light the situation of the competency of interpreters in the Yehuda military court in Jerusalem. This is a court that performs different functions chief of which is the trying of suspected terrorists and other offenders in the West Bank area. In Yehuda, the interpreters are recruited as a part of a compulsory army service for a period of three years and undergo a short course at some stage (not necessarily at the beginning) (Lipkin, 2010, P.93). The chief qualification they have is that they can speak Hebrew and Arabic. Like in Kenya, the Yehuda interpreters perform multiple duties in the courtroom. They maintain law and order, usher in people and do other additional administrative issues. In Lipkin's findings she notes that the interpreters do not view the interpretation they do in the court as their main duty, in fact, they value the other duties they engage in more than the actual interpretation. In drawing conclusions, Lipkin draws attention to the triadic nature of the courtroom interaction. This is a very complex legal-linguistic situation which determines the actions of the interpreter. It determines how interpreters function and has an impact on their status. The other factor that influences interpreters' competence in Yehuda is the military legal system which is strict and clear cut. In this courtroom, the clients felt that they could trust the interpreter as they were the only people who understood their language but by their own admission, the interpreters mainly provided only a summary of what had been said especially when interpreting from Hebrew to Arabic. Lipkin concludes that by allowing the interpreter to exercise his own discretion in deciding what to translate, the level of neutrality is reduced.

Angelelli (2005) examines interpreter competency among medical interpreters. She believes that it is very important to properly train interpreters and suggests some key issues that should be included in their training which are:

1. Any training should have meaningful testing in language proficiency and specific health care interpretation skills.
2. Complete graduate equivalent course work.

3. Expose the students to the types of interpreting situations they will eventually participate in, i.e. the contextualization of interpreting.
4. Provide courses in dialectology, the varieties of language and language register which would help interpreting students contextualize language use and language users.
5. Courses on issues specific to health care settings.

She also advocates that the students be educated in six different areas which are: information processing, interpersonal communication, linguistics, professional, setting specific and socio-cultural. Even though Angelelli focuses on medical interpreting, these are tenets that can be borrowed in courtroom interpreting and then be tailored specifically to fit into it because the principles of interpreting remain the same and it is only the setting that differs. Currently, interpreter certification in those countries that have it measures the interpreters' ability to interpret in the different modes i.e. consecutive, simultaneous and sight. The certification also tests memory of terminology in both languages for which the interpreter is seeking certification.

Gonzalez and Auzmendi (2009) examine court interpreting in Basque. On interpreter competence, they describe two different scenarios. The largest group of interpreters are the full time interpreters who work in the autonomous community of the Basque country. Most of those hold a degree in Basque Philology and there are those who hold a degree in translation and interpreting. They have solid training and are well prepared to face the job (Gonzalez and Auzmendi, 2009, P.140). There are other interpreters in other areas who are only required to have secondary level education and have passed a Basque language examination. This contrasts sharply to the Kenyan situation where the interpreters do not undergo any special training related to interpretation.

In section 2.1, I examined courtroom interpreting. I defined what courtroom interpreting entails and detailed the expectations that there are for a good courtroom interpretation to be deemed to have taken place. Through this literature review, I was able to determine the benchmarks set for the courtroom interpreter to achieve in various settings and countries. These benchmarks enabled me judge whether or not the Dholuo interpreter delivered the legal equivalent of the message. However, my research was able to determine that some expectations of what the interpreter should be able to do are unrealistic given factors such as differences in language structure, culturally bound language, differences in register and extrinsic factors such as constraints of time, lack of training and additional responsibilities. I

also examined interpreter competency where I was able to identify the different qualifications and credentials that interpreters in different parts of the world have. I juxtaposed this with the Kenyan situation in order to create comparison and contrast that enabled me explain the importance of interpreter competency. Section 2.2 that follows explains different types of meaning shifts and how they occur.

## **2.2. Interpretation Shifts in the Courtroom**

While in section 2.1., I reviewed literature on courtroom interpreting in general, in this section, I examine meaning shifts in three dimensions. Firstly, literature on meaning shifts that arise as a result of semantics, then those that come about as a result of a shift in pragmatics and lastly the stylistic related shifts.

### **2.2.1. Semantic Shifts**

The literature reviewed here is about the interpretation shifts that have come about specifically in the courtroom due to the difference in syntax, grammar and vocabulary between the discourse in the Source Language and that of the discourse in the Target Language. One such study that shows this type of shift is that by Gumperz (1982) in a case involving a Filipino physician accused of perjury. Expert linguistic evidence produced in court demonstrated that the discourse structure of English and the physician's Filipino background was the product of interference from his native language rather than an intentional attempt to mislead. Gumperz's study is similar to my study in that they both focus on linguistic causes of meaning shifts. However, while Gumperz gives a generalization of the cause as discourse structure, I go further and identify the specific structures such as the lexical items and the syntactic structures and treat each on its own merit in terms of what meaning loss each causes and how.

Berk-Seligson (2002) identifies techniques of meaning transfer used by interpreters in reference to Spanish-English interpretation. These can however be applied to a broader context such as in the study of English-Dholuo interpretation. The techniques used by interpreters as identified by Berk-Seligson are: (1) addition of particles, words or phrases which modify the degree of relationship of a predicate or a noun phrase within a context and which can give a text a certain tone of vagueness and ambiguity not present in the Source

Language (henceforth SL). For example, phrases like: “a kind of,” “a certain type,” and “some;” (2) introduction of linguistic material which is considered to be implicit or obvious in the original message, with the possibility of giving the statement a much more emphatic and definitive character than expected, transmitting a sense of security, or possibly a sense of uncertainty, which could be decisive in the jury's deliberations, like giving a complete answer instead of just saying “yes” or “no,” (3) not using contracted language, in the case of English with its auxiliary verbs and modals, or, in the case of Spanish, repeating the complete verb form; (4) re-elaboration or repetition of information already said by the interpreter, sometimes consciously, with the purpose of achieving greater precision and exactness in the answer, or, unconsciously, to buy time in order to think of the final form of his or her intervention. This is a mechanism that is often used in monolingual situations as well; (5) addition of forms of courtesy, whose use varies according to the language and usually has a lot to do with the social status of the person being interpreted; (6) the use of particles and doubtful forms. One of the basic rules of interpretation is, that the information should mirror the SL and that it should produce the same effect. To accomplish this, apparently unimportant elements in a discourse such as "ah," "this guy," and "well" must not be forgotten. But they must also not be included in the witness's testimony when he or she has not used them. Many of the interpreter's frequent "ah's" are in fact his or her own, and not a transfer of doubtful forms from the SL (Berk-Seligson 2002). Such interventions make the witness's words seem to lack the confidence and certainty which he or she said them with, possibly affecting the jury's deliberations. These are expressions which are unconsciously included by the interpreter, but which could alter the effect that the information should have had on the hearers. Other categories of errors could be analysed as literal, word-for-word translations, use of a different register, grammatical errors, lexical errors, omissions, or addition of information.

The issues that Berk-Seligson views as techniques, my study views as meaning shifts. This is because, the techniques mentioned result in distortion of the SL text. For instance, the additions of particles, words, and phrases may cause ambiguity and vagueness as recognised by Berk-Seligson. The fact that there is a change goes against the standards set for interpretation of adhering to the spirit of the original text. If a TL text is ambiguous whereas the SL text was not, there is an element of meaning loss and this cannot be merely termed as techniques. Also, Berk-Seligson mentions words, particles, phrases, and linguistic material but is not specific as to which particular ones; he just mentions them in general. My study

aims at going a step further to isolate which particular kinds of words, phrases, and sentences lead to meaning loss.

Lang (1976) in (Mead, 1985, P.11) in a study on interpreters in local courts in Papua New Guinea identifies five types of interpreter errors. These are: derogatory remarks made by the interpreter of his clients, misinterpreting due to carelessness, misinterpreting resulting from substituting a command by the reasons for the command, careless paraphrasing and misinterpreting due to quality misperception. My study while agreeing with Lang (ibid) on the presence of interpreter errors also recognizes that what he explains is how the errors are made by the interpreters. I propose to examine these errors further and give a linguistic explanation of their occurrence. For example, if there is an error due to careless paraphrasing, I seek to examine the words phrases and sentences used in the TL and how they differ from those used in the SL to determine what exactly in linguistic terms comes across as careless paraphrasing or about the derogatory remarks made by the interpreter, I also seek to identify which exact terms are used by the interpreter and why they are considered derogatory.

According to Gonzalez et al (1991), the goal of the interpreter is to produce a legal equivalent target language message. Legal equivalence is achieved by giving a linguistic TL message that is equal to the source language message in terms of meaning, style and register. It is an objective of this study to determine the linguistic levels and the features of style that when omitted, added, misinterpreted, or summarised result in meaning loss. Therefore, the assertion by Gonzalez et al is useful in this study as it sets the standards to be met in courtroom interpretation in terms of meaning and style. Through these standards, I am able to analyse the data to ascertain whether the TL adheres to the SL in terms of meaning and style and hence identify the points at which semantic, pragmatic, and stylistic meaning shifts occur. The assertion shows that a TL message which deviates from the SL message in terms of meaning and style results in lack of equivalence which this study equates to meaning loss in interpretation.

A case of linguistic influences can be demonstrated by Shuy (1993, P.429), who in the study examines the testimony given by Filipino nurses convicted on charges of conspiracy to poison patients. Shuy's findings show that tenses in Filipino, the language of the nurses, caused their English responses to appear off track and deliberately misleading, perhaps contributing to the jury's verdict of guilty. Shuy's findings are important to this study in that he examines tenses and draws conclusions that difference in dialect results in errors in the

interpretation into English. My study uses the same techniques in the analysis of semantic, pragmatic and stylistic meaning shifts to determine loss of meaning in the interpreted version however, while Shuy dwells on tenses alone, this study focuses on the various linguistic levels of the lexis as well syntactic categories.

Moeketsi (1999) identifies the linguistic phenomenon of polysemy as being a factor in the loss of meaning in interpretation. She gives the illustration of the Nguni word “*bamba*” which normally means “to hold’ but its meaning may shift in context and in how it is actualised to mean sexual assault; robbery; arrest; withhold; or take a route. I find Moeketsi’s examples useful in that words form the lexical items of a language which form part of the data collected and analysed in this study. Moeketsi (ibid) also recognizes that African languages are very rich in proverbs and in kinship terms. For instance, there is usually a word for a paternal uncle/aunt, younger/older than one’s father, and for a maternal aunt/uncle younger/older than one’s mother. There is a word for elder/younger brother/sister in many African languages. For instance, the word “*nyieka*” in Dholuo may loosely translate to co-wife in English that is a person with whom one shares a husband in a polygamous marriage. However, the word also refers to a sister-in-law in the English sense of a wife to a husband’s brother. Whereas African languages are rich and versatile in these terms, they lack the linguistic equivalents of crucial courtroom words such as “plead” and “guilt”. The study seeks to determine how the courtroom interpreter goes about transferring the meanings of these types of words and whether the resultant TL leads to meaning loss or not.

Kiguru in his study on courtroom interpretation in Kenya concludes that “court interpreters encounter challenges in form of legal jargon, culturally bound expressions, as well as slang and colloquialism in their work” (Kiguru 2008, P.122). The identification of areas where interpreters encountered challenges is important for this study as it helps identify the areas of style and semantics where meaning shifts are likely to occur. Slang and colloquialism are treated as areas of style in this study and the deviations as stylistic meaning shifts. The interpretation of jargon and culturally bound expressions are also observed to determine whether they result in meaning loss.

Karton also conducted a study on interpretation errors at the International Criminal Court. In his study, he shows that there are factors that contribute to the inherent indeterminacy of interpreted language. These are:

1. Diversity in syntax and vocabulary: on this he shows that since languages do not overlap, many expressions are not interpretable because of lack of equivalents in the TL. This leads the interpreter to find an expression in the TL that is the rough equivalent of the one in the SL, which creates imperfect interpretation (Karton, 2008, P.27)
2. Cross-cultural communication: the participants in international court trials and indeed in other court trials come from different cultures. The lack of cultural proximity may undermine the ability of the interpreter to convey information in a way readily understood by the court officials (Karton, 2008, P.28)

The intrinsic causes of interpreter errors, as explained by Karton (2008), are useful for my study as they provide further insights into the causes of semantic, pragmatic and stylistic shifts. For example, Karton mentions diversity in syntax. In my study, I seek to compare the syntax of the discourse in the source language to that of the target language to discover what differences exist and how they impact on equivalence, which is important for the person to whom the interpretation is addressed such as the judge, the lawyer, the accused and the witness.

Karton further cites an interesting example which I recount here;

In Rwanda much is made about the plane of President Habyarimana crashing. It occurred on 6 April 1994, a date you will hear at ICTR at least ten times daily. The genocide began that day. Much debate surrounds the circumstances of that crash. The plane was shot down, but there is debate as to who did it. The RPF (Rwandan Patriotic Front)? The Hutu extremists? One expert witness was testifying and the interpretation of the "plane crash" came out as "l'accident" in French. Now of course implying that it was an "accident" prompted the French-speaking defence lawyer to question the witness as to why such a theory could be developed. Did the witness have information suggesting that it was an accident and not an attack? The debate took this unexpected turn and went on for a while, all the result of a slight modification of the original meaning (Karton, 2008, P. 3).

This example continues to reinforce the position of this study that even though semantic shifts are considered a normal part of the interpretation process, they may have diverse effects and need to be minimised if these effects are to be diminished.

Cloete (2008) discusses the S. M. Otieno case in which the meaning of the Dholuo noun phrase *dala* was imposed upon the English noun phrase *home*. The word *home* was made to acquire the property of ancestral land which is absent in the English meaning. Among the issues that have been identified as being critical in underpinning meaning shift in interpretation in courtroom discourse are linguistic and cultural interference, which though, frequently unnoticed have legal consequences. An example that stands out in the Kenyan situation is that of the S.M. Otieno case of 1986-1987 that Cloete discusses. This was a case of a burial dispute between a widow, Wambui Otieno, and members of her late husband's clan the Umira Kager. Wambui belonged to the Gikuyu speaking community whereas her late husband belonged to the Dholuo speaking community. The interpretation issues in this case revolved around the Dholuo noun phrases "*dala*" vs. "*ot*". The clan argued that the NP "*dala*" means *home* which is specifically one's ancestral *home* as opposed to the NP "*ot*" which means a house, which is, merely a place where one lives. Wambui on the other hand argued that her house in upper Matasia was actually *home* and thus the case was made to revolve around the meaning of the NP "*home*". The defendants failed to distinguish between *house* and *home* in the Dholuo concept, giving the Umira Kager clan an advantage and thus losing the case. It seems therefore that Dholuo semantics were imposed on the English word *home* through an act of semantic shift in the interpretation process. This is what Okoth-Okombo says about the case:

Since the word "home" was used throughout in the communication which was to be recorded by the judges, it was clear that in the proceedings in this case the word "home" was used as a metalinguistic concept which, as such, did not belong to the vocabulary of any particular language. A concept of that category is supposed to have a universal technical meaning which it retains in every language irrespective of how it is represented at word level. Thus, by engaging in a disputation over the concept of "home" the litigants and their counsels gave it the status of a legal technical term, which it was not (Okoth-Okombo, 1989, P.94).

In view of such an example, my research acknowledges that, even though meaning shifts are a normal part of interpretations, in some instances, the resulting text may go against the principle of interpreting which states that the interpreter should transfer the meaning, the mood, the jokes, and basically every aspect from the TL into the SL. In the mentioned case, Cloete argues that:

If one truly wanted a more accurate translation of the word "*dala*" into English, it might be closer to the word "homestead". Khaminwa, Wambui's legal counsel, is

not a Dholuo-speaker. If he had called in an expert linguist, he might have disrupted the opposing counsel's manipulations and forced the court to employ greater semantic accuracy. By questioning the legal-technical status the word "home" achieved, he might have reduced its power as well as the ethnographic authenticity it claimed (Cloete, 2008, P.9)

Kiguru (2010) discusses the main errors made by interpreters in Kenyan courtrooms. He gives the following categories of errors:

1. Grammatical errors, which manifest in changes of tense, aspect, number agreement, wrong use of pronouns and even wrong word order;
2. Lexical errors, which occur when interpreters fail to grasp the meaning of either general or specialised vocabulary;
3. Omission errors, which occur when interpreters fail to interpret words, phrases, sentences or parts of discourse resulting in the person for whom the interpretation was intended not hearing the omitted information;
4. Meaning distortion and intrusion errors, which change or alter the meaning of the original message

The errors mentioned are described and examples of how they occurred in Kenyan courts are also given. Kiguru uses three courts in Kenya namely: the chief magistrates' courts in Nairobi, Thika and Kigumo. My study as Kiguru's is also based in Kenya and therefore Kiguru's study forms a basis for comparison. Kiguru's study also provides useful examples given in the earlier sections of this thesis. The classifications of the errors collected is also useful to this study in that it provides a basis on which to classify the pragmatic and the stylistic meaning shifts that I collected. Whereas Kiguru used Swahili, Kikuyu and English as the languages of comparison, my study uses English and Dholuo. My study also takes on a different approach to data analysis in examining the Presentation of Speech and Thought of Others using the categories of fidelity to the Source Text not used by Kiguru.

### **2.2.2. Pragmatic Shifts**

In the previous section, I examined literature on semantic shifts in interpretation and translation; this is closely related to the literature that examines interpretation shifts from a pragmatic point of view which section 2.2.2 dwells on. Utterances have a pragmatic as well as a semantic aspect to them. This research hypothesizes that it is often difficult for the interpreter to convey the pragmatic meaning of the Source Language into the Target

Language. The works examined here show some examples of pragmatic meanings shifts. This section also examines how the illocutionary force of an utterance is affected by interpretation. Searle (1969) defines the illocutionary force as the act the speaker performs as a result of making an utterance such as insult, apologize, show surprise, and disgust among other emotions.

Another different type of courtroom error identified is when there are discrepancies between pragmatic and semantic equivalence in interpreted discourse within the courtroom. Several researchers namely Hale (1997a, 1997b, 2002, 2004), Berk-Seligson (2002), and Jacobsen (2003) illustrate that there are discrepancies between the semantic and pragmatic equivalence of original speech by witnesses from culturally and linguistically diverse backgrounds and the interpreted rendition. These researchers note that in many cases, the interpreter may pass across the semantic meaning but ignore, misunderstand or simply not convey the pragmatic meaning. Pragmatic meaning refers to the meaning of a particular utterance in context. For example, “*goodbye*” is a word whose meaning may differ according to the context. If a visitor has overstayed his welcome for example, the host may use the word *goodbye* to give the pragmatic meaning of *good riddance* whereas the semantic properties of the word imply *go well*.

Jacobsen (2003) conducts research on pragmatics in court interpreting and specifically studies additions where the two languages concerned are Dutch and English. The conclusions reached are that interpreters modify texts through addition. Jacobsen’s study categorizes additions according to their impact on the semantic and/ or pragmatic content of the source text. The additions observed are such as: elaborating additions, emphasizing additions, down-toning additions as well as new information additions. An example taken from Jacobsen (2003) illustrates the way in which the illocutionary force of an utterance can be lost. In this example, the source text is in Dutch and the target text is English. The example is recounted here:

ST-DC: *Var der nogen maerker eller noget ef:er øh at du havde fået knive n holdt øh mod struben?*

FT: Were there any marks or anything after er you had had the knife held er against your throat?

TT-I: Were there any bruises or marks after the: the knife was held against you? Your neck? (Jacobsen, 2003, P. 229)

Jacobsen then goes further to explain that the deviation identified here is an addition through repetition, which adds a degree of hesitancy to the interpreter's target text and thus has a potential to decrease or down tone the force of the original utterance. This effect comes about because the interpreter repeats the definite article the and noticeably lengthens the sound of the /e/ in the first "the". Jacobsen's research findings are particularly useful to my study as they lend the methods of research as well as give an example of how to classify the different types of meaning shifts that were discovered in the data collected.

From Jacobsen (2003) I found a classification and sub classification of additions which is an interpreter modification. The first category is additions with no impact on the semantic and/or pragmatic content of the ST. These are: repetitions, silent pauses, voice-filled pauses and false starts.

The second category of additions are those that have minimal impact on the semantic and/or pragmatic content of the ST which are: repetitions, fillers, paralinguistics, explicit additions, (obvious information additions, connective additions and additions explicating non-verbal information/ culture bound information) and elaborating additions. The last category of additions is those with significant impact on the semantic and/or pragmatic content of the ST which are: emphasising additions, downzoning additions and new-information additions. Jacobsen's findings give a useful insight into analysis of additions in the interpreted courtroom discourse.

Hale (1999) discovers that most of the problems interpreters face in the courtroom are completely unrelated to the specialized terminology but relate mainly to the pragmatic aspects of the discourse such as being able to achieve equivalence of illocutionary force and levels of politeness or equivalence of register of the testimony. Hale concludes in the mentioned study that in courtroom discourse and specifically in lawyers' questions, discourse markers can serve as cohesive devices but more importantly as devices of argumentation, combativeness and control. However, she observes that these markers are often omitted in most interpreters' renditions. The discourse markers that Hale observes in her paper are: well, now, and you see, which she determines are the most frequently used in lawyers' questions and the most often omitted in the interpreted version. She observes that the omission of these discourse markers does not change the propositional content of the utterance but could alter the utterance's illocutionary force. She gives an example that I recount here:

A: *No le he dicho que no estoy seguro? Ha pasado tanto tiempo.*

(Haven't I told you that I'm not sure? It's been so long.)

INT: I have said I am not sure; it was so long ago (Hale, 1999, P.10).

(Here, A refers to the answer given by a witness in response to a question from a lawyer. The answer is given in Spanish. In brackets, we have the exact words of the speaker as reported by Hale (the researcher.) The conversation introduced by INT is the exact rendition given by the interpreter.)

In this example, Hale illustrates that the question asked has been interpreted in a less emphatic and less confrontational way than how the witness actually gave it. The original answer of the defendant as Hale observes is a direct personal confrontation with the lawyer "Haven't I told you" but the rendition is "I have told you" which uses a softer/less confrontational tone. Even though Hale's study is done in Australia and uses English-Spanish courtroom interpretations, the findings are important for this study. Firstly, I borrow the process of the study such as methods as well as data analysis techniques and secondly, I also make useful comparisons using the two studies.

Hatim and Mason (1999) also show that sometimes it is only some aspects of an utterance that are translated and others missed out. They claim "It is possible for the interpreter to translate competently the locutionary act involved in the utterance (in the sense of finding appropriate equivalents for the Source Text words and relating them correctly and appropriately in the Target Language syntax) while failing to perceive or otherwise misrepresenting the illocutionary force of the utterance in context" (Hatim and Mason in Hale, 1999, P.1). My study shows findings that concur with Hatim and Mason.

Lee (2009) also contributes to the debate on interpretation by adding a type of courtroom error in interpretation. She points out that inexplicit source language can be a source of wrong rendition. Her argument is that the courtroom language is by its nature "a highly institutionalized form of discourse that is constrained by evidentiary rules. Legal discourse is often characterised by explicitness and precision and does not tolerate ambiguity or multiple interpretations" (Lee, 2009, P.4). The layperson may not be aware of this nature of the courtroom language thus may lack understanding of the expected language style as well as lack the skill to communicate in the courtroom context. Lee further argues that due to this lack of knowledge and experience, the layperson may produce ambiguous and incoherent speech by not providing enough information. In her study, Lee is able to identify four

grammatical features of Korean that may be problematic in courtroom interpretation namely 1) There is no strict marking of singularity and plurality in Korean 2) Korean does not have a single form that indicates definiteness 3) Korean predicates do not agree in number, person or gender with their subjects but ending forms mark varying degrees of deference and politeness and 4) Korean makes frequent use of ellipsis (Lee, 2009, P.5). Lee's study is very useful here in that even though the two languages compared in his study are English and Korean, my study can borrow from the manner Lee's research was conducted. It points out areas that I could pay attention to such as difference in the syntax of the two languages as well as difference in style. Lee's study also acts as point of comparison.

The literature cited above is useful for my study in the quest to determine the syntactic categories that when omitted, substituted, added or summarised in interpretation result in pragmatic shifts leading to meaning loss. They also help in the quest of this study to determine which styles when omitted, substituted or added result in semantic shifts leading to loss of meaning.

### **2.2.3. Stylistic Shifts**

While section 2.2.1 and section 2.2.2 reviewed literature on semantic and pragmatic shifts respectively, in this section, I examine literature that dwells on stylistics and interpretation. Other than semantic shifts and pragmatic shifts, stylistic shifts can also occur in interpretation and translation. Many researchers including Benmaman, (1992), Berk-Seligson (2002), Gonzalez et al, (1991), Hale (1997 c) O'Toole (1993) say that it is very important during the process of interpretation, to convey the content of the original speaker's words, as well as the style which he or she used in their speech. The style refers to the manner in which the speech is said. It is specifically important to be accurate in the interpretation of style in courtroom as one is quite often judged by their style of speech. A number of studies carried out have actually shown that the style that a person uses to speak can have an impact on the impression they form on their listeners. Through one's style, listeners can judge the speaker's social status, age, personality, intelligence, honesty and intelligence (Hale 2002). For example, a speaker can either use powerful speech forms or powerless speech forms. Conley and O'Barr (1990), describe the powerless speech style thus:

Among the specific features of this style are the abundant use of hedges (prefatory remarks) such as 'I think' and 'it seems like'; appended remarks such as 'you know'; and modifiers such as 'kinda' and 'sort of'; hesitation forms (words and sounds that

carry no substantive meaning but only fill possible pauses in speech such as ‘um’ and ‘well’); polite forms (for example; the use of ‘sir’, ‘ma’am’, and please); question intonation (making a declarative statement with a rising intonation so as to convey uncertainty) and intensifiers (for example, ‘very’, ‘definitely’, and ‘surely’) (Conley and O’Barr, 1990, P.67).

Hale and Gibbons (1999) conduct research that reveals tenor changes in speech, changes in politeness of statements and questions such as when interpreters convey indirect questions as direct questions, changes in reference to persons such as the pronoun you, and omissions of titles and surnames. All these contribute to the change of the tenor that was used in the source language. But this should not be the case as tenor is important in that it manifests relations of status and relations of affect both of which may be modified by inadequate interpretation. In the courtroom, the question form, style and wording are very important and the form in which a question is put to a witness exerts a strong influence on the quality of the answer given (Hale and Gibbons 1999). This may be so but many interpreters often do not put the question in exactly the same way from the source language to the target language. However, this problem might be caused by the fact that the same options may not be available in both languages.

When an interpreter changes the style of speech of a witness or an accused in court, the case is essentially being judged not on the speech style of these two but on the style of the interpreter. The change in style may either be favourable or detrimental to the case and there is a possibility of changing the outcome of the case just because of the change of style. This study aimed at finding out the style of the Dholuo speakers in court as compared to the English version reported. In so doing, the study unravels the styles used by Dholuo speakers in the court and determines to what extent the interpreted version adheres to that style. Whereas Hale used Spanish-English interpretation, my study uses Dholuo-English interpretations.

The review on stylistic shifts is instrumental in giving direction as to how to treat style in interpretation. Through the studies mentioned, I make some comparisons on the styles found in the Kenyan courtroom and whether the interpreter carries the style into the TT. The findings as discussed in chapters 4-6 show how change of tenor is manifested in Dholuo-English interpretation.

## **2.3. Theoretical Framework**

Whereas in sections 2.1 and 2.2 my review centred on interpretation theory, in section 2.3, I endeavour to ground my study in linguistic theory. This study takes on an eclectic approach to the analysis of the data. Thus, I employ several frameworks to explain the results that the study discovers. These frameworks are useful in linguistic analysis in order to anchor the work in linguistic foundations. They are also useful in providing evidence of the linguistic change and the impact thereof. The various frameworks are discussed in this section.

### **2.3.1. Stylistics**

Stylistics is concerned with the description and interpretation of distinctive linguistic choices and patterns in texts. Style in language is generally defined as the result of patterns of choice at different linguistic levels that may be characteristic of a text, the oeuvre of an author, a genre (Semino 2011).

Researchers recognize that linguistic choices have implications for both style and meaning (Semino, 2011; Leech and Short, 2007; and Wales 2001). For their part, Leech and Short (1981) explain that “Stylistic choice is limited to those aspects of linguistic choice which concern alternative ways of rendering the same subject matter” (Leech and Short, 2007, P.31). In my study, I take the same view with regard to courtroom interpretation in that when the original speaker makes their choice of how to convey their message in the Source Language, they also consciously or sub-consciously make stylistic choices. The interpreter is then called upon to convey that same information into the Target Language. The view that style in language comes through linguistic choices that a speaker or a writer makes either consciously or unconsciously is also taken by Jeffries and McIntyre (2010). In the process of conveying the same information through a target language, the interpreter’s own stylistic choices also come into play. It is the points of departure in style from the Source Text that this study is interested in identifying and determining the implications for the meta-functions of text.

Enkvist (1973) suggests that in order to determine style, comparison should be done. That is, that the style of a text can only be accounted for by comparing the text with a larger group of texts that function as a contextually relevant “norm”. He suggests that the comparison will lead to the identification of style markers, namely features whose densities are significantly

different in the text and in the norm (Enkvist 1973, P.25). Whereas Enkvist advocates comparison between different texts, my study uses the same idea of comparison borrowed from Enkvist but the comparison to be made is between the ST and the TT from which the differences in style are identified. This is especially useful as the Target Text is supposed to mirror the Source Text both in style and meaning.

Stylistics is particularly useful for analysis of interpreted data as it enables us to say what exactly is unusual about an expression that causes it to be foregrounded in the ST and whether that has been carried over to the TT. Style as already mentioned is unique to a text and relies on choices made by the author of the source or the target text that have gone into the making of the text (Boase-Beier, 2006, P.50 and Simpson, 2004, P.22-26). Stylistics as a field and a method of analysis presents us with a tool kit for describing texts and their interactions. It explores the key issues of how a text means, how it is made, what choices are implemented and how those choices affect reading/hearing (Boase-Beier 2011). In the processes of translation as well as interpretation, any translation needs to interact closely with the style of the source text.

### **2.3.2. Speech Act Theory**

Speech Act Theory is one of the fields in the Philosophy of language in which consideration of context was earliest introduced. This theory was developed by Austin (1962) who states that language is systematically employed for stating and describing and also for performing actions. He adds that some words not only function at the verbal level but also function as deeds i.e. as concrete performances through words. Another claim he makes is that there is a hidden force in words that can shape people, social and individual relations. Austin (1962) states that all utterances perform speech acts comprised of:

1. A locutionary act: This is the act of saying something. This “includes the utterance of certain noises (the phonetic act), and the utterance of certain words in a certain construction (the phatic act), and the utterance of them with certain meaning in the favourite philosophical sense of that word i.e., with a certain sense and with a certain reference (the rhetic act)” (Austin, 1962, P.92).
2. An illocutionary act: This is the act performed in saying something. More precisely, an illocution explains in what way one is using a locution: “for asking, or for answering a question, giving some information or an assurance or a warning” (Austin 1962, P.98).

3. A perlocutionary act: This is the act done by saying something. "Saying something will often or even normally produce certain consequential effects upon the feelings, thoughts or actions of an audience, or of the speaker, or of other persons" (Austin 1962, P.101).

Austin (1962) in identifying performatives says that for them to be meaningful there have to be certain felicity conditions and he identified three of those

1. Conventional procedure
2. Appropriate circumstances and persons
3. Correct execution of the procedure

By performatives, Austin explains that there are those utterances that are not just used as words but actually perform actions. This is where the courtroom utterances such as to charge, to convict and to acquit fall. According to Austin, these utterances must have various settings to be successful thus when a performative is unsuccessful, it has failed the felicity conditions and is therefore considered infelicitous. An example of a performative is "I declare war". This if uttered by a person in authority to declare war is not just a string of words but an action as well.

In my study, the setting of the audio recordings used as data is the courtroom. In this arena, decisions are made about whether the defendants brought to the court are either guilty or not guilty. This is indeed the main agenda of the courtroom sessions. Therefore, as recognised by Austin (1962), language is used in this arena to either set free the defendants or send them to jail. It is also used to charge them of offences. Acquittals and convictions are specifically mentioned by Austin as examples of performatives. In my analysis therefore, the judge uses utterances which have locution which is just the act of saying those words. In the courtroom setting, however, the words of the judge perform the actions of acquittal or conviction, which is the illocution (i.e. the action performed by saying). Finally, the perlocution is the effect of the words of the judge which involves the accused person either going to serve a jail term or being set free. Thus the setting of my data is able to create a clear distinction of the three acts as enumerated and explained by Austin (1962)

Searle (1969, 1979) further developed Speech Act Theory and his main area of concern was the distinction between the illocutionary force and the propositional content of an utterance. According to Searle, these are the two fundamental components of the illocutionary Act:

1. Analysis of particular kinds of illocutionary acts

2. Classification of the kinds of illocutionary acts into major categories.

In the analysis of particular kinds of speech act, Searle makes reference to four types of conditions which are

1. The essential condition
2. The propositional condition
3. The sincerity condition
4. The preparatory condition

The first two conditions concern the acts of success (that is, they are logically required for the performance of the illocution to be successful) whereas the latter two are acts of non-defectiveness in that they cannot be denied by the speaker performing the illocutionary act. An example of a speech act is “I promise I will pay when I can”. Here, the speaker by uttering those words also performs the act of promising.

On classification of illocutionary acts, Searle (1979) identifies five categories for all illocutionary acts depending on what the speaker’s purpose is in expressing the proposition. These are:

1. Assertive illocutionary acts such as statements, predictions and reports.
2. Declarational illocutionary acts such as convictions, acquittals and resignations.
3. Directive illocutionary acts such as requests, orders and exhortations.
4. Commissive illocutionary acts such as promises, threats and offers.
5. Expressive illocution such as apology, thanks or congratulations.

In my research, I found the declarational acts were common in the judgement phase of the hearings that I recorded. This was so because I dealt with court cases where inevitably at the end of each case, the judge has to make a ruling as to whether he/she finds the accused person guilty or not guilty.

After Searle, Grice (1975) also contributed by introducing a new approach to meaning analysis. According to Grice, a speaker meant something by an utterance on a particular occasion if they satisfied three conditions and these are:

1. Intends to produce an effect on the hearer by an utterance.
2. Intends the hearer to recognise that he/she is intended to have that effect produced on him.

3. He/she intends the effect to be produced on her/ him on the basis of his/her recognising that it is intended to be produced on him/her.

Grice (1975) also proposes a co-operative principle, hereafter (CP), to explain how speaker meaning arises. The CP states:

Make your conversational contribution such as is required at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged (Grice, 1975, P.46).

This CP consist of 4 maxims

- |           |  |
|-----------|--|
| Quantity: | 1. Make your contribution as informative as is required (for the current purpose of the exchange).<br>2. Do not be more informative than is required |
| Quality:  | Try to make your contribution one that is true.<br>1. Do not say what you believe to be false<br>2. Do not say that for which you lack evidence.     |
| Relation: | Be relevant.   |
| Manner:   | Be perspicuous<br>1. Avoid obscurity of expression and ambiguity.<br>2. Be brief and orderly (Grice, 1975, P.46).                                    |

The CP and its maxims are used in this study as a basis for the inference of implicatures which are: interpretations of speakers' communicative intent that go beyond the semantic meanings of what they say. One important feature of Grice's approach that makes it useful to my study is that although one part of interpretation of speaker meaning rests on the text, another important part rests on the CP and the other contexts that figure in the inference of implicatures. According to Grice, implicatures can be created through flouting of maxims.

There is a later group of linguists who take into consideration the speaker's mental state saying it is essential to the performance of illocutionary acts. They include Strawson (1964), Bach and Harnish (1979), Searle (1983) and Searle and Vanderveken (1985). According to Strawson, there are those illocutionary acts that are strictly linguistic in nature because they do not depend on extra-linguistic institutions to be realized whereas there are some other illocutionary acts that are non-linguistic as they depend heavily on extra linguistic institutions to be realized. Also Strawson points out that the hearer must recognize the speaker's intention and that the hearer must be intended to recognize that he/she is intended to recognize the

speaker's intention. If this intention is not recognized, there cannot be said to be an illocutionary act. Searle (1983) further explains that there does not have to be an audience and cooperation of an audience for one to perform an illocutionary act. He shows that a speaker can mean something by his/her utterance and thereby perform random kinds of strictly non-linguistic illocutionary acts even in the absence of an audience. In view of this, Searle proposes intentionality which shows that both speaker meanings and illocutionary acts do not require any kind of cooperation from audiences for them to exist. At the same time, Searle and Vanderveken (1985) add that a person's mental state and their linguistic utterances are entities that are related and that a speaker expresses a mental state in performing any illocutionary acts that belong to the earlier mentioned five categories of acts.

In relation to Searle and his notion that there does not have to be an audience for an illocutionary act to be performed, I agree that there are many such instances. However, the courtroom where my research is based is different. First of all, there must be an accused person for a court case to even exist in the first place. Then there must be a judge who presides over the case to determine whether the accused person is guilty or not guilty. Even if the accused person for one reason or another is absent from the court, the ruling is still directed at him/her and therefore they form the most important part of the audience to whom the illocution is directed. Also according to Strawson, there are illocutionary acts that are purely linguistic and those that rely on extra linguistic institutions for them to occur. It is noteworthy to highlight that none of these scholars refute the existence of illocutionary acts and the debate is about how they occur. My view is that there are illocutionary acts that appear to be brought on by extra linguistic institutions but that language does not occur in a vacuum. Every time language is used, it is used in a particular environment and in a particular context. Giving an example from my study, it is true that the courtroom institution is a place where speech acts of acquittals and convictions are bound to happen by the very nature of that institution but it is language that enables them to happen not the presence of the institution, because, it is only by making an utterance that a conviction or an acquittal is enacted. Thus the presence of the institution alone does not cause the illocution. The utterances play an equally important role.

Alston (1964a, 1964b, 1987, and 2000) shows that a speaker performs an illocutionary act in uttering a sentence just in case he/she thereby takes responsibility for the existence of certain states of affairs. The speaker in essence accepts that they would deserve to be criticised if any of those states of affairs turn out not to obtain.

Gauker (1994, 2000 and 2007) also states that an utterance constitutes the performance of an illocutionary act if some discourse norms can be properly applied to its evaluation. Discourse norms evaluate utterances on the degree to which they promote the practical aim of conversations. This practical aim according to Gauker is to achieve interpersonal coordination while pursuing extra-linguistic goals. Kukla and Lance (2009) proposed an original taxonomy of illocutionary acts from a normative perspective and according to them, every illocutionary act is characterised by reference to the distinctive position it occupies in the normative space where that position comprises on the one hand the acts normative conditions and on the other hand its output conditions. Kukla and Lance then argue that in order to obtain an adequate taxonomy of illocutionary acts, the key question one must ask with regard to both the output and the input conditions is whether these conditions are neutral.

In my study, the fact that the environment of the communicative act is the courtroom rules out this normative approach because in the legal setting, the actors, i.e. both the defendant and the judge, are not responsible for the existence of the state of affairs. The hearing and subsequent judgement of the case follow a predetermined pattern that the participants cannot change. Thus even when an acquittal or a conviction is made, the judge has the duty to make the announcement of the verdict and the accused person to understand it as it has been said.

There have however been major criticisms of Speech Act Theory with Sperber and Wilson (1995, P.243) asserting that “Speech Act Theory has little to contribute to pragmatics”. They claim that in order to understand an utterance, it should be studied as a computational process involving the interaction of several systems such as phonology, morphology, syntax, semantics and pragmatics. This is a claim that resulted in the coming up of Relevance Theory by Wilson and Sperber. They identified three types of speech acts which are:

1. Institutional (social) acts
2. Non-communicated acts
3. Communicated acts (Wilson and Sperber, 1995, P.244-6)

Relevance Theory sought to expand on what Grice (1975) had stated with Cooperative Principle. Wilson and Sperber (1990) agree that Gricean approach to pragmatics is better equipped than previous approaches such as the code model approach. However, they argue that the formulation of Gricean maxims leaves a lot of questions such as: What is meant by being as informative as required? What is meant by relevance? What is meant by brevity? Where did the maxims come from? Are they universal? If so why? Are they culture specific?

If so in what respect? (Wilson and Sperber 1990, P.46). These are the questions that Relevance Theory sets out to answer thus giving a more comprehensive approach to inferential communication. In their Relevance Theory, Wilson and Sperber (2004) argue that a hearer will make effort to process a statement if he or she assumes it to be relevant. Relevance is based on two main principles:

1. The Cognitive principle of relevance: This states that human cognition tends to be geared towards the maximization of relevance (Wilson and Sperber, 2004, P.610). Thus the hearer will try to identify the speaker's intended message being guided by the cognitive principle of relevance.
2. The Communicative Principle of Relevance: Every ostensive stimulus conveys a presumption of its own optimal relevance (Wilson and Sperber, 2004, P.612)

In view of these principles of Relevance, Wilson and Sperber argue that the illocutionary act can only be identified by the hearer of a message if they consider that particular message relevant which is an element that Austin (1962) and Searle (1969,1979) did not factor in in their definitions of the illocutionary act.

Relevance Theory makes valid observations. However, relevance comes into play in naturally occurring conversation that is also free of rules and regulations which is however the hall mark of courtroom discourse. In the courtroom, the agenda is set and there is no ambiguity as to what the agenda is. As such, neither the judge nor the accused person is unaware of what part of the message to treat as relevant especially when it comes to deciding whether a person is either guilty or not guilty.

Having examined the many definitions and different angles on how linguists view the illocutionary act, in my analysis of presenting others' speech, I found that because the interpretation took place in the courtroom, the act of finding people guilty or not guilty and proceeding to decide the judgement was such a performative that strictly had to adhere to the felicity conditions as set out by Austin. The magistrate is the only one who by saying the words "I find you not guilty" sets an accused person free. He/she thus by being the magistrate meets the condition number 2 of being the appropriate person. The setting of the courtroom serves to help meet the appropriate circumstances as set out in condition 2 also. The courtroom procedures also serve to help meet condition 1 of conventional procedure and the correct execution by quoting the law by which the judgement is made helps to meet condition 3. If the magistrate in the privacy of his home met one of the accused persons and said to

them “I find you not guilty”, the performative of setting the person free would not hold because it would fail to meet the condition of appropriate circumstances. In view of the fact that the findings of this research are aimed at creating an impact on how courtroom interpretation is done, I thus decided to use Austin’s description of the illocutionary act to as it best describes the performatives of charging, acquittal and conviction in the courtroom that follow a set pattern on how they are realised.

In later developments of Speech Act Theory, researchers further examine performatives as explained by Austin and critique this category as being unsuitable. One such researcher is Thomas (1995). She argues that:

1. There is no formal (grammatical) way of distinguishing performative verbs from other sorts of verbs.
2. The presence of a performative verb does not guarantee that the specific action is performed.
3. There are ways of doing things with words which do not involve using performatives (Thomas, 1995, P.44).

In my analysis, I also recognise the unsuitability of the performative category and resolve to identify speech acts by other forms of evidence as suggested by Thomas (1995), but this applies only to other speech acts different from acquittals and convictions. These include:

1. The perlocutionary effect of an utterance on the hearer.
2. Explicit commentary by the speaker.
3. Explicit commentary by someone other than the speaker.
4. Subsequent discourse (Thomas 1995, P.104-105).

However, these forms of evidence are only useful when the speech act was not very clear cut, but for the most part of identification of the performatives category, the courtroom arena has acquittals and sentencing that are very clear cut using language that is set out by the law such as “I find the defendant not guilty of the charges preferred” or “On count one, I find the defendant guilty as charged”.

## **2.4. Conclusion**

In chapter two, I provided a critical review of literature in order to determine gaps in literature as well as to enable me to make a comparison between my research and other

studies that have been carried out. The literature also enabled me to ground my study in the theoretical frameworks that I chose to use. In this chapter, I first of all examined the general literature on interpretation starting by showing the difference between interpretation and translation. I then went on to review literature about the role of the interpreter and the interpreter competency. This literature is useful as through it I was able to determine how the roles and competency of interpreters actively influenced the way they carried out the actual interpretation.

I then went on to examine interpreter shifts. These include: semantic shifts, pragmatic shifts and stylistic shifts. From examining works done on these types of shifts, I borrowed the methodology used in determining change in interpretation. Through this review, I was also able to identify in my own study, some other types of changes that had not been mentioned before and in this way contribute to knowledge by filling in those gaps.

The last section of this chapter examines the linguistic theoretical frameworks used. These enabled me to give a linguistic explanation to the changes in interpretation whilst contributing to interpretation and translation theory.

# **CHAPTER THREE**

## **METHODOLOGY**

### **3.0. Introduction**

While the first two chapters of this thesis focus on the introductory part together with the literature reviewed, this chapter gives a description of the methodology used in the research. It identifies the location of the study, the source of the data, how the data is collected, the pilot study, gaining entry, a description of each court case used in the study, the data collection tools and the ethical considerations. It also extensively discusses the model for data analysis showing how each tool is used, the difficulties faced and how those are overcome.

### **3.1. Source of Data**

This first section of chapter three gives an account of the data for this study in terms of where it was collected and how the sampling was done. The research used purposive sampling to select the Nyanza province of Kenya as the location for this study. The purposive sampling technique is also known as judgement sampling and involves the deliberate choice of informants due to the qualities those informants are considered to have. A researcher uses purposive sampling when they have already decided what needs to be known. They then set out to find the people who can provide the information needed (Tongco 2007).

I selected Nyanza province from among the eight in the country because this is where Dholuo language is predominantly spoken. Within the province itself, data was collected from two Dholuo speaking counties out of five namely: Kisumu and Siaya. Data was also collected in three magistrates' court in these counties which are in practice a cluster of courtrooms under the jurisdiction of the Kisumu chief magistrate. For each of these courts, one interpreter was examined except for the Nyando courtroom where a court clerk held brief for another for one day giving a total of four interpreters for the entire study. The choice of a variety of interpreters ensured that the study was able to capture interpreter differences as each individual has a different style of speech. It was not possible to have more interpreters than the four as each courtroom has one permanent court clerk who also does all the interpreting from Dholuo to English as well as from English to Kiswahili.

### 3.2. Map of the Study Location

The map in figure 1 shows Kenya with Nyanza province highlighted. On the opposite side, there is the map of Nyanza province showing major towns. The research was carried out in two Dholuo speaking counties namely, Kisumu and Siaya. These counties are in Nyanza Province which is one of the eight provinces in Kenya. The area is located 385 kilometres North of Nairobi, Kenya's capital city. It has a total area of about 32912 km out of which 15979 km is under water. It is bordered by Western Province to the North, the Rift Valley province to the East, Tanzania to the South and Uganda to the West. The region is inhabited by the Luo, Gusii, Kuria, Luyha, and Abasuba. The Luo, a Nilotic group of people, forms the majority in the area (Kenya Bureau of Statistics 2010) This study was carried out in the two counties because that is where Dholuo is predominantly spoken and in the courts in those counties on any given day, one is most likely to come across many court cases in which interpretation is carried out from Dholuo to English.

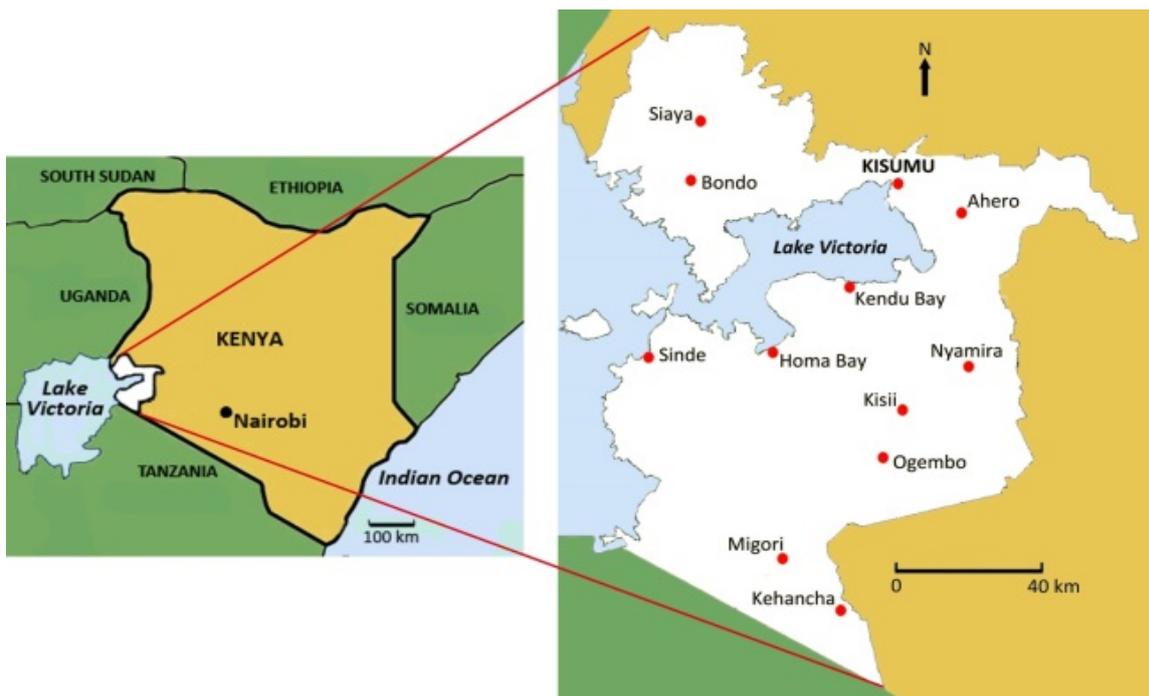


Figure 3.1: Map of Study Location

Source: <http://sspp.proquest.com/archives/vol11iss1/1401-001.ness.html>

### **3.3. Pilot Study**

I thought of this research topic in 2010. In order to determine whether it was possible to carry out this research, I carried out a pilot study. I visited the Nyando Courtroom in 2010 and explained to the magistrate in charge at that time the idea I had. He allowed me into the courtroom and was the first to explain to me the procedures I needed to follow in order to be officially allowed to record data in the courtroom. He pointed out that I was free to attend the court proceedings like any other citizen but was not allowed to at that time make any audio recordings though I was allowed to make written records. I listened to two court cases and made written records of just sections of them. It is those sections that I analysed at that time only using Speech Act Theory. In that way, I was able to test my tools of data collection and at the same time ascertain that there were enough courtroom cases interpreted to Dholuo to enable me collect adequate data for analysis. I also established a good network that was crucial and extremely useful at the time of the actual data collection.

### **3.4. Gaining Entry**

In order for the research to be carried out, I obtained a research permit from the Ministry of Education in Kenya. The University of Huddersfield issued me with a letter showing that I was a research student at the institution. This then enabled the issuance of the research permit. I also approached the office of the Attorney General in Kenya, which handles all legal matters, for permission to carry out research in the Kenyan courtrooms. The permission was granted through an official letter to the three courtrooms involved. In each courtroom, I contacted the magistrate in charge and showed the letter of authorization and the research permit and at the same time explained that the purpose of being present in the courtroom was for linguistic research. Each magistrate then introduced me to the courtroom interpreter. I spoke to each interpreter and reassured them that the research was not in any way about their competence in interpretation (this was the major concern of all the interpreters involved). In each courtroom, I also liaised with the court prosecutor who was in charge of the court programme together with the court clerk.

The prosecutors in each court allowed me to have the charge sheets for the interpreted pleas. These charge sheets were the written charges from which the offences were read and that the interpreter had to convey in Dholuo. There were no verbal charges; all were written down on the charge sheets. The court staff were all very cooperative and in each courtroom, the

magistrate arranged for me to sit next to the interpreter for ease of recording. I sat next to the court clerk and the prosecutor at the front of the court. This greatly improved the clarity of the recordings as I was near the interpreter, the witnesses, the magistrate and the court prosecutor who were the people I needed to record. The Kenyan law does not prohibit recording in the courtroom and states the hearing of the courtroom cases is a public hearing open to the public unless otherwise stated.

### **3.5. Procedure for Data Collection and Analysis**

For the research I used twelve court cases for analysis. These twelve court cases were selected from the 20+ that were recorded in the three courts. This selection was made by taking one of each type of case from each courtroom, meaning that from each court, one plea, one withdrawal, one hearing and one judgement was used. The recordings used for analysis were only those that were clear and complete. The unclear incomplete audio recordings were discarded. The verbal discourse collected involved interpretation from English into Dholuo and from Dholuo into English. The verbal exchanges were audio recorded and then transcribed. The spoken texts were analysed by comparing the source text to the target text. This comparison was achieved by transcribing the source text, transcribing the target text and using the back translation of the two in order to identify the points of departure.

In the analysis, I made use of Jeffries' (2010) model for linguistic and Critical Stylistic analysis. Even though Jeffries identifies ten writing practices that can be used for analysis, I used only three of those namely: presenting others' speech, representing actions/state and naming. These functions were chosen because they are the ones that appear in every utterance in the recordings. In my suggestions for future work, I advise that some other research should be carried out using the remaining seven tools for a fuller understanding of how they work in courtroom interpretation.

### **3.6. A Description of the Data**

Data used in this study was recorded from three courtrooms in the Nyanza province of Kenya. The courtrooms were: Nyando Magistrate's Court, Kisumu Magistrate's Court and Siaya Magistrate's Court. Most cases that went on in these courts were interpreted from

Dholuo into English and some were interpreted from Dholuo into Kiswahili. Data was collected on varied dates between 20th December 2013 and 15th Feb 2014.

In the Kenyan courtroom, the court clerk, who also acts as the interpreter, arranges the court files in terms of the stage that the case has reached. The different stages observed are: mentions, which involve giving the dates when the hearings will be held, and pleas which is the stage where the accused person has to take a plea of either guilty or not guilty. Interestingly, there were many instances when the complainants chose to withdraw the cases from the court at the plea stage. This is so because the constitution of Kenya allows for cases to be solved at home by the concerned parties. This is the section that my study classifies as the withdrawal stage. Hearing is the fourth stage. This is where witnesses are given time to give their evidence, the accused is given time to cross examine the witnesses and also given time to state his or her defence. And the last stage is the ruling or the judgement stage where the magistrate gives his or her verdict about the case. I use the stages of the cases to classify data for easy reference during data analysis and documentation of findings. This study does not use the mentions as there is not much linguistic data to be gathered from those. The data analysed consists of three pleas, three withdrawals, three hearings and three judgements. I was able to liaise with the court officials earlier and know when a particular type of case was going to be heard and thus be present in the courtroom to do the recording. Sections 3.6.1 to 3.6.4 are a description of the audio recordings. They give a brief background of the cases that helps put them into perspective for the reader.

### **3.6.1. Pleas**

In the plea stage, the accused person has the charge against him/her read out to them in the language they best understand. They are only required to take a plea of either guilty or not guilty. The pleas used for my study were only those where, as a result of taking a plea of not guilty, there were adequate turns in the conversation to analyse the interpretation. When a plea of guilty is taken, the judge usually reads out the ruling and the wording is mostly the same thus does not provide enough data for analysis. The pleas used here were one from each of the three courtrooms used in the study and these are:

### **3.6.1.1. Plea 1**

This is a case where the defendant was charged with creating disturbance in a manner likely to cause a breach of peace contrary to section 95(1) (b) of the Penal Code by throwing stones at mourners.

### **3.6.1.2. Plea 2**

In plea 2, the charge is assault and causing actual bodily harm contrary to section 251 of the Penal Code. The defendant unlawfully assaulted the complainant thereby occasioning her actual bodily harm.

### **3.6.1.3. Plea 3**

The charge in plea 3 is that of being in possession of chang'aa contrary to section 27(1) (b) as read with section 27 (4) of alcoholic drinks control act NO: 4 of 2010. The two defendants were jointly found being in possession of 50 litres of chang'aa without a permit from the district alcoholic drinks regulation committee.

## **3.6.2. Withdrawals**

In the Kenyan justice system, it is provided for in the constitution for people to solve their problems out of the court. This is mainly because of the African systems where the community has its own problem-solving mechanisms. It is therefore allowed for a complainant to, in person, go to the court and ask the court to withdraw the case. The withdrawals analysed here are three, one from each court.

### **3.6.2.1. Withdrawal 1**

In withdrawal one, a father had brought a case against his biological son and his son's friend. He had accused both of stealing some goods from him. As they are close members of a family, the complainant said to the court that he had resolved the matter at home and did not wish to pursue it further. The court however ruled that he could withdraw only the charges he had brought against the two accused persons but not the case the state had brought against one of the accused persons, which was that of being in possession of illegal drugs.

### **3.6.2.2. Withdrawal 2**

In this withdrawal the charge was not read out. I included it in the data analysed because it had enough conversational turns to analyse and was from the Kisumu Magistrate's court. The magistrate allowed the complainant to withdraw the case.

### **3.6.2.3. Withdrawal 3**

In withdrawal three, the accused person was charged with stealing a sheep from his sister-in-law, who was the complainant. The sister-in-law chose to have the matter resolved at home rather than in the courtroom after the defendant agreed to pay back for the stolen sheep.

## **3.6.3. Hearings**

Hearings refer to when the magistrate allows the defendants as well as the witnesses to give their versions of how the events unfolded. It is also the stage where the prosecution or the defence cross examines the witnesses with the aim of evaluating the truth of the testimony of the witness or to develop the testimony further. The lawyers for the accused persons as well as the ones for the witnesses may do the cross examination and if unrepresented, the accused persons may do their own cross examinations. In the cases analysed, all the accused persons were unrepresented by lawyers.

### **3.6.3.1. Hearing 1**

In hearing one, the accused person was charged with the offence of beating up and injuring someone on the twenty eighth of December 2013 in Maliera sub-location, Gem District Siaya County. The prosecutor read out the facts of the case and cross examined the accused person to ascertain more facts about the case. The magistrate listened and gave a date for further hearing of the case as the complainant was not present in court and the accused person had claimed that the complainant was ready to withdraw the case.

### **3.6.3.2. Hearing 2**

Hearing two was a continuing hearing. The charge was that on the fourteenth of December 2012 at Nyan'goma location in Muhoroni Kisumu County, the accused person defiled and intentionally committed an indecent act on a child aged nine years. This particular recording

was of when the accused person was giving his version of the events. He was cross examined by the prosecution in order to establish the truth of his statements. This case was also adjourned for further hearing at a later date.

### **3.6.3.3. Hearing 3**

In hearing 3, the accused person was charged with being in possession of Bhang (Cannabis Sativa) with a street value of 20 Kenyan Shillings. The prosecutor read out the facts of the case and the accused person was cross examined. The case was adjourned to a later date.

### **3.6.4. Judgements**

In the judgements, the magistrate reads out the charge afresh highlighting what the responsibility of the court is in that particular case. The magistrate then reads out his/her findings explaining why they reached their decisions. Finally, the magistrate reads out their ruling on each of the counts brought to court on that particular case. The research used three judgements one from each of the three courtrooms.

#### **3.6.4.1. Judgement 1**

In this court case, the accused person was charged with breaking and committing a felony in the first count and in the alternative count with handling stolen property. In the second count, he was charged with being in possession of bhang. The judge gave his ruling explaining each count, the evidence given and why he had reached the verdict of not guilty on all the three counts.

#### **3.6.4.2. Judgement 2**

In judgement 3, the accused person was charged with four counts all of which took place on the third of May 2012 at around sixteen hundred hours. In count one, he was charged with misconduct as a conductor in a *matatu*. On count two, the accused person was charged with acting as a conductor in a PSV *matatu* without having a conductor's PSV licence. In count three he acted as a conductor without a conductor's badge and in count four, he is deemed to have failed to report an accident involving one passenger. In this case, the accused person was found not guilty of all the offences identified.

### **3.6.4.3. Judgement 3**

In judgement 3, there were two counts for the accused person. On count one, he was charged with forgery where it is alleged that on the twenty second of November 2012 the accused person forged an Equity agent transaction register purporting to have been signed by the complainant, a fact he knew to be false. On the second count, the accused person was charged with obtaining money under false pretence. In this case too, the accused person was found not guilty.

### **3.7. Data Collection Materials**

I collected audio recordings of courtroom interpretations by use of an audio recorder. The data is stored in a flash disk for easy retrieval and safety. In the process of non-participant observation, a note book and pen was used for making observational field notes and for textual transcription.

### **3.8. Methods of Data Analysis**

In analysing data, I made orthographic transcriptions. I listened to the audio records and wrote down what was said. The listening was done repeatedly until I was clear on what exactly was being said. The data was then recorded in dialogue format identifying the speaker and then writing out what they said. The change of speaker signified the end of a particular utterance. The utterance made by the witnesses and those made by the court officials such as magistrates and prosecutors to be interpreted into Dholuo or from Dholuo were treated as the ST at any given moment. What the interpreter conveyed was treated as the TT. For any source text that is in Dholuo, I provided a back translation which in the transcriptions is shown as the researcher's translation abbreviated RT. The court interpreter's version was documented and a comparison made with the researcher's version and points of departure noted.

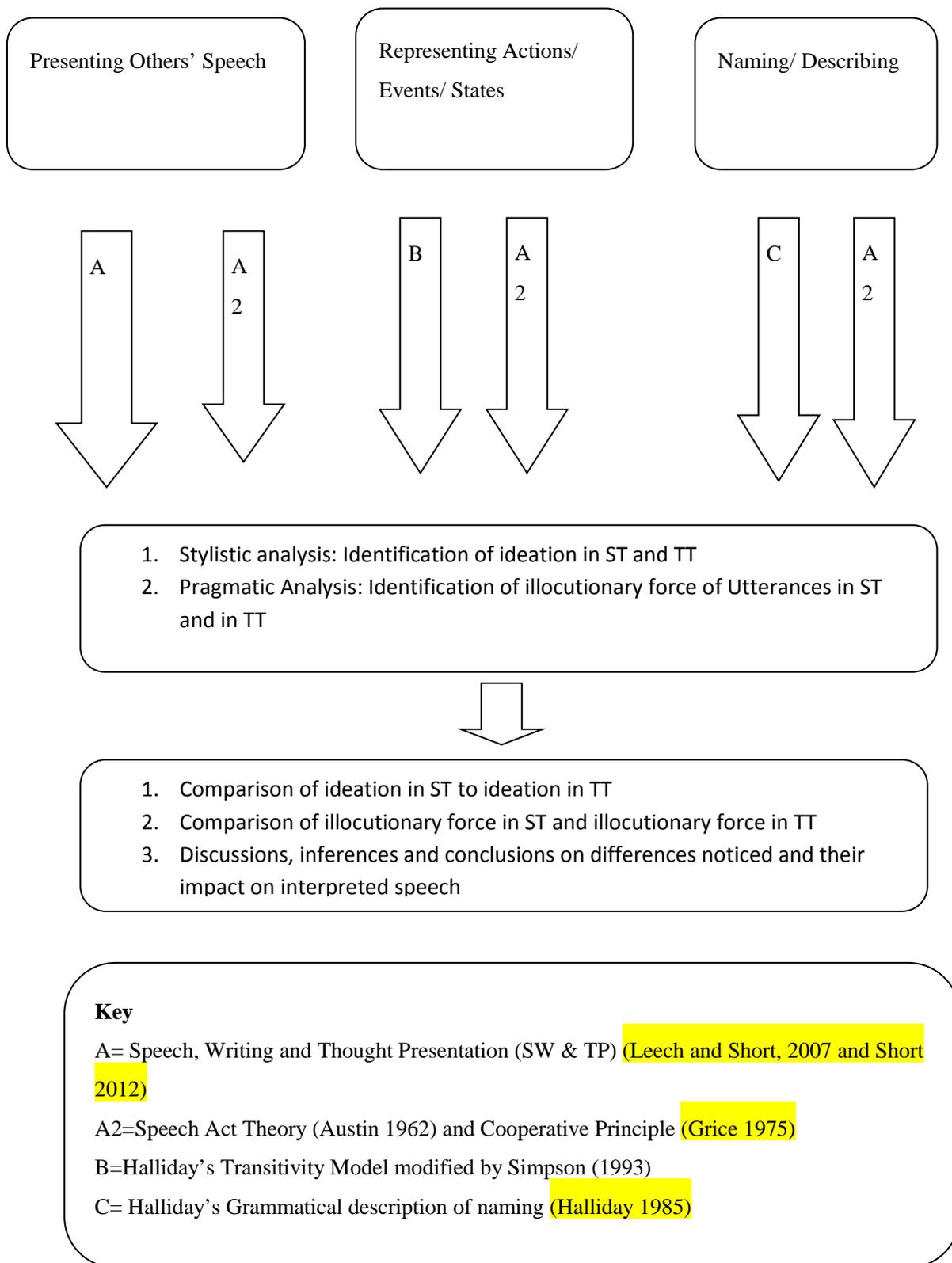
These points of departure were then classified into three: presenting others' speech, representing actions/states and naming choices. In examining faithfulness to the original message, I made use of the Speech, Writing and Thought Presentation as advocated by Leech and Short (2007) and later updated by Short (2012). Through this I identified the changes which generally are: where the interpreter distances themselves from the speech, where they

modify the speech to retain pragmatic meanings and where they maintain the same speech. I also analysed the fidelity to the text through this model.

For naming choices and representing actions/states, I identified the differences in the way the ST chose nouns and verbs from the way it was done in the TT. I made an analysis comparing firstly the ideological implications of the noun and verb choices in the ST to the new choices in the TT. I pointed out the ideologies in the TT and explained the difference of that from the ideologies in the ST. For Grammatical terms and explanations of naming choices, I employed Systemic Functional Grammar by Halliday (1985). For analysis of representation of events/states, I made use of Simpson's (1993) model of transitivity which is also based on Hallidayian grammar.

I also carried out an analysis of the pragmatic changes. This is present in the data when the illocutionary forces of utterances in the ST were found to be different from the ones in the TT. The presence of the interpreter and his/her clerical duties were also a source of pragmatic changes in the TT. In analysing pragmatic changes, I employed Speech Act Theory by Austin (1962) and combined this with Grice's (1975) Cooperative Principle. Figure 2 below illustrates the eclectic approach to the data analysis.

**Figure 3.2: A Presentation of the Eclectic Approach to the Theoretical Framework**



### **3.9. Transcription**

Transcription of the spoken discourse is a key part of this research and the decisions that I made about how to go about the transcription, were based on the research methodology chosen. There are broadly speaking two types of transcription according to Jenks (2013): open transcription and closed transcription. Open transcription involves observing and noting down every feature of talk and interaction as recorded including such features as: audible breathing, timed pauses, the onset of overlapping, turn taking as well as other prosodic features of language. This type of transcription is used when the researcher will eventually need to form research questions from the collected data.

Closed transcription on the other hand involves transcribing the spoken discourse according to pre-defined research questions. These research questions enable the researcher to decide the aspects of spoken discourse that have to be transcribed. In this type of transcription, which is what I used here, the transcription is produced according to what is relevant to the researcher's investigation. Thus the closed transcription is less detailed than the open transcription. In the first chapter of this thesis, I did identify the research objectives as well as the scope and limitations of the research. I emphasised that analysis of interpretation from one language to another is a very wide topic which can investigate all the levels of language including: phonology, morphology, syntax, semantics, pragmatics, as well as discourse. However due to limitations of time and space, this study could not investigate everything. As a result, the prosodic features of the recorded data were not part of the investigation and do not therefore form part of the transcription. Due to this I can state that transcription cannot be objective as it is tied to the personal interests, objectives and experiences of the researcher. That is why according to Mondada (2007, P.810), transcription is "reflexively tied to the context of their production and to the practical purposes of their accomplishments" and Bucholtz (2007, P.789) also asserts "accuracy is of course an important goal in transcription but it is also in the end an impossible one".

In choosing what to transcribe, I considered the organizational format as well as the four key issues of transcription which include: readability, granularity, accuracy and the research agenda (Jenks 2013). On readability, the transcription is text based so that the readers are able to read it. I thus used the English and Dholuo writing conventions. On the issue of granularity, I acknowledge the fact that spoken discourse is highly detailed and also very complex. The details I put into my transcription were dictated by the research objectives

which did not require the analysis of prosodic features of speech though I also realise that this is an important area and as such recommend that further research should be done on those. The third issue that I also considered is the accuracy and this involves being faithful to how the spoken words and utterances are transcribed. To ensure accuracy, I listened over and over to the recordings of the courtroom hearings and painstakingly recorded each word. Where I did not hear well, I went over the recording again and again to ensure I captured everything. The magistrates in the various courtrooms were very helpful when they arranged for me to sit very close to the front of the courtroom where I could clearly hear the interpreters, the witnesses and the other court officials. My recordings were thus very clear.

The research agenda also influenced my transcription. I had set out to examine the utterances of the ST and then compare them to the utterances of the TT. In order to achieve this, I ensured that my transcription reflected that agenda and this is what informed the format.

### **3.9.1. The Transcription Format**

For the transcription of my data, I used the format employed when representing dialogue whereby I identified the speaker, followed by a colon and then represented their utterance in a block quotation form. This was then followed by the interpreter's speech which used the same dialogue format. If the utterance was made in Dholuo, I use italics to show that the utterance was being made in a language other than English, which is the language in which the research is carried out and written. Every Dholuo utterance is followed by a back translation made by myself. In order to ensure accuracy in the translation, after I had done all the transcriptions, I forwarded the transcribed data to two people who speak Dholuo as their native Language, these were, Dr Bernard Kodak of Maseno University Kenya and Beverly Achieng' of Egerton University Kenya. They were able to read the back translations and edit them for accuracy in order to minimise any mistakes that I might have made. I however did not include any prosody, pauses, hesitations or other features of spoken language in the transcription as they did not form part of what was to be analysed. I still preserve the recorded data and also recommend that they can be used to form other corpora for further studies on interpreted discourse. I also recorded the ST and TT as they were said with the all the grammatical errors made and did not make any corrections on those even in the back translations as they formed part of the features analysed.

### 3.10. Model for Data Analysis: Critical Stylistics

In her book *Critical Stylistics: The Power of English*, Jeffries (2010) states the aim of the book as: “to give the reader a clear set of analytical tools to follow in carrying out the critical analysis of texts with the aim of uncovering or discovering the underlying ideologies of the texts” (Jeffries, 2010, P.6). The witerly practices are supposed to help a reader come to an understanding of what the text is doing. These practices as set out by Jeffries are:

- a. Naming and Describing
- b. Representing Actions/Events/States
- c. Equating and Contrasting
- d. Exemplifying and Enumerating
- e. Prioritizing
- f. Assuming and Implying
- g. Negating
- h. Hypothesizing
- i. Representing the Speech and Thoughts of other Participants
- j. Representing Time Space and Society

Through these functions, an analyst may be able to examine the stylistic choices made either consciously or sub-consciously in a text and determine the ideologies of the said texts. I concur with Jeffries that the linguistic functions are useful in helping determine ideologies and in my study I used them for that purpose. However, I also discovered that through the same practices, I determined the pragmatic effects of the stylistic choices that people make. I identified changes in the illocutionary forces of utterances through stylistic choices as well as changes that came about as a result of flouting the Gricean principles thus a major contribution of my study is expanding on the use of the Critical Stylistics linguistic functions to cater for both understanding of the ideologies as well as that of understanding the pragmatic effects of texts.

In my data analysis, I used only three of the ten tools and these were: presenting the speech and thoughts of other participants, representing actions/events/states and naming and describing. SW & TP reflected the nature of the communicative event that I was dealing with, that is, courtroom interpreting. Every utterance that is made in Dholuo has to be interpreted into English which means that the interpreter is tasked with presenting the speech of others. I did not dwell on presentation of thought as it is non-existent in this naturally occurring data.

Gonzalez et al (1991, P.16) argue that a court interpreter is tasked with “interpreting the original source material without editing, summarizing, deleting or adding, while conserving the language level, style, tone, and intent of the speaker”. If an interpreter is able to keep to the fidelity of the text, then they are able to give what is termed as the legal equivalence of the source message”. With this in mind, I set out to use SW & TP model in order to determine if indeed a legal equivalence was achieved both stylistically and pragmatically.

The main reason for choosing the presentation of events/states and naming and describing as tools is because each utterance in the data contains all three. All the other functions occur in the texts but not with the frequency and certainty of these two.

### **3.10.1. Presenting Others’ Speech**

The model I used in my analysis of data is the presenting of others’ speech as presented in Critical Stylistics. This is because the entire communication event of interpretation in the courtroom involves the presentation of others’ speech. The original speaker, that is the person who produces the Source Text, is considered in this study as the author of the message. This message has then to be relayed to others through the interpreter who is the animator (Goffman 1981) or the mouthpiece (Thomas 1986). The presentation of others’ speech in interpreted discourse is thus complex in that the author codes the message in one language and the animator/mouthpiece presents this in another language. The interpreter has to then keep fidelity to the message albeit in a different language when presenting the speech of another person to the hearer. It is important to analyse whether the interpreter maintains the faithfulness to the ST as is expected. It is obvious that there is always a gap between the ST and the TT but the extent of the gap in the courtroom can make a difference as to whether one is found guilty thus imprisoned or found not guilty and set free. It is with this in mind that I used the mentioned model to try and analyse the faithfulness of the interpreters to the ST.

The model of speech presentation used here follows the one developed by Short (2012) who presents the speech, writing and thought presentation scale from the most faithful to the least faithful to the original:

1. Direct Speech (DS)
2. Free Indirect Speech (FIS)
3. Indirect Speech (IS)

4. Narrators' Presentation of Speech Act (NPSA)

5. Narrator's Presentation of Voice (NPV)

These categories are presented in such a way that the most faithful to the original is placed as number one and the least faithful is number five. Jeffries (ibid) notes that

If we begin to depart from the verbatim text of someone's speech in public texts where ideology is being reinforced, created or manipulated, we may more or less subtly misrepresent them with a range of consequences (Jeffries, 2010, P.133).

This turned out to be important to my analysis because I found that most of the utterances failed to adhere to fidelity. The interpreters only adhered to mentioning the source of the words by introducing the reporting clauses to show that it was the speech of another person. In instances where they used the first person narration to appear as the mouthpiece of the person for whom they were interpreting, they still failed to keep the words and the ideation as well as the pragmatic dynamics of the ST.

Also, there is often loss of meaning and at other times there is also change in ideation and change in the illocutionary force of the utterance. When the first person narration is used, the hearer expects to hear the exact words of the persons being interpreted. It is thus even more misleading as the markers indicate fidelity but the utterances do not follow the expected norm of faithfulness to the ST. The biggest disadvantage of this is the people for whom the interpretation is being carried out do not understand the ST language and assume that by using the first person narration, the interpreter is giving verbatim what has been said. An example of the presentation of others' speech as taken from Judgement 3 is:

Example 3.10.1.a

Mag: I find that the complainant who testified as PW1 narrated how she boarded the *matatu*

Int: *No yud ni jadona mane owuoyo kaka janeno mokwongo nolero kaka noidho gari*

RT: It was found that the complainant who spoke as the first witness explained how she boarded the vehicle

The magistrate used the first person to show one of her findings. This is because she is the one in whom is vested the authority to give findings in the courtroom and she is doing this in her capacity as the final decision maker in this case. The interpreter had the task of passing this message across in a different language maintaining the gist of the information. The first

thing the interpreter did was to change the voice of the ST from the active to the passive voice. She also used the narrator's presentation of a speech act (NPSA) embedded in the utterance "the witness explained". It is the change from active voice to passive voice that I find most significant in this example. In the recordings of all the judgement rulings, I found that the interpreters were very conscious of the fact that they have no authority to make any judgements in the courtroom. So whenever the judge used the first person to state a finding or make a judgement, the interpreters did not use the first person narration and instead opted to either introduce the noun phrase "the court found" or to use the passive voice as in example 3.10.1.a. above.

The reason for the failure to use the first person can be explained using the felicity conditions as expounded by Austin (1962). When a judge uses the "I" in a judgement, he/she is performing an act with his/her words. This he/she is only able to do in the right environment and in the right circumstances being the person he/she is in that particular role. The interpreter is therefore not able to use the same words for the same purpose. It is even made more pronounced by the fact that the interpreter serves directly under the judge as his/her subordinate. Therefore, in order to ensure that the performative is valid, the interpreters tend to paraphrase the magistrates' words in such a way as to show that they are not the interpreters' own thus retaining their weight; which is all important for performatives. The interpreters in this study failed to distinguish between the different discourse roles where they are only the animators of the message and not the authors as distinguished by Goffman (1981) and Thomas (1986).

As is shown in the example used in this section, Dholuo speakers also tend to change the voice in some type of reported speech to passive. This is a transfer from the Dholuo language which uses the passive to report speech from a person viewed to be holding a higher rank either by age or by protocol.

### **3.10.2. Representing Actions/Events/States**

This tool deals with the verbal element of the clause. This is the element in the clause that shows what is being done, what is happening or what exists. Like Jeffries (2010), I made use of Halliday's (1985) transitivity model. This tool is used to describe the choices of verbs in any text and facilitate debate on the consequences of those choices. My analysis was twofold because first I identified the verb choices in one language i.e. the SL and used those to

determine the ideation that was being expressed and then examined the verb choices in the interpreted version in the second language i.e. the TL and determined the ideation after which the discrepancies if any were identified and then debated upon.

In analysing the verbs, I used a summary of the transitivity model as advocated by Simpson (1993) which is summarised below:

<b>Main Category</b>	<b>Participants</b>		<b>Subcategories</b>
Material Action Process	- Actor, Goal		- Intention - Supervention - Event
Verbalization Process	- Sayer, verbiage, Goal		
Mental Cognition Process	- Senser -Phenomenon		- Cognition -Reaction - Perception
Relational Process	- Carrier -Attribute		-Intensive -Possessive -Circumstantial

As with the tool on presenting others' speech, this tool also has its challenges. The main challenge is that the categories as identified by Simpson are not water tight. There are several overlaps identified. For example, an action can be a Material Action Intentional but on a closer examination may appear as a Supervention. An example of a MAI is: The accused person beat up the defendant. In many instances, the Dholuo utterances that changed into the passive from the active took on a supervention form when they were originally Material Action Intentional. In examining these types of utterances, I acknowledge the versatility of language and also the fact that even though language has a set number of rules, these rules may also be broken and bent to come up with utterances that are acceptable.

In determining ideation in the utterances used, the main challenge I faced is the difference in cultural norms. I found that what is culturally acceptable in one language is not culturally acceptable in another as the two languages involved: Dholuo and English come from two very different cultural backgrounds. The difference in culturally bound expressions is thus a

contributing factor to the differences that are apparent between the ST and the TT. The same can also be said about the identified pragmatic differences. An example of how this tool is used is given below:

Example 3.10.2.a (See Hearing 2)

Mag: He is charged with defilement

Int: *Ne odonjni go ketho mar ni nene ibambo nyathi matin*

RT: You are charged with an offence that you raped a young child...

Mag: And the alternative, he is charged with an indecent act

Int: *Kotenore gi mano, nodonjni ni ne imulo dend nyathino e yo mokowinjore*

RT: In relation with that, you are charged that you touched the body of that child in an improper manner

There are two instances of representations of actions that I wish to focus on in this example. In the utterance by the magistrate, we have a clause which the subject “He”. The verb group consists of an auxiliary verb (is), a main verb (charged) and a prepositional phrase (with defilement) which also functions as a Complement in the sentence. The process is that of verbalization and the verbiage involved is charged. That is something somebody else is doing in relation to the case, the accused person is only being told about it.

That is one way of looking at the verb process in this utterance. On the other hand, the verb “charged” can also be analysed as a performative in that, the magistrate by saying the accused person is charged also makes it an accusation by saying the words in her capacity as the presiding judge. This example thus shows the problems that a researcher faced while using transitivity for analysis. The categories mentioned are not clear cut and they are bound to overlap. This overlap shows that language has a set of rules but those rules can be broken and we still remain with utterances that make sense (Jeffries 2010).

### **3.10.3. Naming and Describing**

This function explores the way in which texts can be said to name the world. While Jeffries (2010) uses naming and describing to examine naming in the English language, I use it to examine the naming choices in Dholuo that are then interpreted into English. This produces an interesting angle because of the differences in the two languages as well as the differences

in the speakers. The difference in the speakers is a contributing factor to the changes that occur in the process of transferring names from Dholuo to English and vice versa.

The part of the sentence that often typically names an entity is the noun phrase or the nominal group. This often functions as either a Subject of a sentence or the Object of the verb. When the noun/noun phrase functions as the Subject in an active sentence, it is viewed in Hallidayan terms as the Actor (the initiator of the action). When the noun/noun phrase is the Object of an active verb phrase, it may be a recipient of the action also known in Hallidayan terms as the Goal. In examining naming choices, I looked at the choices of nouns by the interpreter and compared them to the nouns used in the ST. Through that I examined the changes in ideation that take place in the TT. The same noun choices were also examined for pragmatic impacts through examining the Illocutionary forces that were present in the choice of nouns in the ST and comparing those to the illocutionary forces in the TT.

Noun modification is another key factor while using naming to examine the texts. Through modifications of nouns speakers convey a particular ideology but in many instances, those modifications are different in the TT thus creating a difference in style sometimes and a difference in pragmatics effects at other times. This again is a key difference between my analysis of naming and Jeffries' analysis. While she examined the modification of nouns and their ideological impact, I used the same functions to examine both ideological and pragmatic significance. Nominalization is also found to be used to carry ideology in the ST but is not maintained at the same level in the TT. Thus naming proves a useful way not only to determine stylistic choices and their consequences but also to unearth the pragmatic meanings and how those change in the process of interpreting.

The use of the naming function is not without challenges. The first challenge is that even though it is relatively easy and straightforward to identify nouns, it is not as easy to map out the modification boundaries in noun phrases. This is because of embedded phrases where it is sometimes difficult to decide what part of the head noun they modify. Even with the use of bracketing, some structures are simply complex. In order to overcome this, I make use of tree diagrams and explain the noun phrase structures and where there are problems, consult widely to decide on the best boundaries for the embedded clauses.

An example of how this tool was used in analysis is shown here:

Example 3.10.3.a (See Hearing 2)

RT: You are charged with an offence that you raped a young child...

Mag: And the alternative, he is charged with an indecent act

Int: *Kotenore gi mano, nodonjni ni ne imulo dend nyathino e yo mokowinjore*

RT: In relation with that, you are charged that you touched the body of that child in an improper manner

In this example, the interpreter expands the noun phrase that is used in the ST to a more complex one in the TT. “An indecent act” is a simple noun phrase that consists of a determiner, an adjective which acts as the modifier and the head noun “act”. The resultant noun phrase in the TT is far more complex; “that you touched the body of that child in an improper manner”. I treat this as a noun phrase because it can be used as a subject in a sentence e.g. that you touched the body of that child in an improper way is terrible. This shows one of the methods I used to determine whether a group of words could qualify to be used as a noun clause or not. I have had to go back to the study of syntax in order to determine how words relate with each other to form phrases no matter how complex they become.

### **3.11. Conclusion**

In chapter three, I presented the methodology used in this study. The introduction was given in section 3.0. I gave the source of the data in 3.1 and identified the geographical location of the research in 3.2. Section 3.3 explained how the pilot study was done. I explained how I gained entry for the study in section 3.4. The procedure for data collection was outlined in 3.5 while description of the recordings used as data in 3.6. In section 3.7, I gave a brief description of the data collection materials and in 3.8 discussed the methods of data analysis. In 3.9, I described the transcription choice and format. Section 3.10 is a description of the model used for this study.

## **CHAPTER FOUR**

### **PRESENTING OTHERS' SPEECH IN DHOLUO- ENGLISH COURTROOM INTERPRETATION**

#### **4.0. Introduction**

In this chapter, I examine the ways in which interpreters present the speech of others in Dholuo-English courtroom interpretation. In Jeffries' (2010) book on Critical Stylistics, she proposes how to analyse presentation of speech and thought through a model of Speech, Writing and Thought Presentation (SW & TP) by Leech and Short (2007). In my work however, due to the nature of the courtroom communication event, I do not come across any presentation of thought as usually happens in works of fiction or other types of writing and I therefore only examine the presentation of others' speech. In my analysis, I make use of the categories of speech presentation as presented by Short (2012) which is an updated version of Leech and Short (2007). The original speaker, that is the person who produces the Source Text, is considered in this study as the author of the message. This message has then to be presented to others through the interpreter who is the animator (Goffman 1981) or the mouthpiece (Thomas 1986). The presentation of others' speech in interpreted discourse is thus complex in that the author codes the message in one language and the animator/mouthpiece presents this in another language. The interpreter has to then keep faithful to the message albeit in a different language when presenting the speech of another person to the target audience.

Gutt (2000) is one researcher who links translation with presenting the speech of others. In reference to faithfulness to the original text, Gutt states that what the animator of a message presents to the target audience must resemble what the source person was talking about rather than what someone else was saying. Gutt thus defines faithfulness in interpretive use by stating:

In interpretive use, the principle of relevance comes across as a presumption of optimal resemblance: What the reporter intends to convey is:

- a) Presumed to interpretively resemble the original otherwise it will not be an instance of interpretive use- and
- b) The resemblance it shows is presumed to be consistent with the presumption of optimum relevance (Gutt, 2000, P.106)

Still on faithfulness, Gutt explains that the speaker should guarantee that the utterance is a faithful enough presentation of the original that is, it resembles it closely enough in the relevant respects.

Short et al (2002) also argue for the importance of faithfulness in discourse presentation. They argue that “faithfulness in direct discourse concentrates on those factors which are relevant in specifying as accurately as is feasible in context the precise communication content of the discourse being reported” (Short et al, 2002, P. 328). They also show that faithfulness does not necessarily involve reproducing, except where it is communicatively important, every single linguistic characteristic of the utterance being reported. Most importantly, Short et al also mention the faithfulness in translations from one language to another as part of direct forms of discourse. The definitions of faithfulness by Gutt (2000) and Short et al (2002) inform the identification of discourse that is considered less faithful to the original in my study.

Given the importance of faithfulness in the courtroom, it is important to analyse whether the interpreter maintains the faithfulness to the ST as is expected. The discourse presentation scales as advocated by Short (2012) explain speech presentation with a progression from the least faithful to the original version, to the most faithful.

These categories of speech representation are: Narrator’s Presentation of Voice (NPV), Narrator’s presentation of Speech Act (NPSA), Indirect Speech (IS), Free Indirect Direct (FIS), and Direct Speech (DS). These five speech presentation categories are associated with different sets of proposition-domain faithfulness assumptions as explained below and extracted from Short (2012), first giving the category, and then explaining its faithfulness claims. These categories are placed in the reverse order so as to “outline the faithfulness claims in ascending order from one claim in NPV to four claims in DS” (Short, 2012 P.21).

1. NPV: Speech took place.
2. NPSA: Speech took place and the speech act was specified with the topic optionally indicated.
3. IS: Speech took place, speech act specified with an indication of the propositional content.
4. FIS: Speech took place, the speech act was identified, the propositional content was indicated and words and structure either used or not used, to express the content

5. DS: Speech took place, the speech act was identified, the propositional content was indicated and words and structure used to express the content.

These categories as presented by Short (2012) are useful for this research in that they provide a reference point for when changes in speech presentations are made. In using SW & TP, my research introduces a type of speech presentation absent from Short's framework and that is: where two different languages are involved for the same speech as is the case in courtroom interpretation.

In my study therefore, I go beyond using categories of speech presentation to determine faithfulness. My data provides the missing link which is: what was actually said in the original speech which is lacking in continuous prose and indeed cannot be retrieved because continuous prose especially of the written type has the originator of the message as the author. I also bring in the element of comparison between different languages. In using the approach, I have used here, linguists will be able to determine what needs to be adhered to in reporting speech beyond just the categories. The style, the choice of words, the meaning in context as well as the speaker intention are the main points that my study determines must be reflected in speech presentation in order to retain faithfulness. I am cognisant of the fact that even though a person may retain the proper category of reporting speech for example by using DS; determining the faithfulness to the original goes beyond that category and to the utterance itself. This is because it is possible for people to appear to be faithful to the original text by purporting to quote verbatim what was said but if we do not have the original text, we may be misled into thinking a text is faithful to the original when actually it is not. Thus this study presents data that gives both the original speech and the presented version and provides a basis for establishing which of the features in presented utterances can be said to determine fidelity.

In courtroom interpretation, researchers such as Moeketsi (2008) and Gonzalez et al (1991) have advocated the retention of everything from the speech of others that is to be presented including the tense, person, and the deixis. During interpretation, the interpreter often uses the first person. Moeketsi (2008) argues that speaking in the third person tends to make a messenger out of the interpreter thus making him/her overly visible and intrusive, something that is not good for the case. On the other hand, in discussing the role of the courtroom interpreter, González et al point out what is to be done to retain equivalence; "the court interpreter is required to interpret the original source material without editing, summarizing,

deleting or adding while conserving the language level, style, tone and intent of the speaker (González et al, 1991, P.16).

In view of these recommendations, the closest category of presenting speech to that supposed to be witnessed in the courtroom is the use of direct speech (DS). I use the categories of presentation to help examine the ideological and pragmatic effects of the changes made in presentation of others' speech and these form the discussions in the rest of this chapter.

#### **4.1. Adherence to Felicity Conditions**

When interpreters translate their speech to English from Dholuo, it is evident that they all have a difficulty when trying to convey the message from the judge and still retain the felicity conditions that are necessary to make speech acts felicitous. Austin (1962) in explaining performatives says that for them to be meaningful there have to be certain felicity conditions and he identifies three:

1. Conventional procedure
2. Appropriate circumstances and persons
3. Correct execution of the procedure

In the courtroom discourse, the judge is the only person who has the right conditions to either free a defendant or send them to prison. They also set the cash bail and the bond terms. In order for the judge to successfully execute a performative for instance of setting free an accused person, there has to be the felicity condition of conventional procedure. This in the courtroom situation can be considered as the judgement procedure. The circumstances and the persons also have to be appropriate so that it is only the judge who can by speaking, set free a suspect. There also has to be adherence to the correct execution of the procedure and in the courtroom; this is set out by the law. If any of these felicity conditions are not met, then the utterance made may just be considered mere words with no power to be performatives. According to Thomas (1995) however, there are other forms of evidence that can be used to identify performatives. These include:

1. The perlocutionary effect of an utterance on a hearer
2. Explicit commentary by the speaker
3. Explicit commentary by someone other than the speaker
4. Subsequent discourse (Thomas, 1995, P.204-5)

These forms of evidence as set out by Thomas are useful in identifying other performatives that are not acquittals and convictions. In the courtroom set-up, there is a set way for the judge to acquit and convict accused persons and this is what I examine in this section of the thesis.

The Dholuo-English interpreters working in the Kenyan courtroom find it difficult to speak as the mouthpiece of the judge; mainly because they are employees of the courtroom as clerks and are directly under the supervision of the judge thus power relations come into play. Even though Goffman (1981) and Thomas (1986) clearly distinguish between the discourse roles of author vs. animator or author vs. mouthpiece, the courtroom interpreters in Kenya confuse the roles and, in instances exemplified elsewhere in this thesis, sometimes take up the author role by producing utterances of their own which they then attribute to the author of the utterance. The discursal constraints of the courtroom are hierarchically marked in the sense that lawyers acknowledge their subordination to judges whereas laypeople are subordinate to both the lawyers and the judges. This subordination conveys hierarchical power, authority and credibility to the opposing sides, and to their clients. Atkinson (1992) contends that judges on one hand must convey dominance and control while at the same time appear neutral and objective.

What is apparent in my findings is that whereas there are instances when in presenting the defendants and witnesses discourse the interpreters use DS retaining the first person voice, there are no instances when the interpreters use first person voice presentation for the magistrate. All the interpreters in my study use the third person point of view when presenting speech by the magistrate especially when magistrates are making judgements. The magistrate has authority in the court of law to determine the outcome of a case whereas the interpreter has no such authority. In the Kenyan courtroom, since the interpreter is also a courtroom employee, he/she is well aware of his/her subordination in terms of the ability to decide the outcome of cases and I find it impacts on how they present the speech of the judge as is shown in the examples of this section. This is so even though it is advocated by researchers such as Moeketsi that the first person point of view is the best in interpretation as the interpreter is just a mouthpiece/animator of the person they are reporting thus should retain the first person (Moeketsi 2008). However, there are instances where faithfulness to the ST is at odds with the performative nature of some utterances. Discussed below are some examples that help explain this finding.

Example 4.1.a (see Judgement 3)

This example is from a court case where the accused person is charged with obtaining money under false pretence.

Mag: I find that the court is expected to determine

Int: *Koro kot neno ni kot eeh ohh onego n'gad bura ni ka n'giyo*

RT: Now the court sees that the court eeh oohh should determine this case looking at...

In this example, the interpreter is presenting what the magistrate has said to the defendant who does not speak English. The category of reporting speech that she uses is free indirect speech (FIS). Also, when the magistrate uses the first person singular “*I*” the interpreter decides to replace that with the third person “*the court*”. This is because firstly, the interpreter recognises that she has no authority to determine the case; that is the jurisdiction of the judge alone. This is because it is only the judge who can determine the outcome of a case in the courtroom. The felicity conditions adhered to here are that the circumstances are right i.e. the courtroom and the person is also the right one i.e. the magistrate.

Secondly, in the Kenyan courtroom, the interpreter is an employee of the courtroom under the direct supervision of the magistrate. Due to this, the power relations in the courtroom are real for them and they find that they too show their subordination to the judge which influences the way they interpret. So even though the magistrate does not say “*the court should determine*”, the interpreter chooses to use “*the court*” which is in the third person as opposed to the first person “*I*” so as not to break the felicity conditions necessary for the utterance to be a performative. If the interpreter had retained the first person narration, then she would have flouted the felicity conditions that require the circumstances, the procedure, and the person to be right in order for the performative to be felicitous. This is only so because the Dholuo interpreter has not been sensitized to the fact that his/her discourse role in the courtroom is only that of animator as opposed to that of author.

Example 4.1.b. (see Judgement 2)

This is an example drawn from a case where a man is accused of negligence of duty as a conductor in a public service vehicle.

Mag: And I have gone through the whole evidence

Int: *Kot ose n'giyo kaka ne ji owuoyo te*

RT: The court has looked at how everyone talked

Mag: Regarding counts one that alleged that the accused person was regarded to have acted in uncivil and disorderly manner

Int: *Kaluwore gi ketho mokwongo miwacho ni in ne itimori e yo ma ok ni kare e ketho mokwongo*

RT: In relation to the first offence where it is said that you behaved in a manner that is not right in the first offence

Example 4.1.b also does what was evident in example 4.1.a. by first making use of FIS. The interpreter changes the first person singular pronoun “I” to the third person noun phrase “*the court*” in order to take care that the felicity conditions are adhered to. This is in recognition of the fact that as the court clerk, the interpreter has no power to go through any evidence that is given in the court in order to make a decision about the case. Knowing this, the interpreter finds it difficult to use the first person narration to present what the magistrate says. This is however in contrast to when the interpreters are presenting what witnesses say where they have no problem using the first person narration.

Example 4.1.c (See Judgement 1)

In this case, the accused person was charged with breaking into a store and stealing some goods.

Mag: And the accused is acquitted under section 215 of the CPC

Int: *Kendo court oweyi e buo chik mia ariyo gapar ga bich*

RT: And the court has freed you under the law number two hundred and fifteen

Example 4.1.c makes use of Narrator’s Presentation of Speech Act (NPSA). This she uses by identifying the speech act, that is, that the court has freed the accused person. In this example, the magistrate uses the passive voice in making an acquittal of the accused person. Even though there is no Actor, it is implied that the person who has acquitted the defendant is the magistrate who is reading the judgement. In so making this utterance, there has been the performative of acquitting the accused person and absolving him of the crime he was accused of having committed. This is possible by the powers given to the magistrate by the laws of the land. The interpreter on the other hand has no such powers and therefore in reporting what was said by the magistrate, introduces an Actor into the utterance thus changing it from the passive voice to the active voice. The Actor introduced was, “*the court*”. This enables the interpreter to convey that it is the judge who had acquitted the accused person and not the interpreter.

Example 4.1.d (See Judgement 3)

Mag: I find that it was the evidence of the complainant

Int: *Iyudo ni en neno mar jardonjo*

RT: It is found that it was the evidence of the complainant

Mag: That on the twenty sixth of December twenty twelve

Example 4.1.d also makes use of FIS with retention of the tense which is only possible because the utterance is made in the active voice in the original form and is changed to the passive in the TT. When it comes to choosing the subject in the first part of the utterance, the interpreter does not use the first person singular pronoun “I”. Even though this conforms to the rules of presenting other people’s utterances, the main idea for the interpreter here is to retain the felicity conditions.

In this example, the interpreter does not choose to use the third person pronoun and instead interestingly, uses the passive in the way that Dholuo uses the passive in reporting speech made by a person in authority. This is identified in this study as one of the main differences between reporting in Dholuo and reporting in English. Dholuo uses the passive to show that the speech is made by a person higher in rank than both the speaker and the addressee. (The use of the passive is discussed more extensively in section 4.4 of this thesis)

Example 4.1.ei. (See Judgement 2)

Mag: I find that the complainant who testified as PW1 narrated how she boarded the matatu

Int: *No yud ni jardonjo mane owuoyo kaka janeno mokwongo nolero kaka noidho gari*

RT: It was found that the complainant who spoke as the first witness explained how she boarded the vehicle

Example 4.1.ei. also uses FIS. The tense of the utterance changes from the present to the past in the new utterance. The person also changes from the first person to the third person but in the reported utterance, the voice also changes from the active to the passive voice. This happens because the interpreter introduces the verb “to be” in the presented utterance thus passivizing the utterance.

All the examples used in section 4.1 that introduce the passive also show a pattern in Dholuo which is not evident in English. That is that Dholuo often uses the passive as a form of

reporting speech made by a senior person to a junior person mainly in age but also in rank as well. This is further illustrated in example 4.1.eii below:

Example 4.1.eii. (Plea 1)

Mag: A plea of not guilty is entered

Int: *Owach ni ukwedo ketho no*

RT: It has been said that you have refused the offence

In this example, there is use of NPSA where the speech act presented is that the accused persons have refused the offence. In so doing, again there is an introduction of passivization. This type of passivization in Dholuo is often evident when children are reporting to their siblings what their parents have said especially if it is a warning over an impending punishment e.g. “*it has been said that you should stop making noise or you will be punished*”. Passivization of this nature usually has the effect of showing that the message should be treated seriously as it has come from a person of rank in relation to both the speaker and the addressee.

Section 4.1 examined the way in which Dholuo interpreters modified their interpretations so as to fit in the felicity conditions required for performatives to hold. I illustrated how the interpreters often changed the first person pronoun from “I” to the third person “the court”. At other times, the Dholuo interpreter also made active utterances passive in order to show that they were reporting the speech of a person senior in rank and that should be taken seriously as is the norm in the Dholuo language. This kind of change of the voice and person was only evident when the magistrate was making a judgement ruling and the interpreters did not do the same when reporting utterances from witnesses. This drove me to the conclusion that the fact that the interpreter is also an employee of the court and subordinate to the magistrate contributed to the way they presented the speech of the judge whom they acknowledged to be their direct boss. Also I showed that because the interpreters had not been sensitized to their role as the animators, they tended to alternate between being the author and the animator of the utterance in the course of translation.

## 4.2. Misreporting While Using Direct Speech

In this section, I examine how interpreters use Direct Speech (DS) presentation scale but still mispresent what is said by others including the witnesses and the court officials. Leech and Short (2007) claim that the DS is the most faithful category in presenting the speech of others a claim that is also held as true by Short (2012). This is because Direct Speech (DS) consists of four faithfulness claims as opposed to other scales that claim less. These faithfulness claims for the DS are that: speech took place, the speech act was specified, there was an indication of the propositional content and that the words and structure are used to express that content. However, I find that it is possible for people presenting the speech of others to use the first person thus giving the impression that what they are being faithful but then go on to misreport what was said. The effect of this is that the listener tends then to believe that the reporter is giving a version faithful to the original when in reality they are not. In interpretation, this type of mispresentation will go unnoticed by the people involved because they do not understand the language that was used in the original version and only have the target text to rely on. The examples in this section help illustrate the use of the DS and how it may lead to misreporting that largely goes unnoticed but still gives the impression of faithfulness to the original text.

Example 4.2.a (See Plea 2)

Int: *Ema ipenji ni in gi pesa adi minyalo tweyo. Bond gi cash bail imiyi*

RT: That's why you are being asked how much money you can give. A bond and a cash bail you will be given

Acc: *Gi sani onge pesa ma an go*

RT: As at now, I do not have any money

Int: I cannot raise cash bail; I pray to be granted bond

Mag: A bond of twenty thousand

Int: *Omiyi bond mar siling alufu prariro*

RT: You have been given a bond of twenty thousand

In this example the underlined utterances are the focus of analysis. The interpreter chooses to use the category of direct speech (DS) to present the defendant's speech. I categorize it as DS because the interpreter chooses to retain the first person narration as well as the tense of the ST and thus retains the voice of the accused person. The expectation of the target audience is that the interpreter is going to state exactly what was said by the accused person seeing as he starts the utterance with the first person pronoun "I". The use of the DS gives the listener the

impression that the interpreter is being faithful to the utterance in the ST because according to Short (2012), the DS is the most faithful of the categories. Short et al (2002) also show that the use of the direct forms carries a greater commitment to a reproduction of the original words both from the point of view of the reporters and from the point of view of those who hear the report (Short et al, 2002, P.327). However, this can only be said to be true if the person reporting the speech also retains the words of the speaker. In a case like this one where the person and tense are retained but the words are different, the conclusion is that the DS does not assist in retaining the faithfulness to the original text. Therefore, in describing DS and its faithfulness to representing other people's speech, especially in interpreted discourse, it should be pointed out that the interpreter must also retain what was said by the author of the utterance.

In example 4.2.a., the illocutionary force of the utterance in the TT is different from that in the ST in that while the defendant simply states a fact i.e. that at that point in time he has no money, the interpreter makes a plea. "*I pray to be granted bond*". The register is also different because the accused person uses layman's language but in the TT, the word "*money*" is changed to "*cash bail*" and the use of the verb "*pray*" is also used in the legal sense and not in the religious sense. The change in the illocutionary force and register makes the defendant come out as politer than he does in his original utterance.

Example 4.2.b (See Withdrawal 1)

This is a case where the accused person was charged together with the son of the complainant of stealing some goods.

Pros: The complainant in the first and second count cannot withdraw the case against the second accused person your honour of being in possession of narcotics

Int: *Koro, ngatnie ok nyal ng'uononi e keth namba adek mano mari Samson\* mar bedo kod njaga*

RT: Therefore, this man cannot forgive you on the third offence that is yours Samson\*. The one of being in possession of bhang

Pros: So it will be unfortunate because it will not be allowed if he consciously wrongly accused the second accused person

Int: *Koro ok nyal yieni nekech kopo ni pachi ne idonjo ne Samson\* e yo ma ok ni kare ni riambone*

RT: Now you cannot be allowed in case in your mind, you accused Samson\* unfairly. You lied about him (Name changed to protect the identity of the defendant)

In example 4.2.b, the prosecutor's underlined utterance is the subject of analysis. In presenting this utterance, the interpreter also uses DS whilst retaining the tense and the person. However, the illocutionary forces of the two utterances are very different. Whereas the prosecutor shows regret that the complainant's case is not going to be withdrawn when he says: "*it is unfortunate*", the interpreter fails to capture this and instead accuses the complainant of being a liar by saying "*you lied about him*". These are two contrasting views with one expressing sympathy over the situation and another expressing lack of sympathy. Since the prosecutor represents the voice of the government, the interpreter inadvertently implies that the government is against the withdrawal of cases which is not the reality of the situation. In fact, the prosecutor is expressing regret that whereas the complainant is allowed to withdraw his case against the accused person, this particular accused person is not going to be set free because whilst under police custody for theft, the police discovered illegal drugs on him and charged him with the offence. Therefore, if the complainant had not made a complaint about him in the first place, then this other charge; which cannot be withdrawn would not be in existence. Thus through this example, we can see that it is possible to use DS and still be unfaithful to the original text.

Example 4.2.c (See Withdrawal 2)

Pros: Do you know the accused person?

Int: *N'gama idonjo ne ni in'geye?*

RT: This person you accused, do you know him?

Comp: *Ee an'geye*

RT: Yes, I know him

Int: I know the accused person

4.2. c. shows the prosecutor asking the complainant if the accused person was known to him. This is a question that is simply intended to ascertain whether the right person is before the court. The interpreter uses DS to report this utterance and retains the question, the tense and the person. He was also able to retain most of the words as they are in the ST. However, in the TT, there is a change in word order where the interpreter uses a post modified noun phrase in the utterance ("(the person) (you accused)") which shifts the illocutionary force of the utterance. In the ST, the accused person is neutral and simply identifies the person who is before the court. In the TT, "*the person you accused*" ceases to be neutral. The emphasis is now on the accuser and not on the accused person. Whereas the phrase "*the accused person*"

is a common reference to the defendant in court, “*the person you accused*” lays emphasis on the accuser and is not a normal way of referring to the defendant in court. Cartellieri (1983) opines that, there should not be loss of quality in the target language message because in the courtroom, accuracy and completeness are an absolute requirement. I found through this study and examples like 4.2.c. that even though accuracy and completeness are requirements in the courtroom, many times these requirements were not adhered to.

Example 4.2.d. (See Withdrawal 3)

RT: I can only thank her

Int: *Aa?*

RT: Pardon

Acc: *Anyalo mana gone erokamano*

RT: I can only thank her

Int: Your honour, I am grateful and thank the complainant

In example 4.2.d. the interpreter also uses DS with retention of the person and the tense. This is different from the utterance of the accused person which had made use of NPSA by identifying the speech act of thanking the complainant. The interpreter does not adhere to faithfulness in the text by adding new words that were not part of the utterance of the original speaker. First of all, he refers to the magistrate as “*your honour*” a phrase that is absent from the accused person’s utterance. This addition like other similar ones that will come later in this thesis serves to make the original speaker appear politer and more knowledgeable in legal matters. Another addition to the reported speech is “*I am grateful*” which also changes the illocutionary force of the ST. It is true that the accused person says he thanked the complainant but without using the words gratitude and complainant. When the interpreter says “*I am grateful*”, this makes the accused person sound sincerer in his gratitude than in his original utterance.

In looking at the whole case, the accused person appears to show no gratitude for being pardoned. He also shows no remorse as he still insists that the sheep he is accused of stealing actually ran away and he has not benefited from the theft. However, the interpreted version purges this and makes him appear more thankful than he actually is. Searle (1969) identified the conditions necessary for gratitude/thanking to hold true. S= speaker H= hearer A= act

1. Propositional condition- Past A done by H
2. Preparatory condition: A benefits S and S believes A benefits S

3. Sincerity condition: S feels grateful or appreciative for A
4. Essential condition: Counts as an expression of gratitude or appreciation (adapted from Searle, 1969, P.67)

The accused person in this case when asked what he wanted to say to the complainant said “*I can only thank her*”. Even though this seems to imply his gratitude, his explanation as to what happened on the day shows he believes he committed no crime as the stolen sheep ran away and therefore there was no need for the complainant to pardon him as there was nothing to pardon. When the interpreter presented that utterance she said “*I am grateful and thank the complainant*”. There is repetition of the speech act of thanking in the words *grateful* and *thank* which implies a sincerity in being grateful that is not there in the ST. The preparatory condition of act benefiting the speaker and the speaker believing that the act benefits him is missing.

In 4.2, I examined how interpreters adhere to use of direct speech (DS) by retaining both the personal pronouns of the original speech as well as the tense. The effect of this is that the hearer is made to believe that the interpreter is being faithful to the original text thus when it is discovered that they are not faithful to the original text, the lack of faithfulness appears more gross. Interpreters tend to only keep to using the markers of faithfulness to present speech but then give a completely different utterance from the one made by the witnesses or by the courtroom personnel. In interpreting, the problem is made even more serious by the fact that the two groups of people involved do not understand the languages of each other and thus have no way of knowing about the misrepresentation. Also, the courtroom is a place where judgements are made based on what has been said yet through interpretation what has been said is inaccurate.

### **4.3. Distortion of Meaning in Presentation of Others’ Speech**

Whereas in section 4.2 above, I examine the misreporting of others’ speech while using direct speech only, in this section, I examine distortion of meaning in others’ speech when using direct speech as well as other categories of presenting speech. This happens when the interpreter in presenting others’ speech fails to capture what they had said and instead gives a different meaning to the speech but retains the markers of reported speech. Several researchers namely Hale (1997a, 1997b, 2002, 2004), Berk-Seligson (2002), and Jacobsen (2003) state that there are discrepancies between the semantic and pragmatic equivalence of original speech by witnesses from culturally and linguistically diverse backgrounds and the interpreted rendition. These researchers note that in many instances, the interpreter may

deliver the semantic meaning but ignore, misunderstand or simply not convey the pragmatic meaning. In this section, I examine examples where the interpreters' versions have a completely different meaning both semantically and pragmatically from that of the ST.

Example 4.3.a (See Judgement 1)

This is taken from a case where the accused person is charged with breaking and committing a felony.

Mag: And he is set at liberty unless otherwise stated

Int: *Otiok bura ni court onge ushahidi moromo koro wuogi idhi*

RT: This case is finished. The court does not have enough proof so get up and leave

In example 4.3.a, the magistrate in setting a defendant free says that the man is set at liberty. Accordingly, it is the duty of the interpreter to relay these very words in Dholuo retaining the meaning as said by the magistrate. While using FIS, the interpreter manages to let the accused person know that he is free to go but he uses words that do not come from the magistrate. Firstly, the magistrate does not utter the words “*the case is finished*” even though because the accused person is found not guilty, it is true that the case is finished. The words that the magistrate uses are very formal and convey the weightiness of the matter. They also convey the professionalism expected of the court. The interpreter's words on the other hand even sound rude when he says “*get up and leave*” a phrase that is also not part of the ST. The danger of this is that the words of the interpreter are treated as the representation of what the magistrate says and thus makes it seem as if the court is deliberately rude to members of the public who come there to seek justice. Lee (2009) argues that the interpreter in his/her role should be aware of cultural differences and must show cultural sensitivity. The interpreter also has the role of being a language expert. He/she is supposed to know well the two languages involved in the communication event. The interpreter has also been cast in the role of acting as a bridge or a channel. In this role, he/she is expected to interpret accurately, faithfully and without emotional or personal bias. Actually he/she forms a connection between the accused/witness and the rest of the people in the court. These are clearly flouted in example 4.3.a. This example also serves to show that even though the interpreter is supposed to present the speech of the source speaker, they may end up just reformulating the entire utterance with only markers of direct presentation left such as direct address.

Example 4.3.b (See Plea 1)

Acc: *Adwa ni kot ong'wonna nekech gima nomiyo naba kite guogi e mane lawa kaba kidi to ogo gate kane adhi e matanga no*

RT: I want the court to forgive me because the reason why I was throwing stones is because I was being chased by dogs but when I threw a stone it hit the gate as I was going to that funeral

Int: *Your Honour, mimi naomba mahakama inisaidie. Nilitupa hayo mawe kwasababu nilikuwa nafukuzwa na mbwa ndiposa nikatupa mawe ndo mawe yakaenda yakapiga watoto* (Kiswahili)

RT: Your honour, I am asking the court to help me. I threw those stones because I was being chased by dogs that's why I threw the stones and the stones went and hit the children

In example 4.3.b, the interpreter uses DS, without the reporting clause to introduce the speaker and retains the person and tense in the sentence. This reinforces the idea that the interpreter is the mouthpiece of the defendant as he uses pronoun "I". However, the interpreter, while, maintaining most of words of the speaker makes some additions to the utterance that totally change the meaning of the sentence. Whereas the accused person admits to throwing stones and hitting a gate, the interpreter claims that he had thrown stones and hit children. It is one thing to hit a gate; an inanimate object and completely another to hit children. Thus by substituting a gate for children, the offence looks bigger in magnitude that it really is and thus more grievous. So even though researchers advocate for the use of the first person narration, this is only helpful when the interpreter also adheres to retaining the meaning of what the speaker said.

Example 4.3.c (See Withdrawal 1)

Pros: But if in his mind he wrongly accused the second accused, the second accused person,

Int: *Lakini kaluwore gi pachi ni ne idonjo ne Samson\* e yo marach*

RT: But in relation to your thinking that you accused Samson\* unfairly

Pros: That will remain on his conscience. Will always still hang over his neck

Int: *Gino biro chieni po ni timo kamano. Nidonjone e yo ma ok kare. Tamruok to ok otamre ni case kik wit oko lakini kane idonjone e yo marach owach ni mano koro wachni. In ma gino biro chieni*

RT: If you did that, that thing will haunt you. He is not refusing that the case be thrown out but if you accused him unfairly, that is now your problem. You are the one who will be haunted by that thing

In example 4.3.c, the underlined utterances show the different versions given of the same utterance. Looking at the graphic presentation of them, one utterance is much longer than the other. The prosecutor's speech is reported using FIS with the changing of person to reflect that the speaker is the prosecutor "*He is not refusing...*" The interpreter manages to capture some of what is said by the prosecutor and that is mainly that if the complainant knowingly falsely accused the defendant, then that would remain in his conscience. However, the interpreter adds words that only serve to give his own opinion and attitude. The Dholuo phrase "*mano koro wachni*" which I have only loosely translated to "*that is now your problem*" is a phrase that is considered rude. This is a phrase which is often used in anger and can mean an array of things such as: I don't care, do as you wish, I am not bothered, and you are in trouble. It is a phrase that has no positive connotations. The interpreter also goes on to add that "*you are the one who will be haunted by that thing*" which is a threat that is not part of the ST.

Example 4.3.c brings to mind some rules researchers give for the standards of interpreting that the interpreter has to adhere to. These include translating exactly what was said by the source person and being neutral during the communicative event of interpretation. In as much as such high standards are expected from an interpreter, there are many circumstances that may arise and prevent the interpreter from meeting those set standards. However, if the process of interpretation is faulty, misunderstandings can easily arise that may also affect the outcome of the case (Matu et al 2012). Example 4.3.c above shows an instance when the interpreter fails to meet the set standards by letting his feelings intrude into his work.

Example 4.3.d (See Withdrawal 2)

Pros: You are the one who complained to the police that he offended you?

Comp: Yes

Int: *In mane idonjone ka polis ni odonjoni? Ni okethoni? To kendo koro in ema idwa n'guonone kendo?*

RT: You are the one who reported him to the police that he reported you? That he offended you? And now again, you are the one who wants to forgive him again?

In this example, the prosecutor asks the complainant a question to determine whether he is truly the complainant in this case. This is a routine type of question in the courtroom where the person being asked that question is simply expected to affirm that he/she is indeed the

person they claim to be. In presenting this question, the interpreter retains the question type of utterance as well as the person and the tense of the ST by using DS. However, in this example as in the previous one, the interpreter let his attitudes intrude into the interpretation. The interpreter shows disapproval of the complainant's actions by juxtaposing two contrasting utterance. The first, that the complainant reported the case and the second that now again, the complainant wants to forgive the defendant. The verb used in the ST was *complained* which in the TT is changed to *reported*. The verb reported shows the complainant wilfully brought the matter to the attention of the police. Another new word is “*again*”. The use of the word *again* in Dholuo has the effect of showing an unexpected contrast in circumstances. In this example for instance, if the complainant is the one who, out of his own free will, reported the case to the authorities for arbitration it is expected that he had already thought the matter carefully through so if he decided to withdraw the case from the court, he cannot claim he had not thought it through before. That is what the interpreter alludes to when he says “*and again you are the one who wants to forgive him again?*”

Example 4.3.e (See Hearing 1)

Pros: Your honour the facts are ready

Int: *Chik iti iwinj kaka ne itimo gigo*

RT: Be attentive and hear how you did those things

Example 4.3.e shows use of DS to report the prosecutor's speech. However, so much has changed in that speech as for it to be unrecognisable from the original. First of all, the addressee in the ST is the magistrate as is shown by the use of the honorific “*your honour*” but in the reported version, the addressee has changed to the defendant. Secondly, the prosecutor shows neutrality in his statement when he says “*the facts are ready*”. This is a formal utterance which has no emotions attached to it. In contrast, the interpreter says to the accused person “*be attentive and hear how you did those things*”. The use of the primary auxiliary verb “*did*” and the embedded clause “*how you did those things*”, which is a presupposition, make the sentence more certain and the interpreter appears to have no doubt that the accused person did whatever crime he was accused of having committed. In choosing to use different words, the interpreter in example 4.3.e fails to perform his duty as required and ends up giving his own version of what he assumes the prosecutor means. This makes me agree with Berk-Seligson who points out the importance of interpreter training by saying

Interpreters generally do the best they can, and are sincere in their effort to be precise and faithful to the foreign language testimony. Yet if they are not highly qualified to do their job, the product of their efforts is bound to be faulty. No amount of oath-

swearing can guarantee high quality interpreting from an interpreter who does not have the necessary competency” (Berk-Seligson, 2002 P. 204).

Example 4.3.f. (See Plea 3)

Acc 1: *An awacho ni kata kane oyuda gi chang'aa to unyalo konya nekech an kenda e dala minwa ool*

RT: I am saying that even though I was found with chang'aa you can help me because I am alone at home. My mum is old

Int: I am requesting for assistance. I am just alone at home

In example 4.3.f, the interpreter uses NPSA by telling the court the request that the accused person has. The interpreter makes a summary of the utterance by omitting one section where the accused mentions the reason that he wants the court to be lenient with him is because his mother is old, implying that he needs to be home to take care of her and not in jail. The omission of this section may be a disadvantage to the accused person because he obviously wants the fact that his mother is old to be considered as a factor when his sentence is being decided.

Secondly, another change made by the interpreter is that he introduces a new verb “*request*” into the accused person’s speech which is not originally there. The interpreter’s utterance is vague and sounds incomplete because it does not give what the accused person is requesting assistance for. The accused person in his utterance in the ST has identified the crime he is charged with: that of being in possession of illicit alcohol and thus implying that he needs leniency with the sentence he is going to be given by the judge. In his utterance, the accused person acknowledges implicitly that he is aware he committed a crime and seeks leniency. All this is absent in the TT even though the interpreter has a duty to present the accused person’s speech exactly as it was said and indeed purports to by the use of the first person pronoun “I”. Short (2012) illustrates how NPSA can be used to present summaries of long stretches of speech and this is evident in example 4.3.f.

The interpreter here however retains the first person point of view by using the first person pronoun “I”. The interpreter seems to recognise the fact that he/she is only the animator and not the author of the message but that is as far as it goes. When the interpreter chooses lexical items to include in the presentation of the speech, those words are different from the utterance of the accused person.

4.3 is a section in which I explored the way interpreters in presenting other people's speech distort the ST. This happened mainly when interpreters added their own words to the utterance thus bringing in information that was not part of the ST. In some instances, the distortion of meaning was as a result of insertions of instructions to the defendants which the interpreters added as part of their other duty as court clerks. Yet in other instances, the additions were just their own that showed the attitudes they held about the case. As a result of the distortions of meaning identified, the effects were that the court appeared unfriendly to the defendants and yet it was not the court that had that attitude but the interpreter. Also, facts changed from less serious accusations to more serious ones for example an accused claimed to be hitting children with stones when he said he had hit the gate with stones. In general, the interpreter passed off his/her attitudes and beliefs as those of the court.

#### **4.4. Passivization in Dholuo-English Courtroom Interpretation**

Earlier in section 4.1 of this chapter, I mentioned in passing that Dholuo interpreters change active statements into passive ones when interpreting. In this section, I examine this further as it is a unique finding and key in my study. Dholuo interpreters in presenting others' speech tend to use words that show they wish to distance themselves from the information they are giving. This is mainly done by introducing a reporting clause at the beginning of the utterance to show that the speaker is a different person from the interpreter. This reporting clause together with the introduction of a form of the verb "to be" also serve to turn the utterance into the passive voice from the active voice.

In Dholuo, passivization is usually used to report what someone senior in either age or rank had said to a person perceived to be junior. I mostly find that the interpreters use this when presenting the speech of the magistrate or a person higher in rank than them in the courtroom hierarchy. This happens across the board with the four interpreters involved in this study. Also, even though in giving the categories of presenting other people's speech, the yard stick used by Leech and Short (2007) and Short (2012) is faithfulness to the original text, I find that interpreters routinely appear to be reporting what other people said but end up saying things that are, pragmatically and stylistically different from the ST. The effect of such changes is that the interpreter in instances like those discussed in this section appear to want to distance themselves from some utterances that they are interpreting. The examples that

follow in this section serve to show the passivization that takes place in interpretation as well as some more general changes in the TT.

Example 4.4.a (See Plea 2)

In Plea 2, there are two accused people who were in court for being in possession of the illicit alcoholic drink *chang'aa*.

Pros: Your honour the facts in this matter your honour are as per the charge sheet. And the fifty litres of *chang'aa* your honour is in court

Int: *Iwacho ni gigo notimore kaka asesomonugo to chang'aa go lita prabich go ni e kot. Ema omulogo*

RT: It is being said that those things happened just the way I have read them to you. And the *chang'aa*, the fifty litres are in court. It is the one he is touching

In example 4.4.a, the interpreter introduces a reporting clause which does not identify the speaker: “*it is being said*”. The introduction of the verb “be” causes the utterance to change from the active voice to the passive voice. The phrase has the effect of making the interpreter distance herself from the utterance by highlighting that it is someone else who is saying those words and not her. It is noteworthy that when interpreters are presenting the speech of defendants and other witnesses, they find it comfortable to use the first person narration and appear to be the voice of the people they are presenting but when they are presenting the speech of the magistrate or another person senior to them in the courtroom, they do not use the first person narration.

In 4.4.a, the speaker is the prosecutor who in the courtroom is more senior in rank to the interpreter and this hierarchy of power is identified as coming into play in interpretation and influencing how the interpreter presents the speech of the other party. In introducing the reporting phrase “*it is being said*”, the interpreter manages to convey that the words she is just about to utter do not belong to her personally but belong to the prosecutor. Also, this serves to distance herself from the utterance and in Dholuo, manages to convey that these are the words of a person with a higher authority than that of the speaker who is the interpreter.

Example 4.4.b (See Hearing 1)

RT: I was with her and she said that she will come so that we can agree with her about the case so that we go back to rectify this at home

Int: *Donge oonge e kot ka kawuono?*

RT: But she is not in this court today?

Int: He says that they were together with the complainant. The complainant was supposed to come and withdraw this matter so that it can be settled back at home

Example 4.4.b is an instance where the interpreter seeks to distance himself from the utterance of the accused person. This can be understood in the context of the rest of the hearing. During this time, the case has reached the hearing stage and the accused person is supposed to give his defence as to why he had committed the crime he was alleged to have committed of assaulting the complainant. Instead of giving his defence, the accused person says that he had been with the complainant the previous evening and she had agreed to withdraw the case. The interpreter however does not interpret that bit of information even though the accused person has repeatedly said it. When eventually the accused person is adamant, the interpreter says “*he says that...*” which is a way of distancing himself from what was being said having warned the accused person against giving that information. This use of the reporting clause however is misleading because it gives the impression that the interpreter is going to accurately present the speech of the accused person but instead, he then goes on and gives only his version of what is being said thus being unfaithful to the ST. Example 4.4.b, serves to show that the interpreter distanced himself/herself from utterances across both sides of the divide i.e. from the court officials and from the members of the public.

Example 4.4.ci (See Hearing 2)

Hearing 2 is about a defilement case involving a middle aged man and a nine-year-old girl.

Pros: So if I put it to you that you dragged Paulina\* and took her to the sugar cane farm and raped her what will you say to that? (\* name altered to protect the identity of the complainant)

Int: *Kowachni ni in ne imako Paulina\* ma iywayo mitero ei nian'g ma ibambe kaka iwacho no in ibiro wache an'go?*

RT: If you are told that you grabbed Paulina\*, dragged her to the sugarcane farm and raped her as it is being alleged, what will you say about that?

Example 4.4.c ii (See Hearing 2)

Pros: If I put it to you that, the time the complainant who is Paulina\* was testifying in court, you yourself asked her that when you were doing those things, didn't she feel nice. Did you ask her such a question?

Int: *Owacho ni ka ne un e kot to Paulina\* ne wuoyo ni in ni penje ni en sama nutimo gigo ne okowinjo ber. Be nipenje penjo machal kamano?*

RT: He is saying that when you were in the court and Paulina\* was talking, you asked her whether she did not feel good when you were doing those things. Did you ask her such a question?

Example 4.4.ci and 4.4.cii are both extracts from hearing two which is about a defilement case where a middle aged man is accused of defiling a nine-year-old girl. The prosecutor is cross-examining the suspect who claims that he had never met the young girl before and had only met her in court when she came to testify. In 4.4.ci, the prosecutor uses the first person singular “I” to say he was the one putting the question to the accused person. When the interpreter is reporting this, she omits the first person pronoun and instead uses the second person singular pronoun “you” and also changes the utterance to a passive one from an active one. At the same time, this shifts the focus from the prosecutor to the suspect and yet this is supposed to be a presentation of the speech made by the prosecutor. As mentioned earlier, this gives a false impression that the interpreter is being faithful to the ST when in reality; the interpreter replaces the focus and the intensity of the question.

In 4.4.cii, the interpreter introduces the text with the reporting clause “*he is saying*” which is a marker of IS. In this example, the interpreter is effectively distancing herself from a question that is embarrassing as it goes into details of the sexual act that is alleged to have happened. This can be attributed to the socio-cultural issues relating to the Dholuo language where matters sexual are not discussed in their gravity and explicit details in public which the courtroom is considered to be. In the Luo culture and in many other African cultures, there are norms about how conversations are held which relate to age, sex, and the environment.

From the examples discussed in this section therefore, I draw the conclusion that Dholuo interpreters often mostly use DS to present the speech of others in the courtroom. When the speaker is a senior person in rank and age, they change the voice of the utterance from the passive to the active which is used in Dholuo when reporting something from a senior person to show its seriousness. Also, when they are in disagreement with what the ST utterance said for instance it is a reprimand or if it is embarrassing, the interpreters tend to introduce a reporting clause which serves to help distance themselves from the utterance made.

#### 4.5. Modifying the Speech of Others to Retain the Dignity of the Court

This section examines the way in which Dholuo interpreters modify the speech of others and this is mainly the speech of the magistrates in order to retain the dignity of the court. This happens when the magistrate uses careless language or when they display an illocutionary force that may put the court to shame. Matu et al (2012) in their study on the roles that the Dholuo interpreters perceive to play found that they made a conscious effort to resolve communication problems in the courtroom. In the examples in this section, I illustrate that indeed the interpreters make an effort to solve communication problems but here, I show they modify the speech of the magistrate to conform to the dignity that is expected of the judges in the courtroom. This puts the interpreter in a really difficult situation; on the one hand, he/she is required to interpret the ST accurately with every meaning transferred as it is to the TT but on the other hand, he /she is supposed to be aware of societal norms of communication and adhere to those as well.

Example 4.5.a (See Withdrawal 1)

Mag: When you were reporting them to the police, didn't you know that you were the father?

Comp: I Knew

Int: *Owacho ni sama nodhi go report kapolis, no'nge maber ni en e wuon Bernard\**

RT: He is saying that when he went to make the report to the police he knew very well that he is Bernard's\* father (\* Name altered to protect the identity of the defendant)

Example 4.5.a is an interesting one in that there is a lot going on in terms of the structure of the interpretation. The magistrate asks a question which the complainant responds to in the affirmative. When the interpreter presents what is said, he makes a summary of the two utterances and changes them into one utterance which he then attributes to the complainant. Even though the complainant utters only two words: “*I knew*”, parts of what the magistrate says is also attributed to the complainant and even so, those parts of the utterances are changed from a question to a statement. This summary as well as the change of sentence type distorts the meaning of the utterance. The resultant sentence makes the complainant appear as if he is speaking nonsense and is in fact a ridiculous utterance.

In example 4.5.a, the magistrate's underlined utterance is a show of disapproval at the complainant's reason for withdrawing the case. It is in fact an impolite utterance as the question the magistrate asks the complainant is one whose answer seems obvious: “...*didn't*

*you know that you were the father?"* In making this utterance, the magistrate is not seeking a yes/no answer, but showing his irritation that the complainant has wasted the court's time by bringing a case to court that he knew he would later withdraw on the grounds that he is the father of the accused person. This irritation was evident in the choice of words and also in intonation. Thus the most important illocutionary force of this utterance is that of irritation.

The interpreter here faced with what he clearly is able to identify as a rude utterance from the magistrate seeks to downplay this aspect first of all by introducing the reporting clause "*he is saying*" which effectively helps him disassociate himself from that utterance. This makes the reported speech an IS. After introducing the reporting clause, the interpreter also uses words that downplay the magistrate's rude remark by turning it into a statement instead of a question. This has the effect of changing the illocutionary force of the utterance from that of irritation to a more amicable one. It is worth noting that in the Luo culture, it is not acceptable for a young man to be rude to an elder. The complainant in this court case is an elderly man and the magistrate a much younger man. The interpreter seems therefore to also try to balance the societal norms in his rendition.

This finding confirms one of the findings by Matu et al (2012) which states that: The Dholuo interpreters make a conscious effort to solve communication problems in court. In example 4.5.a, the interpreter did make a conscious effort to ensure a rude utterance which would have caused cultural communication problems was removed from the conversation but still maintained the gist of what the magistrate had said.

Example 4.5.b (See Withdrawal 3)

RT: Whom did you sell the sheep to?

Acc: *Kaka ne oringo no, ne ok amake*

RT: After it ran away, I did not recover it

Int: Your honour, the sheep ran and I did not catch up with it

Mag: He seems to believe his own story eh! Mr Micheni\*, he seems to believe what he is saying! (\*name altered to protect the identity of the prosecutor)

Pros: Yes, your honour

Int: *Iwacho ni in iyie gi gik ma iwacho go kin'geyo an'geya maber ni onge n'gama chielo moyie weche ni go*

RT: It is being said that you believe in what you are saying and yet you know very well that no one else believes in your stories

Example 4.5.b is another example where the interpreter like in 4.5.a. above decides to purge undesirable elements from what has been said by the magistrate. These two examples come from two different courtrooms and are therefore made by two different interpreters. In the underlined utterance made by the magistrate, he ridicules the accused person for claiming that the sheep he had been alleged to have stolen had ran away. The words used by the magistrate “*he seems to believe what he is saying*” are used to show that the magistrate himself does not believe him and does not expect the prosecutor and other people present in the court to believe him either. Another indicator that the judge is ridiculing the defendant is that he refers to the defendant in the third person and yet the defendant is present before him in court. The choice of the word “*seems*” also indicates the ridicule in that the judge implies it is ridiculous for the defendant to appear to believe his own words. When the interpreter is conveying this utterance, he purges the illocutionary force of ridicule from it and also at the same time distances himself from the ridicule by using the reporting clause “*it is being said that...*” which serves to highlight the fact that these words are not his. In the words that follow reporting clause which makes this reporting IS, the interpreter tones down the ridicule by explaining to the defendant why the magistrate does not believe what he has said. The explanation the interpreter gives was not part of the ST and is only introduced to minimise the effects of the judge’s words. In so doing, the sting is removed from the words of the magistrate.

Even though it is a positive thing to make other people not feel too bad about what has been said, the courtroom sort of setting is a formal one where the interpreter is expected to adhere to the highest standards of interpreting. The interpreter is expected to carry the words uttered by the magistrate including the tone of ridicule but at the same time, the magistrate is also expected to restrict themselves to using formal and civil language.

I note that the interpreters step in to diminish the effects of any harsh words uttered by the magistrates in response to what Matu et al found to be the interpreters’ perception of what their job is. In the literature review, I found that Berk-Seligson (2002) reports that in many legal proceedings members of the legal fraternity view the role of an interpreter as being that of an intercultural mediator; or even an advocate. Steytler (1993) for his part believes that the role of the interpreter is to facilitate communication where one party is not conversant in

the language of the record. However, most researchers are in agreement that the interpreter has one formal task that is unambiguous: to translate accurately, comprehensively and without bias all communications in court to a language which the accused can understand. In these particular examples however, it would have been very difficult for the interpreter to report the tone of ridicule given that that tone itself was not appropriate for the dignity of the judge's position. This casts the interpreter in another role i.e. that of protecting the dignity of the court when the need arises; a role that I have not come across in any other literature. The interpreter protects the dignity of the court by expunging undesirable language made by court officials senior in rank without losing face for those officials.

#### **4.6. Expanding Others' Speech**

The first five findings relating to presenting others' speech in this study are: adherence to felicity conditions, misreporting while using direct speech, distortion of meaning, passivization, and modifying speech to retain the dignity of the courtroom. In addition to those, I also find that interpreters report speech in such a way as to expand on what the speaker has said especially if they think that the person being interpreted for is not likely to understand what is being said. This is comparable to the Yehuda situation researched on by Lipkin (2010). In the courtroom in Yehuda, the clients feel that they can trust the interpreter as they are the only people who understand their language but by their own admission, the interpreters mainly provide only a summary of what has been said especially when interpreting from Hebrew to Arabic. Lipkin concludes that by allowing the interpreter to exercise his own discretion in deciding what to translate, the level of neutrality is reduced. In the Kenyan courtroom, there are times when the interpreter provides only a summary of what is said and this they do in their own words and at other times they decide to expand what is said. I concur with Lipkin (2010), that due to this, the level of neutrality is reduced. The examples in this section serve to explain how this happens.

Example 4.6.a (See Withdrawal 1)

Mag: What about the second accused?

Comp: The second person also was mentioned. There was no item got from him. Samson\*

Int: *Owacho ni in Samson\* n'gat mat ariyo noluong nyingi lakini onge gimoro amora mane okwal mane oyud kuomi*

RT: He is saying that you Samson\*; the second person, your name was mentioned but there was nothing that had been stolen that was recovered from you. (\* name altered to protect the identity of the second accused person)

Here, the interpreter uses IS to report the speech of the complainant by introducing the speech using the reporting clause “*he is saying that*”. The listener is therefore made to believe that the words of the interpreter are those of the complainant because he makes that claim. However, whereas the complainant only says that “*there was no item got from him*” in reference to the recovery of the goods he had claimed had been stolen, the interpreter in presenting the utterance decides to explain more what the complainant meant by his statement. This is because the complainant does not provide enough information in his utterance. The interpreter thus introduces a modifier clause to explain the “*items*” mentioned by the complainant which he names as “*that had been stolen*”. This example also confirms one of the findings as made by Matu et al (2012) which states that interpreters feel the need to clarify issues for the Dholuo speaking litigants. Whereas it is a noble idea to be of help to people, it is linguistically misleading to use a marker to show that one is reporting another person’s speech and to go on and be completely unfaithful to the ST.

Example 4.6.b (See Withdrawal 1)

In withdrawal 2, the case is about theft of some items by two defendants.

Mag: Under section 204 of the CPC

Int: *E bwo chick namba mia ariyo gi an’gwen e timbe njore tora kod maundu. Mano en maru ji ariyo*

RT: Under the law number two hundred and four on deeds about theft, assault and theft with violence. That is for the two of you

Example 4.6.b is another instance where the interpreter purports to present the words of the magistrate but actually only gives his version of it and expands his own utterance to try and explain to the accused persons what in his opinion the judge has said. The magistrate uses the legal register and mentions the law under which he is allowed to withdraw the case as requested by the complainant.

The interpreter uses FIS when he starts the utterance by mentioning parts of what the magistrate has said and expands on it by explain that that particular legislation is about theft, assault and theft with violence. In so doing, the utterance takes on the illocutionary force of a

threat something that was absent from the magistrate's own utterance. What is worth noting in this example is that when the interpreter uses FIS to report what the magistrate has said, it gives the impression that it is the magistrate speaking. Also it appears the interpreter is interested in bragging to the audience to appear knowledgeable to them in matters concerning the law.

Example 4.6.c (See Withdrawal 2)

Pros: And you are the one who is requesting the court to allow you to withdraw the case against him?

Int: *Koro ikwayo kot ni mondo oyieni iwit kes oko?*

RT: Now you are requesting the court to allow you dismiss the case?

Comp: Yes

Int: I am praying to withdraw the matter against him

In 4.6.c, the complainant in requesting the court to dismiss his court simply answers in the affirmative when asked if it is true he wants the case dismissed. However, in reporting this, first of all the interpreter takes on the first person voice using the first person singular "I". This serves to make the utterance look as if it is the exact words of the complainant that are being presented. However, the utterance is much longer than the monosyllabic response of the complainant. It also contains legal jargon that it is improbable the complainant would have used in the first place. The legal meaning of "pray" is used in the new utterance and it is not part of the ST this may give the impression that the complainant is a member of the legal fraternity as well as that he is very formal in his speech and thus polite. Again this example serves to show how the presence of the interpreter affects the quality of the communication on the courtroom.

Angermeyer (2009) observes that when interpreters relay speech from English to another less dominant language, they are conscious that their interpretation may be evaluated by the people who speak English therefore in most cases they adhere to the norm in English but may fail to adhere to the norm in the other language. This is manifested in instances of self-correction when interpreting the English version, something which is absent when interpreting into the less dominant language. In this example also, we see an instance where the interpreter takes it upon himself to refine the speech of the complainant and in the process expands what has been said and this affects faithfulness to the original text.

Example 4.6.d (See Hearing 3)

Mag: Judgment on Friday. Let the probation report be prepared

Int: *Ibiro duogo e kot tarik abich ibiro ket ripot ma idhi ng'i go kaka ditweyi twech ma oko kata ka inyalo keti e tich moro koro duog tich abich*

RT: You will come back to the court on fifth. A report will be made on whether you can be given a non-custodial sentence or whether you can work somewhere so you will come back on Friday

Example 4.6.d also shows how the interpreter can purport to present the speech of others and yet fail to do so by expanding on what those others say. The magistrate says that the defendant should report back to the court on Friday without giving the specific date. He also asks the district probation officer to make a probation report. The interpreter for his part expands this by first of all giving the exact date when the defendant would report back to court. He also adds that the purpose of the probation report is to determine whether the defendant would be given a non-custodial sentence or whether he would be punished by making him do some work somewhere.

This appears to have been an attempt to make the defendant understand the meaning of the probation report and why it needed to be done. Hale (2004) in examining the role of an interpreter in the courtroom says that the interpreter plays the role of replicator. He/she replicates the original source language message in the target language to have the same effect on listeners. In some instances, the interpreter also takes on the role of the lawyer by simplifying the language of the court proceedings to enable the client to understand the proceedings. In 4.6.d, the effect of what the interpreter has given in the TT is not the same as what the magistrate has said. In the Kenyan situation, this can be attributed to the fact that apart from the interpreting duties, the interpreter also has other duties as the court clerk. One of those duties is to ensure that the defendants know the exact date when they are expected back in court. The clerk has to write down those dates on the bond certificates that are issued to the defendants. This role as the court clerk influences how the interpreters carry out interpretation as they are forced to integrate the two roles.

The interpretation services in Kenya differ from legal interpreting in the UK and many other countries in that in the UK, public service interpreters, including court interpreters, are all freelance professionals normally listed on the national register and hired on a case by case basis (Ibrahim and Bell 2003) whereas in Kenya, the court clerk also doubles up as the court

interpreter as is the case in Botswana as well as Malaysia. The court interpreter is a government employee who is also responsible for duties in the court other than interpretation. Ibrahim and Bell (ibid) enumerate the multiple roles of an interpreter in the Malaysian courtroom. These duties are the same as those performed by interpreters in the Kenyan courts. This shows the great amount of pressure already on the interpreter which may be a factor that leads to problems when it comes to doing the actual interpretation in the court as evidenced in 4.6.d.

Example 4.6.e. (See Hearing 3)

This example is drawn from a case where the accused person is defending himself against accusations that he was found with Bhang (cannabis) against the law. He however believes that bhang is good for him as it enables him to work hard.

Mag: So how do you know that you are not misusing it?

Int: *In era kaka ing'eyo ni ok iti kode e yo marach*

RT: How do you know that you are not using it in a bad way?

Acc: *Nekech atiyo kode tijega mayudo go*

RT: Because I use it to do those jobs that I get

Int: Because I am using it while I am going for my casual duties where I earn my living

In the above example, the interpreter uses the DS to report what the accused person says retaining the first person narration “I” thus giving in an element of authenticity. However, in the text itself, there are some parts of the TT which are not from the ST. The accused person says that he uses the drug in the jobs that he gets. The interpreter manages to capture this but expand it further by saying that these were the casual duties where “*I earn my living*”. As had earlier been mentioned in the previous section, the interpreters often feel under pressure to make sure they interpret well in English. Due to this, they often end up refining what was said in the ST and thus making the ST different in meaning and structure to the TT.

In section 4.6, I examined how interpreters caused a difference between the ST and the TT by expanding the utterances that had been made. This happened when they decided to explain to the defendants the meaning of words that they thought would be difficult to understand for example the meaning of probation. Moreover, when the interpreters were convinced that the original speaker’s speech was vague or incomplete, they expanded it by giving an explanation or by providing other information mostly from their knowledge about the case from previous court sessions of the same case. At other times, the information that the interpreters added by

way of explanation was only so that they could appear important and knowledgeable to the listeners. The extra duties that the Dholuo courtroom interpreter has as a court clerk also served to contribute to the expansion of utterances as they are required to give information on the case such as the next date of courtroom appearance to the witnesses and they often incorporated these in their interpretations.

#### **4.7. Conclusion**

In chapter 4, I examined the way other people's speech is presented using the model of SW & TP as presented by Leech and Short (2007) and later modified by Short (2012). The scale of speech presentation I used here were the categories as presented in Short (2012). The categories give a representation of speech presentation with a progression from the least faithful to the original version, to the most faithful. I found that even though interpreters used mostly direct speech to present the speech of the interlocutors who spoke the ST, by using the first person narration, they were not faithful to the ST. The lack of faithfulness to the ST was manifested in the change of others' illocutionary force which was different from those in the TT. This was so even when the interpreter retained the first person narration and the effect of this was that because it was said in the voice of the ST, it gave the impression of being faithful to the ST whereas in the choice of words, it was not.

Another finding identified was that because the environment in which the interpretation was taking place was the courtroom, there were instances when judgement was made by the magistrate either to set people free or to set bonds and probation terms. These are performatives as described by Austin (1962) and have to meet the appropriate felicity conditions to hold. The Dholuo interpreter was observed to be very keen to retain the felicity conditions in order not to have a failed performative. In doing this, they changed the first person singular pronoun "I" to a third person pronoun or phrase. This enabled the performative to fulfil all the felicity conditions. The power relations in the courtroom also played a role in creating this effect as the court interpreters in Kenya are also court clerks and therefore employees of the courtroom directly answerable to the magistrate as their immediate boss. This made them conscious of how they relayed the courtroom hierarchy.

There was also distortion of meaning of other people's speech. Again this was shown when the interpreters used the first person narration as markers of presenting speech but failed to ensure they used the exact words or equivalents of the ST. Sometimes they added information

to the words or they simply misrepresented what was in the ST thus giving a different utterance all together.

I also found that interpreters used reported speech but then distanced themselves from what was being said in the ST. This happened when they introduced a reporting clause at the beginning to highlight the fact that what was being said was not their own utterance but that of a third party. This happened mostly when they were uncomfortable with what was in the ST such as embarrassing utterances or those utterances that they considered rude. The unique thing about this finding was that the interpreters reverted to the Dholuo passive which is mainly used to report the speech of a person higher in hierarchy either by age or by rank. Also through this change, the interpreters were able to perform the role of ensuring that the dignity of the courtroom was maintained.

Lastly, the interpreters also expanded ST by offering explanations of what they thought were not clear. The interpreters mostly made these explanations to the accused persons and other laymen in the courtroom. The finding is in agreement with an earlier research carried out by Matu et al (2012) in courtrooms in Luo Nyanza where they discovered that Dholuo interpreters felt the need to explain and clarify matters to the litigants and viewed themselves as the helpers of the lay people in the courtroom. Thus generally when presenting other people's speech, the interpreters only adhere to the markers to show that they are presenting others' speech but do not retain any form of faithfulness to the ST. This is even more misleading as people expect the interpreters to be faithful to the ST because of the markers and may believe that what they are getting is the exact version.

**CHAPTER FIVE**  
**REPRESENTING ACTIONS/STATES AND EVENTS IN DHOLUO-ENGLISH**  
**COURTROOM INTERPRETATION**

**5.0. Introduction**

In this chapter, I carry out an analysis of the data collected in my study with the aim of comparing the way the interpreter represents actions/ states and events from the ST into the TT. I use Jeffries' Critical Stylistics (2010). This is based on Simpson's (1993) version of Halliday's model of transitivity on representing action/states and events. Transitivity is used to describe the choices of verbs in any text and facilitate debate on the consequences of those choices. Simpson (1993) assigns lexical verbs to a number of different categories according to the process or kind or state they appear to be describing.

1. Material actions: These are the most common type of verbs. They refer to something which is done or that happens often in a physical way but also in an abstract way.
  - a. Material action intentional (MAI)= these are actions done intentionally by a conscious being
  - b. Material action supervision (MAS) unintentional actions by conscious beings.
  - c. Material action events (MAE) use of verbs with an inanimate actor.
2. Verbalization describes any action that uses language and are close to material actions because they have a human actor
3. Mental process refers to what happens within human beings
  - a. Mental cognition (MC) thinking, knowing, understanding, etc.
  - b. Mental reaction (MR) feeling. Liking, hating, etc.
  - c. Mental perception (MP) sensing, hearing, feeling etc.
4. Relational Process  
This represents the static or stable relationships between carriers and attributes rather than any changes or dynamic actions.
  - a. Intensive relations (RI) she is pretty. Intensive relationships show a situation where the carrier (usually the noun) has an attribute or a quality ascribed to it.
  - b. Possessive relations (RP) she has a baby. In possessive relations, the carrier owns/possesses something. In some instances, the thing possessed can be seen as a kind of attribute for example when it is an inherent part of the possessor like in the sentence: She has brown eyes.

- c. Circumstantial relation (RC) the Sikh community is in the north. The circumstantial relation is similar to the intensive relation but involves concepts such as time and location.

I use these different processes to describe what is happening in the ST and how they are relayed in the TT after which I determine and describe the changes in ideation. During analysis I faced challenges with allocating processes to the given categories. Often, processes overlap into various categories while at other times some processes seem difficult to categorize. An example is the verb “charge” which is commonly used in the courtroom. At one level, it appears to be a material action intentional when the judge tells the accused person that he/she is charged with an offence. At another level, I consider it verbiage when the judge says to the suspect you are charged then adds an explanation of the charge. This is just but one example but there are many more such instances. When these types of problems arise, I look closely at the verb involved before using linguistic description to assign it to a category. In the sections that follow in this chapter I discuss, using examples from the recordings, the various findings about changes in transitivity.

### **5.1. Changes to the Process or Kinds of States/ Events/Actions**

In the audio recordings, there are instances when in the ST, the witness uses a verb with a certain process but the interpreter’s version changes the verb thus changing the process as well. Nida and Taber (2003) analyse translation from a linguistic point of view and identify three processes that translation goes through which are: 1) Analysis, in which the surface structure (i.e. the message as given in language A) is analysed in terms of a) the grammatical relationships and b) the meanings and combinations of the words 2) Transfer, in which the analysed material is transferred in the mind of the translator from language A to language B and 3) Restructuring, in which the transferred material is restructured in order to make the final message fully acceptable in the receptor language (Nida and Taber, 2003, P.33). The sequence of analysis transfer and restructuring as identified by Nida and Taber can be said to exist for the courtroom interpreter too. However, the interpreter in the courtroom and indeed in all other live interpretation situations is further faced with the additional constraint of time. The process has to take place in real time and so the interpreter does not have the luxury of going through the three steps time and time again as the translator would. This may be what contributes to changes in verb processes and other linguistic changes that come about in the interpretation process. In this section, I examine examples of instances where processes

changed in the TT and use them to explain how these changes occurred and the effects in meaning.

Example 5.1.a (See Hearing 2)

Hearing two as earlier mentioned is a defilement case involving a middle aged man and a nine-year-old girl.

Mag: I have some questions

Int: *Odhi penji penjo*

RT: She is going to ask you questions

In this example, the processes in the two utterances are different. The magistrate uses a relational process and precisely a Possessive Relational (PR). She says: “*I have some questions*”. This has the impact that she is pondering about some issues and indeed that is the ideational impact of her words. At the same time, it also has the implication that whatever information she has heard about the case so far, has left her needing to seek more answers. When the interpreter transfers the information into the TT, the process changes to a Material Intentional one where the magistrate is the Actor who is going to perform the intentional act of asking. The question in the TT therefore is just a form of interrogation whereas in the ST the question asked implies that the magistrate is dissatisfied with the information she has so far. In so doing, focus changes from showing dissatisfaction with the witness’s account of events to actively questioning the witness.

Example 5.1.b (See Hearing 3)

In hearing three, the accused person is charged with being in possession of narcotic drugs. The drugs were found on him when he had gone to the police station and the police officers on seeing him became suspicious and searched him for drugs. Example 5.1.b is an extract from that hearing.

Acc: *Nyasore en gima atiyo godo*

RT: Bhang is something I usually use

Int: I use the said drug

Acc: *To ok ati kode e yo marach*

RT: And I do not use it in a bad way

Int: I don’t misuse the same drug

Acc: *Koro ne akwa kot mondo oweya*

RT: Now I am requesting the court to release me

Int: I am requesting the court to forgive me

In this example, the underlined sections are the focus of analysis. The rest of the extract serves to give the context in which the analysed section is uttered. In the utterance made by the accused person, the proposition is divided into two. There is the first section which is given information: “*I am requesting*” and the second part which has the new information “*to release me*”. Even though the first part is used as a marker of politeness, the proposition in this utterance is a command. I have come to that conclusion due to the context of the utterance where it is shown that the accused person believes that there is nothing criminal about his being in possession of bhang as he claims it gives him extra strength to go about his daily chores. So the accused person then demands to be released from custody by using the verb “*release*”. Release here has the process of MAI with the Judge being the Actor and the act is that of intentionally releasing the accused person.

When the interpreter conveys the utterance into the TT, she too retains the two propositions of the sentence so the polite marker: “*I am requesting*” still remains and is still the given information. The second part of the proposition however changes to “*to forgive*” instead of “*to release*”. The choice of verb in the interpreter’s version changes the process from a MAI to the Mental Process of Material Reaction (MR). The accused person through the interpreter is now seen to be seeking sympathy from the judge by appealing to her feelings. As the judge does not understand the source language and the accused person does not understand the target language, none of them would be able to understand that what the interpreter says is different from what the accused person says. Lee (2009) argues that the interpreter in his/her role should be aware of cultural differences and must show cultural sensitivity. The interpreter also has the role of being a language expert. He/she is supposed to know well the two languages involved in the communication event. The interpreter has also been viewed as a bridge or a channel. In this role, he/she is expected to interpret accurately, faithfully and without emotional or personal bias. Actually he/she forms a connection between the accused/witness and the rest of the people in the court. The interpreter also plays the role of replicator. He/she replicates the original source language message in the target language to have the same effect on listeners (Hale 2004). In example 5.1.b, we can see that the effect of the utterance is not quite the same and neither does the interpreter replicate the original source language message in the TT.

Example 5.1.c (see Judgement 1)

Judgement one is about an alleged theft of household items involving a man and his step-son.

Mag: Indeed, if the store's main door was broken as alleged

Int: *Kiwacho no dho od store maduon'g nituro kaka iwacho no*

RT: If it is alleged that you broke the door of the store as alleged

Mag: What would have been so difficult for the two witnesses who visited the scene to say so?

Int: *Ango momiyo jowuoyo ariiyo wacho ni ... wacho dhok mopogore*

RT: Why are the two speakers saying that... saying contradictory statements?

In the underlined sections of example 5.1.c, the interpreter keeps the question form of the utterance but gives a different question from the one asked by the magistrate. In the ST, the Magistrate is expressing his being perplexed at the fact that the witnesses found it difficult to say that they had seen the door broken into as alleged and therefore he is casting doubt on the validity of their evidence on the basis of it not being plausible. This is achieved by the use of the Verbal group “*would have been*” which serves to show that the witnesses did not say they saw the door broken. It is a negation of the MAI of saying. So whereas the witnesses were expected to say if they saw that the door to the main store had been broken, they found it difficult to say so. However, when the interpreter relays this in the TT, the process of the sentence changes so that the two witnesses (this also changed to two speakers) are made to be the Actors in the sentence which now contains a MAI. In the TT, it appears as if they did say something which is not identified but is described as contradictory. So therefore in the TT the judge is dismissing their claim because they made contradictory statements whereas in the ST, the judge is using negation to show the improbability of their actions; it is because of statements that they did not make. By making the witnesses Actors in the sentence and providing a Goal i.e. “*contradictory statements*”, the proposition changes from casting doubt on the witnesses' account to accusing the witnesses of telling lies.

Example 5.1.d (See Hearing 1)

Hearing one involves a male accused of causing actual bodily harm to a female

Pros: Your honour the facts are ready

Int: *Chik iti iwinj kaka ne itimo gigo*

RT: Be attentive and hear how you did those things

This is an interesting example where what the prosecutor says in the ST is not repeated anywhere in the TT and at the same time, the processes are very different. The Prosecutor is addressing the magistrate to let him know that the facts in the case are ready. He uses politeness markers to show his subordination to the judge as required in courtroom discourse. The prosecutor makes a statement of fact by using the process of Verbalization. In the TT, the interpreter addresses the utterance to the accused person. He gives an order by using the Verb Group “*be attentive*”, which is a mental process of cognition (MC). However, this takes on the form of a command as it is an imperative sentence marked with the absence of the Subject which is the implied “you”. The accused person is thus commanded to pay attention; a mental process absent in the ST in the first part of the utterance.

In the second part of the utterance, there is another new proposition thus a new process. When the interpreter says to the accused person: “*hear how you did those things*” (which is supposed to be the legal equivalent of “*the facts are ready,*”) the utterance changes completely. In this second section of the utterance, there is the MAI where the actor is “you” in reference to the accused person and the action is “*did*” with the Goal as “*those things*”. The introductions of new actions in the TT that are not in the ST actually change the entire meaning of the utterance bringing in an unfriendliness that is not present in the ST and at the same time brings in a presupposition of guilt.

In section 5.1, I examined verbs that were used in the ST and compared them to the verbs used in the TT. I found that in changing the processes, the categories of the verbs also changed and this affected the meaning, for example, statements of fact were changed to accusations. The interpreters did not adhere to the participants as mentioned in the ST too and this contributed in changing the verbs, the processes and the categories of verbs. At other times, what contributed to the change in the TT was that the interpreter chose to use new words and new verbs not present in the ST. The result of this apart from changing the proposition also changed the atmosphere in the courtroom from merely stating facts to being combative and unfriendly to the public yet this is not really a creation of the court but a result of interpretation. I also pointed out the difficulty involved in using the transitivity model which is largely that mapping out verbs as processes to their categories is a challenge contributed to by the fact that language is dynamic and there are many ways of saying the same thing. In section 5.2 that follows, I discuss the distortion of meaning that comes about as a result of transitivity changes.

## 5.2. Distortion of meaning in the TT as a Result of Transitivity Changes

The second finding in relation to verb choices shows that the resultant TT may be distorted in meaning when there is a change in the transitivity choices. This is in addition to the changes to the process or kind of state/ action as discussed in 5.1. Moeketsi strives to give a working definition of courtroom interpretation to distinguish it from other forms of interpretation. She says: “courtroom interpreting is an oral/sign activity that occurs in a live judicial setting or any such setting where conflicts are resolved” (Moeketsi 2008, P.227). The aim is to facilitate communication in such a way that the judge is able to adjudicate in the matter between the prosecution and the defence in such a way as for the accused person or witness to participate effectively in the case just as if the proceedings were being conducted in his/her own language. In this section, I identify instances where as a result of how the interpreter presents the processes in the utterances in the TT, there is distortion of meaning. These examples serve to show that in some instances, even though interpretation is provided, it is quite difficult to participate in court proceedings as if one was doing so in one’s own language and inevitably, some meaning is distorted.

Example 5.2.a (See Plea 3)

In Plea 3, the two accused persons are charged with being in possession of *Chang’aa* an illicit alcoholic drink.

Acc 1: *Mama wa oti. Mama wa ool. Kata mago ne mana konge*

RT: My mum is old. My mum is old. Even the alcohol was hers

Int: My mother is tired or aged and she was the owner of the said alcohol

Acc 1: *Koro kaka ne oyuda to koro an ema ne atin’go nekech osebedo ka obiro ka man’geny sana*

RT: Therefore, when I was found, I was the one carrying it because she has been coming here very many times.

Int: When I was found, I was the one who took charge of the said alcohol coz my mother had been arrested severally.

In the utterance by the first accused person, he identifies himself as an Actor in a Material Action Intentional i.e. that of being the one carrying the alcoholic drink at the time when the arrest was made. He explains that even though he is carrying the alcoholic drink, it does not

belong to him and is his mothers' whom he also explains has been arrested several times before for the same offence. So in reality the accused person is trying to show that he does not own the said alcohol and therefore is really not responsible for it.

In the TT, the interpreter reports this as "I was the one who took charge of the said alcohol". There are two overlapping processes in this utterance. First of all, there is the MAI where the accused person is the Actor by taking charge. However, to take charge is a phrasal verb which also has the meaning of the Mental Perception (MP) process of taking care of as owner. Thus in the TT, it has been made to appear as if the accused person has pleaded guilty to the charge whereas in the ST, the accused person does not plead guilty. He explains that the alcohol is not his thus is actually entering a plea of not guilty which the interpreter makes to look as if the accused person is entering a plea of guilty.

#### Example 5.2.b (See Judgement 1)

Judgement 1 is a case where a young man is accused of breaking into a store but he is found not guilty of the offence

Mag: Now, the main issues for consideration were as follows. Number one, was the complainant's store broken into as alleged?

Int: *Gigo mikoni kaka gigo nobet; mokuongo complainant wacho ni ituro ode midonjo*

RT: Those things you are being told is how they happened, first the complainant says you broke into his house and entered

Mag: Number two, was the accused seen breaking into the store?

Int: *Namba ariyo, noneni kituro dhot midonjo kuro*

RT: Number two, you were seen breaking the door and going in

Mag: Number three, has the ownership of the stolen items been proved?

Int: *Namba adek n'gama nokwal gige no prove mowacho ni mago gige manoyudi go no*

RT: Number three, the person whose things were stolen proved and said that the things that were recovered were his

Example 5.2.b has a series of interrogatives that the judge enumerates as the main issues that have to be considered in this particular case. This is the introductory section of the judgement ruling through which the judge organises his ruling by looking at each question the judgement is meant to take into consideration.

The first issue is: *was the complainant's store broken into as alleged?* This the interpreter presented into TT as: *"First the complainant says you broke into his house and entered"*. This changes the interrogative to a declarative. In the interrogative, the judge asks a question whose answer he does not supply immediately but later on in the ruling, he says he is convinced that the accused person did not break into the store as alleged. When the interpreter changes the interrogative into a declarative, he gives a different message from that of the judge. While the judge later answers the question in the negative, the interpreter immediately answers the question in the affirmative. The answer as supplied by the interpreter is a verbiage beginning the *"complainant says..."* and then supplies a statement which has a MAI which is that the defendant being the Actor, performed the material action intentional of breaking into the house. This is contrary to the words of the judge.

The second question the judge poses is: *was the accused seen breaking into the store?* In the TT however, the interpreter says: *"you were seen breaking the door and going in"*. Again here, the clause changes from an interrogative to a declarative. There is now an actor "you" who performs the Material Action Intentional of breaking the goal which is the door whereas the magistrate's question seeks to find out whether the material action of breaking a door took place. In so changing the utterance, the meaning changes to the opposite of what the judge eventually gives as his answer to the question which is, that he believes no one saw the accused person breaking the door to the store.

Lastly, the third question by the judge is: *"has the ownership of the stolen items been proved?"* In the TT, this becomes: *"the person whose things were stolen proved and said that the things that were recovered were his"*. This also has an Actor; the complainant, who performs a MAI of proving. The interpreter thus makes it look as if the magistrate has found the accused person guilty. As the case goes on, the accused person is probably surprised to later hear that he has been found not guilty of any of the three main charges.

Due to the misinterpretation noted in this example, I would like to reiterate that the Kenyan interpreters lack any form of training and their only qualification for the job is their ability to speak the two languages. As Berk-Seligson puts it, "Interpreters generally do the best they can, and are sincere in their effort to be precise and faithful to the foreign language testimony. Yet if they are not highly qualified to do their job, the product of their efforts is bound to be faulty (Berk-Seligson, 2002, P. 204).

Example 5.2.c (See Withdrawal 3)

In withdrawal three, a woman has accused her brother-in-law of stealing one sheep from her but wishes to withdraw the case from the court.

Int: *Uwinjoru nan'go?*

RT: What was the agreement?

Comp: *Wawinjore ni obiro dhi chula*

RT: We have agreed that he will repay me

Int: Your honour we have agreed and the accused person has promised to pay me back

The underlined parts of example 5.2.c are the focus of this analysis. In the ST, the utterance consists of a compound sentence in which is embedded another clause introduced by the complimentizer “that”. In the TT, the utterance also consists of two sentences independent of each other connected together with the compound connector “and”. The second clause is an addition by the interpreter and is not present in the ST. This addition results in the distortion of meaning as it implies that the accused person performed the MAI of making a promise to pay back but there was no mention of such a promise in the ST. Thus this utterance constitutes both a lexical and a grammatical change.

Example 5.2.d (See Hearing 2)

Hearing two is a case in which a middle aged man is accused of defilement.

RT: When it reached the third day

Int: When it reached the third day

Acc: *Ne amuoch gi ywak*

RT: I let out a cry

Int: I started crying

Acc: *Then eka ne gikawo action kacha kachiel*

RT: That's when they took action one by one

Int: At that point is when the action was taken

In example 5.2.d, the actions of the accused person are presented differently from how he says that they occurred. In the ST, the accused person says that he let out a cry. This is an involuntary action by a conscious being thus a supervention (MAS). The effect of this choice of words is that the crying is not premeditated and is as a result of the accused person's suffering at the hands of the police whom he accuses of mistreating him while he was in

police custody. The accused person is trying to show that he is an innocent person treated so brutally by the police to an extent that he broke down emotionally.

However, in the TT, the interpreter uses the words “*I started crying*” which is also a supervention but the degree to it is different from letting out a cry. The ideation is very different as it has the implication that the accused person deliberately decided to cry. It may therefore imply that he is crying as a way of seeking sympathy from the police officer. In this instance therefore, the illocutionary force of the ST was lost in the TT. Searle (1969) defines the illocutionary force as the act the speaker performs as a result of making an utterance such as insult, apologize, show surprise, disgust, etc.

Researchers, namely Hale (1997a, 1997b, 2002, 2004), Berk-Seligson (2002), and Jacobsen (2003) determine that there are discrepancies between the semantic and pragmatic equivalence of original speech by witnesses from culturally and linguistically diverse backgrounds and the interpreted version. These researchers note that in many cases, the interpreter may pass across the semantic meaning but ignore, misunderstand or simply not convey the pragmatic meaning which refers to the meaning of a particular utterance in context. This is what happens in example 5.2.d.

Example 5.2.e (See Judgement 1)

Judgement one involves a charge of committing a felony and handling stolen property.

Mag: However, further on, the complainant said that the accused remained at the chief's place

Int: *Kata kamano, janeno wacho ni jadona noparo ne chief*

RT: However, the witness says that the complainant reminded the chief

In example 5.2.e, the magistrate is pointing out anomalies in the witnesses' statements. These anomalies are such as they show inconsistencies upon which the case is dismissed. One of the discrepancies is that one witness claims that the accused person was present in his house when it was searched by the chief for stolen items whereas another witness says in the same court that the accused person had remained at the chief's camp during the search. As it is not possible for one person to be both present and absent, the magistrate concludes that the witnesses are not telling the truth.

In the magistrate's utterance in example 5.2.e, he says the accused person *remained* at the chief's place. This is a MAI where the main Verb "*remained*" is used to show the accused person was absent from the search scene. In the TT, the interpreter said "*the complainant reminded*" this is a verbalization process where the verbiage is whatever the reminder was about. This is however a complete distortion of meaning and may have been caused by mishearing. The words *remained* and *reminded* are almost similar in sound but very different in meaning. A trained linguist would have however noticed the anomaly immediately in relation to the fact that the word *reminded* does not fit into the context. That is why it is important for the interpreter to be properly trained.

Vilela (2003) also examined court interpreters in Venezuela. In that country, training programmes and regulatory frameworks do not exist. The court interpreter takes on the dual role of interpreting in the courtroom as well as serving as social actors. The Venezuelan scenario resonates with that of Kenya in both the lack of training and the fact that the court interpreters in both countries serve as social actors. Yet researchers agree that it is essential to have a comprehensive training but it is mandatory to have instructions on standards of conduct and good practice in educating interpreters (Mikkelsen and Mintz 1997, Moeketsi and Wallmach 2005).

Lipkin (2010) brings to light the situation of the competency of interpreters in the Yehuda military court in Jerusalem. This is a court that performs different functions chief of which is the trying of suspected terrorists and other offenders in the West Bank area. In Yehuda, the interpreters are recruited as a part of a compulsory army service for a period of three years and undergo a short course (Lipkin 2010, P.93). The chief qualification they have is that they can speak Hebrew and Arabic. Like in Kenya, the Yehuda interpreters perform multiple duties in the courtroom. They maintain law and order, usher in people, and do other additional administrative issues. From examples in this section, it is obvious that training plays a key role in proper interpretation.

In section 5.2, I examined distortion of meaning as a result of verb choices in the utterances. I came to the conclusion that distortion of meaning can come about as a result of the wrong choice of verbs for example if in the ST, the speaker through their words takes a plea of not guilty but the interpreter uses words that take on a plea of guilty. The change from an utterance being an interrogative to a declarative also contributed to distortion of meaning where the declarative gives the wrong information by providing an answer to the interrogative instead of reporting the interrogative. The change in the illocutionary force of an

utterance also contributes to the distortion of meaning. Finally, the mismatch between the ST and the TT is also contributed to by mishearing of similar sounding words.

### **5.3. Vagueness Occasioned by Change of Verbs in the TT**

While I state that changes in verb choices result in changes in processes as well as in distortion of meaning, it is also evident that the TT sometimes becomes vague as a result of the differences in verb choices. Lee (2009) contributes to the debate on interpretation by adding a type of courtroom error in interpretation. She points out that inexplicit source language can be a source of wrong rendition. Her argument is that the courtroom language is by its nature “a highly institutionalized form of discourse that is constrained by evidentiary rules. Legal discourse is often characterised by explicitness and precision and does not tolerate ambiguity or multiple interpretations” (Lee, 2009, P.4). The layperson may not be aware of this nature of the courtroom language thus may lack understanding of the expected language style as well as lack the skills to communicate in the courtroom context.

In this study, I find that there are actions in the ST that are stated clearly but when the same actions are interpreted into TT, they lose their clarity and become vague and sometimes also ambiguous. This is however not caused by the witnesses as is explained in Lee (2009) but is actually caused by the interpreters who are supposed to guard against the same. This comes about when the interpreter makes a different choice of action and state words in the TT. Action and state words represent various processes such as intention, verbiage, mental or relational. Sometimes, the vagueness comes about as a result of the change of process and at other times, the vagueness comes about as a result of the change of the action/state word. In this section, I examine some examples where the choice of action/state words results in vagueness in the TT.

Example 5.3.a.i. (See Judgement 3)

This example is taken from a case where the accused person is charged with forging a bank transaction register in order to defraud the complainant of 60,000 Ksh. (roughly £400) and Equity is the name of the bank i.e. the bank transaction register was from Equity bank.

Mag: In an attempt to defraud, the accused person forged an Equity agent transaction register purporting to have been signed by Tamira Owino\*; a fact he knew to be false

Int: *Kane itemo mayo, in ne iloso gimoro ma en Equity agent transaction register mane iwacho ni nokete sei gi Tamira Owino\* mane in'geyo ni en miriasia*

RT: You attempted to steal and you made something which is the Equity agent transaction register that you said had been signed by Tamira Owino\* and you knew that to be untrue (\* names changed to protect the identity of the complainant)

In example 5.3.a., there are two processes I wish to analyse. In the ST, the magistrate uses an Adjunct which is the prepositional phrase “*in an attempt to defraud*” to introduce the utterance. This is an adjunct and is not really part of the proposition as it comes at the beginning of the utterance and is followed by the new information which is in the proposition “*the accused person forged an Equity agent transaction register*”. In the TT, the interpreter reports the adjunct phrase as if it were a complete main clause on its own thereby making it part of the proposition. It is interpreted as “*you attempted to steal*”. This is an independent clause that has an Actor: you (referring to the defendant) and a Material Action Intentional that of attempting to steal. It also ceases to be an adjunct.

In the second part of the utterance, there is vagueness about what crime the accused person is supposed to have committed in the TT as opposed to the clarity of the charge in the ST. In the ST it is clear that the accused person forged a document. This is a definite MAI with a criminal element. In the TT on the other hand, the interpreter states “*you made something*”. Whereas this is also a MAI, to make something is not criminal. The propositions in the two utterances are different in that the magistrate in her utterance includes the criminality of what the accused person is purported to have done by using the verb “*forged*”. In the TT, the verb used is “*made*” which carries with it no criminal implications. As the same judgement progresses, the interpreter continues to refer to “*forged*” as “*made*” as shown below:

Example 5.3.a. ii.

Mag: I find that the court is expected to determine

Int: *Koro kot ineno ni kot eeh ohh onego n'gad bura ni ka n'giyo*

RT: Now the court sees that the court eeh oohh should determine this case looking at

Mag: a) whether the accused person forged a document i.e. the Equity agent transaction register

Int: *N'gama ne odonjne ni ne oloso otas moro mar jo Equity*

RT: The accused made a certain paper from Equity

Example 5.3.b (see Judgement 2)

In this example, the conductor of a public service vehicle (*matatu*) is charged with negligence of duty when he fails to ensure the safety of a passenger.

Mag: Did act in an uncivil and disorganised manner by failing to take reasonable precaution

Int: *Ne itimori e yo ma ok owinjore ka ne ok ikawo okang mowinjore*

RT: You misbehaved when you did not take the necessary precautions

Mag: To ensure the safety of a passenger who was alighting from the “*matatu*”

Example 5.3.b also shows how an utterance can change in the TT so that it loses some of its meaning and then becomes vague. In the ST, the magistrate gives a full description of the criminal act the accused person is charged with. The type of process described is a Material Action Intentional; that of acting in an uncivil and disorganized manner. The verb to act is in itself not criminal so the magistrate qualifies it with a prepositional phrase. In most English clauses, the prepositional group can be optional as it often serves as an adjunct and only gives additional optional information. In this utterance however, if we decide to make the prepositional phrase optional, the criminal element which is the very reason why the accused person is in the courtroom will be lost. The interpreter fails to incorporate an equivalent of the prepositional phrase into the TT. She says “you misbehaved”. This is either a MAI where the accused person may be viewed to have intentionally set out to misbehave or it may also be a Material Action Supervention (MAS) where the accused person may have not been aware that his actions were considered as misbehaviour. It is because of this that the TT appears vague. The prepositional phrase that ensures the process remains a MAI is lost in translation. However, even though the choice of the word misbehaved in a way captures the bad behaviour exhibited by the conductor, the ST version is clearer because it uses post modification that explains the charge better and that is what is missing in the TT.

It is this type of change that leads me to conclude like Watermeyer (2011) that interpretation is not simply about communicating a linguistic code from one language to another; rather, it involves conveying multiple interwoven layers of information including verbal and nonverbal codes, feedback mechanisms, cognitive and pragmatic processes, emotional content as well as cultural and contextual information all of which must be conveyed to the recipient in an accessible form.

Example 5.3.c (See Hearing 1)

This example is taken from an assault case where the complainant sustained bodily harm.

Pros: Treated at the Yala Sub-District hospital

Int: *Asto ne odhi othiedhe e hospital mar Yala Sub-District*

RT: And she went and was treated at the Yala Sub-District hospital

Pros: Where the P3 was signed and the injuries were confirmed to be bodily harm

Int: *Kasto nojaz. P3 then n'gama ne othiedhe ban'ge n'gama ne othiedhe ne on'gado ni oyudo hinyruok*

RT: Then a P3 was filled then the person who treated her, then the person who treated her decided that she had got injuries

The focus of this example is on the underlined parts of the utterances. In the ST, the prosecutor mentions that the injuries were confirmed to be bodily harm. This utterance lacks an Actor and is in the passive voice. The process of the sentence is a MAI due to the choice of verb confirmed which has to be done intentionally by a conscious being. However, the Actor is not mentioned. In the TT, the interpreter introduces an Actor in the utterance; “*the person who treated her*”. The process of the utterance remains a MAI but the verb changes to “*decided*” from “*confirmed*”. The use of this verb makes the utterance vague in that it is not clear whether the person who treated the complainant decided that the injuries she had were as a result of being assaulted by the accused person which was the main reason for the examination. It removes the implicature that the injuries were present prior to the doctor’s assessment. A defence lawyer could argue that evidence given by the prosecutor does not show that the accused person is the one who caused the injuries as the phrase “*bodily harm*” which was the accusation is missing in the TT.

Example 5.3.d (see Judgement 3)

This example is taken from a judgement that is about obtaining money under false pretence.

Mag: The accused person is charged with obtaining money under false pretence

Int: *Nodonjni ni ne ikawo pesa e yo ma ok owinjore*

RT: You were charged that you took money in a way that is not right

Mag: Whereby it is alleged that on the twenty second of November at Ahero township

Int: *Kuma iwache ni tarik prariyo gariyo dwe mar apar gi achiel higa mar alufu ariyo gi apar gariyo*

RT: Where it is said that on twenty second of November twenty twelve

Mag: The accused person with the intent to defraud obtained from the account of Tamira Juma Owino\*

Int: *In kane idwa mayo niyudo kowuok e account mar Tamira Juma Owino\**

RT: You, in attempt to rob, you got from the account of Tamira Juma Owino\* (\* names changed to protect the identity of the complainant)

In example 5.3.d, the criminal offence that the accused person is charged with is identified as “*obtaining money under false pretence*”. Even though to obtain is a verb that can be either a MAI or MAS, in this particular instance, it is used more as an MAI where the actor who is the accused person deliberately set out to obtain money from the complainant. This verb is further modified using a prepositional phrase “*under false pretence*” wherein lies the criminal offence. If the accused person simply obtained money, then that cannot be considered a criminal offence because money can also be obtained in a legal manner. In the TT, the interpreter says: “*took money in a way that is not right*”. In a way, the interpreter retains the first part of the magistrate’s utterance by using the verb “*took*” which is a synonym of “*obtained*” it is the prepositional phrase used in the TT that makes the utterance vague. “*...in a way that is not right*” does not bring out the criminality of the offence clearly as one may still wonder what way is that? This is one loophole that can be employed by a lawyer to show that the accused person has committed no crime. This example goes to show that in interpretation, one can even retain the syntactic structure of an utterance but still lose the meaning. In this example, the TT retained the V + PP structure but the meaning is altered and becomes quite vague.

Karton (2008) in his study on interpretation errors at the International Criminal Court found that one of the factors contributing to inherent indeterminacy of interpreted language is diversity in syntax and vocabulary: on this he shows that since languages do not overlap, many expressions are not interpretable because of lack of equivalents in the TL. This leads the interpreter to find expressions in the TL that are a rough equivalent of the one in the SL, which creates imperfect interpretation. However, example 5.3.d shows that one can retain the syntactic structure in the TT but still lose some aspects of meaning that were present in the ST.

Example 5.3.e (see Judgement 3)

Mag: It is worth noting that her daughter Benter\* whom she had indicated witnessed this agreement

Int: *Mane nyare ma iluongo ni Benter\* mane owuoyo kaka janeno mar ariyo*

RT: That her daughter called Benter\* who talked as the second witness (\* name changed to protect the identity of the witness)

In example 5.3.e, the magistrate in the ST indicates the action of the witness who is the daughter to the complainant as “*witnessing an agreement*”. Earlier on in the hearing, we are made aware that the agreement is that the accused person refunded 30,000 Kenyan shillings (£200) to the complainant in this case and that the complainant’s daughter was there to confirm that this had been done thus “*witnessing*” the agreement. Here, witnessing is used as a verb meaning to ascertain. In the TT, the interpreter says “*who talked as the second witness*” where talked is the verb. It lacks the property of ascertaining that is present in the magistrate’s utterance. However, the word *witness* is used in the TT as well as in the ST but, it is used as a noun and in the TT whereas it is used as a verb in the ST and this is why the element of ascertaining is lost.

In section 5.3, I examined how the verb choices made by the interpreter that are different from those in the ST can cause an utterance to be vague, or incomplete. I found that when semantically complex verbs are used in the ST, the interpreter may instead use less complex verbs in the TT which then cause vagueness and incompleteness. Yet, when the verb used is semantically simple, the TT may incorporate an equally simple verb and still end up being less clear. Other examples used in this section also showed that retention of the same syntactic structure in the TT does not necessarily result in a clearer rendition as the interpreter might retain the syntactic structure but choose different verbs which still result in incompleteness and lack of clarity.

#### **5.4. Use of Explanations and Modifications to Simplify Actions/States**

In this section, I examine the choices of verbs in the utterances and analyse them for how they use explanations and modifications to simplify the TT and as a result create a different

meaning from that in the ST. For this study, I consider explanations to be the giving of additional information in the TT in the attempt to make issues clearer. According to Benmaman (1999), the interpreter has to show full understanding of the message. This can be influenced by a variety of factors including the knowledge: of the language, of the subject matter, of the context, of the institutional culture as well as the knowledge of the speaker's own culture. In my study I find that interpreters treat the utterances in the ST as inadequate and so add information that further explains those utterances even though in so doing, they are going contrary to the principals of courtroom interpretation which demands fidelity to all aspects in the original text. The examples that follow in this section help explain how these explanations are manifested.

Example 5.4.a.i. (See Withdrawal 3)

RT: Did the person before the court ask you for your forgiveness or did you decide to forgive him?

Comp: *Okwaya*

RT: He asked me

Int: The accused asked me for forgiveness

In this example, and indeed in the entire clip of withdrawal three, the complainant gives her responses in very short answers most of them being one word answers which the interpreter then mostly changes to complete sentences. Looking at the complainant's response in example 5.4.a.i. above, she uses an utterance consisting of a Subject, a Verb and a Goal. All these are single words consisting of just the head word with no modifications. When the interpreter converts this into the TT, he gives an utterance with the structure Subject (Det + N) Verb (MV) Goal 1 (N) Goal 2 (PP). The additional Group that is present in the TT and absent in the ST is the Preposition Group. The effect of this is that it gives the utterance a more complete well-formed sentence which was not there in the ST and consequently is not a true reflection of the ST. In the same case, the conversation continues like this:

Example 5.4.a. ii.

Int: *Iyie n'gwonone*

RT: You have agreed to forgive him?

Comp: *Ee*

RT: Yes

Int: Your honour, I accept to forgive him

Again here, the complainant gives a one-word answer: yes. This is then reported into the TT as a longer well-formed sentence consisting of an Adjunct (your honour), a Subject (I) a verb (accept) and a Goal (to forgive him).

In regard to this type of change, researchers such as Benmaman, (1992), Berk-Seligson, (2002), Gonzalez et al (1991), Hale (1997c), and O'Toole, (1993) say that it is very important during the process of interpretation, to convey the content of the original speaker's words, as well as the style in which he or she uses in their speech. A number of studies carried out have actually shown that the style that a person uses to speak can have an impact on the impression they form on their listeners. Through one's style, listeners can judge the speaker's social status, age, personality, intelligence, honesty and intelligence (Hale 2002). For example, a speaker can either use powerful speech forms or powerless speech forms. Example 5.4.a here shows that the style of the complainant changes to being politer with the use of polite forms such as "*your honour*" and more complete sentences. She also appears to be more knowledgeable as in the TT, she through the interpreter uses the legal register.

Example 5.4.b (See Withdrawal 1)

Comp: I want to withdraw the case

Mag: Withdraw?

Comp: Mmm

Mag: Why is that?

Int: *Nowacho ni odwa ni mondo ong'wonu owit kes ni oko*

RT: He is saying that he wants to forgive you and throw out this case

In example 5.4.b, the ST under scrutiny is the complainant's utterance "*I want to withdraw the case*". The action word used here is the MAI "*withdraw*" where the complainant is the Actor of intentionally withdrawing the case he brought to court. In the TT, the interpreter uses not one but two action words. The first he uses is the MAI "*forgive*". This is not an action present in the ST explicitly but is implied in the withdrawal of the case. By bringing the case to court, the complainant is seeking some form of punishment for the defendant but by withdrawing the case the punishment is also withdrawn and hence a sense of the defendant being forgiven. Thus when the interpreter uses "*forgive*" in the TT, it is a form of explanation by bringing to the surface the deeper or the implied meaning. The second action word used is the phrasal verb: "*throw out*" which has the meaning of dismiss. In truth, the complainant does not have the power to throw out a case, only the judge has. However, those are not the

complainant's words but those of the interpreter. So in this example, the interpreter by adding information explains and modifies the complainant's words.

Example 5.4c (See Plea 1)

Int: *Kennedy\**, *odonjni ka gi keth mar ketho kwe mar aluora mane intiere tarik prariyo gaboro dwe mar apar gariyo higa mar alufu ariyo gapar gadek e Koyeyo sub-location Siaya District Siaya County. Niketho kwe mar aluora mane intie.*

RT: Kennedy\*, you are charged here with the offence of disturbing peace in the environment where you were on the 28th of December 2013 in Koyeyo Sub Location Siaya District, Siaya County. You disturbed the peace in the environment where you were.

CS: Creating disturbance in a manner likely to cause a breach of peace contrary to section 95(1) (b) of the Penal code at Koyeyo sub location in Siaya sub district in Siaya County created disturbance in a manner likely to cause a breach of peace. (\* name changed to protect the identity of the defendant)

Pleas in Kenyan courts are written out in English on a charge sheet (CS) and it is then the duty of the interpreter to read out the charge in the language that the defendant says they best understand. Thus they take on a different type of interpreting where the interpreter takes mental note of what he is reading and then says it out aloud as if reading in the defendant's chosen language. In example 5.4.c, in the charge sheet, it is recorded that the criminal offence that the defendant is being charged with is that of "*creating disturbance in a manner likely to cause a breach of peace*" like in all other charges, the mention of the offence takes on the form of the action verb which is a MAI with a modifying prepositional phrase "*in a manner likely to cause a breach of peace*" in the TT, the interpreter says that the offence is that of "*disturbing peace in the environment where you were*". Parts of the charge are replaced with terms that are simpler to understand in layman language. The new terms are such as: *environment* and *disturbed peace*, the words that were replaced are mainly words from the legal register such as "*in a manner likely to cause a breach*". The explanation of meaning is brought about by the simplification of legal jargon so as to enable a layman to understand the charge.

Angermeyer (2009) explains that most interpreters tend to view the people they interpret for as clueless and unintelligent as well as ill prepared to meet the requirements of the court. This attitude contributes to the way the interpreters do their work. This may result in the kind of simplification noted in 5.4.c.

Example 5.4.d (see Withdrawal 1)

Pros: But if in his mind he wrongly accused the second accused, the second accused person,

Int: *Lakini kaluwore gi pachi ni ne idonjo ne Samson\* e yo marach*

RT: But in relation to your thinking that you accused Samson\* unfairly (\* name changed to protect the identity of the defendant)

Pros: That will remain on his conscience. Will always still hang over his neck

Int: *Gino biro chieni po ni timo kamano. Nidonjone e yo ma ok kare. Tamruok to ok otamre ni case kik wit oko lakini kane idonjone e yo marach owach ni mano koro wachni. In ma gino biro chieni*

RT: If you did that, that thing will haunt you. He is not refusing that the case be thrown out but if you accused him unfairly, that is now your problem. You are the one who will be haunted by that thing.

In example 5.4.d, the Prosecutor is cautioning the complainant who was withdrawing a claim. The complainant has just confessed that even though he brought the case against the accused person to court, his belongings that were stolen had not been found on this particular accused person and therefore he has no case against him. Due to this, the prosecutor decides to caution the complainant against falsely accusing people in the future. In order to do this, he uses a MAE (material action event) by saying that the complainant's actions which are inanimate would remain in his conscience and would hang over his neck. This is made even more intense by the use of epistemic modality choosing to use the modal auxiliary "will" which shows that it is very likely the complainant will be disturbed by his false accusations against the accused person. The interpreter in his version retains the disapproval of the complainant's actions but instead of just issuing a caution, issues a threat by equally using an MAE but saying to the accused person that he will be haunted and repeating that threat twice. He adds more to his threat by saying to the accused person "that is now your problem". "Mano korowachni" is a Dholuo clause used as a threat and also a scare mongering tactic that is supposed to instil fear in a person. It usually implies unexplained dire consequences for any actions a person has done.

Example 5.4.e. (See Withdrawal 1)

Mag: Accused two in respect to count one and count two

Int: *To in Samson\* kaluwore gi keth namba achiel gi keth namba ariyo? Iyie ni mondo on'guon ni koso itamori?*

RT: And you Samson\*, in relation to the first offence and the second offence? Do you agree to be forgiven or do you refuse? (\* name changed to protect the identity of the defendant)

Acc 2: *Ayie*

RT: I accept

Int: No objection to the application your honour in respect to count one and count two

Still in the same withdrawal case, the interpreter explains utterances made by the judge as well as those made by the witnesses. In the magistrate's first utterance in example 5.4.e, the utterance is incomplete. This is because earlier, he asked the same question to the first accused person and hence sees no need to repeat the question in full. The interpreter for his part decides to ask the question in full perhaps recognising that it would be difficult for the second accused person to follow the procedures otherwise. What the interpreter introduces to the judge's statement however is "*do you agree to be forgiven or refuse?*" This is the interpreter's way of simplifying the magistrate's words to make it easier for the accused person to understand and give a meaningful response. At the same time, when the accused person gives his response, it is a short answer "*I accept*", the interpreter chooses to expand the answer by saying "*No objection to the application your honour in respect to count one and count two*". This statement is made in the style of the interpreter and not of the speaker. This is so due to the use of words from the legal register such as: *no objection, the application, your honour, count one and count two*.

In section 5.4, I examined explanation of meaning. This is whereby interpreters gave explanations for utterances made or made simplifications of legal terms. At other times they also added legal terminology mainly for the benefit of the members of the legal fraternity. The effect of this is that some utterances came across as politer in the TT than they were in the ST. Sometimes, the interpreter also explained the meaning of the utterance by supplying missing information from their knowledge of a previous context of the same case. The overall effect of this was that the accused persons were being judged not on their own speech styles but on the speech styles of the interpreter.

## **5.5. New Actions/States in the TT Influenced by Extrinsic Factors**

As has been mentioned elsewhere in this thesis, the Kenyan courtroom interpreter is also the court clerk. Because the interpreter also has to perform his/her clerical duties, there are new actions/states in the TT that are related to the role of the interpreter as a court clerk and are absent in the ST. These are the new actions/states that in this section are treated as influenced by extrinsic factors.

When recruiting court clerks to serve in the courtrooms in Kenya, one requirement that is compulsory is that they should be able to speak three languages: English, Kiswahili and their own mother tongue. It is not uncommon to find a court clerk who can also speak a fourth language but they all must speak three languages at the least. The court clerks in Kenya do not have any further training in linguistics or in interpretation as it is assumed that because they can speak the languages involved well, they can also interpret. The government has made an effort to since 2012, take courtroom interpreters for some training on interpretation but this is a short course which is integrated into other subject areas such as law and is not very intensive. From my observation in the courtroom, the clerk has a duty to arrange court files in order of how the court cases will be heard, inform the general public when the court session starts and in which court cases will be heard, ensure the accused persons, witnesses and their lawyers know where and when to go for their cases, liaise with the court prosecutor about other information like whether the accused people are present in court or are to be produced from custody. All these he/she does just before the court session begins.

During the court process, the clerk reads out the particulars of the case, swears in witnesses, makes a record of the dates given by the magistrate on the files, and on the bonds that the accused people carry around with them. He/she also maintains law and order in the courtroom and at the same time has to interpret for people who do not understand the language of the courtroom. The interpretation can be on any one given day switching back and forth from Kiswahili to English to Dholuo all depending on the language preference of the accused person or the witness. During data collection, I witnessed a hearing where there were three accused persons each choosing to use a different language in the same case. The interpreter then had to interpret the same thing into three different languages i.e. English,

Kiswahili and Dholuo. This section examines the new actions/states that introduced into the TT as a result of the other duties that the interpreter engages in in the courtroom.

Example 5.5.a (See Plea 2)

Acc: *Nakwayo court mondo okonya gi bond*

RT: I am requesting the court to give me a bond

Int: *Ema ipenji ni in gi pesa adi minyalo tweyo. Bond gi cash bail imiyi.*

RT: That's why you are being asked how much money you can give. A bond and a cash bail you will be given

In example 5.5.a, the magistrate has been trying to set bond terms for the accused person. The accused person however seems not to understand that he is actually being granted a bond and keeps on asking for a bond. This is partly due to the fact that he thinks he needs to pay cash straight away. The interpreter senses this because the accused person makes a request for bond terms three times. In making this utterance, the interpreter does not provide an interpretation for the rest of the courtroom and speaks directly to the accused person in Dholuo. He says to the defendant that he will be given a bond and cash bail and explains “*that is why you are being asked how much money you can give*”. The choice of verbs reflects irritation and impatience. This is an illocutionary force that is solely from the interpreter’s own personal feelings. The magistrate concerned does not show impatience and is waiting for the interpreter to report what the defendant had said. The problem with this kind of additional utterances is that the people who are in the courtroom and do not understand the language being spoken may wrongly attribute the interpreter’s own feelings to those of the magistrate.

Example 5.5.b. (See Withdrawal 2)

Comp: *Nokoso na to koro kaka wan jirani ne wase wuoyo ma...*

RT: He wronged me but as we are neighbours, we already discussed and...

Int: I am the complainant. Since we are neighbours, we discussed the matter and I would like to withdraw it. *Kel ane kitambulisho mari mondo isudi nyime koni*

RT: Bring your identity card and come forward

Example 5.5.b shows the interpreter in the TT introduces several new verbs that are not in the TT. In fact, the complainant does not even finish his utterance but somehow, the interpreter is

able to give a more complete utterance. The new actions introduced in the utterances are in the first utterance and in the last utterance. The interpreter first of all says “*I am the complainant*” an utterance missing in the ST. This utterance has a verb group with a relational process of Intensive Relation (RI). As everyone in the court including the magistrate is aware that he is the complainant, this utterance is redundant. However, the interpreter chooses to use this utterance in a manner as to reaffirm that the complainant has a right to ask to withdraw the case.

The last section of the utterance with additional action words states: “*I would like to withdraw it*”. The utterance has a MAI where the Actor is the defendant, the action is withdrawal and the Goal is the case. The utterance also has the modal auxiliary verb “*would*” which serves two purposes. One, it serves to show that the complainant seeks permission from the court to withdraw the case and at the same time acts as a marker of formality thus also denoting politeness. Considering however that these are not the words of the complainant, the illocutionary force of politeness and requesting for permission are not the complainant’s but are the interpreter’s.

In the same example, the final utterance is made by the interpreter and it is not an interpretation of anything; rather it is a set of instructions relating to the clerical duties performed by the interpreter in his capacity as the court clerk whose duty it is to also ensure due process of the law is followed in case withdrawals. The utterance is made in Dholuo and is not interpreted for the sake of the rest of the courtroom audience who do not understand the language. That means that the magistrate presiding over this case who is not a Dholuo speaker does not understand most of the utterance.

The linguistic significance of this is however for the complainant being addressed by the interpreter who may have viewed this utterance as coming directly from the magistrate. Considering that the hierarchy in the court is such that the magistrate is viewed as of higher rank than that of the court clerk, the response to these instructions by the complainant would then factor in that. People tend to use politer terms in responses to people of higher rank than they would otherwise use with people of lower rank. Thus giving instructions without signalling that the instructions are from the court clerk and not the magistrate makes the addressee respond not to the voice of court clerk but to the voice of the magistrate. As this is something that routinely happens in the courtroom in Kenya, it can be classified as a feature of Kenyan courtroom interpretations.

Example 5.5.c. (See Withdrawal 3)

Pros: *Elezea Mahakama nyumbani ni wapi. Unaanza na kijiji* (Kiswahili)

RT: Tell this court where you come from starting with your village

Comp: Kamahawa Kakola Ahero sub location

Int: *Village. Wach iwacho achiel. Kaka openji no iwacho achiel kaka openji e kaka iduoko. Koro village, gweng' en mane?*

RT: Village. People say one thing. When you are asked you give one answer as you have been asked. That is how you respond. Now village. Which village?

In example 5.5.c, the interpreter takes on his role as the court clerk and is trying to advise the complainant that when she is asked a question, she should respond to the question by giving a specific answer to the question asked. This arises because when the complainant is asked to state where she comes from starting with her village, she gives a string of words which include both her village and her sub-location. Looking at the way the prosecutor frames his question, the complainant is not wrong in giving her full address as the prosecutor does not limit her to only giving her village. He has said she should say where she comes from but start with her village which is exactly what she does. She states her village first then gives her sub-location. The interpreter then butts in as the court clerk and gives the complainant what appears to me as a dressing-down. First of all, he uses six sentences in one utterance which in comparison to the complainant's one sentence is quite a lot. The choice of lexemes in the court clerk's utterance also shows that he is irritated by the complainant's answer as they show an attitude of disdain. For example, he says "*people say one thing*". Using Grice's (1975) maxim of quality which states:

Try to make your contribution one that is true.

1. Do not say what you believe to be false
2. Do not say that for which you lack evidence

One can analyse the statement by the courtroom interpreter as false. It is not true that people say one thing because people can and do say a lot of things. In using this statement therefore, the interpreter implies that people other than the complainant usually say one thing when asked one thing and therefore she is wrong to respond in the way that she does.

That utterance is demeaning to the complainant because it implies she does not behave like normal people do. The utterance is designed to make her feel guilty for giving the answer she gives. The rest of the utterance is also very patronising and ends with the words "*Now village. Which village?*" the lack of reference to the addressee in both sections of the

utterance are pointers to the patronising nature of this utterance. It signals that the addressee is not important enough to be included in the question.

This sort of butting in happens in all the types of data collected. It happens in the pleas, the withdrawals, the hearings and the judgements. Some of it like example 5.5.a. is just the court clerk giving normal courtroom instructions in the process of interpreting but others like examples 5.5.b and 5.5.c. also carry with them the attitudes that the court clerk has towards the laypeople in the courtroom. All the court clerks viewed the laypeople as ignorant people who have no knowledge of courtroom decorum. They mostly spoke to them in a derogatory manner which was evident both in their choice of words and intonation. This thesis examined the choice of words and not the intonation which was treated as a paralinguistic feature and therefore out of the scope of this study. It is hoped that further research can be carried out which will examine the paralinguistic features used in courtroom interpretation. The examples in this section concur with findings by Matu et al (2012) who found that Dholuo interpreters in Nyanza province often felt the need to interrupt the speaker on the floor.

## **5.6. Conclusion**

Chapter five examined the choices made when representing actions and states. This was discussed using critical stylistics from Jeffries (2010). The transitivity model by Simpson (1993) which is a modification of Halliday's (1985) model of transitivity was used in the discussion and evaluation of results. The verbs used in the ST were compared to those used in the TT and as a result, I was able to make conclusions on the implications on stylistics as well as pragmatics. I found that in the TT, there were changes of processes. There were also instances when the illocutionary force of verbs in the ST were missing in the TT or were replaced by different illocutions all together. There were also instances where as a result of different verb choices, the TT became vaguer than the ST. A further finding was that as interpreters made verb choices, some of their choices resulted in meaning distortion so that what was said in the TT was semantically different from what was said in the ST. In Kenyan courtrooms, the interpreters seemed to feel that it was part of their duty to also explain verb choices that they felt would be unclear to the litigants and as a result, they ended up using explanations that were originally absent in the ST. Lastly, I also found that extrinsic factors affected the quality of interpretation. In the Kenyan situation, the two main contributing factors were the fact that the interpreter also doubled up as the court clerk in the same court where he/she was interpreting and so the clerical duties interfered with the interpreting duties. And secondly, the interpreter in the Kenyan courtroom is not trained for the job in any way and the government assumes that being able to speak two or more languages enables a person to do interpretation well.

## CHAPTER SIX

### NAMING CHOICES IN DHOLUO- ENGLISH COURTROOM INTERPRETATION

#### 6.0. Introduction

In Chapters four and five, I presented my findings on how Dholuo interpreters present the speech of others and how they present actions and states. The findings revealed changes in the TT affecting meaning in context. Chapter six is the last of three chapters that present the findings of my research. In this chapter, I examine the naming choices used by interpreters when transferring the speech of witnesses from Dholuo into English. In the analysis, I make use of Jeffries' (2010) naming and describing in her model for Linguistic and Critical Stylistic analysis. Whereas Jeffries uses this function to examine "*the way in which texts represent the world with ideological consequences*", I introduce a new angle to the analysis by using the tool to further examine the interpersonal (pragmatic) effects of interpretation. In order to carry out an analysis of the interpersonal effects, I make use of two Theoretical frameworks that deal with pragmatics: Austin's Speech Act Theory (1962) and Grice's Cooperative Principle (1975).

Using examples from the recordings, I first of all examine the ways in which witnesses present utterances and then compare those to the version of the same speech as presented by the interpreter. In so doing, I compare the two for differences and similarities in ideation as well as in pragmatic effect and thereafter draw conclusions as to whether fidelity to the source text (ST) is adhered to in the target text (TT). In undertaking grammatical analysis, I make use of Halliday's Systemic Functional Grammar (1985) (henceforth SFG).

As noted by Jeffries (2010), individual speakers of a language choose from the regular resources of that language in presenting a view of the world. When the choices on how to reference an entity are made, some may have certain ideational and interpersonal significance in the contexts in which they occur. In this section, I examine some of the data where as a result of differences in choices of naming, the TT creates different ideation and changes the interpersonal relationships in the ST.

## 6.1. Use of Euphemisms that Obscure Meanings of Names

In the court recordings made, I make the observation that interpreters introduce ambiguities and vagueness absent from the ST by using euphemisms. In this section therefore, I examine the use of naming where the interpreter fails to capture the meaning of the noun phrase as used in the ST and instead makes them appear vague and obscure. In the instances where this occurs, it is evident that the interpreter is struggling with equivalents in the two languages involved.

Berk-Seligson (1987) identifies a systematic repetition of methods or techniques used by interpreters in reference to Spanish-English interpretation. One of the techniques used by interpreters as identified by Berk-Seligson is the addition of particles, words or phrases which modify the degree of relationship of a predicate or a noun phrase within a context and which can give a text a certain tone of vagueness and ambiguity not present in the ST. Like Berk-Seligson, I also came across vagueness in the TT that was absent in the ST.

In the examples in this section, the interpreters of Dholuo to English use modifications that have effects of vagueness that result in the obscuring of meaning of the source text. In my study, the causes of the vagueness are not only identified as the addition of modification words but also include other causes such as: the use of taboo words in the ST which cause the interpreter to resort to using euphemisms in the TT thus producing vague names, the introduction of hedges by the interpreter also contribute to the change in modality of the ST and lastly, the cultural norms and expectations of what is to be said where, when, and how also contribute to this. The examples in this section are used to explain how vagueness and obscurity are manifested in interpretation.

Example 6.1.a (See Judgement 1)

Mag: The complainant said that the bhang was found in the accused person's house. The chief and the youth found it.

Int: *Jadonjo wacho ni gino noyudi e odi. Chief gi yudhe noyudo gino*

RT: The complainant says that that thing was found in your house. The chief and the youth found that thing

The interpreter in his rendition introduces a Dholuo colloquial phrase “*that thing*” in Dholuo, *gino*. In the ST, the magistrate identifies the drug the accused person was charged with being

in possession of as Bhang. This is the antecedent of the pronoun “*it*” in the second part of the magistrate’s ST. So “*it*” is used to refer back to the narcotic drug, bhang. In turning this into a TT, the interpreter decides to bring in “*gino*”; a Dholuo colloquial noun phrase which is used as a euphemism for anything that a speaker wants to obscure. For example, if there is a taboo word used and a Dholuo speaker wants to use reported speech to repeat what had been said, it is common to omit the taboo word and replace it with “*gino*” or “*gine*” so as not to break societal norms in speech. Another example would be, if one was ordering condoms in a shop and felt embarrassed by it, one would probably tell the shopkeeper “*adwaro gino*” or “*adwaro gine*” i.e. I want that thing.

In example 6.1.a therefore, when the interpreter chooses to use “*gino*” the change of naming shows the interpreter’s disapproval of the fact that the accused person dabbles in the taking of drugs. The fact that his words obscure the drug also serves to mitigate the offence making it look less serious than it is. This brings to light the role the interpreter perceives to play. From this example it is evident that the Dholuo interpreter views him/herself as the helper of the accused person in court. They play a protective role even to an extent of obscuring words in an attempt to mitigate the crime committed by the accused people.

This finding goes contrary to the finding in the research carried out by Matu et al (2012) which sought to determine the perceived roles of the Dholuo courtroom interpreter. Their research shows that:

1. Interpreters felt the need to clarify issues for the Dholuo speaking litigants
2. The interpreters did not desire to omit some utterances by the Dholuo speakers.
3. Interpreters often felt the need to interrupt the speaker on the floor
4. The interpreters made a conscious effort to solve communication problems in court.

The research by Matu et al was however carried out by asking the court interpreters what they perceived was their role in the courtroom so the results are based on what the interpreters said. In their second finding, the interpreters said that they did not desire to omit utterances by the Dholuo speakers. The example 6.1.a, however disproves that as the interpreter uses a phrase that obscures the meaning of the word in the ST. However, this does not look like a deliberate action.

Example 6.1.b (See Hearing 2)

Mag: That on the fourteenth of December twenty twelve in Nyang’oma location

Int: *Kuma niwache ni tarik apar gang'wen mar dwe mar apar gariyo*

RT: Where it is alleged that on the fourteenth of December

Mag: He used his penis to penetrate the vagina of Paulina Aloo\* a girl aged nine years (\* names changed to protect the identity of the complainant)

Int: *In ne ikawo nyimi ma iriko e duong' nyathi manyako ma ja higa ochiko*

RT: That you took your private parts and forced it into the private parts of a young girl of nine years

Example 6.1.b is taken from a hearing of a rape case. The courtroom is an arena in which evidence gathered is tested for fact. The evidence is tested for its relevance to the elements of the offence and the particular facts in the issue; its admissibility, its credibility and its reliability. The judge needs to be satisfied that the offence elements for each charge have been proven beyond reasonable doubt (Bronit and McSherry 2001). It is for this reason that in sexual offence cases, the person giving evidence cannot afford to use words that cause ambiguities thus casting doubt on the credibility and reliability of the evidence given.

The magistrate presiding over the mentioned hearing having qualifications in law is well aware therefore that for the charge of rape to stand, there has to have been penetration of the penis to the vagina and she therefore uses those noun phrases so that there would be no ambiguities. However, the interpreter uses: “*private parts*” a noun phrase that the magistrate did not use. In Dholuo, the words used by the interpreter can literally translate to “his/her front” (*nyimi*) and “her/his bigness” (*duong'ne*). These are euphemisms used for both vagina and penis interchangeably. The two phrases do not have any markers for gender as either can be used for the female or the male. Importantly for this example however, the interpreter did not use the words *penis* and *vagina* in Dholuo and would not have been expected to do so by any Dholuo speaker. The reason for this is that Dholuo treats words that refer to genitalia as taboo and would not be mentioned in a public place even if that public place is a courtroom. This however contrasts with expectations in a sexual assault or rape case where the evidence and the charge must be given in explicit terms to ensure there is no misrepresentation of the facts.

The effect of this change of naming choice is such that the explicitness of the language in the ST is totally lost in the TT. What the accused person understands from the utterance is adherence to the Dholuo expectations of the use of euphemisms for genitalia. In my analysis this diminishes the impact of the charge and makes it less serious to the accused person as

opposed to if the charge was explained to him in its graphic details. This is especially true because English also has euphemisms for genitalia that are not used in the ST. If the charge in English had been read out with the use of those euphemisms for example by using the phrase “*private parts*”, even then, the charge would have sounded less grave than it was. Thus the use of euphemisms diminishes the gravity of the matter and obscures the charge.

It is important to note here that language is culturally-bound. There are utterances that are acceptable in some contexts in some languages but these differ from one language to another. In the English language it is acceptable to use explicit language in the courtroom in describing the charge in sexual offences. In Dholuo on the other hand, taboo words are not allowed in the public and the courtroom is not given any special treatment. It is as public a place as the market. In fact, if the real words for genitalia were used in the public arena, they would cease to be just mere words and become insults.

Example 6.1.c (See Plea 3)

Example 6.1.c is taken from Plea 3 a case in which two accused persons are charged with being in possession of *Chang’aa* (an alcoholic drink) without a permit from the district alcohol regulation committee.

Acc 2: *An ne ok aus kon’go no. Ne an jamath*

RT: I was not selling that alcohol. I was a *drinker*

Int: I was not selling the said alcohol. I just went to drink the said alcohol

Acc 2: *An ne an mana jamath nok an jauso*

RT: I was just a *drinker*. I was not a seller

Int: I was just a customer, so I am requesting the court’s assistance.

*Jamath* is the Dholuo word in question for analysis in this example. The second accused in this case uses a sentence with the structure SVC: I was a drinker.

I was a *drinker*

S V C

I use italics in *drinker* to show that it’s only a loose translation of the word “*jamath*”. “*Jamath*” is a Dholuo word that means more than a hopeless drunk and when someone is referred to as a “*jamath*” by another person; it is usually with wonder/disdain at how that person can drink a lot of alcohol. Therefore, when one refers to oneself as a *Jamath*, it is done with a sense of pride in one’s ability to imbibe alcohol.

The second accused in this case says “*I was not selling alcohol. I was a drinker*”. The sentence itself is a declarative one, stated in a matter of fact way. In choosing to use a declarative, the second accused person is stating what he knows to be a fact. The illocutionary force of the utterance is that of boasting. The word *jamath* in Dholuo however has negative connotations. By choosing this particular word, the second accused is admitting to being a hopeless drunk and at the same time showing no remorse or shame for it. *Jamath* is a word whose use by a speaker referring to himself/herself comes with some sense of bravado. The accused person could however have chosen words with less negative connotations associated with drinking.

The interpreter translates this part of the speech as “*I just went to drink the said alcohol*”. Even though the sentence used by the interpreter is also a declarative, she adds the adverb “*just*” with the meaning of; merely so that we can read the sentence as I merely went to drink the said alcohol. In adding this adverb, the second accused speech changes to one of less bravado; in fact, it appears meek and more remorseful than what the defendant actually says. The second accused then goes ahead and repeats again that he is a drinker. In the second instance, he also uses the adverb “*just*” with the meaning of “merely”. In this second instance, he brings in a comparison. He says he is a *drinker* and not a *seller*. In as much as he does not directly say so, the implication in this sentence is that the seller is the one guilty of the crime and not him. In so doing, the second accused is shifting blame.

To understand this, it is important to explain that in Kenya, there are alcoholic drinks that are outlawed; one of them is *chang’aa* which the two accused persons in this case are alleged to have been found in possession of. These drinks are brewed in homes mainly by individuals and, due to the lack of proper standards to control how they are brewed, the government has declared them illegal unless one obtains a permit for them from the District Alcoholic Drinks Regulation Committee.

Interestingly, the interpreter, in presenting the accused person’s speech starts by saying “*I was just a customer*”. The choice between the naming terms “customer” and “drinker” makes a big of difference in ideation. While a customer is a respectful paying member of the society, a drinker is viewed less respectfully. The interpreter also adds a whole sentence that is not in the second accused person’s utterance: “*I am requesting the court’s assistance*”. This is a very polite sentence due to the use of “*requesting*” and “*assistance*”. It appears therefore that

the interpreter takes on the role of “helper” for the accused. It is also noteworthy that the magistrate in this case does not speak a word of Dholuo. What she hears therefore is a very polite request for leniency and not a show of bravado and lack of remorse for being a hopeless drunkard. The interpreter’s version also has a different illocution all together. It effectively changes from boasting to pleading. Whereas the accused person boasts about his drinking prowess, the interpreter pleads for leniency. Also whereas the accused person apportions blame to the seller of the illicit drink, the interpreter does not even mention the seller.

Angermeyer (2009) in her description of how interpreters behave in the course of their duty observes that most interpreters are native speakers of the language they interpret into which is mostly a dominated language and as such, they are often members of the minority group as the people whom they assist in court. Given this type of situation therefore, they may need to negotiate competing allegiances to communities in contact. This illustrates how the interpreter brings into the interaction a part of him/her. Also, most interpreters tend to view the people they interpret for as clueless and unintelligent as well as ill prepared to meet the requirements of the court (Angermeyer 2009). This attitude contributes to the way the interpreter does his/her work. The example from plea 3 shows that the interpreter through a change of names causes the accused person to appear politer and more remorseful than he actually is and in the process, distortion of meaning also occurs.

Example 6.1.d (See Hearing 1)

Example 6.1.d is from Hearing 1 which is an assault case. The accused person is charged with assaulting the victim and causing her actual bodily harm.

*Pros:* At five thirty pm

*Int:* *Kar saa apar gachiel gi nus mar odhiambo*

*RT:* At about five thirty in the evening.

In example 6.1.d, the interpreter introduces a hedge: “about” to the Noun phrase embedded in the Prepositional phrase that is used to identify the time when the offence took place. This is in contrast to what the prosecutor says in the ST which is “at five thirty”. Hedges are words that when used in speech, make statements vague. Zuck and Zuck (1986) view hedging as the device used by speakers to reduce the strengths of statements. Hale (2002) on the other hand defines a hedge as “any word or phrase that attenuates the force of the utterance by reducing the level of certainty or by deliberately making an utterance vaguer” (Hale, 2002, P.29). The

prosecutor in his utterance is certain about the time when the said offence took place and states it categorically as 5:30 PM. When the interpreter conveys it, he introduces uncertainty into the TT by adding the modifier “*about*” into the embedded noun phrase. While the prosecutor makes a statement of fact, the interpreter turns it into a guess of what the time could have been. This changes the modal force of the utterance. It ceases to be more certain and becomes less certain through the introduction of the hedge “*about*”. In the courtroom, precision is important as judgements are made on who appears to be more credible than the other.

Section 6.1 examined the way interpreters use euphemisms and hedges resulting in vagueness of the TT. The use of terms in Dholuo that serve to obscure the English names used in the TT are mainly due to the interpreter disapproving the actions of the defendants and result in vagueness. In addition to that, when words that are considered taboo are used in the English ST, the interpreter for cultural reasons, cannot use those words in the Dholuo TT and thus changes them to non-taboo words which have the effect of vagueness as well as diminishing the seriousness of the charges. Lastly the use of hedges in the TT that were absent in the ST also affect the quality of the interpretation by making the resultant utterance more uncertain than they were in the ST.

## **6.2. Changes to ST Naming Due to Lack of Equivalents in the TT**

In section 6.1, I examined how changes occur in the TT as a result of the use of euphemisms colloquialism, and hedges which then obscure meaning in the TT. In this section, I also discuss changes but I dwell on those changes that come about as a result of the differences in the two languages involved i.e. English and Dholuo. Even though researchers advocate that in interpretation, one should carry everything from the ST into the TT, the differences in the two languages involved inevitably result in changes of the type that is the focus of this section.

Karton (2008) conducted a study on interpretation errors at the International Criminal Court. In his study, he shows that there are factors that contribute to the inherent indeterminacy of interpreted language. These are

1. Diversity in syntax and vocabulary: on this he shows that since languages do not overlap, many expressions are not interpretable because of lack of equivalents in the TL. This leads the interpreter to find expressions in the TL that are a rough

equivalent of the one in the SL, which creates imperfect interpretation (Karton, 2008, P.27).

2. Cross-cultural communication: the participants in international court trials and indeed in other court trials come from different cultures. The lack of cultural proximity may undermine the ability of the interpreter to convey information in a way readily understood by the court officials (Karton, 2008, P.28).

Like Karton, I find that there are those expressions in Dholuo that are not directly interpretable into English and those expressions in English that are not directly interpretable into Dholuo. The majority of these in the courtroom setting are in relation to the English legal register because Dholuo has no known legal register and even if it had one, I doubt the expressions would match one to one with the English ones. In this section, the examples that follow show illustrations of the changes made due to lack of equivalents and the effects these have on the meaning both semantically and in context.

Example 6.2.a (See Hearing 2)

Mag: He is charged with defilement

Int: *Ne odonjni go ketho mar ni nene ibambo nyathi matin*

RT: You are charged with an offence that you raped a young child...

Mag: And the alternative, he is charged with an indecent act

Int: *Kotenore gi mano, nodonjni ni ne imulo dend nyathino e yo mokowinjore*

RT: In relation with that, you are charged that you touched the body of that child in an improper manner

The legal terms used by the magistrate in the example 6.2.a cited above are: “*defilement*” and “*indecent act*”. Both are noun phrases used to name the Goal of two of the clauses which identify the crime the accused person is charged with. These noun phrases form part of the legal register that is used in the courtroom. In an attempt to explain defilement, the interpreter says “*raped a young child*”, a proposition that is embedded in a relative clause introduced by the relative pronoun “that”. And in an attempt to explain “*indecent act*” she says: “*touched the body of that child in an improper manner*” also, embedded in a relative clause, which is used to modify the charge.

According to the Sexual Offences Act of Kenya 2006;

Defilement:

A person who commits an act which causes penetration with a child is guilty of an offence termed defilement

And

“Indecent act” means any unlawful intentional act which causes-

- a). any contact between the genital organs of a person, his or her breasts and buttocks with that of another person;
- b). exposure or display of any pornographic material to any person against his or her will, but does not include an act which causes penetration (Government of Kenya 2006)

So when the interpreter conveys defilement as “*raped a young child*”, she is trying to explain its meaning in Dholuo as she cannot find one word that is the equivalent of defilement. In the ST, the magistrate only says: “*he is accused of defilement*” but does not mention a child and does not mention rape either but the interpreter says: “*raped a young child*”. Looking at the definition of defilement as given by the Sexual Offences Act of Kenya 2006 gives one an insight into why the interpreter includes rape and child in her rendition. The definition states that penetration is part of defilement. In order to capture this, the interpreter introduces rape which she seems to know involves penetration. This she has already gathered from the previous parts of the charge.

The introduction of the noun phrase “*The child*” is a modification that can be explained by the definition in the Sexual Offences Act which states that for there to be defilement, a child must be involved. So in as much as linguists point out that one must retain the semantic and pragmatic meanings in interpretation (De Jongh, 2008; Mikkelson, 2000; Hale, 2004; and Gonzalez et al, 1991), there are instances like this one where due to the lack of an equivalent word or term that would provide a one on one semantic meaning, the interpreter resorts to explanation which captures the pragmatic meaning thereby effectively tying the two together. This only goes to prove that both meanings are interdependent. Mikkelson (1999) points out that the interpreter “must convey the target language message in the target language legal register”, (Mikkelson, 1999, P.5) but as the data in this study has shown, there are those languages like Dholuo with no known legal register. In such cases therefore, the interpreter is left with no option but to use their linguistic prowess to get the meaning across using the linguistic facilities available to them.

The second legal term used in example 6.2.a is “*indecent act*”, which the interpreter states as “*you touched the body of that child in an improper manner*”. The Sexual Offence Act of Kenya in defining “indecent act” states that it is the contact between the genital organs of a person with another. Assuming that the interpreter is aware of this, she is unable to capture it in the TT. Touching the body of someone in an improper manner does not mention anything about genital organs which the offence is about. This addition can however be explained by looking at the culture of the Dholuo speakers and indeed of speakers of other African languages. It is considered taboo to mention genitalia in public in Dholuo. This goes contrary to the legal context where explicit language is expected to be used in rape cases. The interpreter is faced with this situation and opts to use an explanation which rather than shed light on the word actually obscures it. And so in this example too, the culture of the interpreter comes in to interfere with interpretation effectively causing meaning loss.

Example 6.2.b. (See Judgement 2)

In example 6.2.b, it was the use of the legal terminology “*prima facie*” that posed a problem for the interpreter

Mag: At this stage, the issue is whether they have established a prima facie case against the accused

Int: *koro gima idwa n’gi ni be negi wuoyo ma nyalo miyo in n’gama odonjne inyalo keti mondo iwuo kor ka kori*

RT: Now what is to be looked at is whether they talked in a way that you accused person can be made to talk on your behalf

The Noun Phrase “*prima facie*” is a legal term used in civil cases: the complainant presents a prima facie case to prevent an unfavourable verdict. It is incumbent upon the plaintiff to adduce sufficient evidence on all elements of the claim in support of that claim. The burden of convincing a judge or jury is actually with the applicant. Therefore, when the magistrate says that the court needs to establish a prima facie case against the accused, the interpreter should have striven to capture the fact that it was upon the complainant to prove he has a case against the accused. The verdict of such a case is usually given on the basis of whether prima facie is established or not and that makes the noun phrase the key unit in the entire case. It is therefore prudent for the interpreter to be able to capture its meaning.

The interpreter's words however do not manage to capture any of this. She uses the subordinate clause: "*whether they talked in a way that you the accused person can be made to talk on your behalf*". *They* in the interpreter's sentence can be taken as referring to the complainant and her witnesses. This is because even the magistrate only refers to them as "*they*". This is all right because from the previous exchanges, it is clear whom the magistrate is referring to. "*Talked in a way that you the accused can be made to talk on your behalf*" is however vague. It is meant to refer to "*established prima facie against the accused*". This may indicate that either the interpreter does not know the meaning of *prima facie* or, is completely unable to report that in Dholuo. She is unable to do so even in a round and about way through circumlocution. The fact that she tries to interpret *prima facie* into Dholuo shows that she is not deliberately trying to mislead the court. She tries as best as she can to find an explanation to fit *prima facie* but in the process, meaning loss occurs even though the explanation is meant to clarify the point.

This meaning loss can therefore be attributed to the difference between the legal register in English and the (lack of) legal register in Dholuo. When researchers recommend that the interpreter should retain all aspects of the ST utterance in the TT, they should take into consideration that languages do not share the types of register that exist. Example 6.2.b shows how change in syntax i.e. from a naming phrase to a subordinate clause turns the named item into a vague utterance. It also shows that the interpreter does not understand the legal terminology and ends up making an utterance that is utterly meaningless.

Example 6.2.c (See Hearing 2)

Acc: *An abiro. Gima abiro wacho en ni mago gik moko maliekore mag miriambo ma an ok an'geyo kuma oaye*

RT: I will. What I will say is that those are wild malicious allegations that are untrue and I do not know where they came from

Int: Those are just rumours and they are lies. I do not know where those things came from

In this example, the accused person uses the Dholuo word "*maliekore*". This is not a word that is used in common day to day conversations as it conveys a hyperbolic style. The accused person uses hyperbole to emphasize the fact that he maintains that he is being wrongly accused of rape. He chooses what he supposes to be very strong terms to show this.

He names the accusations as allegations and modifies them with the adjectives *wild* and *malicious*. The interpreter on the other hand does not use strong enough words as she names the accusations *rumours*. In so doing, the intensity of the accused person's declaration of his innocence is down toned.

In this example, there is evidence of the omission of intensifying modifications. Even though modifiers do not change the grammaticality of a clause, there is always a reason why a speaker chooses to use specific modifiers. In example 6.2.c, the accused person wants to show that he vehemently denies the charge but at the same time, he comes across as agitated which gives an insight into his frame of mind during this cross examination. His emotions and the way he reacts to issues are important for both his defence team and for the prosecution. However, with the interpreter's version, both the meaning of the clause and the emotions that go with it are lost making it impossible to judge what sort of person the suspect is.

6.2 generally examined the changes to the ST that come about as a result of lack of one to one equivalents in the TL. Mainly, the English legal register is shown as particularly challenging to find equivalents for in Dholuo. Legal terms such as defilement, indecent act, and prima facie caused the interpreter to look for explanations in Dholuo which did not match those legal terms. On the other hand, there were also words in Dholuo that could not be directly translated into English for example: "*maliekore*". In an effort to explain these difficult terms, the interpreter often resorted to either explanation or omission which resulted in meaning loss.

### **6.3. Change of Tenor in Interpreted Names**

Whereas in sections 6.1, and 6.2, I examined euphemisms and lack of equivalents respectively, in this section, I present the way in which tenor changes in interpreted speech. By tenor here, I am referring to the course of thought or meaning that runs throughout an utterance or the general drift on an utterance. Researchers in the field of interpretation advise that the interpreter should stick to the tenor of the ST. for example, if the ST is formal, the TT should also be formal and if the ST is informal then the TT should also be informal (Gonzalez et al, 1991; Benmaman, 1999; Mikkelson, 2000; Hale, 2004; and De Jongh 2008). In the courtroom, the interpretation should reflect the tone, intonation, register and educational level of every source language speaker all of which form part of the tenor.

Hale and Gibbons (1999) conduct research that reveals tenor changes in speech, changes in politeness of statements and questions such as when interpreters convey indirect questions as direct questions, changes in reference to persons such as the pronoun you, and omissions of titles and surnames. All these contribute to the change of the tenor used in the source language. But this should not be the case as tenor is important in that it manifests relations of status and relations of affect both of which may be modified by inadequate interpretation. In the courtroom, the question form, style and wording are very important and the form in which a question is put to a witness exerts a strong influence on the quality of the answer given (Hale and Gibbons 1999). Many interpreters however do not often put the question in exactly the same way from the source language to the target language. When an interpreter changes the tenor of a witness or an accused in court, the case is essentially being judged not on the speech style of these two but on the style of the interpreter

Kiguru (2010) discusses the main errors made by interpreters in Kenyan courtrooms. He gives the following categories of errors:

1. Grammatical errors, which manifest in changes of tense, aspect, number agreement, wrong use of pronouns and even wrong word order.
2. Lexical errors, which occur when interpreters fail to grasp the meaning of either general or specialised vocabulary.
3. Omission errors, which occur when interpreters fail to interpret words, phrases, sentences or parts of discourse resulting in the person for whom the interpretation was intended not hearing the omitted information.
4. Meaning distortion and intrusion errors, which change or alter the meaning of the original message.

In line with Kiguru (2010), the examples in this section of the thesis agree with finding number 4 where there occurred changes in naming choices which then resulted in distortion of the ST message in the TT.

Example 6.3.a (See Hearing 2)

Acc: *Mane ok aneno nyaka nene ma an nanene mana e court ka*

RT: That I had never ever seen and I just saw her here in court

Int: I had never seen the said girl; it was my first time to see her in court when she came to testify

In example 6.3.a, *here in court* is an Adverb phrase which serves as an Adjunct that gives the location where the accused person claimed to have first seen the complainant. The interpreter in her version introduces an adverbial clause of time whose head word is: *when*. This is an example of when the interpreter adds information that they are privy to because of their involvement in the on-going case. The clause makes the occasion when the accused person claims to have met the girl more specific than what the accused person had said. In so doing, the accused person comes out as being confident and sure of what he is saying whereas his own words are less certain about when he actually met the girl. He had said “*I just saw her here in court*”. That could have been any other day when the girl came to court but the interpreter specifies the day further by using an adverbial clause of time that places the day in question in a particular time frame. If one wanted to find out the date, they would just check the court records to see the date when the girl testified.

Such modifications have the potential to change the direction of a court case verdict. However, the scope of this study does not allow for that kind of speculation which is more in the realm of law than in linguistics. However, considering that in the courtroom it is through the use of language that cases are decided, it is still prudent for interpreters to keep the style and tone of the speaker as the fact that they are only the mouthpiece of the speaker they are interpreting for cannot be over emphasized.

When an interpreter changes the style of speech of a witness or an accused in court, the case is essentially being judged not on the speech style of these two but on the style of the interpreter. The change in style may either be favourable or detrimental to the case and there is a possibility of changing the outcome of the case just because of the change of style. The finding in example 6.3.a can be compared to that of Berk-Seligson (2002) where she notes the

Introduction of linguistic material which is considered to be implicit or obvious in the original message, with the possibility of giving the statement a much more emphatic and definitive character than expected, transmitting a sense of security, or possibly a sense of uncertainty, which could be decisive in the jury's deliberations like giving a complete answer instead of saying “yes” or “no” for example (Berk Seligson 1985 in Garcés, 1996, P.6)

Similarities are noted here in that as in her research, this study finds that the addition of new information by the interpreter makes the accused person's words appear more accurate than they actually had been.

Example 6.3.b (See Withdrawal 2)

Acc: *Ayie ni ong'won na*

RT: I accept his forgiveness

Int: No objection to this application

In example 6.3.b, the naming devices I want to concentrate on are: *his forgiveness* and *this application* which are both noun phrases used as Compliments in the clauses in which they occur. Clearly these are very different noun phrases but that is how the interpreter conveys them. This example is a contradiction of circumstances. The accused person is unable to use English as the medium of communication in the courtroom but through the interpreter, he appears to know legal terminology. "*This application*" is a noun phrase frequently to be found in the legal register in reference to submissions made to the judge. Even in normal day to day English conversations, laypeople do not use the kind of vocabulary that example 6.3.b employs.

In using legal terms, the interpreter brings the accused person to the same level as other people in the legal realm such as the lawyers, the court prosecutor and the judge. The speech style of the accused person changes so that he now uses the legal register from use of ordinary everyday language through the interpreter's choice of naming devices. The irony of the situation is that even the court interpreter who introduces the legal register has no qualification in law. Yet, one feature of the courtroom that many researchers have consistently brought to light is the power relations in the courtroom where the judge is viewed as supreme and the rest of the courtroom people know their place in the ranks.

The discursal constraints of the courtroom are hierarchically marked in the sense that lawyers acknowledge their subordination to judges whereas lay people are subordinate to both the lawyers and the judges. This subordination conveys hierarchical power, authority and credibility to the opposing sides, to their clients (Atkinson 1992). As Wodak-Engles (1984) found out in a study, the speakers of a particular social class and educational background tend to speak in a particular style and are evaluated more or less positively by the powerful members of the society. On examining the examples given that show that

interpreters add legal terminologies to their renditions, it shows that the listener to these renditions receives the view of the interpreter's self rather than that of the accused person or the witness.

Example 6.3.c (See Judgement 1)

Mag: This therefore means that the complainant's allegation that his store was broken into has not been corroborated

Int: *Koro owacho ni kata jardonjo wacho ni dho ot notur ne ok one adiera*

RT: Now he is saying that even though the complainant says that the door was broken, no one saw for sure

Corroboration is a term mostly used by members of the legal fraternity to show that something has been verified, supported or validated. Grice (1975) through Cooperative Principle Theory explains that humans operate in such a manner as to be cooperative in their communication and as such, adhere to cooperation in conversation. It may be argued therefore that in this example, even though the interpreter adds the sentence “*no one saw for sure*”, it is not irrelevant to the intended meaning. He is observing two maxims as expounded by Grice i.e. those of quality and quantity. The maxim of quantity states that speakers don't say what they believe to be false that is provable by adequate evidence and that of quality states that the speaker is as informative as is required to be. When the interpreter decides to say “*no one saw for sure*” he is only introducing an aspect of corroboration where it is expected that for a fact to be verified, another person has to stand as witness of that action. One can therefore say that this interpretation is not irrelevant as there are aspects of corroboration to be found in there being a witness to an event. The interpreter manages to some degree to capture the pragmatic meaning of corroboration; however, the formal tone is lost. The new utterance is said in plain layman's language; different from the formal legal tone that is present in the ST.

Example 6.3.d (See Plea 1)

Mag: Mitigation?

Int: *Wach ane ywak mari kaka idwa ni okonyi*

RT: Give your mitigation. How you want to be helped

In this example, the magistrate does not use a complete sentence. He just utters one word: “*mitigation*”. The interpreter chooses to make this a complete sentence by saying: “*give your*

*mitigation.*” In so doing, he brings in the implied subject “you” that is usually present in commands or in requests i.e. in imperatives. The effect of this addition is that it makes the magistrate’s utterance more formal in the TT than it was in the ST. In correcting the magistrate’s speech, the interpreter also shows the attitude of disapproval of the casual way in which this particular magistrate addresses issues in that courtroom. This is evident in many other examples that involved that magistrate and the particular interpreter.

But the Subject is not all that is added to the utterance. The interpreter adds his version of what he believes mitigation involves. Research on the interpreter’s perception of their role carried out by Matu et al (2012) in Dholuo speaking Nyanza shows that interpreters feel the need to clarify issues for the Dholuo speaking litigants. This example actually proves that interpreters do this. In this particular example, the interpreter clarifies the meaning of the word mitigation even though the accused person does not ask for any clarification. The reason why this easily happens in the Kenyan courtroom is because of the other roles that the interpreter plays. The interpreter is first a court clerk before he/she is the interpreter so as he/she performs the duty of interpretation, this has to be done simultaneously with the clerical duties of the court. This is bound to reflect in the quality of interpretation as exemplified here.

In section 6.3 I presented findings that show the changes of tenor in the TT. These changes illustrate how the defendants are routinely judged on the speech style of the interpreter. The tenor changes come about in various ways, firstly, when the interpreter adds legal terminology to the utterance, it makes the witnesses appear more knowledgeable than their original utterances did. Secondly, interpreters also add words into the utterances that make them more certain than in the original speech. In other instances, the interpreter corrected the speech of the magistrate to make it more formal. This is in agreement with the finding in section 4.5 where I illustrated that interpreters often modified the speech of courtroom officials in order to retain the dignity of the courtroom. Lastly, there were also instances where the interpreter lost the formal tone that was in the ST by using less formal utterances in the TT.

#### **6.4. Changes in Pre and Post Modifications in Names resulting in Changes in Illocutionary Force**

In relation to naming in interpretation, I discovered that when the modification was changed, the result was also a change in the illocutionary force of the given utterance. According to

Austin (1962) language is action and there is a hidden force in words that can shape people, social and individual relations. He states that all utterances perform Speech Acts comprised of:

1. A locutionary act. This is the utterance of the expression with sense and reference. It is also viewed as the production of words with meanings
2. An illocutionary act. This is the act performed in saying the locution; such that what is said has the force of that illocution. This is the issuing of an utterance with conventional communicative force achieved in saying something.
3. A perlocutionary act. This is the consequent effect of an utterance on the interlocutor; that is, what is achieved by saying something (Austin 1962, P.139).

The illocutionary force of an utterance may be described using words such as: a command, suggestion, inquiry, vow, suggestion, request, insult, praise, plea, praise, reprimand, ridicule, etc. It is evident that when conveying speech from Dholuo to English, differences in modifications in naming choices result in changing the illocutionary act of the witness as well as those of the magistrate and other court officials. Garcés (1996) suggests that the interpreter is not the author of the message, but they must capture the meaning and style of the discourse, search for an equivalent in the other language, and be able to express it, all of which requires a lot of effort in the pursuit of maximum fidelity to the ST, faced with the knowledge that their words can have an influence on the decisions of the jury and of the severe consequences that a misinterpretation can have (Garcés 1996, P.3).

The interpreters are further tasked with the responsibility of preserving the style, the language level, the idiosyncrasies, and the idiomatic language these speakers might use or any other aspect, as well as have the linguistic and cognitive ability to be able to change registers, styles, content, and languages, since they must interpret from ST to TT and vice versa.

In this section, I present some examples explaining the modification choices in Dholuo naming as made by the witness and comparing those to the interpreters' naming choices. My findings show that even though the prescription is for interpreters to strictly retain ideology and meaning in context, most often these change, as is illustrated in the examples that follow.

Example 6.4.a (See Hearing 2)

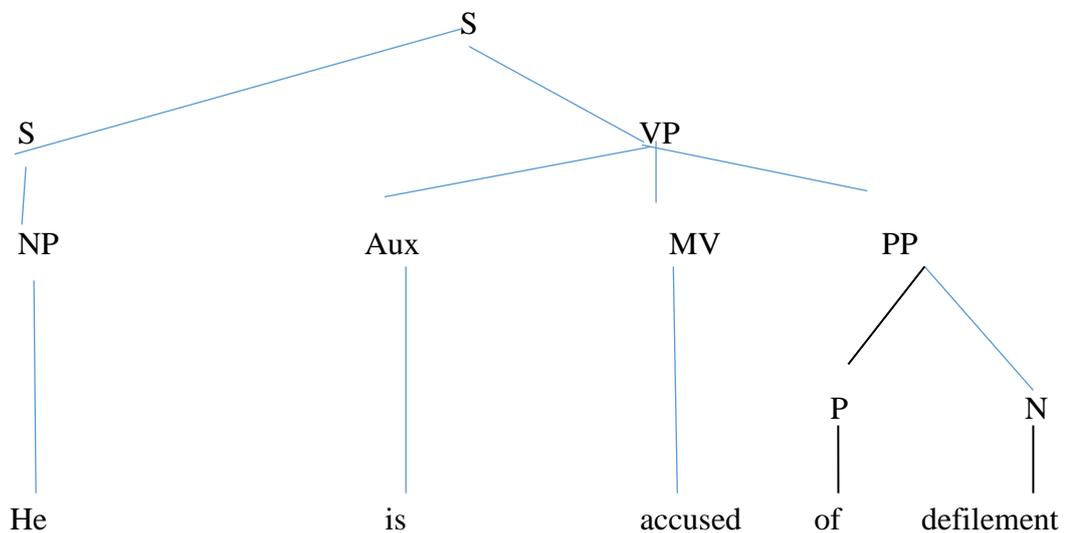
Example 6.4.a is taken from a hearing in Nyando District magistrate’s court where the accused person is charged with defilement. In this particular recording, the defendant is giving his defence and the prosecutor is cross examining him on the evidence he has given.

Mag: He is charged with defilement

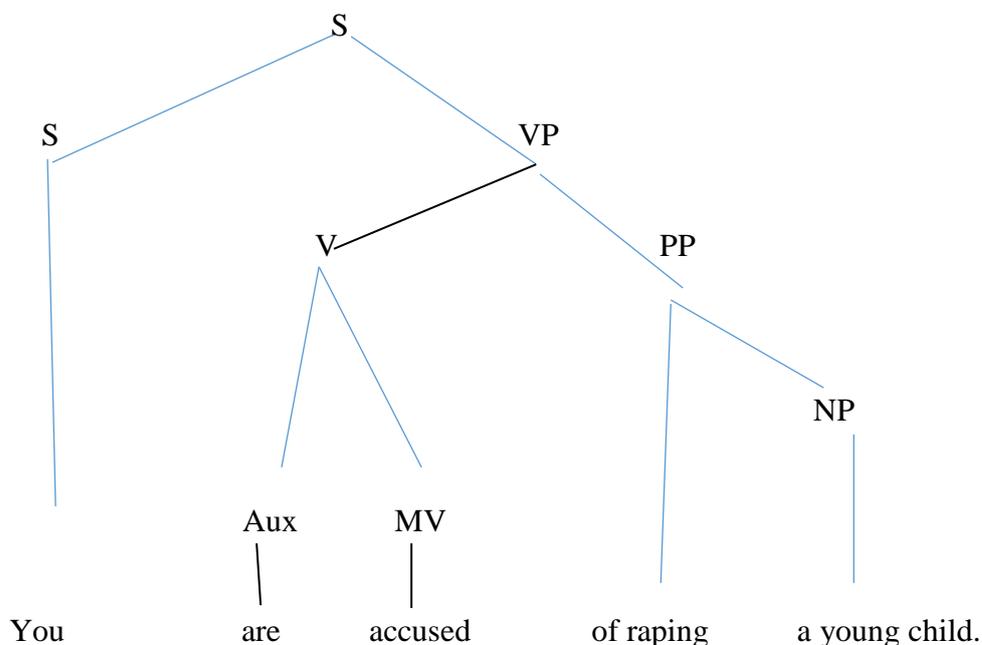
Int: *Ne odonjni go ketho mar ni nene ibambo nyathi matin*

RT: You are charged with an offence that you raped a young child

In this example, the interpreter introduces a Goal in the second part of the sentence that consists of a relative clause which she uses to define the offence that the accused person is in the courtroom for. The relative clause: “*that you raped a young girl*” is in itself a new utterance absent from the magistrate’s speech. The magistrate’s utterance is represented in the tree diagram below:



In conveying this utterance into Dholuo, the interpreter introduces a Goal as shown in the tree diagram below:



The Goal introduced is: “*a young child*” which is the goal of the verb in the PP: “*raping*”. This noun phrase that functions as the Goal consists of a determiner, a modifier and the head noun. In choosing the modifier to use, the interpreter brings in her attitude which is different from that of the magistrate whose speech she is supposed to report without making any alterations.

First of all, the interpreter identifies the complainant as a child which already denotes that the person involved is young. In adding the modifier young to the head noun child, the interpreter manages to highlight the fact that the affected child is very young. Considering that the Goal in the predicate is an introduction into the utterance that was not in the ST, I can conclude that the interpreter manages to convey sympathy with the complainant in this case by her choice of naming words and pre modification, which introduces into the utterance an emotion absent from the magistrate’s utterance, that of sympathy.

This choice of the Goal is not just made randomly. The interpreter manages to convey where her sympathies lie when she refers to the victim as a young child as the use of “*young child*” here implies very young. In looking at the entire hearing, it is later made known that the child in question is nine years old. The interpreter is the animator for the magistrate though, who is supposed to be impartial in the case and is not to show any emotions that will make her final decision look biased. This brings me to the conclusion that even though it is advocated for the

interpreter to be “invisible”, this is often not the case. Interpreters bring with them a lot of themselves as noted by Angelelli (2005) who states

The interpreter is present with all his/her deeply held views on power, status, solidarity, gender, age, race, ethnicity, nationality, socio-economic status, plus the cultural norms and blue prints of those social factors that are used by him/her to construct and interpret reality (Angelelli, 2005, P.16)

As witnessed in this example, the interpreter brings in her feeling of solidarity in showing sympathy for the victim in this case when she refers to her as “*the young child*”. We therefore have the magistrate’s statement of fact being changed to an expression of sympathy.

Example 6.4.b (See Plea 3)

In this example, there are two accused persons who are charged with being in possession of *Chang’aa*: an illicit alcoholic drink. At this stage of their court case, they are only required to take a plea of either guilty or not guilty. Pleas are written out in English on a charge sheet and it is then the duty of the court clerk who also doubles as the interpreter to “read out” the charge in the language understood by the accused person.

ST: Being in possession of *chang’aa* contrary to section 27(1) (b)

TT: You are charged that you were found with *chang’aa*.

In the ST, there is an utterance that is not a clause but a noun phrase. The noun phrase is used to name the offence that the accused persons are said to have committed. It is a noun phrase that is formed through nominalization i.e. the verb “to be” is modified to name a thing which is the offence committed. The noun phrase apart from naming the crime also serves to show the legal register that is usually to be found in the context of a courtroom such as this one. It serves the ideological purpose of declaring neutrality and observing the legal requirement that states that one is innocent until proven guilty. In that section of the ST, only the offence is named. However, in the rendition by the interpreter, there is the use of an independent clause that consists of a Goal and moreover, the voice of the utterance also changes from the active voice to the passive voice.

By introducing the passive voice in this utterance, the interpreter manages to maintain the formal nature of the discourse. Introducing the pronoun, you as the Goal of the sentence on the other hand as was done by the interpreter draws attention to the accused persons and turned the sentence into a straightforward charge rather than the mere announcement that it

was in the ST. This is an interesting twist because it appears that the interpreter has taken over the responsibility of making a charge more explicit than the magistrate who is the one with the legal authority to make a charge in the courtroom.

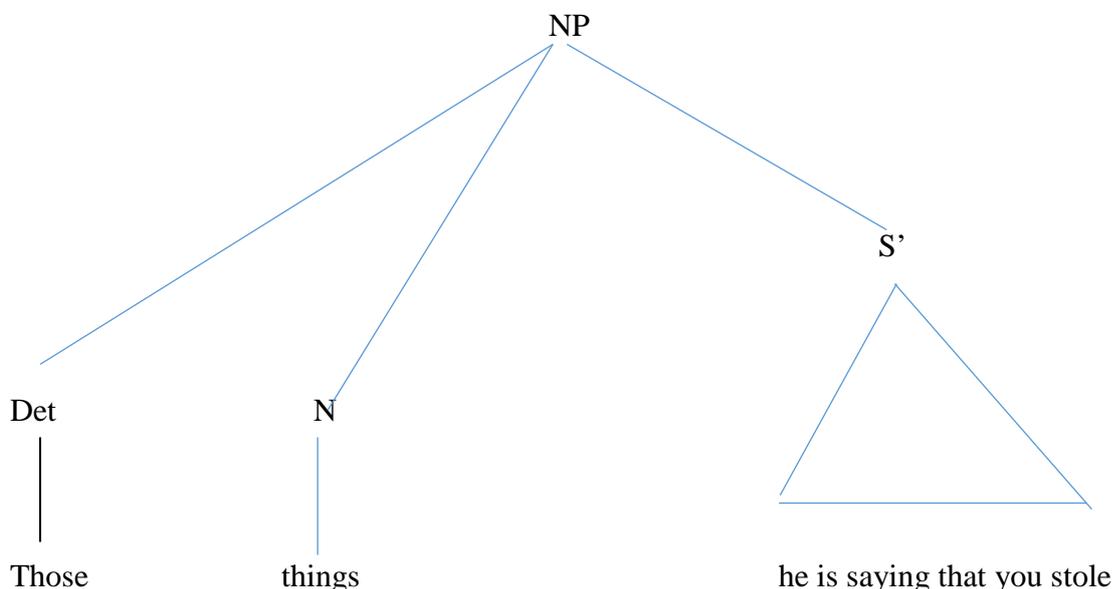
Example 6.4.c (See Judgement 1)

Mag: He said that the accused named the items as family items

RT: *Niwacho gik mowacho ni ikwalo go mago ne meku mag familia*

RT: You said that those things he is saying that you stole belong to your family

In this example, the magistrate names what the accused is alleged to have stolen from a store as: *the items*. This is a noun phrase consisting of a determiner and a noun. The determiner is a definite article and serves the purpose of showing that these items were known as they had earlier been mentioned in the earlier parts of this text. However, the interpreter for his part decides to explain further what the magistrate meant by the “*items*” and names them as “*those things he is saying that you stole*”. While this is also a Noun phrase, the head word has changed to *things* as opposed to *items* and the noun is post modified using an independent clause: *he is saying that you stole*. The interpreter’s Noun phrase is represented in the tree diagram below:



Embedded in the noun phrase is the clause: *he is saying that you stole*, which is a post modification used to explain the things which is the head noun. This is supposed to be an equivalent to the Noun phrase: *the items*.

The NP as used by the magistrate, “*the items*” is quite a neutral phrase as opposed to saying “*those things he saying that you stole*”, which brings with it the presupposition that the accused person did indeed steal. This change of tone goes contrary to what Gonzalez (1989) refers to as giving a legal equivalent. In this example also, the illocutionary act of the magistrate changes in the interpreter’s version. While the magistrate only makes a statement, the interpreter brings in the presupposition that the accused person stole the items in saying “*the things he says that you stole*”. The magistrate, being a member of the legal fraternity, probably chooses his words carefully so as not to imply that he already considered the accused person guilty. Gonzalez (ibid) advises that in the process of interpretation, the interpreter should not only keep to the meaning of the sentence but should also be true to the tone as well. Also according to De Jongh (2008), in the courtroom, the interpretation should reflect the tone, intonation, register and educational level of every source language speaker. In changing the illocution, (whether intentionally or otherwise), the interpreter interferes with the pragmatic meanings as well as with the ideation present in the ST.

Example 6.4.d (See Plea 1)

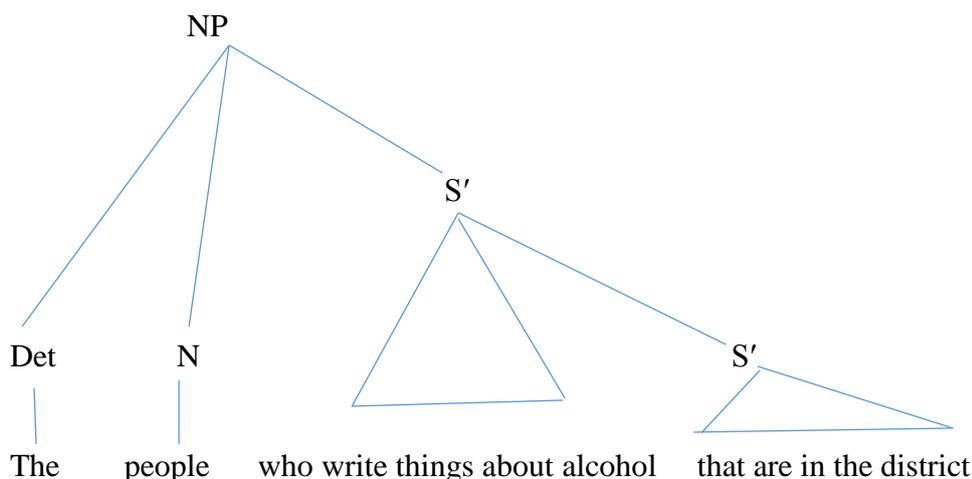
CS: Were jointly found being in possession of 50 litres of *chang’aa* without a permit from the district alcoholic drinks regulation committee

RT: you were found with about fifty litres of *chang’aa* when you did not have a permit from the people who write things about alcohol that are in the district

Naming in language allows a speaker or a writer to give further description of a noun through the process of modification. In example 6.4.d, the underlined noun phrase is the focus. The ST gave the name of the group of people who issue permits for alcohol as *the District alcoholic drinks regulation committee*. This makes them come across as a group of professionals whose duty is also highlighted in their name, that of regulation of alcoholic drinks. The fact that the modifier used is a pre modifier, i.e. it comes before the noun, makes the modifier more intrinsic to the noun.

In an attempt to replicate this in Dholuo, the interpreter in the TT refers to them as “*people who write things about alcohol that are in the district*”. In the ST noun phrase, the head noun is committee and the rest of the words are simply modifiers and like all modifiers, can be removed without affecting the grammatical structure and meaning of the clause in which that noun phrase occurs. Due to this, and due also to it being pre-modification, more

prominence is given to the group of people being a committee; a professional body. In the TT on the other hand, the head noun is people and the rest of the words are simply modifiers. However, because this is post modification, it is even more peripheral to the noun than if it were pre- modification. The two units that serve as modifiers are both relative clauses. By choosing to name the key word of the noun phrase as people, the interpreter loses the fact that these are not just any people but a group of professionals with a particular purpose in relation to the very reason why the accused persons were in the courtroom: to regulate alcoholic drinks.



The tree diagram above shows the deep structure of the Noun phrase that is conveyed by the interpreter where the modifiers are relative clauses that fail to show that the chief function of these people is to regulate alcoholic drinks.

Example 6.4.e (See Judgement 1)

Judgement 1 is a case where the accused person is charged with theft of domestic items from his step-father. The accused person was acquitted of the crime.

Mag: The assistant chief was with the complainant and two other youths

Int: *Assistant chief ne nigi jodong gweng' ariyo*

RT: The assistant chief was with two village elders

In example 6.4.e, there is a change in the Goal of the sentence that distorts the facts. In the ST, the magistrate says that the assistant chief was with three people; the complainant and two other youths. In the TT, the assistant chief was with two people and they are village elders. The number of people that came is reduced from four to three and the age group of the

people is also different. Whereas in the ST they are young people implied by the use of the word “*youths*”, in the TT they are old people implied by the word “*elders*”. The distortion of facts in this example appears gross to me as the youths are the extreme opposite of elders.

My observation in this particular judgement however is that the interpreter involved was not very competent in Dholuo. In the entire case, he makes gross errors that I cannot explain away in terms of slips but actually show a lack of competence in Dholuo. When the jobs for court clerks are advertised, the requirement is for one to be competent in English, Kiswahili and the language of the catchment area where he/she will work. There is evidence of knowledge of Kiswahili and English because these are examinable subjects in the secondary school syllabus and are compulsory for all students. There is however no certification for the indigenous languages and so no evidence apart from the speaker claiming he/she can speak the language.

The Kenyan situation on interpreter competency can be juxtaposed with the situation in other countries. In Australia, the interpreters are accredited. The National Accreditation Authority for Translators and Interpreters does the accreditation. It also sets the accreditation standards for interpreters and has several levels of accreditation for different languages. In the United States, an examination was designed by a group consisting of language specialists, international conference interpreters, court interpreters, and test construction specialists that would make it possible to establish minimum levels of competency and demonstration of required qualifications before an interpreter may be admitted to status as a certified federal court interpreter (De Jongh 1990).

In a pilot study on the role of court interpreters in South Africa, Lebesse (2011) comes to the conclusion that in South Africa, a legislation that clearly defines the role of courtroom interpreters does not exist. This is the same for Kenya where my study is based. The situation in Kenya is even more complex. The court clerk often also doubles up as the court interpreter. The only qualification that they have is their ability to speak the language of the witness or accused as well as speak the English language. No training on interpretation whatsoever is provided for the courtroom interpreter in Kenya and the assumption is that if one can speak a language, then they are automatically able to translate it into another language. This notion is dispelled by Moeketsi (1999a,) who states “the dismal performance of the interpreter is as a result of poor training and lack of proper definition of the interpreter role” (Moeketsi 1999a,

P.43) I concur with Moeketsi and add that in Kenya, the training is not poor, rather it is non-existent.

In 6.4, the focus was on modification changes and the effects that they had on illocution. When modifiers that were not in the ST were added to names, there was ideation that come into the TT that was absent in the ST and at other times, emotions that were not supposed to surface in the courtroom also come out. Also sometimes, the interpreter changed the syntax of the utterance for example by substituting a phrase with a clause thus also bringing in additional information that changed illocution. At other times the change was so that the head noun was lost creating a totally different message from that in the ST contributing to meaning loss.

### **6.5. Change in Naming as a Result of Specialised Local Vocabulary**

Section 6.5 is the last part in chapter six that examines naming changes that occur in Dholuo interpretation. English is learnt as a second language in Kenya and like in all other places the English in Kenya has acquired some specific characteristics that make it distinctly Kenyan. There are words and phrases that are used routinely in the Kenyan English that are understood by most Kenyan speakers but are not part of English as is used by native speakers of English. In my study, I came across some of these Kenyan English terms that caused a problem in translation for the interpreters. In this section, I give a few examples of these and the effects that they have.

Example 6.5.a (See plea 3)

Acc 1: *Koro an aywak ni mondo ukonya koro kata ka inyalo many gimoro matin to...*

RT: So I plead that you may help me. Even if something small can be looked for

Int: *Kinyalo?*

RT: If they can?

Acc 1: *Many gimoro matin to ane kaka achulo*

RT: Look for something small so that I can see how to pay it

Int: So I am requesting for court's assistance even if we are going to look for a fine we can pay

The naming device in this example that results from local terminology is: “*something small*”. In giving my translation, I intentionally leave it as it is said even though the translation does not result into a Standard English sentence. The reason for that is that “*something small*” is a Kenyan compound noun translated from Kiswahili “*Kitu Kidogo*” which is used as a euphemism for bribery. “*Something Small*” was popularised in Kenya through a song entitled “*Nchi ya kitu Kidogo*” by a Kenyan musician called Eric Wainaina. The title means “the country of something small”. In that song, Wainaina says Kenya is the country of “*something small*” meaning it is the country of bribery. After that song hit the radio waves in 2001, the phrase “*something small*” became even more synonymous with bribery than it had been before.

Compounding is one way in which languages form new words. Compound words consist of two or more words and most often the meaning of these compound words is not the sum of the words used to form them. The compound noun “*something small*” is an example of a word whose formation is as a result of compounding in which the sums of the words used do not play a role in determining the resultant meaning.

In seeking to interpret the noun, the interpreter replaces “*something small*” with “*fine*”. It appears that the first accused person thought that the money people pay in courts to be released either as bail or as fines is a form of bribery. The interpreter is most likely aware of the meaning the first accused person intended because when the first accused uses the term “*something small*” in his first speech, the interpreter seeks clarification by asking “*if they can?*” and the first accused person repeats “*look for something small*”. In my view therefore, the interpreter deliberately changes the accused person’s meaning from bribery to fine.

Another pointer to the fact that the accused person is negotiating to pay a bribe is the use of the passive voice. He says “*if something small can be looked for*” in his first reference to bribery. The use of the passive voice effectively removes him from being the participant in the sentence. This makes it vague who exactly is going to pay the “*something small*”. Even in his second sentence, he says after he finds “*something small*”, he will see how to pay it. On both occasions, he is using evasive speech which the interpreter changes into a more certain way of speaking. The interpreter uses the active voice and says the accused is requesting the court assistance and to be allowed to pay a fine. All in all, the meaning is distorted with implied meaning of payment of a bribe changed to the payment of a fine.

Example 6.5.b (See Hearing 1)

Acc: *Ne giwuok koda kane gimanyo gari moro mane en Nissan*

RT: They left with me to look for a certain vehicle which was a Nissan

Int: They took me out of the cells and took a PSV vehicle. That's a Nissan

The naming choices analysed in this utterance are: the noun phrases “*a certain vehicle*” and “*a PSV vehicle*” which are used as the Goal of the clause in which they occur. (PSV: This is an acronym for Public Service Vehicle. The transport industry in Kenya is largely privatised and all the vehicles which transport people at a fee are known as PSV). This is an acronym that is so common in Kenya that in formal speech it is treated as a word. In example 6.5.b, the accused person does not however use this word. He says of the vehicle they used that it was *a certain vehicle*. This use of an indefinite adverb to modify the noun makes the noun in question non-specific. He also uses the word “*Nissan*” in the relative clause to further describe the vehicle he and the policemen took. For anybody reading this, it may seem like the accused person was being specific as to the type of vehicle that was used. However, this was not the case.

The word Nissan in Kenya is used in a very broad way to refer to all those Public Service Vehicles that carry 14 passengers and are vans. Whether the type of the van is Toyota, Isuzu or Vauxhall does not matter. All of them are colloquially lumped together up as “*Nissan*”. This is an illustration of what Sperber and Wilson (2008) refer to as category inclusion which involves “extending a word with a relatively precise sense to a range of words that clearly fall outside its linguistically specified denotation” (Sperber and Wilson, 2008 P.94).

In an attempt to explain what the accused person means by “*Nissan*”, the interpreter uses the term PSV in the TT as a modifier to the head noun: vehicle. She seems aware that the use of “*Nissan*” is a colloquial term that would be misconstrued to mean only a vehicle of the Nissan make and therefore seeks to rectify this by using the acronym *PSV*. This change in modification of the head noun serves to illustrate the kind of role the interpreters perceive themselves as playing. The interpreters view themselves as helpers of the people for whom they are interpreting and also feel responsible for the “correctness” of their language. As a result, they strive to correct the language used and in the process lose the original meaning of the ST. In this particular example; the addition was not the “right” kind because the courtroom process is a formal process. Because of this, the interpreter should also strive to keep the interaction formal.

I use section 6.5 to illustrate how the Kenyan local specialised English vocabulary poses a problem during interpretation. The interpreters are aware that the local vocabulary can cause problems for native speakers of English to understand and as a result, they try to correct the Kenyan vocabulary but then end up misinterpreting the meaning of the original utterance.

## **6.6. Conclusion**

In chapter six, I examined Dholuo- English interpretation making use of naming from Jeffries' Critical Stylistics. I illustrated that when taboo words were used in the ST, the interpreter resorted to using euphemisms so as to conform to cultural norms and expectations thus occasioning meaning loss. Also, when there are terms in one language that cannot be found in another (and this was evident in both English and Dholuo especially in the legal register), the interpreters struggled for equivalents which led to meaning changes. Another finding evident was that in interpretation, the tenor in the ST became different from the one in the TT. Fourthly, pre and post modification changes also contributed to meaning loss and lastly, local vocabulary posed a problem for the interpreters to translate into Standard English. In next chapter i.e. chapter seven, I give a summary of the findings of this research and also make recommendations as to further future research.

## **CHAPTER SEVEN**

### **FINDINGS AND RECOMMENDATIONS**

#### **7.0. Introduction**

This study had the following objectives:

1. To examine the presentation of others' speech by identifying, analysing, and explaining stylistic and illocutionary changes that occur in the TT.
2. To identify the processes in the representation of actions/states in Dholuo-English courtroom interpretation and determine the ideational, stylistic and pragmatic modifications in the TT.
3. To identify naming choices in Dholuo-English courtroom and determine the changes that occur between the ST and the TT examining their effects on ideation and illocution.
4. To draw conclusions and inferences and make further research suggestions based on the findings of the study.

In this chapter, I examine a summary of the findings in relation to each objective of the study.

#### **7.1. Presenting Others' Speech in Dholuo- English Courtroom Interpretation**

In data analysis, I first examined the presentation of others' speech using of the Speech, Writing and Thought Presentation model (SW & TP) by Leech and Short (2007) as modified by Short (2012).

My study brings in new insights into the SW & TP model. Whereas the model as used by Leech and Short (2007) and Short (2012) determines fidelity to the original text by examining the presentation categories, I show that categories alone cannot be used to determine fidelity to the original text. This is because in the use of language, it is possible to retain the category markers such as Direct Speech (DS), which is considered most faithful to the original text, but still remain unfaithful to that text in the choice of words. An example of this is that humans have the capacity to tell lies with the use of reporting categories to make it appear as if they are telling the truth.

Leech and Short (2007) and Short (2012) do not examine the original speech or writing that is being reported because they use written prose or recorded spoken texts. These do not show the original utterance and in the case of literary prose, are quite unable to present the original version as these are just in the mind of the author. Other authors such as Semino and Short (2004) do show differences in speech presentation using news reports but none show speech presentation using two languages. My study provides both the original speech and the subsequent translated version because of the interpretive nature of the communicative event. Thus I provide a new way for examining reported speech through the comparison of the Source Language text to the Target Language text. This examines a better interaction with the two texts involved and a fuller explanation of how fidelity to the original text is adhered to that involves both the categories of reported speech and the content. Also importantly, my study examines Dholuo text as compared to English text thus showing how a minority language is interpreted into an international language and vice versa. The findings of this study can be used as a basis to draw conclusions about interpreting from and into a minority language.

The setting of my recordings was the courtroom. Here, inevitably, the judge has to make decisions on whether to free a suspect or sentence him/her to imprisonment or determine whether they get a fine. This particular setting therefore calls for the use of performatives as set out by Austin (1962) where in saying the words “I find you guilty”, a person is condemned to a set form of punishment. For the performatives to hold, Austin (ibid) sets out three felicity conditions. First, the person has to be the right one, secondly, the environment has to be right and thirdly, the procedures have to be right too. The first finding in relation to the presentation of the speech of others shows that the interpreters strive to retain the felicity conditions to ensure that performatives by the judge retain the power that they have as performatives. I find that when interpreting the speech of the witnesses and the accused persons, the interpreter uses the first person point of view except when what they say is embarrassing then the interpreter resorts to using a reporting clause to show that the speech is not his/hers. However, when reporting the speech of the judge, especially when the judge is giving a judgement or giving a professional opinion, the interpreter then chooses to substitute the first person pronoun with the noun phrase “*the court*”. This change occurs because the interpreters recognise that the power to set free a suspect, to set bail terms and to justify rulings rest with the judge. This also occurs because they fail to distinguish between the discourse roles of author vs. mouthpiece (Goffman, 1981 and Thomas, 1986). The performative “acquit” or “convict” in a court of law is null and void if said by a mere court

clerk. In recognition of this and perhaps to give the performative more weight in the eyes of the laymen, the Dholuo interpreter always uses markers to indicate that the utterance belongs to the judge and not to the interpreter.

In other findings on presenting others' speech, there is evidence of misreporting while using the direct speech category. When the interpreter retains the category of Direct Speech (DS), it gives the misleading impression that he/she is going to retain faithfulness to the original text. When eventually the words used turn out to be different from the original, the lack of fidelity to the original comes out as more profound. The tragedy is that this is only evident to the researcher, but to the interlocutors, this is lost as they do not understand the languages of each other. Thus this finding shows that even though in the SW & TP model, the direct speech category is considered the most faithful to the original text, markers of direct speech alone cannot be used to determine fidelity. The meaning of the original text must be transferred to the target text and without this, there can be no fidelity.

Whereas I noted earlier the change of first person to third person in reporting the judge's speech, there is also the change of the voice of the judge's utterances from the active voice to the passive voice. Whereas in English, the passive is mainly used in formal communication, there is a use of the passive in Dholuo to show that the reported speech comes from a person higher in rank than both the person reporting the speech and the addressee. This is noticed for example when siblings report to each other what was said by their parents or in the political arena, when a junior ranked officer is reporting what was said by a person higher up in the government. The passive as used in reporting speech in Dholuo thus has the effect of showing that the message being conveyed is important, from an important person and should be treated with respect. The use of the passive to report from higher authorities is seen to have been transferred into English from Dholuo.

Distortion of meaning occurs in all the sections of analysis while using all the three tools. In presenting others' speech, distortion of meaning takes place when the interpreter introduces words that are absent in the ST into the TT. There are also instances when the interpreter brings in his/her feelings and emotions into the interpretation thus distorting the pragmatic message of the utterance. Interpreters also introduce into the utterance new information from previous sessions of the case thus distorting the current message and at other times they make an offence look either greater than it is or diminish it hence failing to keep the original meaning.

In translating, the interpreters sometimes want to distance themselves from the utterances that have been made. This they do both for the senior people like the judges and for the witnesses and suspects. If what the suspect says is embarrassing, for example a sexually loaded messages in a rape case, the interpreters are observed to use the third person to report and introduce a reporting clause to show that the speech does not belong to the interpreter but to the witness or to the suspect. On the other hand, sometimes judges make statements that the interpreters feel are undignified. In those instances, the interpreters also distance themselves from those utterances by adding a reporting clause to show that it is the judge that said those words.

Finally, on presenting speech, the interpreters expand on meaning. This is done by explanation of terms considered technical and complex. They also add courtroom instructions which make the utterances clearer to the listeners. When the judge gives summaries that provide little detail, the interpreters feel it is their duty to give a fuller version of the utterances to make them clearer to those attending the court proceedings.

In section 7.1, I gave the findings on the way interpreters presented others' speech. Generally, even though they kept the markers of reported speech that made it appear as if it was a reflection of the original, the examination of the utterances revealed that there was a discrepancy between what had been reported and the original utterance.

## **7.2. Representing Actions/States and Events in Dholuo-English Courtroom Interpretation**

Secondly, I examined representing actions, states and events. In my analysis, I grounded the work in the Halliday's transitivity model as presented by Simpson (1993). I sought to determine the processes of the verbs used by Dholuo speakers and whether those are transferred into the TT. I also sought to determine the effects of the transfer of the processes from one language to another.

In relation to the choice verbs, I found that just like in presenting others' speech, there are changes in the resultant illocutionary forces. Whereas in presenting others' speech, the illocutionary forces mainly change due to difference in choice of words, in the verbs, the

change of verb processes from one category to another is what contributes to this change. When a different main verb is used, it contributes to illocutionary force changes as well as when there are changes to the verb group. This also happens in such cases as when there is a change in the epistemic modal thus bringing a difference in the focus of the verb. When illocutions change, the style and emotions of the originators of the speech are replaced with those of the interpreter.

Vagueness in the TT is also evident in the representation of actions/states and events; in the same way as it is present in presenting the speech of others. The cause of vagueness in the verb choices is when verbs that are semantically complex are replaced with semantically simpler verbs. This results in loss of part of the meaning contributing to the vagueness observed. Another cause of vagueness is when adjuncts in the clauses are treated as part of the proposition. And lastly, change of word order in the clause also contributes to vagueness.

Distortion of meaning occurs in the TT and this is evident in both noun and verb choices. Meanings change when the processes of verbs are changed from one to another for example, when a Material Action Intentional (MAI) is changed to a Mental Perception (MP) process which in one case changed a plea of not guilty to a plea of guilty. When sentences as a result of verb changes are altered from one type to another for example from an interrogative to a declarative, then distortion of meaning also occurs. And another cause of the change is when new verbs that are not present in the ST are introduced into the TT.

Use of explanations and modification are also observed in the findings. Whereas in naming choices, these are mainly caused by explanation of complex terms, in verb choices the explanations and modifications mainly come about when interpreters decide to make well-formed sentences from single word utterances. The interpreters also use explanations to simplify technical terms and legal terminology. When the ST single word utterances are changed to well-formed complete sentences, it has the effect of making the witnesses sound politer and more formal than they are in the original utterance as well-formed complete sentence are more formal than one word utterances.

The interpreters' presence in the communication event influences verb choices in the same way as it does noun choices. The interpreters largely affect the interpretation by their perceived roles as well as by their other roles as court clerks. One such example is when the interpreter treats the information given by a witness as unnecessary then omits to present it in

the TT. They also give explanations to words they consider too complex for the laypersons in the courtroom thus adding verbs to the TT absent in the ST.

Finally, extrinsic factors also cause changes in verb choices. The lack of training for the interpreters reflected on how they report the ST. The role of the interpreter as the court clerk is also found to affect their quality of interpreting as they perform their other duties at the same time as they are interpreting so some verb changes came about as a result of this.

In this section, I gave a summary of the contributions to theory as well as the contributions to knowledge that my study has made while analysing presenting actions/states. In the next session, I discuss the findings on naming choices in Dholuo-English interpretation.

### **7.3. Naming Choices in Dholuo- English Interpretation**

In examining naming choices in Dholuo-English interpretation, I make use of naming and describing Jeffries (2010). I examine the naming choices made by Dholuo speakers and the resultant interpretations of those into English by courtroom interpreters. In so doing, I ground the analysis in Speech Act Theory by Austin (1962) and Co-operative Principle Theory (Grice 1975).

The main new contribution that this section of my study makes is that whereas Jeffries gives an analysis of naming in the English language, I make a comparative analysis of two languages from diverse cultural backgrounds. This serves to show that the tool can be stretched beyond the use of one language. Secondly, whereas Jeffries concentrates only on the ideological function of language, I use the tool for both the ideological and the interpersonal functions of language. This is made possible by examining the pragmatic effects of the differences in naming choices in interpreted discourse from Dholuo to English.

I also use examples to show the changes that take place in naming choices and the effects they have. The first such change is that when taboo words are used in the ST, the interpreter uses euphemisms that obscure meaning in the TT. The new names are a reflection of the difficulty of interpreting culturally bound terms as well as the influence that culture has on language and on discourse. The interpreters' cultural disposition determines how they make their naming choices and thus instead of keeping to the message and intent of the ST, the interpreters bring in their own style and meaning. In the instances where euphemisms are

used for taboo words, the effect is that the weight of the matter is reduced and the charge appears less serious in the TT than it is in the ST.

Another finding shows the changes of tenor in the TT. These changes illustrate how the defendants are routinely judged on the speech style of the interpreter. The tenor changes come about in various ways, firstly, when the interpreter adds legal terminology to the utterance, it makes the witnesses appear more knowledgeable than in their original utterances. Secondly, interpreters also add words into the utterances that make them more certain than in the original speech. In other instances, the interpreter “corrected” the speech of the magistrate to make it more formal. This is in agreement with other findings on presenting the speech of others where I illustrate that interpreters often modify the speech of courtroom officials in order to retain the dignity of the courtroom. Lastly, there are also instances where the interpreter loses the formal tone that is in the ST by using less formal utterances in the TT.

Another finding is that there are modification changes and these have effects on illocution. When modifiers that were not in the ST are added to names, there is ideation that come into the TT that is absent in the ST and at other times, emotions that are not supposed to surface in the courtroom that belong to the interpreter and not the witness also come out. Also sometimes, the interpreter may change the syntax of the utterance for example by substituting a phrase with a clause thus also bringing in additional information that changes illocution. At other times the change is such that the head noun is lost creating a totally different message from that in the ST therefore contributing to meaning loss. Meaning is distorted when modifications of nouns are changed for instance when a more favourable adjective is used to replace a negative adjective that is used in noun modification. Also, in some instances, the interpreters choose to expunge undesirable utterances in their version of the speech.

The use of Kenyan local English vocabulary poses a problem during interpretation. The interpreters are aware that the local vocabulary can be problematic for native speakers of English to understand and as a result, they try to correct the Kenyan vocabulary but then end up misinterpreting the meaning of the original utterance. When interpreters attempt to refine the Kenyan English vocabulary to conform to a more standard form of English, the unique use of those particular expressions are lost.

In making naming choices, the interpreters also attempt to explain the meaning of the names they chose to use. These explanations occur when the interpreter seeks to simplify some

complex terminologies in either of the two languages in this study. There is also cultural interference in that the interpreter may appear to explain the meaning of a naming device but due to cultural expectations actually obscure the real meaning of that word. Another finding shows that explanations are also made when the interpreters include their knowledge of the case from previous court sessions in their current interpretations. And finally, there is a tendency for the interpreters to bring in legal terminology into the speech of laypeople a feature that serves to make the laymen look politer and more knowledgeable than they actually are.

The last finding in relation to naming choices is that the interpreters' presence in the communication act also serves to cause changes in naming. The power dynamics in the courtroom together with the perceived interpreter role in the Kenyan courtroom greatly influence naming choices in interpretation.

In section 7.3, I reflected on the findings made in relation to naming choices. The section highlighted both the new knowledge my study brings to the theoretical realm as well as to the existing knowledge in providing answers as to why there are naming changes in Dholuo-English interpretations. I also highlighted the effects of the shifts in naming.

#### **7.4. Findings on Interpreter Roles and Competency**

Even though finding out about interpreter roles is not a main objective of this study, inevitably I come across those roles. Secondly, in my literature review, I found a study that researched on interpreter roles in Nyanza province amongst Dholuo speaking interpreters. The research on the interpreter's perception of their role carried out by Matu et al (2012) shows that:

1. Interpreters feel the need to clarify issues for the Dholuo speaking litigants
2. The interpreters do not desire to omit some utterances by the Dholuo speakers.
3. Interpreters often feel the need to interrupt the speaker on the floor
4. The interpreters make a conscious effort to solve communication problems in court.

The research by Matu et al is important to my study. First of all, this is the only study to have looked at Dholuo- English courtroom interpretation. The location of their study is also Luo-Nyanza in Kenya. My study compares their location of study to my own and learns from

them the divisions of courtrooms in Nyanza. From their study, I also gain insight into some of the roles that interpreters perceive to be their roles. Matu et al however do not examine any linguistic aspects of the courtroom interpretation; theirs is based solely on the opinion of interpreters about what they think they ought to do. My study goes further than that by examining naturally occurring data of actual interpretations to determine whether the set standards are adhered to and whether any meaning loss occurs.

My findings agree with Matu et al's on points 1, 3, and 4. Like Matu et al, I find that interpreters feel the need to clarify issues for Dholuo speakers in the courtroom. This they do by explaining technical terms as well as legal terms even if that results into distortion of meaning. The interpreters feel the need to interrupt the speaker on the floor. This happens when they feel that the speakers are being irrelevant. My study shows that they however do not interrupt the court officials like the judge, the prosecutor, and the probation officer. In relation to this, interpreters also fail to interpret parts of utterances that they consider irrelevant to the case being heard at any one time. Matu et al's final finding is that the Dholuo interpreter makes a conscious effort to solve communication problems in court and this my study concurs with too as I also find that interpreters polish utterances made by witnesses to make them sound "better".

However, while Matu et al find that interpreters do not desire to omit utterances made by Dholuo speakers in the courtroom, I discover the opposite. I find that when interpreters feel that what has been said is irrelevant, they fail to translate that into the TT. At other times, interpreters purge undesirable utterances from the utterances of Dholuo speakers. I also discovered another interpreter role that I did not find in any literature. Interpreters also feel it is upon them to uphold the dignity of the court. This is reflected in the way they interpret the utterance of senior members of the court who make undignified utterances or display undignified emotions for example if a judge insensitively ridicules a witness. When this happens, the interpreter still reports what the judge has said but purges the undignified bit thus saving face for both the judge and the witness.

In relation to interpreter competency, I find that because the Dholuo interpreters are not trained in interpretation, they end up making many mistakes in their interpretations that would otherwise have been eliminated with proper training. A trained interpreter is for instance able to tell when a word cannot fit in a context so that even if they did not hear a word correctly, they are aware of collocations and therefore sensitive to meaning in context.

The interpreters' additional role as court clerks also impacts on the quality of interpretation. They have to perform their clerical duties at the same time they are also interpreting. The clerical roles thus intrude into the interpretation often resulting in disconnect between the TT and the ST.

Lastly, I have through the audio recording of Dholuo-English courtroom interpretation, created corpora that can be used by other researchers who are interested in carrying out further research on this type of interpretation.

### **7.5. Recommendations for Future Studies**

I would like to make some suggestions for future research. First, my study examines only the linguistic aspects of interpretation i.e. in relation to the meanings of words. I would recommend that further research be carried out on the extra linguistic features such as the non-verbal cues, prosodic features as well as other extrinsic factors that affect interpretation.

Due to constraints of time and space, I was unable to follow up the cases to determine how the changes of meaning in interpretation impact on the judgements made about the cases; I suggest that other longitudinal research be carried out on the impact of misinterpretation on the rulings made.

In my analysis, I only use only three of the tools of critical stylistics by Jeffries (2010). It would give more insight if studies were also carried out using the remaining seven tools.

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# Appendices

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## **Transcription Conventions**

Acc: Accused

Comp: Complainant

CS: Charge sheet

Mag: Magistrate

Int: Interpreter

RT: Researcher's translation

Pros: Prosecutor

Wit: Witness

PO: Police Officer

PBO: Probation Officer

PSV: Public Service Vehicle

CPC: Criminal Penal Code

Matatu: Sheng for a public transport vehicle

PW: Prosecution Witness

IO: Investigating Officer

...: Hesitations

## Transcriptions of Pleas

### Plea 1

Int: Kevin Okoth Aput

PO: Kevin Okoth

Mag: *Lugha gani Kevin?* (Kiswahili)

RT: What language Kevin?

Acc: Kijaluo

RT: Dholuo

Int: *Kevin, odonjni ka gi keth mar ketho kwe mar aluora mane intiere tarik prariyo gaboro dwe mar apar gariyo higa mar alufu ariyo gapar gadek e Koyeyo sub-location Siaya District Siaya County. Niketho kwe mar aluora mane intie. E sechego, ne ichako bayo joma ne odhi e liel kata iko e dala mar n'gama iluongo ni Phaniel Odhiambo Ochien'g. Nibayo gi gi kite. adiera koso ok adiera?*

RT: Kevin, you are charged here with the offence of disturbing peace in the environment where you were on the 28th of December 2013 in Koyeyo Sub Location Siaya District, Siaya County. You disturbed the peace in the environment where you were. At that time, you started throwing stones at the people who had gone to the funeral or burial in the home of a person called Phaniel Odhiambo Ochien'g. You threw stones at them. Is it true or not true?

CS: Kevin Okoth Aput. Charge: Creating disturbance in a manner likely to cause a breach of peace contrary to section 95(1) (b) of the Penal code. Particulars of the offence: On the 28th day of December 2013 at Koyeyo sub location in Siaya sub district in Siaya County created disturbance in a manner likely to cause a breach of peace by throwing stones to mourners at the home of one Funel Onyango Ochieng

Acc: *en adier*

RT: It is true

Int: It is true your honour

Mag: Apart from what is contained in the charge sheet, anything else?

Pros: Oh yes your honour. They are. Let me state that the facts as provided in the charge sheet

Mag: *Hayo maelezo ni ya ukweli vile umesomewa?* (Kiswahili)

RT: Are those explanations true as they have been read out?

Int: *Kaka osom gigo e kaka gin adiera?*

RT: The way those things have been read is the way they truly are?

Acc: *Gin adiera*

RT: They are true

Int: *Kaka owach gi no ekaka gin adiera?*

RT: The way they have been said is the way they truly are?

Acc: Yes

Int: Mmm?

Pros: *Ulitupa watu mawe kwa matanga ama hukutupa?* (Kiswahili)

RT: You threw stones at people in the funeral or you did not throw?

Acc: *Nilikuwa huko kwa gate* (Kiswahili)

RT: I was there at the gate

Pros: *Ulitupa ama hukutupa?* (Kiswahili)

RT: Did you throw or did you not throw?

Acc: *Nilitupa* (Kiswahili)

RT: I threw

Mag: Convicted on your own plea of guilty

Int: *Idhi kumi*

RT: You will be punished

Mag: Mitigation?

Int: *Wachane ywak mari kaka idwa ni okonyi*

RT: Give your mitigation. How you want to be helped.

Acc: *Ne awuok ni adhi matanga no*

RT: I left to go to that funeral

Mag: *Wacha maelezo kwa nini court ikuhurumie?* (Kiswahili)

RT: Stop the explanations. Why should the court be lenient on you?

Int: *Idwa ni kot otimni nade? Kik inwonwa gima notimore*

RT: What do you want the court to do for you? Do not repeat what had happened

Acc: *Adwa ni kot on'gwonna nekech gima nomiyo naba kite guogi e mane lawa kaba kidi to ogo gate kane adhi e matanga no*

RT: I want the court to forgive me because the reason why I was throwing stones is because I was being chased by dogs but when I threw a stone it hit the gate as I was going to that funeral

Int: *Your Honour, mimi naomba mahakama inisaidie. Nilitupa hayo mawe kwasababu nilikuwa nafukuzwa na mbwa ndiposa nikatupa mawe ndo mawe yakaenda yakapiga watoto* (Kiswahili)

RT: Your honour, I am asking the court to help me. I threw those stones because I was being chased by dogs that's why I threw the stones and the stones went and hit the children

Mag: Probation report? Will it be possible on 6th?

PBO: Yes your honour

Mag: He will be remanded in custody till 6th

Int: *Idhi kaw report mari ka pok okumi. Idhi bedo e remand nyaka tarik auchiel dweni*

RT: Your report is going to be taken before you are punished. You will be in remand until the sixth of this month.

## **Plea 2**

Int: Joseph Otieno Onian'go

Mag: *Lugha gani Joseph* (Kiswahili)

RT: What language Joseph?

Acc: Kijaluo

RT: Dholuo

Mag: *Skiza mashtaka* (Kiswahili)

RT: Listen to the charges

Int: *Joseph odonjni ka gi keth ka mar goyo kendo hinyo ngato tarik angwen dwe mar apar higa alufu ariyo gi apar gadek e bar Kalale Lihanda sub-location mantie e Gem District Siaya County. Ka ok oluwore gi chik ne igoyo mihinyo Margaret Atieno Onyango. Adiera koso ok adiera?*

RT: Joseph, you are charged here with the offence of beating and causing harm to someone on the 4th of October at Bar-Kalale Lihanda Sub Location which is in Gem District Siaya County. Against the law, you beat up and caused harm to Margaret Atieno Onyango. True or not true?

CS: Charge: Assault causing actual bodily harm contrary to section 251 of the penal code.

Particulars of offence: Joseph Otieno Onian'go: on the 4th day of October at Bar-Kalale Lihanda Sub Location within Gem District in Siaya County unlawfully assaulted Margaret Atieno Onyango thereby occasioning her actual bodily harm

Acc: Ok adiera

RT: Not true

Int: Not true

Mag: *Unahitaji bond ya pesa ngapi ujilipie?* (Kiswahili)

RT: How much money do you need for bond so that you can pay for yourself?

Int: *In gi bond mar pesa adi ma inyalo tweyo?*

RT: How much money do you have to give for a bond?

Acc: *Nakwayo kot mondo okonya gi bond*

RT: I am requesting the court to give me a bond

Int: *Ema ipenji ni in gi pesa adi minyalo tweyo. Bond gi cash bail imiyi*

RT: That's why you are being asked how much money you can give. A bond and a cash bail you will be given

Acc: *Gi sani onge pesa ma an go*

RT: As at now, I do not have any money

Int: I cannot raise cash bail, I pray to be granted bond

Mag: A bond of twenty thousand

Int: *Omiyi bond mar siling alufu prariro*

RT: You have been given a bond of twenty thousand

Mag: With one surety. Alternative cash bail ten thousand

Int: *Ma n'gato achiel nyalo chun'g ni ka ok kamano manyalo tweyo siling alufu apar kaka cash bail*

RT: One person can guarantee you or you can bring ten thousand shillings as cash bail

Mag: *Ngoja kidogo* (Kiswahili)

RT: Wait a bit

Int: *Tim rito matin*

RT: Try to wait a bit

Mag: Mention on 13th January, hearing on twenty fifth

Int: *Ibiro winj case tarik prariyo gabich to ibiro duogo e mention kae tarik apar gadek*

RT: The case will be heard on twenty fifth and you will come back here for mention on thirteenth

### **Plea 3**

Int: Henry Juma Jabuya, Alex Odek Mambo

Int: *Mna elewa lugha gani* (Kiswahili)

RT: What language do you understand?

Acc 1 and 2: Dholuo

RT: Dholuo

Int: Luo language

Int: *Odonj nu ni ne oyudu kod chan'gaa. Iwacho ni tarik abich mar dwe mar achiel higani kane un Nyakongo manie Awasi location e Nyando district Kisumu county ka un kaachiel noyudu kod changaa madirom lita prabich kane uonge gi permit mowuok kuom jogo mandiko gig kon'go manie district. Kamano koso ok kamano*

RT: You are charged that you were found with *chan'gaa*. It is said that on 5th January this year, when you were in Nyakongo which is in Awasi Location in Nyando District Kisumu County, when you were together, you were found with about fifty litres of *chan'gaa* when you did not have a permit from the people who write things about alcohol that are in the district. True or false?

CS: Charge: Being in possession of *chan'gaa* contrary to section 27(1) (b) as read with section 27 (4) of alcoholic drinks control act NO: 4 of 2010. Particulars of offence: (1) Henry Juma Jabuya (2) Alex Odek Mambo: on 5th day of January 2014 at Nyakongo Awasi location in Nyando district within Kisumu county were jointly found being in possession of 50 litres of *chan'gaa* without a permit from the district alcoholic drinks regulation comitee

Int: Henry

Acc 1: *En kamano*

RT: It is like that

Int: It is true. Alex

Acc 2: *En kamano*

RT: It is like that

Int: It is true

Pros: Your honour the facts in this matter your honour are as per the charge sheet. And the fifty litres of *chan'gaa* your honour is in court

Int: *Iwacho ni gigo notimore kaka asesomonugo to chan'gaa go lita prabich go ni e kot. Ema omulogo*

RT: It is being said that those things happened just the way I have read them to you. And the *chan'gaa*, the fifty litres is in court. It is the one he is touching

Mag: Each accused person has entered a plea of guilty?

Int: *Uyie ketho*

RT: You have accepted the offence

Pros: No records your honour

Int: *Iwacho ni ma e ketho u mokwongo. Chiw ywak ni Henry*

RT: It is being said this is your first offence. Give your mitigation Henry

Acc 1: *An awacho ni kata kane oyuda gi chan'gaa to unyalo konya nekech an kenda e dala minwa ool*

RT: I am saying that even though I was found with Chan'gaa you can help me because I am alone at home. My mum is old

Int: I am requesting for assistance. I am just alone at home

Acc 1: *Mama wa oti. Mama wa ool. Kata mago ne mana konge*

RT: My mum is old. My mum is old. Even the alcohol was hers

Int: My mother is tired or aged and she was the owner of the said alcohol

Acc 1: *Koro kaka ne oyuda to koro an ema ne atin'go nekech osebedo ka obiro ka man'geny sana*

RT: Therefore when I was found, I was the one carrying it because she has been coming here very many times

Int: When I was found, I was the one who took charge of the said alcohol coz my mother had been arrested severally

Acc 1: *Koro an aywak ni mondo ukonya koro kata ka inyalo many gimoro matin to...*

RT: So I plead that you may help me. Even if I can look for something small and...

Int: *Kinyalo?*

RT: If they can?

Acc 1: *Many gimoro matin to ane kaka achulo*

RT: Look for something small so that I can see how to pay it

Int: So I am requesting for court's assistance even if we are going to look for a fine we can pay.

Int: (to second accused): *In Alex*

RT: You Alex?

Acc 2: *An ne ok aus Kon'go no. Ne an jamath*

RT: I was not selling alcohol. I was a drinker

Int: I was not selling the said alcohol. I just went to drink the said alcohol

Acc 2: *An ne an mana jamath nok an jauso*

RT: I was just a drinker. I was not a seller

Int: I was just a customer, so I am requesting for court's assistance

Acc 2: *Nawuok dala kata ka nyithindo ok on'geyo*

RT: I left home even when the children were not aware

Int: I left home and my children don't know where I am

Mag: In view of your mitigation statements

Int: *Kaluwore gi kaka uchiwa yuak*

RT: Due to your mitigation

Mag: A plea of not guilty is entered

Int: *Owach ni ukwedo ketho no*

RT: It has been said that you have refused the offence

Mag: Hearing will be on thirtieth of January twenty fourteen mention on eleventh January

Int: *Bura ibiro winji tarik pradek to uduogo e mention tarik apar gachiel*

RT: The case will be heard on thirtieth and you will come for mention on eleventh

## **Transcriptions of Case Withdrawals**

### **Withdrawal 1**

PBO: Your honour, the report is ready

Int: *Report maru ji ariyo ose ikore*

RT: The report for the two of you is ready

Pros: However the complainant had something to say to the court

Int: *Kata kamano n'gama odonjo nu nitie gi wach modwawacho e court ka*

RT: However, the complainant has something he wants to tell this court

Mag: Where is the complainant?

Comp: Yes I am here your honour

Mag: Remind me *jina yako* (partly Kiswahili remind me your name)

Comp: My name is Alex

Mag: *Unataka kusema nini* (Kiswahili)

RT: What do you want to say?

Comp: I want to withdraw case

Mag: Withdraw?

Comp: Mm

Mag: Why is that?

Int: *Nowacho ni odwa ni mondo on'gwonu owit case ni oko*

RT: He is saying that he wants to forgive you and throw out the case

Comp: I am the father to the boy sir

Mag: Brian?

Int: *Owacho ni en ema odonjonu to en kendo e wuon Brian*

RT: He is saying he is the one who brought the charges against you and he is also the father of Brian

Mag: So you want to withdraw the case against Brian?

Comp: Brian and Samuel

Int: *Odwa N'gwononu karu ji ariyo*

RT: He wants to forgive the two of you

Mag: When you were reporting them to the police, didn't you know that you were the father?

Comp: I Knew

Int: *Owacho ni sama nodhi go report kapolis, no'nge maber ni en e wuon Brian*

RT: He is saying that when he went to make the report to the police he knew very well that he is Brian's father

Mag: Why now?

Comp: I want I want this case to be solved at home

Int: *Odwa ni wach case ni otiek dala*

RT: He wants this case to be solved at home

Mag: Is it like you want it to be solved at home or that the same has been resolved?

Comp: It has been

Mag: It has been?

Int: *Owacho ni wachni osetiek dala kono*

RT: He is saying this issue has been resolved at home

Mag: Like how? How did you resolve it?

Comp: The mother and oh the whole family

Mag: The mother?

Comp: Mmmmm

Mag: You are talking about your wife?

Comp: Yes

Int: *Owacho ni jaode ma mano min Brian gi jo family*

RT: He is saying that his wife and that is the mother to Brian and the family

Mag: What about the second accused?

Comp: The second person also was mentioned. There was no item got from him. Samuel

Int: *Owacho ni in Samuel n'gat mat ariyo noluong nyingi lakini onge gimoro amora mane okwal mane oyud kuomi*

RT: He is saying that you Samuel; the second person, your name was mentioned but there was nothing that had been stolen that was recovered from you

Mag: Mmm? Prosecutor, back to the charge sheet aa?

Pros: Yes

Mag: There is a count one; that was shop breaking

Int: *Charge mokuongo ne en mar turo duka*

RT: The first charge was breaking a shop

Mag: Charge two stealing

Int: *Keth namba ariyo mar kuo*

RT: The second charge was theft

Mag: There is an alternative charge against Brian; that of handling

Int: *Kasto nitie keth ma otenore gi keth mar kuo no mar Brian*

RT: Then there is a charge that is related to the charge of theft for Brian

Mag: Then there is a count three against Samuel Onyango

Int: *Keth namba adek en mar Samuel Onyango*

RT: The third offence is against Samuel Onyango

Mag: That of being in possession of narcotic drug

Int: *Keth mar bedo kod njaga*

RT: The offence of having bhang

Pros: Your honour under the circumstances then; in the last count, it is the state which is the complainant

Mag: Yes

Int: *Owacho ni keth mar adek n'gama odonjoni in Samuel en sirikal*

RT: He is saying that on the third offence, the complainant Samuel is the government

Pros: The complainant in the first and second count cannot withdraw that count

Int: The?

Pros: The complainant in the first and second count cannot withdraw the case against the second accused person your honour of being in possession of narcotics

Int: *Koro, ngatnie ok nyal n'guononi e keth namba adek mano mari Samuel mar bedo kod njaga*

RT: Therefore, this man cannot forgive you on the third offence that is yours Samuel. The one of being in possession of bhang

Pros: So it will be unfortunate because it will not be allowed if he consciously wrongly accused the second accused person

Int: *Koro ok nyal yieni nekech kopo ni pachi ne idonjo ne Samuel e yo ma ok ni kare ni riambone*

RT: Now you cannot be allowed in case in your mind, you accused Samuel unfairly. You lied about him

Pros: Because as he is putting it, the goods were. Nothing was recovered from the second accused person and he ought to have known this before he made his report to the police earlier

Int: *Kendo ja ta bura koro wacho ni nowinjore ibed maber kin'geyo gima itimo ka ne pok idonjo ne*

RT: And the prosecutor is now saying that you should have known very well what you were doing before accusing him

Pros: And I am sure coz he made even close follow up insisting that the two must be brought before court

Int: *Kendo wachni ne iluwo kabisa ma i hakikisha ni ji ariyo gi kelgi a kot kae*

RT: And you followed this issue closely and made sure that these two people were brought here in court

Pros: I think I will have no objection for him to withdraw the first and the second count

Int: *Keth namba achiel gi namba ariyo ok obi kwedo wach mar wito oko*

RT: He will not object to the throwing out of the first and the second offences

Pros: But if in his mind he wrongly accused the second accused, the second accused person,

Int: *Lakini kaluwore gi pachi ni ne idonjo ne Samuel e yo marach*

RT: But in relation to your thinking that you accused Samuel unfairly

Pros: That will remain on his conscience. Will always still hang over his neck

Int: *Gino biro chieni po ni timo kamano. Nidonjone e yo ma ok kare. Tamruok to ok otamre ni case kik wit oko lakini kane idonjone e yo marach owach ni mano kor wachni. In ma gino biro chieni*

RT: If you did that, that thing will haunt you. He is not refusing that the case be thrown out but if you accused him unfairly, that is now your problem. You are the one who will be haunted by that thing.

Mag: Accused number one's comments

Int: *Iwacho nade Brian? Iyie gi kwayo mara n'gama odonjoni mondo on'guon ni?*

RT: What can you say Brian? Do you agree with the request for the complainant to forgive you?

Acc 1: *Eeee*

RT: Yes

Int: No Objection to that your honour

Mag: Accused two in respect to count one and count two

Int: *To in Samuel kaluwore gi keth namba achiel gi keth namba ariyo? Iyie ni mondo on'guon ni koso itamori?*

RT: And you Samuel, in relation to the first offence and the second offence? Do you agree to be forgiven or do you refuse?

Acc 2: *Ayie*

RT: I accept

Int: No objection to the application your honour in respect to count one and count two

Pros: Your honour, I don't know whether the matter has got a hearing date

Mag: Hearnig fifth of February. Count one, count two and the alternative withdrawn.

Int: *Keth namba achiel gi keth namba ariyo to gi keth motudore kode owit oko*

RT: The first offence, the second offence and the third offence are thrown out

Mag: Under section 204 of the CPC

Int: *E bwo chick namba mia ariyo gi an'gwen e timbe njore tora kod maundu. Mano en maru ji ariyo*

RT: Under the law number two hundred and four on deeds about theft, assault and theft with violence. That is for the two of you

Mag: Count three

Int: *Keth namba adek ma en keth mar Samwel kende*

RT: The third offence that is the offence of Samwel alone

Mag: The same shall proceed

Int: *Bro dhi nyime. Koro in Brian in watieko kodi ionge case. Samwel, keth namba adek mar bedo gi njaga bro dhi nyime*

RT: Will go on. Now Brian, we are finished with you, you do not have a case. Samwel, the third offence that of being in possession of bhang will go on

Mag: And the dates still remain fifth of February

Int: *Koro kes mar bedo gi njaga no ibiro winj tarik abich dwe mar ariyo*

RT: Now the case about being in possession of bhang will be heard on fifth of February

Mag: Mention twenty first of this month

Int: *Ibiro duogo e mention kot ka tarik prariyo gachiel dweni*

RT: You will come back to this court for mention on the twenty first of this month

Acc 2: *Akwayo ni inyalo weya e bond*

RT: I am requesting can I be released on bond?

Int: I pray to be released on bond

Mag: How big how small is ten grams? Cash bail of three thousand granted. Accused number one released forthwith

Int: *Brian in oweyi*

RT: Brian, you have been released

## Withdrawal 2

Int: Joseph Aduol Ogombe

Mag: *Sema we ndiyo nani?* (Kiswahili)

RT: So who are you?

Comp: *Mimi ni Jackson Opiyo Mita* (Kiswahili)

RT: I am Jackson Opiyo Mita

Comp: *An mane okosona*

RT: I am the one he wronged

Mag: *Uko na file gani?* (Kiswahili)

RT: Which file do you have?

Int: *E kes ni?*

RT: In this case?

Acc: *Eeee*

RT: Yes

Int: Yes. I am the complainant

Comp: *No koso na to*

RT: He wronged me and

Pros: *Unaitwa nani?* (Kiswahili)

RT: What is your name?

Comp: Jackson Opiyo Mita

Acc: *Nokoso na to koro kaka wan jirani ne wa se wuoyo ma*

RT: He wronged me but as we are neighbours, we already discussed and...

Int: I am the complainant. Since we are neighbours, we had discussed the matter and I would like to withdraw it

Int: *Kel ane kitambulisho mari mondo isudi nyime koni*

RT: Bring your identity card and then come forward

Mag: *Mshukiwa unasema nini?* (Kiswahili)

RT: Suspect, what are you saying?

Pros: *Ume kubali?* (Kiswahili)

RT: Do you agree?

Int: *Iyie ni mondo on'gwon ni?*

RT: Do you accept his forgiveness?

Acc: *Ayie ni on'gwon na*

RT: I accept his forgiveness

Int: No objection to his application

Int: *Dhok mane? English, Kiswahili Dholuo?*

RT: Which language? English, Kiswahili, Dholuo?

Comp: Dholuo

Int: *Tin'g Muma malo gi bado kor achich. Akuon'gora e nyim kot*

RT: Carry the Bible in your right hand. I swear before the court

Comp: *Akuon'gora e nyim kot*

RT: I swear before the court

Int: *E nying Nyasaye*

Comp: *E nying Nyasaye*

RT: In the name of God

Int: *Ni weche ma adhi wacho*

Comp: *Ni weche ma adhi wacho*

RT: That the things I am going to say

Int: *E kes manie kot*

Comp: *E kes manie kot*

RT: On the case before the court

Int: *Gin adiera*

Comp: *Gin adiera*

RT: Is the truth

Int: *Maonge miriambo*

Comp: *Maonge miriambo*

RT: Without any lies

Int: *Nyasaye konya*

Comp: *Nyasaye konya*

RT: God help me

Pros: What is your name?

Int: *Iluongi ni n'ga?*

RT: What is your name?

Comp: Jackson Otieno Mita

Pros: From which location

Int: *I a e location mane?*

RT: Which location do you come from?

Comp: Gem Location

Pros: Do you know the accused person?

Int: *N'gama idonjo ne ni in'geye?*

RT: This person you accused, do you know him?

Comp: *Ee an'geye*

RT: Yes I know him

Int: I know the accused person

Pros: What's his name?

Int: *Iluonge ni n'ga?*

RT: What's his name?

Comp: Joseph Aduol Ogombe

Pros: You are the one who complained to the police that he offended you?

Comp: Yes

Int: *In mane idonjone ka polis ni odonjoni? Ni okethoni? To kendo koro in ema idwa n'guonone kendo?*

RT: You are the one who reported him to the police that he reported you? That he offended you? And now again, you are the one who wants to forgive him again?

Comp: *Eee*

RT: Yes

Int: Yes, I am the one who complained to the police station and would like to withdraw the matter

Pros: And you are the one who is requesting the court to allow you to withdraw the case against him?

Int: *Koro ikwayo kot ni mondo oyieni iwit kes oko?*

RT: Now you are requesting the court to allow you dismiss the case?

Comp: Yes

Int: I am praying to withdraw the matter against him

Pros: If your application is considered, the court will believe that you were not forced, not bribed, you were not intimidated and there is nothing forced

Int: *Ko po ni kwayo mari kot oyiego kot ok bi kawo ni ochuni kata ochuli kata jok moko oridoni ni nyaka in'guon ne*

RT: If the court accepts your request, the court will not take it that you have been forced or paid or that some people have insisted that you should forgive him

Comp: *Eee*

RT: Yes

Int: This is the position

Mag: *Unasema nini?* (Kiswahili)

RT: What are you saying?

Int: *Iwacho nade*

RT: What do you say?

Acc: *An bende akwayo ni on'guon na an'guona*

RT: I am also just requesting that he should forgive me

Int: *Aah? E i kwayo no iyie godo?*

RT: Pardon. On that request, do you agree with it?

Acc: *Eeh*

RT: Yes

Int: No objection to the application

Mag: Case withdrawn under section 159 of the constitution of Kenya

Int: *Kes ni owit oko e bwo chik namba mia achiel gi pro abich gi ochiko mar katiba mar Kenya*

RT: This case has been thrown out under the law number one hundred and fifty nine of the constitution of Kenya

### **Withdrawal 3**

Int: *Nyingi kaka ondik e kipande*

RT: Your name as written on your identity card

Comp: Monica Adhiambo Amollo

Int: I am Monica Adhiambo Amollo

Pros: *Namba yako ya kitambulisho ni gani?* (Kiswahili)

RT: What is your identity card number?

Comp: 20413307

Pros: *Elezea mahakama nyumbani ni wapi. Unaanza na kijiji* (Kiswahili)

RT: Tell this court where you come from starting with your village

Comp: Kamahawa Kakola Ahero Sublocation

Int: *Village. Wach iwacho achiel. Kaka openjo no iwacho achiel kaka openji e kaka iduoko. Koro village, gwen'g en mane?*

RT: Village. You should say one thing. When you are asked, you give one answer as you have been asked. That is how you respond. Now your village, which village?

Comp: *Village en Kamahawa*

RT: The village is Kamahawa

Int: My village is Kamahawa

Pros: *Sub Location gani?* (Kiswahili)

RT: Which sub-location?

Comp: Kakola Ahero

Pros: *Location gani* (Kiswahili)

Comp: Kakola

Int: My Location is Kakola

Pros: *So elezea mahakama una uhusiano gani na mshukiwa ambaye ako mbele ya mahakama* (Kiswahili)

RT: So tell the court, what is the relationship between you and the suspect who is before the court?

Comp: *Ma yuora*

RT: This is my brother in law

Int: The accused is my brother in law

Pros: *Huyo mfugo wako ambaye alipotea umewahi kumpata mpaka wa leo?* (Kiswahili)

RT: Have you been able to recover that domestic animal that you lost as at today?

Comp: *Aa*

RT: No

Int: I have not yet

Pros: *So mshukiwa ambaye yuko mbele ya mahakama amekuomba msamaha ama wewe mwenyewe ndiye umeona umsamehe?* (Kiswahili)

RT: So the accused who is before the court asked you to forgive him or you decided to forgive him on your own free will?

Int: *Jalno midonjoneni okwayi n'gwono koso in ema ihero n'gwonone*

RT: Did the person before the court ask you for your forgiveness or did you decide to forgive him?

Comp: *Okwaya*

RT: He asked me

Int: The accused asked me for forgiveness

Pros: *Na umekubali umsamehe* (Kiswahili)

RT: And you agreed to forgive him?

Int: *Iyie n'gwonone*

RT: You have agreed to forgive him?

Comp: *Ee*

RT: *Yes*

Int: Your honour, I accept to forgive him

Pros: *So pia unaelewa ombi ambalo unaweka mbele ya mahakama ya kwamba ukikubali umsamehe mshukiwa huyu ukikubali, huwezi kurudi mbele ya mahakama kuuliza kwa nini haiendelei kuskia kesi yako?* (Kiswahili)

RT: So you understand the request you have put before the court that if you agree that you forgive this suspect, if you agree, you cannot come back before the court to ask why it is not continuing to hear your case?

Int: *Bin'geyo ni kiyie n'gwonone kawuono to wachni ok ichak ikel e kot kendo*

RT: Do you know that if you agree to forgive him you cannot bring this matter to court again?

Comp: *An'geyo*

RT: I Know

Int: Your honour, I am aware of that

Mag: What does the accused have to say?

Int: *Chung Malo. In gi wach mane kuom mowacho go?*

RT: Stand up. What do you have to say about what she has said?

Acc: *Anyalo mana gone erokamano*

RT: I can only thank her

Int: *Wuo matek mawinjore*

RT: Talk loudly enough so that you can be heard

Acc: *Anyalo mana gone erokamano*

RT: I can only thank her

Int: *Aa?*

RT: Pardon

Acc: *Anyalo mana gone erokamano*

RT: I can only thank her

Int: Your honour, I am grateful and thank the complainant

Mag: What happened to the sheep?

Int: *An'go mane otimo rombo? An'go mane otimo rombo*

RT: What happened to the sheep? What happened to the sheep?

Acc: *Rombo nakao kasto oringo*

RT: I took the sheep but it escaped

Int: Your honour, I took the sheep and it ran away

Mag: Eeeh!

Int: I took the sheep and it ran away

Mag: You took the sheep and it ran away? When it was running away, where were you?

When it was running away?

Int: *Sama ne oringo, ne in kanye?*

RT: When it was running away, where were you?

Acc: *Ne an e yo kasto tol ne ochot*

RT: I was on the road but the rope cut

Int: Your honour, I was holding the sheep with a rope and the rope and the rope

Mag: The rope cut?

Int: Yes and it ran away

Mag: So you didn't go after it?

Int: *Sama noringo no niluwe?*

RT: At that time when it ran away, did you go after it?

Acc: *Aa*

RT: No

Int: Your honour, I did not go after it

Mag: Whom did you sell the sheep to?

Int: *Ni uso ne n'ga rombo?*

RT: Whom did you sell the sheep to?

Acc: *Kaka ne oringo no, ne ok amake*

RT: After it ran away, I did not recover it

Int: Your honour, the sheep ran and I did not catch up with it

Mag: He seems to believe his own story eh! Mr. Muchiri, he seems to believe what he is saying!

Pros: Yes your honour

Int: *Iwacho ni in iyie gi gik ma iwacho go kin'geyo an'geya maber ni onge n'gama chielo moyie weche ni go*

RT: It is being said that you believe in what you are saying and yet you know very well that no one else believes in your stories

Mag: He could get somebody's sheep, property and then it ran away

Int: *Ni ne inyalo kawo rombo n'gato asto rombo no ringo*

RT: That you could take somebody's sheep and then that sheep runs away

Mag: Have you reached some sort of settlement with him?

Mag (To interpreter) ask the question

Int: *Be use winjoru kode?*

RT: Have you reached an agreement with him?

Comp: *Wase winjore*

RT: We have reached an agreement

Int: Yes your honour

Mag: He has agreed with you?

Int: *use winjoru?*

RT: You have reached an agreement?

Comp: *Ee*

RT: Yes

Int: *Uwinjoru nan'go?*

RT: What was the agreement?

Comp: *Wawinjore ni obiro dhi chula*

RT: We have agreed that he will repay me

Int: Your honour we have agreed and the accused person has promised to pay me back

Mag: Has he promised or has he paid you back?

Int: *Ose chulo koso owacho no obiro chulo?*

RT: Has he already paid or has he said that he will pay?

Comp: *Owacho ni obiro chulo*

RT: He said that he will pay

Int: Your honour he has promised that he will pay

Mag: And you are happy with that promise? You have no problem you have agreed?

Int: *In gi wach moro kuom mano*

RT: Do you have anything to say about it?

Comp: *Ayie gi kaka wawinjore kode no*

RT: I am satisfied with our agreement with him

Int: Your honour, I have no problem with the way we have agreed

Mag: Section 204

Int: *Bura ni orumo. On'gade e section 204*

RT: This case is over. It has been removed through section 204

## **Transcriptions of Hearings**

### **Hearing 1**

Int: *Dominique Odiwuor Ondele. In e Dominique Odiwuor Ondele?*

RT: Dominique Odiwuor Ondele. Are you Dominique Odiwuor Ondele?

Acc: *Kamano*

RT: yes

Int: English, Kiswahili, Dholuo?

Acc: Kiswa... Dholuo

Int: *odonjni gi keth mar rodho kendo hinyo n'gato tarik prariyo gaboro dwe mar apar gi ariyo higa mar alufu ariyo kod apar gi adek e Maliera sublocation Gem District Siaya County. Ka ok oluwore gi chik, ne irodho ma ihinyo Seline Adhiambo Owino. Adiera koso ok adiera?*

RT: You are charged with the offence of beating up and injuring someone on the twenty eighth of December twenty thirteen in Maliera sub-location, Gem District Siaya County. Against the law, you beat up and harmed Seline Adhiambo Owino. Is it true or not true?

Acc: *Ne ok ahinye*

RT: I did not harm her

Int: *Adiera koso ok adiera*

RT: True or not true

Acc: *Adiera*

RT: True

Int: *Eeh? En adiera ni ne igoye mihinye?*

RT: Eeh? Is it true that you beat her and harmed her?

Acc: *Adiera*

RT: It is true

Int: It is true

Pros: Your honour the facts are ready

Int: *Chik iti iwinj kaka ne itimo gigo*

RT: Be attentive and hear how you did those things

Pros: Your honour, the facts are that on the twenty sixth day of December. No no no sorry sorry, on the twenty eighth day of December twenty thirteen

Int: *Tarik prariyo gi aboro higa mokadho*

RT: On the twenty eighth last year

Pros: At five thirty pm

Int: *Kar saa apar gia achiel gi nus mar odhiambo*

RT: At about five thirty in the evening

Pros: In East Gem Sub- Location

Int: *E east Gem Sub-Location*

RT: In East Gem Sub-Location

Pros: The complainant in this matter one Seline Odhiambo Owino

Int: *Ngama odonjo ni e case ni miluongo ni Seline Odhiambo*

RT: The complainant in this case called Seline Odhiambo

Pros: Was coming from her neighbour's house when he met the accused person Dominique Odiwuor onde....

Int: *Ne owuok e od jirani mare ka odhi e ode kasto oromo kodi in Dominique.*

RT: Was coming from her neighbour's house going to her house then she met you Dominique

Pros: The accused person greeted the complainant

Int: *Ne imose*

RT: You greeted her

Pros: Aaaaand who did not respond

Int: *Te nok oduoki*

RT: And she did not reply

Pros: Instead, he.. she picked a stick and started beating her on the back and thighs

Int: *Ban'ge nikawo kede tichako chwado n'geye gi bamne*

RT: Afterwards you took a stick and started beating her back and thighs

Pros: The complainant screamed and she was rescued by one George Okoyo

Int: *Nogo nduru kasto n'gama iluongo ni George Okoyo ne obiro mokonye*

RT: She screamed and a person called George Okoyo came and helped her

Pros: The complainant was advised to report the matter where she reported at the... where the complainant report.. the incident at Sinaga Police post

Int: *Nodhi ogoyo report ka polis ma sinaga*

RT: She reported to the police at Sinaga

Pros: Where she was issued with the P3

Int: *Mane omiye P3 form*

RT: Where she was given a P3 form

Pros: Treated at the Yala Sub-District hospital

Int: *Asto ne odhi othiedhe e hospital mar Yala Sub-District*

RT: And she went and was treated at the Yala Sub-District hospital

Pros: Where the P3 was signed and the injuries were confirmed to be bodily harm

Int: *Kasto nojaz P3 then n'gama ne othiedhe ban'ge n'gama ne othiedhe ne on'gado ni oyudo hinyruok*

RT: Then a P3 was filled then the person who treated her, then the person who treated her decided that she had got injuries

Pros: It was after the investigations that the accused person was arrested and charged for the offence of assaulting the complainant

Int: *Bang timo nonro polis ne obiro momaki kasto obi odonjni e court kae kawuono gi keth ni*

RT: After investigations, the police came and arrested you and you are charged in this court today with this offence

Pros: If he agrees with the charges your honour I will produce the P3 as exhibit 1

Int: *Gin kamago kaka owach gi no?*

RT: Are they true as they have been said?

Acc: *Ne wan kode nyoro*

RT: We were with her yesterday

Int: *Eeh? Gik mowacho mane aloko gi dholuo go kamano e kaka ne gitimore?*

RT: Eeh? Those things he said that I translated into Dholuo, is that how they happened?

Acc: *Kamano*

RT: Yes

Int: Facts correct your honour

Acc: *Ne wan kode nyoro*

RT: We were with her yesterday

Int: *En ka sani? Ne... ling*

RT: Is she here now? Look... Keep quiet

Acc: *Ne wan kode nyoro*

RT: We were with her yesterday

Int: *Anasema ati walikuwa na mlalamishi* (Kiswahili)

RT: He is saying they were with the complainant

Mag: Eeh?

Int: *Jana walikuwa na mlalamishi* (Kiswahili)

RT: Yesterday they were with the complainant

Pros: *Ati jana? Tunaongea mambo ya leo* (Kiswahili)

RT: What do you mean yesterday? We are talking about today!

Int: *Iwuoyo e wach ma kawuono*

RT: Today's issue is being discussed

Pros: *Hiyo mambo ya P3 bwana* (Kiswahili)

RT: That issue of the P3 "bwana" (a form of address to a male peer)

Mag: You will be convicted on your own plea of guilty

Int: *Idhi kumi kaka iseyie gi ketho mari*

RT: You will be punished as you have accepted your offence

Pros: No previous records your honour

Int: *Ma e keth mitimo mokwongo*

RT: This is the first offence you have committed

Mag: Mitigation?

Int: *Wach ane yuakni*

RT: Now give your mitigation

Acc: *Ne an kode to ne owacho ni obiro biro mondo wawinjre kode e case mondo wadog wadhi walos wach dala*

RT: I was with her and she said that she will come so that we can agree with her about the case so that we go back to rectify this at home

Int: *Donge oonge e kot ka kawuono?*

RT: But she is not in this court today?

Int: He says that they were together with the complainant. The complainant was supposed to come and withdraw this matter so that it can be settled back at home.

Int: *Koro idwa nade?*

RT: So what do you want?

Acc: *Adwa ni kot okonya*

RT: I want the court to help me

Int: Court to decide on how to help

Mag: His report will be taken and he will come back on tenth

Int: *Ibiro duogo e kot ka tarik apar. Idhi bedo e remand*

RT: You will come back to the court on tenth. You will be at the remand

## **Hearing 2**

Mag: Tell this court your name

Int: *Nyis kot nyingeni te*

RT: Tell the court your full name

Acc: *Wycliffe Otieno On'githo*

Int: I am Wycliffe Otieno On'githo

RT: *Wycliffe Otieno On'githo*

Mag: Where do you come from?

Int: *I wuok Kanye Wycliffe*

RT: Where do you come from Wycliffe?

Acc: *Adak Awasi to a ja Nyakach*

RT: I live in Awasi but I come from Nyakach

Int: I stay in Awasi and my home place is in Nyakach

Mag: What do you do for a living?

Int: *An'go itiyo ma iyudo kaka ichiemo*

RT: What work do you do to earn a living?

Acc: *Atiyo tich ot a ja gedo*

RT: I do house related work. I am a builder

Int: I am a mason

Mag: He is charged with defilement

Int: *Ne odonjni gi ketho mar ni nene ibambo nyathi matin*

RT: You are charged that you raped a young child

Mag: That on the fourteenth of December twenty twelve in Nyan'goma location

Int: *Kuma niwache ni tarik apar ga ng'wen mar dwe mar apar gariyo*

RT: Where it is alleged that on the fourteenth of December

Mag: He used his penis to penetrate the vagina of Penina Ayoo a girl aged nine years

Int: *In ne ikawo nyimi miriko e duong nyathi manyako ma ja higa ochiko*

RT: You took your private parts and force it into the private parts of a young girl of nine years

Mag: And the alternative, he is charged with an indecent act

Int: *Kotenero gi mano nodonjni ni neimulo dend nyathino e yo mokowinjore*

RT: In relation with that, you are charged that you touched the body of that child in an improper manner

Mag: On fourteenth of December twenty twelve at Nyan'goma location in Muhoroni you intentionally committed an indecent act on Penina Ayoo; a child aged nine years.

Int: *Ni tarik apar gi an'gwen dwe mar apar gi ariyo higa mar mia ariyo gi apar gi ariyo ka ne in Muhoroni to ne itimo timbe moko ma ok owinjore ne nyathi miluongo ni Penina Ayoo ma en nyathi ma ja higa ochiko*

RT: That on the fourteenth of December of two hundred and twelve whilst at Muhoroni, you performed some unacceptable acts on a child called Penina Ayoo who is a child of nine years

Mag: So what is his defence?

Int: *Koro kuom wachno, in iwacho e an'go?*

RT: Now about that, what do you have to say?

Acc: *Your honour, kaparo tarik apar gi ang'wen*

RT: Your honour, if I think back to the fourteenth

Int: If I can recall the fourteenth

Acc: *Saa ariyo e wan'ge okinyi*

RT: At eight AM sharp

Int: At around eight AM in the morn. Eight AM

Acc: *Ka ne koro wayweyo wamadho soda*

RT: As we were relaxing taking some sodas

Int: As we were resting taking some sodas

Acc: *Ka wadwa dhi tijwa ma pile pile mar gedo ka wan gi wuoyi miluongo ni David Aluodo*

RT: When we wanted to go to our daily job of building with one boy called David Aluodo

Int: We wanted to go to our work ah ah the mason work. With one of my the boys known as  
David

Int: *David nga?*

Acc: David Ojwan'g Aluodo

Int: David Ojwan'g Aluodo

Acc: *Ka ling nono ka waluongo soda bang dakika matin*

RT: In a short while after we had called the soda after a few minutes

Int: After a short time after we have called the sodas

Acc: *Ne apoyo mana mama moro kabiyo gi nyathi moro*

RT: Suddenly I saw a certain woman coming with a certain child

Int: All of a sudden, a certain woman came with a child

Acc: *Kae kane pok abulo n'gor, kata kane pok ayweyo matin*

RT: Then, before staying for a while before even resting a bit

Int: Before resting for some time

Acc: *Ne achako apoyo polise moko adek*

RT: Then as suddenly I saw some three policemen

Int: I aaah just saw some police officers

Acc: *Kabiyo kuma ne wayweye no*

RT: Coming towards where we were relaxing

Int: Coming. Abruptly coming towards where we were resting

Acc: *Kane jogi ochopo kuma ne wantiere no*

RT: When these people reached where we were

Int: When they reached where we were

Acc: *Jogi nodonjo mana kuoma gi gocho*

RT: These people started beating me up

Int: These people just came to me and started assaulting me

Acc: *Kane an'giyo gi maber*

RT: When I looked at them carefully

Int: When I checked on them

Acc: *Nayudo ka gin polise motin'go bunde*

RT: I found out that they were police carrying guns

Int: I saw that they were police officers armed with fire arms

Acc: *Ne gigoya mane atimo remo*

RT: Thy beat me till I bled

Int: They assaulted me and I bled (sic)

Acc: *Kane apenjora ni to an'go matimo kapenjo gi ni to an'go m. Makosa mane. An'go momiyo ugoya?*

RT: I wondered what I had done. I asked them what ... What offence have I committed that makes you beat me?

Int: I was asking myself the offence that I had done and I also asked them why. The offence that I have done that they are beating me

Acc: *Ne gin'gwana kachiel kachiel to gi wuotho koda kagichomo koda polis station*

RT: They took me one by one and walked with me towards the police station

Int: They held me andaaaa took me to the police station

Acc: *E kama ne gitera Awasi police station*

RT: Where they took me to Awasi police station

Int: Where they placed me at Awasi police station

Acc: *Kuma negiketa anindoe ndalo achiel*

RT: Where they made me spend one night

Int: I spent a night at Awasi

Acc: *Kane ok an'geyo mistake mane atimo kata kosa mane mane an go*

RT: When I did not know the mistake I had made or what offence I had done

Int: And I did not know the offence the mistake or the offence I had committed

Acc: *Kane ochopo kiny gokinyo*

RT: When it reached the following morning

Int: When it reached the following morning

Mag: He said they did not tell him?

Int: The offence or the mistake that he has done

Acc: *Ne giwuok koda kane gimanyo gari moro mane en Nissan*

RT: They left with me to look for a Nissan vehicle

Int: They took me out of the cells and took a PSV vehicle. That's a Nissan

Acc: *Ne gi ringo koda nyaka Chemelil police station*

RT: They drove me up to Chemelil police station

Int: They took me up to Chemelil police station

Acc: *Kame ne gidok gikanoya ndalo madirom adek*

RT: Where they again kept me for about three days

Int: At Chemelil I was detained for three days

Acc: *Kane onge gimoro amora mane jogo nyisa kaluwore gi gima atimo nikech onge gima ne atimo to jogi ne okana kanyo kata ne apenjogi to jogi ne ok nyisa case mane atimo*

RT: where there was nothing that these people were telling me concerning what I had done because I had done nothing but these people kept me there. Even when I asked them, these people did not tell me the case I had done

Int: They did not inform me of the offence I had committed even though I tried asking them, they never told me the offence that I had committed

Acc: *Kane ochopo odiochien'g mar adek*

RT: When it reached the third day

Int: When it reached the third day

Acc: *Ne amuoch gi ywak*

RT: I let out a cry

Int: I started crying

Acc: *Then eka ne gikawo action kacha kachiel kachiel*

RT: That's when they took action one by one

Int: At that point is when the action was taken

Acc: *Negikela Ahero Court*

RT: They brought me to Ahero court

Int: And I was brought before the court

Acc: *Then kane achopo e nyim court*

RT: Then when I appeared before the court

Int: When I appeared before court

Acc: *Ne apo kisomo na ketho ni anindo gi nyathi moro ma ja higa ochiko miluongo ni Penina Ayoo*

RT: I was surprised when they read the charge that I slept with a child of nine years called Penina Ayoo

Int: An offence was read to me that I had defiled a girl aged nine years and the girl is Penina Ayoo

Acc: *Mane ok aneno nyaka nene ma an nanene mana e court ka*

RT: That I had never ever seen and I just saw here at the court

Int: I had never seen the said girl; it was my first time to see her in court when she came to testify

Acc: *From kanyo*

RT: From there

Int: From there

Acc: *Jogi nokela e nosomona keth ni kane abuok nono*

RT: These people brought me and read me a charge. I was shocked

Int: The offence oh oh their oh oh oh... When the charge was read out to me I was surprised

Acc: *Ne atamora e nyim court*

RT: I denied it before the court

Int: I denied the offence

Acc: *Nekech ne ok an'geyo gini endi adiera. Nyaka sani pok an'geyo gima omiyo an e lwet sirikal.*

RT: Because I did not know this thing to be honest. Up to now, I still do not know why I am in the hands of the government

Int: I didn't know the offence and and till date I don't know why I am being detained by the government officials

Acc: *Koro kaluwore gi kama antiere sani*

RT: As per where I am now

Int: As per where I am now

Acc: *An marach kendo touche man'geny*

RT: I am in a bad way and many diseases

Mag: It is just the defence. *Wewe Umemaliza kujitetea?* (Kiswahili)

RT: You! Have you finished your defence?

Int: *Itieko wuoyo orka kori?*

RT: Have you finished talking on your behalf?

Acc: *Korka kora?*

RT: On my side?

Mag: What he has now about where he is staying that is now a social problem. A welfare problem. *Lakini umemaliza kujitetea?* (Kiswahili)

RT: But have you finished your defence?

Int: *Kuma iwacho kuma idake cha mano koro opogore*

RT: Where you are talking about where you live, that is now different

Int: *Kuom ketho modonj ni go, itieko wuoyo?*

RT: About the offence you have been charged with, have you finished talking?

Acc: *Pod ne adhi mbele gi wuoyo*

RT: I was still continuing with my speech

Int: I still have something to say

Acc: *Koro kuom weche mane osewachi kuoma kata mane odonjna go gi ketho no*

RT: Now about the things that had been said about me even the ones that were used in the accusation

Int: All the evidence that were brought before the court touching on me even the offence that I was charged with

Acc: *Akwayo kot ni mondo on'giye n'gama wacho adier gi n'gama wacho ne kot adier*

RT: I am requesting the court to check who is telling the truth and who is telling the court the truth

Int: I am requesting the court to look on who is telling the truth

Acc: *Nikech kata kin'giyo gik mane ondiki go*

RT: Because even if you check what was written

Int: If you look at the charge (To Accused) *Gik mane ondiki kanye?* (The things that were written where?)

Acc: *Mane ondiki gi ketho mane odonjna, mane odonjnago ni aketho mane ok an'geyo*

RT: The ones that were written together with the offence I was charged with. The one I was charged with, an offence that I did not know

Int: If you look at the charge that I was charged with the offence

Acc: *Ibiro yudo mana ka gigo gin gik ma miriambo ma fuongore nono*

RT: You will find that those things are things that are lies that are spread wildly

Int: You will find that they are all lies

Acc: *Ma onge n'gama wacho adier to onge n'gama i wacho ni riambo*

RT: So there is nobody who is telling the truth and there is nobody you can say is lying

Int: There is nobody who is telling the truth. You can say is telling the truth and there is nobody that you can say is lying

Acc: *Nekech gin weche mawachore mopogore opogore*

RT: Because they are contradictory statements

Int: Because they are contradictive statements

Acc: *Mago e ma an go*

RT: That is all I have

Int: That is all I have

Pros: I have some questions your honour

Int: *Odhi penji penjo*

RT: He is going to ask you questions

Pros: On'githo

Acc: Yes

Pros: Do you know where Penina Ayoo Lives?

Int: *In'geyo kuma Penina Ayoo odake?*

RT: Do you know where Penina Ayoo lives?

Acc: *Ok an'geyo*

RT: I don't know

Int: I don't know

Pros: And the time when you do this job of building, is there another different job you do apart from building?

Int: *Kane itiyu tich gedo ni, ne nitie tich moro kendo mane itiyu mopogore gi mar gedo ni?*

RT: When you were doing this building job, was there another job apart from building that you were doing?

Acc: *Mana gedo ni emane a maintain*

RT: I just maintained the building job

Int: I was just in the mason department. That is where

Mag: Eeh?

Int: I just maintained my work as a mason

Pros: So if I put it to you that you dragged Penina and took her to the sugar cane farm and raped her what will you say to that?

Int: *Kowachni ni in ne imako Penina ma iywayo mitero ei nian'g ma ibambe kaka iwacho no in ibiro wache an'go?*

RT: If you are told that you grabbed Penina, dragged her to the sugarcane farm and raped her as it is being alleged, what will you say about that?

Acc: *An Abiro. Gima abiro wacho en n imago gin gik moko maliekore mag miriambo ma an ok an'geyo kuma oaye*

RT: I will... What I will say is that those are malicious allegations that are untrue and I do not know where they came from

Int: Those are just romours and they are lies. I don't know where those things came from

Pros: If I put it to you that, the time the complainant who is Penina was testifying in court, You yourself asked her that when you were doing those things, didn't she feel nice. Did you ask her such a question?

Int: *Owacho ni ka ne un e kot to Penina ne wuoyo ni in ni penje ni en sama nutimo gigo ne okowinjo ber. Be nipenje penjo machal kamano?*

RT: He is saying that when you were in the court and Penina was talking, you asked her whether she did not feel good when you were doing those things. Did you ask her such a question?

Acc: *Penjo machal kamano napenje*

RT: I asked her such a question

Int: I asked her such a question

Pros: So if you remember asking Penina such a question and yet now, you were saying that you do not know Penina. So who is telling lies now?

Int: *Ka iwacho ni ne ipenjo Penina penjono kasto sani iwacho ni in ikia Penina. Koro n'ga mawacho adier? Kata n'ga mariambo sani?*

RT: If you are saying that you asked Penina that question and then now you are saying that you do not know Penina, now who is saying the truth or who is lying now?

Acc: *Penjo ne ne apenjo Penina kaluwore gi kiach mane akiaya go. Mano emomiyo napenje penjo machalo kamano.*

RT: I asked Penina that question considering that I did not know her. That is why I asked Penina a question like that one

Int: I asked Penina such a question because I did not know her

Acc: *Nekech case machalo kamano pok ne awinjo. Pok nomaka*

RT: Because I have never heard of such a case. I have never been arrested

Int: I have never heard of such an offence and I have never been charged of such an offence

Pros: So which station are the policemen who arrested you from?

Int: *Polise mane omaki ne gin polise mowuok kure*

RT: Where did the policemen who arrested you come from?

Acc: *Ne gin polise mowuok Awasi*

RT: They were policemen from Awasi

Int: They were police officers from Awasi

Pros: When you were arrested, wasn't it Penina who identified you to the police by showing them that you were the person that raped her?

Int: *Seche manimaki, donge Penina nenitie mosiemo ni mae e n'gama ne obamba*

RT: At the time of your arrest, wasn't Penina present and wasn't it she who pointed out that you were the man that raped her?

Acc: *Penina ne ok aneno*

RT: I didn't see Penina

Int: I didn't see Penina

Pros: You said very well that when you were being arrested, a certain woman came with a certain child

Int: *Donge iwacho ni mama no ne nigi nyathi moro korka polis obiro mamaki*

RT: Didn't you say that that woman was with a certain child when the police came to arrest you?

Acc: *Ne akuongo aneno mama moro gi nyathi asto polis obiro momaka*

RT: I first saw a certain woman with a child, and then the police came and arrested me

Int: I first saw a certain woman with a certain child thereafter is when the police came and arrested me

Pros: And this person, who was with you known as David Ojwan'g, was he arrested?

Int: *N'gama ne un go miluongo ni David Ojwan'g ni enbe nomake?*

RT: This person who was with you known as David Ojwan'g, was he also arrested?

Acc: *Aa*

RT: No

Int: He was not arrested

Pros: So why wasn't he arrested and yet you were together?

Int: *An'go momiyoyo en ne ok omake?*

RT: Why wasn't he arrested?

Pros: You are claiming that the people who reported this matter did not know you

Int: *En ango momiyoyo ne ok omake ka to ne un kode to iwacho ni n'gama noketo ni weche gi to ne kiayi*

RT: Why wasn't he arrested and yet you were together and you are claiming that the person who reported you did not know you

Acc: *Your honour, kaluwore gi penjo no kaduoko ni mar an ok an'geyo paro mane jogo nigo momiyoyo ne an mane giyiera ei ji. Kata mana prosecutor owuon ok anyal n'geyo gima ne giparo*

RT: Your honour, in regards to that question, when I am responding, I cannot know what intentions those people had, that made them pick me out of the people present. I cannot even know what intentions the prosecutor himself has

Int: To respond on such questions, I didn't know the intentions that those people had

Mag: We are trying to establish this; why would people who don't know you and you don't know them come and arrest you? And to have you charged with such a serious offence

Int: *An'go momiyoyo jok ma kiayi to in bende ikia nyalo biro maki to donjoni kod ketho machal kamae.*

RT: Why would people who don't know you and you don't know them come and arrest you and charge you with such an offence?

Mag: Does it usually happen like that? People who do not know you and you do not know them can come and arrest you and claim that this young man Wycliffe raped this child.

Int: *Be en gima timore ga adier? Ni n'gato ikia to obiro to owacho kae ni wuoyi miluongo ni Wycliffe ne nobambo nyathi. Timre ga kamano?*

RT: Surely, is it something that usually happens? That you do not know a person and he comes

here and says that young man called Wycliffe raped a child. Does it usually happen like that?

Acc: *You honour kanyo kaduoko kaluwore gi tija mar gedo ni endi*

RT: Your honour if I am to respond to that; in relation to my job as a mason,

Int: As per my work as a mason

Acc: *A communicate gi ji man'geny e kuonde mopogore opogore*

RT: I communicate with many people in many different places

Int: I talk to many people in different places

Acc: *Kendo awuotho e gwenge*

RT: Also, I walk in villages

Int: I also walk in villages

Acc: *Kendo nitiere jok moko mon'geya mang'eny*

RT: And there are many different people who know me

Int: There are many people who know me

Acc: *Ma anto an awuon ok an'geyo gi*

RT: And I myself don't know them

Int: And I don't know them

Acc: *Koro ne nyalo bedo ni n'gato samoro o'ngeya to anto akiaye*

RT: So it might be sometimes that someone knows me yet I don't know them

Int: May be somebody knows me very well and I don't know the person

Pros: So may I also ask, this David Ojwan'g that you were with, he does not walk around in the villages? Don't you work together with him?

Int: *David Ojwan'g mane un godo ni enbe en jagedo? En ok owuoth ga e gwenge go?*

RT: This David Ojwan'g that you were with, is he also a mason? Does he not walk in those villages?

Acc: *David Ojwan'g that was the first time mano e odiochienge mokuongo mane wakuongo bedo kode kanyo endo*

RT: David Ojwan'g that was the first time. That was the first day that we started being with him at that place

Int: That was the first time that we were seated with David Ojwan'g

Acc: *Mane pok owuotho ga e gwen'g e area no kata e center no*

RT: Therefore he has not walked in those villages in that area or at that centre

Int: He has never walked in the same area or in the same shopping center

Acc: *Ma en bende nobiro abira to warado kode kanyo*

RT: He also just came and we met at the centre

Int: He just came and we met at the centre

Mag: So it is you who is known in that village?

Pros: So this David ojwan'g, where is his home?

Acc: *David Ojwang kane olero na dalagi to nowacho ni en ja Oyugis*

RT: When David Ojwan'g told me about his home, he said he comes from Oyugis

Int: David Ojwan'g told me that he is coming from Oyugis

Pros: And all these issue that you are telling the court, about your being arrested and taken to Awasi then to Chemelil, why didn't you ask the investigating officer those questions?

Int: *Wacho miwacho ni nomaki kasto oteri Awasi kasto oteri Chemelil polis mane timo nonro e kesni dak nipenje weche machal kamano?*

RT: The things you are saying that you were arrested and taken to Awasi then taken to Chemelil, why didn't you as the policeman who was doing the investigation those type of questions?

Acc: *Ne ok apenjo penjono kaluwore gi nonro mane ok onge n'gama ne timo nonro*

RT: I did not ask considering there was no one doing the investigations

Int: I did not ask the question since there was no police officer who was carrying out investigations

Pros: The investigating officer testified in this court

Int: *Polis mane timo nonro kata investigation nobiro mowuoyo e court ninene kobiro e court?*

RT: The policeman who was carrying out investigations or investigations came and talked in this court. Did you see him when he came to court?

Acc: *Ne anemo kowuoyo e court to your honour ne ok an'geyo ni mano en*

RT: I saw him talk at this court your honour but I did not know that he was the one

Int: I saw him testifying before court and I didn't know if he was the investigating officer

Pros: So why didn't you as him those questions that you are asking about your being in the police cells in Awasi and in Chemelil?

Acc: *Your honour kaduoko kanyo gi ma omiyo ne ok apenje penjo no your honour*

RT: Your honour, in response to why I did not ask that question your honour

Int: The reasons why I did not ask him such questions

Acc: *Ni mar ne ok an'geyo ni mano e mane en polis nekech nobiro ka ok orwako uniform*

RT: Because I did not know that that was the police because he came without uniform

Int: I didn't know he was the police officer coz when he came to court, he was not having his uniform on

Pros: That will be all your honour

Int: *Mano e penjo ma en go mogik*

RT: That is the last question he has

Mag: Judgement will be on twenty eighth of January. Mention on sixth

Int: *Ibiro somni judgment tarik prariyo gaboro dwe mar achiel to ibiro duogo e court kisomo ni bura tarik achiel dwe mar achiel. Mano mention tarik achiel dwe mar achiel higa manyien. I winjo On'githo?*

RT: Your judgement will be read to you on twenty eighth January and you will come back for reading of your case on sixth January. That is the mention sixth January next year. Do you understand Ongitho?

Acc: Yes

### **Hearing 3**

Int: Stephen Omondi

Acc: *Antie*

RT: Present

Pros: On 16th of January 2014

Int: *Iwacho ni tarik apar gi achiel dwe mar achiel higa mar alufu ariyo gi apar ga an'gwen*

RT: It is said that on the sixteenth of January the year two thousand and fourteen

Pros: At Awasi police station

Int: *Ka ne in ka polis ma Awasi*

RT: When you were at Awasi Police station

Pros: Where the accused person had gone

Int: *Kuma nidhie*

RT: Where you had gone

Pros: And officers who were on duty became suspicious

Int: *To polise mane nitie e tich ochich*

RT: And the police that were on duty became suspicious

Pros: And they were able to conduct a search on his clothing

Int: *Mane gitimo sach e lepi*

RT: And they did a search on your clothes  
Pros: And they were able to recover one roll of bhang  
Int: *Mane giyudo rol achiel mar nyasore*  
RT: Thereafter they found a roll of bhang  
Pros: With a street value of Kenya shillings twenty  
Int: *Mane ka iuso to golo siling prariyo*  
RT: That if sold would fetch twenty shillings  
Pros: Whereby he was arrested  
Int: *Kama nomakie*  
Pros: And eh charged with the offence your honour  
Int: *Ma odonjni kod ketho no*  
RT: Then you were charged with that offence  
Pros: The one roll of bhang your honour is in court  
Int: *Roll achiel mar nyasore no ni e mbele kot ka*  
RT: That one roll of bhang is here in the court  
Mag: Are those facts true?  
Int: *Kamano e kaka notimore*  
RT: Is that how it happened?  
Acc: *Kamano*  
RT: Yes  
Int: The facts are true  
Mag: Why is he dancing? *Nauliza* why is he dancing? (Kiswahili: I am asking)  
Int: *An'go momiyo imiel*  
RT: Why are you dancing?  
Acc: *Aaa?*  
RT: Pardon?  
Mag: What's your name?  
Acc: Sephen Omondi  
Mag: Where do you come from?  
Acc: Ger Liech  
Mag: Mmm?  
Acc: Ger Liech Primary  
Int: *Iwuok kanye?*  
RT: Where do you come from  
Acc: Ger Liech

Int: Ger Liech?

Mag: What do you do for a living?

Int: *Itimo ga an'go miyudo kaka ikonyori?*

RT: What do you usually do for sustenance?

Acc: *Ago amal*

RT: I am labourer

Int: I am a casual labourer

Mag: What is his mitigation?

Int: *Chiw ywakni*

RT: Give your mitigation

Acc: *Nyasore en gima atiyo ga godo*

RT: Bhang is something I usually use

Mag: Let him just stand still

Int: *Chun'g achun'ga tir we yungni kamano*

RT: Just stand still, do not shake like that

Mag: Can you just stand still?

Acc: *Nyasore en gima atiyo godo*

RT: Bhang is something I usually use

Int: I use the said drug

Acc: *To ok ati kode e yo marach*

RT: And I do not use it in a bad way

Int: I don't misuse the same drug

Acc: *Koro ne akwa kot mondo oweya*

RT: Now I am requesting the court to release me

Int: I am requesting the court to forgive me

Mag: You don't misuse it?

Int: *Ok iti kode e yo marach*

RT: You do not use it in a wrong way?

Acc: *Ok ati kode e yo marach*

RT: I do not use it in a bad way

Mag: So how do you know that you are not misusing it?

Int: *In era kaka in'geyo ni ok iti kode e yo marach*

RT: How do you know that you are not using it in a bad way?

Acc: *Nekech atiyo kode tijega mayudo go*

RT: Because I use it to do those jobs that I get

Int: Because I am using it while I am going for my casual duties where I earn my living

Mag: Were you prescribed by someone who is well versed in this drug? So that you know when you are misusing it or not?

Int: *Rieko no non'gad ni gi daktari ma be nidhi e ir daktari ma ochun'g ne yedhe monyisi ni itiyoko e yo maber kata itiyoko e yo maber?*

RT: Which doctor advised you? Did you go to any doctor in charge of drugs who told you whether you are using the drugs in a bad way or in a good way?

Acc: *Ne ok adhi*

RT: I did not go

Int: I did not go to anybody for information

Acc: *Koro nakwayo mondo kot owena*

RT: Now I am requesting the court to forgive me

Int: I pray for forgiveness

Acc: *Nekech mano e kosa mokwong yuda godo to ok dachak anuo*

RT: Because that is the first offence I have been found with and I will not repeat it

Int: That's my first offence I will never repeat.

Mag: I am just tired of saying this eeh. Smoking cannabis does not make you stronger. I don't know where you people get the idea.

Int: *Madho nyasore ok bi medi teko. Kuma ugolo e paro no kat kot*

RT: Smoking bhang will not add you energy. Where you got that thought even the court

Mag: Everyone who comes here, I do a lot of work so I smoke to get strong. Who told you?

Int: *Ni n'gato mobiro kaa wacho ni omadho nyasore mondo omi oyud teko*

RT: The people who come here claim they smoke bhang to be stronger

Mag: Who told you when you smoke bhang you get strong? Who gave you that story?

Int: *Nga monyisi ni kimadho nyasore tibedo matek?*

RT: Who told you that if you smoke bhang you get stronger?

Acc: *Onge*

RT: No one

Int: There is nobody

Mag: So you people just believe that? You and your friends, those people who smoke you just believe you get a lot of strength?

Int: *Un gosiepeni mumadho nyasorego un un'geyo ni kumadho nyasore tuyudo teko?*

Acc: *Aa*

RT: No

Int: It is not true

Mag: Judgment on Friday. Let the probation report be prepared

Int: *Ibiro duogo e kot tarik abich ibiro ket ripot ma idhi n'gi go kaka ditweyi twech ma oko kata ka inyalo keti e tich moro kor duok tich abich*

RT: You will come back to the court on fifth. A report will be made on whether you can be given a non custodial sentence or whether you can work somewhere so you will come back on Friday

## **Transcriptions of Judgements**

### **Judgement 1**

Mag: Now you had been charged with the offence of breaking and committing a felony was the first count

Int: *Ne oyudi gi kosa mar turo gi mecho. E count mokwongo*

RT: You were found with the offence of breaking and stealing in the first count

Mag: In the alternative count you were charged with handling stolen property

Int: *Mar ariyo, noyudi gi gig kuo*

RT: Secondly, you were found with stolen property

Mag: And the second count, and in the second count, you have been charged with possession of bhang

Int: *Kosa mar ariyo noyudi gi nyasore*

RT: In the second offence you were found with Bhang

Mag: You denied the offence and the matter went to trial

Int: *Nidagi makosa kes odhi nyime*

RT: You denied the offence and the case went on

Mag: I will just go to the main points of the judgement eeh?

Int: *Obiro dhi e kuonde...*

RT: He will go to...

Mag: There are photocopies. You can always get copies

Int: *Kidwaro copy to ibiro kwayo timiyi*

RT: If you want copies, you can come and ask for them and you will be given

Mag: Now, the main issues for consideration were as follows. Number one; was the complainant's store broken into as alleged?

Int: *Gigo mikoni kaka gigo nobet; mokuongo complainant wacho ni ituro ode midonjo*

RT: Those things you are being told is how they happened; First the complainant says you broke into his house and entered

Mag: Number two; was the accused seen breaking into the store?

Int: *Namba ariyo, noneni kituro dhot midonjo kuro*

RT: Number two; you were seen breaking the door and going in

Mag: Number three; has the ownership of the stolen items been proved?

Int: *Namba adek n'gama nokwal gige no prove mowacho ni mago gige manoyudi go no*

RT: Number three; the person whose things were stolen proved and said that the things that were recovered were his

Mag: Number four has the complainant's evidence been corroborated?

Int: *namba an'gwen ja donjo nowuoyo dhoge mone ni gin adiera*

RT: Number four; the witness testified and it was agreed to be the truth

Mag: And number five; was bhang recovered from the accused?

Int: *Namba an'gwen noyudi gi nyasore kuomi*

RT: Number four, you were found with bhang in your possession

Mag: Now in regard to the first issue,

Int: *Kaluwore gi wach mokuongo*

RT: In regard to the first issue

Mag: This is ehh whether the store was broken into

Int: *Be notur ot*

RT: Was the house broken into?

Mag: The complainant told the court that on the twenty first of July twenty thirteen

Int: *Tarik. Jadonjo wacho ni tarik prariyo gachiel*

RT: The date, the complainant says that on twenty first

Mag: He came from the church and found the store broken into

Int: *No a e kanisa noyudo ka store notur modonjie*

RT: He came from the church and found the store broken into and entered

Mag: And items stolen. These were: A metal bed, windows and other small things had been taken

Int: *Dirisa gi gige moko noyudo kokaw kanyo*

RT: He found windows and some of his things had been taken

Mag: The main door was broken

Int: *Dho ot maduon'g notur*

RT: The main door had been broken

Mag: At this time, he did not suspect anybody

Int: *Esechego, ne onge n'gama ichich go*

RT: At that time, there was no suspect

Mag: PW2; the assistant chief, said that he went to the accused home upon receiving the information

Int: *Janeno mar ariyo; assistant chief ma gwen'gno, no dhi e od jadona ban'g yudo ripot*

RT: The second witness; the assistant chief of that village, went to the complainant's house after receiving the report

Mag: of the breakage

Int: *Mar turo*

RT: Of the breakage

Mag: However, nowhere has he mentioned visiting the complainant's home

Int: *Nokowacho ni pok olimiga dalau kanyo*

RT: He did not say that he has never visited you there at your home

Mag: He also does not say whether he saw the complainant's store broken into

Int: *Nowacho ni ok oneni kituro midonjo e odno ne ok oneni*

RT: He said he did not see you break into and enter that house. He did not see you

Mag: Or whether he also saw the door broken

Int: *Bende ne ok oneno ka dho ot otur kaka iwachono*

RT: And he did not see the door broken as alleged

Mag: The third witness, who was the investigating officer

Int: *N'gat mar adek ma ne en investigating officer matimo nonro*

RT: The third person who was the investigating officer who was doing the investigations

Mag: Told the court that he visited the scene

Int: *Owacho ne kot ni nodhi kanyo moyudo mo dhi kuma gigo no timore*

RT: Told the court that he went there and found. And went to the place where those things happened

Mag: He said and I quote "the exhibits were inside the store and the complainant said you broke the store"

Int: *Nowacho kaka notimore. Exhibit nenitie e dho. E store no kendo janeno wacho ni nituro dho ot*

RT: He said how it happened. The exhibit was at the door. In that store and the witness says that you broke the door

Mag: I couldn't ascertain the truth

Int: *Ne ok owacho gimiturono ne en ango*

RT: He did not say what it was you broke

Mag: Clearly the IO does not say he saw the store having been broken into

Int: *Ja tim nonro ne ok oneno ka store ne ok otire kaka iwachono*

RT: The investigator did not see if the store was not broken into as alleged

Mag: He only told the court what the complainant told him

Int: *Ok nowacho gima ikone*

RT: He did not say what you told him

Mag: However, the IO himself does not say that he saw the main door broken into

Int: *Ja tim nonro ne wacho ni ok oneno dhot maduon'g kotur kaka iwachono*

RT: The investigator said that he did not see the main door broken into as alleged

Mag: Those were the only two witnesses that the prosecution produced

Int: *Mago e joneno ariyo mane oluongi gi prosecutor*

RT: Those were the only two witnesses called by the prosecutor

Mag: This therefore means that the complainant's allegation that his store was broken into has not been corroborated

Int: *Koro owacho ni kata jardonjo wacho ni dho ot notur, ne ok one adiera*

RT: Now he is saying that even though the complainant says that the door was broken, no one saw for sure

Mag: Indeed if the store's main door was broken as alleged

Int: *Kiwacho no dho od store maduon'g nituro kaka iwacho no*

RT: If it is alleged that you broke the door of the store as alleged

Mag: What would have been so difficult for the two witnesses who visited the scene to say so?

Int: *Ango momiyo jowuoyo ariyo wacho ni .. wacho dhok mopogore*

RT: Why are the two speakers saying that... saying contradictory statements?

Mag: In regard to the second issue

Int: *E ketho mar ariyo*

RT: In the second offence

Mag: No witness has given evidence to state that they saw the accused breaking into the store or indeed stealing from the store

Int: *Onge kind ji ariyogo onge n'gama wacho ni noneni kituro kata kikao gimoro e store no*

RT: Of the two people who spoke, none said that they saw you break into or saw you take something from the store

Mag: In regard to the third issue,

Int: *E charge mar adek*

RT: In the third charge

Mag: The complainant alleged that the spring bed, two wooden windows and the wooden tray allegedly recovered from the accused belongs to him

Int: *Jadonjo newacho ni kitanda mar mar... mattress to gi .. moyudi go, giwacho ni gin meke*

RT: The complainant says that the ... the mattress bed and the... things found, he said they were his

Mag: When the second witness came to the court

Int: *Sama jawuoyo mar ariyo owuoyo*

RT: When the second speaker spoke

Mag: He said that the accused had named the items as family items

Int: *Niwacho gik mowacho ni ikwalo go mago ne meku mag familia*

RT: You said that those things he is saying you stole belong to your family

Mag: Since the complainant is also his step- father

Int: *Iwacho jadonjo be en wuonu mar ariyo*

RT: It is being said that the complainant is your uncle

Mag: In his defence

Int: *Defence ni miwuoyo*

RT: In your defence when you talked

Mag: The accused had stated that he inherited the items from his grand parents

Int: *Gigo nikao ir kwaru mane osetho*

RT: You took those things from your grandfather who had died

Mag: And the items had been in his custody since two thousand and five

Int: *Kendo isebudho kodgi chakre gana prariyo gabich*

RT: And you have lasted with them since two thousand and five

Mag: When the complainant was being cross examined

Int: *Sama ja donjo nipenje penjo*

RT: When the complainant was being asked questions

Mag: He was asked to produce the receipts for the items

Int: *Mondo ogol risit kuom gigo*

RT: To produce the receipts for those things

Mag: But he did not have

Int: *To ne ok ogolo risit*

RT: But he did not produce the receipts

Mag: The picture we have therefore is as follows:

Int: *Picha ma gin go kanyo wacho kaluwore*

RT: The picture they have says therefore

Mag: The complainant has not produced any ownership documents of the items

Int: *Jadonjo onge gima ogolo mawacho ni mago gige kata anything mogolo*

RT: The complainant has not produced anything that shows those are his things or anything he has produced

Mag: In addition to the above

Int: *Kaluwore gi wach mogik*

RT: Following the last words

Mag: No witness has come to court to prove that indeed those items belong to the complainant

Int: *Onge n'gama osewacho ni gigo mag jadonjo. Onge gimoro amora mawacho anything ma wacho ni en mar jadonjo*

RT: There is no one who has said those things belong to the complainant. There is nothing anything that says that it is the complainant's

Mag: Or even that he saw them in the possession of the complainant

Int: *kata moseneni ka in kodgi*

RT: Or who has seen you with them

Mag: It is straight law that it was for the complainant to prove ownership of those items and not for the accused

Int: *En tich mar jadonjo mondo owach ni magi gige to ne ok otimo kamano*

RT: It is the duty of the complainant to say that these are his things and he did not do that

Mag: And the complainant and the prosecution failed to do so

Int: *Koro jadonjo gi prosecutor ok ogolo case kaka idwaro*

RT: Now, the complainant and the prosecutor have not brought the case as is expected

Mag: In regard to the fourth issue of whether there is corroboration in the witness testimony

Int: *Kaluwore gi keth mar an'gwen*

RT: In relation to the fourth offence

Mag: The complainant told the court

Int: *Complainant nokone kot*

RT: The complainant told the court

Mag: That after he found his items had been stolen

Int: *koseyudo gig kokwal*

RT: After finding his items stolen

Mag: He decided to go and report to the chief. At that point, he did not suspect anyone

Int: *Okwongo odhi ogo report ka polis seche go, onge n'gama nochich go kata n'gato achiel*

RT: He first went to report to the police, at that time he did not suspect any one person

Mag: The chief then called the assistant chief  
Int: *Chief noluongo assistant chief*  
RT: The chief called the assistant chief  
Mag: This assistant chief had heard where the items were  
Int: *Assistant chief nowinjo kuma gigo nitie*  
RT: The assistant chief had heard where the items were  
Mag: So the assistant chief went there and did not find the thief  
Int: *Koro odhi kuno to ok odhi oyudo jakuo*  
RT: Now he went there but did not find the thief  
Mag: He went the second day and found the stolen items  
Int: *Odiochieng mar ariyo, oyudo gigo mokwal go*  
RT: On the second day, he found those stolen items  
Mag: They then found the accused who was suspected on the way  
Int: *Noyudi kiwuotho to gi chich kodi ma gimaki*  
RT: They found you walking; they suspected you and then arrested you  
Mag: The chief and his people inspected the accused and also found some bhang on him  
Int: *Chief gi joge nomaki mosachi moyud nyasore e ofuki*  
RT: The chief and his people arrested you, searched you and bhang was found in your pockets  
Mag: The accused was then taken to the chief's camp  
Int: *Seche go oteri e chief's camp ma gwen'gno*  
RT: At that point, you were taken to the chief's camp in that village  
Mag: And then later to the police station  
Int: *Kasto okeli e kot... ka polis*  
RT: Then you were brought to the court... to the police station  
Mag: On cross examination  
Int: *Sama ipenjo penjo*  
RT: When you were asking questions  
Mag: The complainant said they found the accused on the road  
Int: *Owacho ni giyudi e wan'g yo kiwuotho*  
RT: He said they found you walking on the road  
Mag: The chief confronted him  
Int: *Chief openje*  
RT: The chief asked him  
Mag: And they went to his house and found the stolen items

Int: *Gi dhi e odi to giyudo gik mokwal e odi no*

RT: They went to your house and found the stolen items in that house of yours

Mag: However, further on, the complainant said that the accused remained at the chief's place

Int: *Kata kamano, janeno wacho ni jadona noparo ne chief*

RT: However, the witness says that the complainant reminded the chief

Mag: When the chief and the rest went to the said accused's house

Int: *Sama chief gi jok moko nobiro maki dalani*

RT: When the chief and other people came to arrest you at your home

Mag: All recovered items were then taken to the chief

Int: *Giyudo gigo ma gitero ka chief*

RT: They found those things and took them to the chief

Mag: The witness further stated that when they went to the accused's place, to search for the items

Int: *Jadona wacho ni kane owuok odi mosacho odi*

RT: The complainant says that when he went to your house and searched it

Mag: The police informed them to leave the accused at the chief's place

Int: *Polis okone ni mondo giweyi ka polis e chief's camp*

RT: The police told him to leave you at the police station at the chief's camp

Mag: And not to go with him to his place

Int: *Mondo kik gidhi kodi e dalau*

RT: That they should not go with you to your home

Mag: Now this testimony has mysterious contradiction from that of the other witness

Int: *Gima ne gikuongo wacho opogore e kindgi ji adek go*

RT: What they said between the three of them is different

Mag: Whereas the complainant said that at the time the items were stolen he did not suspect anybody

Int: *Janeno wacho ni sama nokwal gige go onge n'gama nochich go kata n'gato achiel*

RT: The witness says that when his items were stolen, he did not suspect any one person

Mag: And that it is the assistant chief who had heard where the stolen items were

Int: *Assistant chief nochich kodi modhi kuma gigo ne nitie kuma nowinjo*

RT: The assistant chief suspected you and went where he had heard those things were

Mag: The assistant chief came to court and said no, it is actually the complainant who informed him that the accused was the thief

Int: *Kendo obiro kendo odagi am okwedo kethno modagi ni jadona emanowachone ni in mikwale. Jadonjo wacho ni in ema ni kwale*

RT: And he came and refuted the offence and he refused and said that it is the complainant who said that you had stolen from him. The complainant said that you had stolen from him

Mag: In other words

Int: *E seche moko*

RT: At other times

Mag: The assistant chief was actually contradicting what the complainant had said

Int: *Assistant chief koro ne temo kwedore e keth no*

RT: The assistant chief was now trying to refute that offence

Mag: Further to this, the assistant chief said that on twenty second of July

Int: *Assistant chief wacho ni tarik prariyo gi ariyo mar dwe mar aboro*

RT: The assistant chief says that on the twenty second of August

Mag: When they met the accused on the way

Int: *Sama ne giromo kodi e yo*

RT: When they met you on the way

Mag: The assistant chief was with the complainant and two other youths

Int: *Assistant chief ne ni gi jadona jodong gwen'g ariyo*

RT: The assistant chief was with the complainant and two village elders

Mag: The accused then accompanied them to his house

Int: *Ne gimaki ma gidhi kodi e gwen'gu*

RT: They arrested you and went with you to your village

Mag: Where the complainant and the accused found the stolen goods

Int: *Kuma jadona osiemo ni magi e giga*

RT: Where the complainant pointed to the items saying these are my things

Mag: They took the items together with the accused and went to the chief's camp

Int: *Gi kao gigi ma gitero ka chief's camp*

RT: They took those things to the chief's camp

Mag: The assistant chief reiterated that it would be a lie to say that the accused was not at the scene when the search was done

Int: *Chief ne wacho ni mano dan'g bed wach ma miriambo kiwacho ni nosach odi kionge*

RT: The chief said that it would be a lie to say that your house was searched in your absence

Mag: Clearly this contadicts the complainant

Int: *Ne giwacho ni ma jadona okwedo*

RT: They said that this one the complainant refuted

Mag: Who was categorical that when they searched the accused's house, the accused was not present

Int: *Sama ne gisacho odi nionge*

RT: When they were searching your house, you were not there

Mag: The complainant said the accused was at the chief's camp

Int: *Complainant owacho ni ne in e chief's camp*

RT: The complainant said that you were at the chief's camp

Mag: The complainant and the youths and the chief searched his house in his absence

Int: *Koro jadonjo gi chief gi youth ma gwengno nosacho odi kionge*

RT: So the complainant, the chief and the youth of that village searched your house in your absence

Mag: All this it is therefore clear that the complainant's testimony has not been corroborated by that of the assistant chief

Int: *Koro dhok mane ja neno ondiko ok odonjore gi mag chief gi jomokogo*

RT: So the words written by the witness differs from the ones of the others

Mag: So from the foregoing, it is clear that the main count of store breaking cannot stand

Int: *Koro iwacho ni keth mokwongo mar turo ok nyal chun'g*

RT: Now it is said that the first offence of breakage cannot stand

Mag: Since as noted, the prosecutor does not prove the complainant's store was broken into

Int: *Prosecutor ok onyiso court ayanga ni notur dho ot*

RT: The prosecutor did not show the court clearly that the door was broken

Mag: They have also not proved that the accused was seen breaking and stealing

Int: *Onge n'gama ne oneni kituro kendo onge n'ga ma neoneni kikwelo*

RT: No one saw you breaking and no one saw you stealing

Mag: They have also not proved that the exhibit from the the exhibit in the court were the property of the complainant

Int: *Gik momaki e odi go te gigo te onge janeno manyiso ni gin mag jadonjo mari*

RT: The things found in your house, all those things, there is no witness to prove that they belong to your accuser

Mag: And also the complainant's testimony has not been corroborated

Int: *Kasto jadonjo mari gik mowacho ok winjre*

RT: And the things your accuser says cannot be understood

Mag: In regard to the alternative count of handling stolen property

Int: *Koro keth mar ni ne oyudi gi gig kuo*

RT: Now on the offence that you were found with stolen goods

Mag: Since the ownership of the goods have not been proved

Int: *Koro iwacho ni kaonge gima di nyis ni magi gige jadonjo*

RT: Now it is said that if there is nothing to show that these things belong to the complainant

Mag: The charge of handling stolen property cannot stand

Int: *Bura modonj ni go ni noyudi gi gik kuo ok nyal chung*

RT: The offence you have been charged with that you were found with stolen goods cannot stand

Mag: You can only handle stolen property if it is proved that the property belongs to someone else

Int: *Bura chung ka oyudi gi weche moromo mawacho ni gik mokwal gin mag n'gama kama*

RT: The charge can only stand if they find you with enough issues to show that the stolen items belong to so and so

Mag: In regards to the second count of possession of bhang

Int: *Count mar ariyo noyudi gi nyasore*

RT: In the second count you were found with bhang

Mag: The complainant said that the bhang was found in the accused's house

Int: *Jadonjo wacho ni gino noyud e odi*

RT: The complainant says the thing was found in your house

Mag: The chief and the youth found the bhang

Int: *Chief gi yudhe noyudo gino*

RT: The chief and the youth found that thing

Mag: The assistant chief said it was found under the chair

Int: *assistant chief wacho ni noyude e bwo kom*

RT: The assistant chief says it was found under a chair

Mag: The only corroboration could have been from the chief's youths

Int: *Chief's youth otemo wach kuma ne oyude*

RT: The chief's youth tried to to say where it was found

Mag: On where this bhang was found if it was found on the accused

Int: *Ni nyasore ni noyude. Ne ok oyude kuomi*

RT: That this bhang was found. It was not found on you

Mag: However these youths were never brought to court to come to give testimony

Int: *Ne ok oluong gi ne onge n'gama ne ochun'g ka mowacho dhoge*

RT: They were not called there was no one who stood here and talked about it

Mag: The court is therefore wondering; how was this bhang recovered?

Int: *Kor court be wuoro penjo ni ere kaka nyasore ni iyudo to gini jok ma yudo nyasore kuomi wacho gik ma opogore*

RT: Now even the court is wondering and asking; how can the bhang be found and yet the people who found these things say contradicting things

Mag: The benefit of doubt is given

Int: *Koro chich n'geny chich nitie kanyo koro court owito mano oko*

RT: Therefore there is suspicion. The suspicion is a lot so the court throws that out

Mag: In a nut shell, the prosecution has failed to prove its case

Int: *Koro prosecutor case otamo prove ma koro owito oko*

RT: Now the prosecutor is unable to prove its case and he has thrown the case out

Mag: In respect to the first count, in respect to the second count and in respect to the alternative count

Int: *Count mar achiel, count mar ariyo gi count mar adek be*

RT: The first count, the second count and the third count

Mag: And the accused is acquitted under section 215 of the CPC

Int: *Kendo court oweyi e buo chik mia ariyo gapar ga bich*

RT: And the court has freed you under the law number two hundred and fifteen

Mag: And he is set at liberty unless otherwise stated

Int: *Otiak bura ni court onge ushahidi morormo koro wuogi idhi*

RT: This case is finished. The court does not have enough proof so get up and leave

Mag: Fine, you are free to leave but if you want to go back to Kodiaga you can always go back eeh

Acc: It's only a word of thanks

Mag: Don't thank me; it's based on the evidence seriously on the evidence

## **Judgement 2**

Mag: You were charged with four counts

Int: *Nodonji kod ketho an'gwen*

RT: You were charged with four offences

Mag: Now, on count one, he was charged with misconduct as a conductor in a "matatu"

Int: *Ketho mokwongo, noket ni ni nitimori marach kaka kondakta mar matatu*

RT: On the first offence you were accused of misbehaving whilst a conductor in a matatu

Mag: That on the third of May twenty twelve at around sixteen hundred hours

Int: *Ni tarik adek dwe mar abich higa mar alufu ariyo gi apar gi ariyo*

RT: That on third of May two thousand and twelve

Mag: At Ahero bus stage along the Kisumu- Nairobi road in Nyando district within Kisumu County

Int: *E stage ma Ahero manie ndara mowuok Kisumu kadhi Nairobi*

RT: At the Ahero stage which is on the Kisumu- Nairobi road

Mag: The accused person being a conductor of vehicle registration number KAZ 957 A

Int: *In ka ne in kondakta e gari namba KAZ 957*

RT: Whilst you were the conductor in the vehicle number KAZ 957

Mag: Did act in an uncivil and disorganised manner by failing to take reasonable precaution

Int: *Ne itimori e yo ma ok owinjore ka ne ok ikawo okang mowinjore*

RT: You misbehaved when you did not take the necessary precautions

Mag: To ensure the safety of a passenger who was alighting from the “matatu”

Int: *Mondo omi in’gi n’gima mar abiria mane donjo kate ne lor e gari*

RT: So that you could take care of the life of the passenger who was getting into or getting off the vehicle

Mag: By pushing one female passenger namely Caroline Achien’g who was alighting from the said vehicle

Int: *Kane idhiro mama moro achiel miluongo ni Caroline Achien’g mane lor*

RT: When you pushed one woman known as Caroline Achien’g who was getting off

Mag: And she sustained injuries

Int: *Mane ohinyore*

RT: And she got injured

Mag: On count two, the accused person is charged with acting as a conductor in a PSV matatu

Int: *Mar ariyo ne odonjni ni ne itiyo kaka kondakta e matatu*

RT: Secondly, you were accused that you worked as a conductor in a matatu

Mag: Without having a conductor PSV licence

Int: *Kionge gi PSV mar kondakta*

RT: When you did not have a conductor’s PSV

Mag: The reports are that on the third of May twenty twelve at around sixteen hours

Int: *Ni tarik adek dwe mar abich higa alufu ariyo gi apar gi ariyo*

RT: That on third May the year twenty twelve

Mag: The accused person being the conductor of the said vehicle

Int: *Ni kaka conductor mar gari mosewachi no*

RT: That as the conductor of the vehicle that was already mentioned

Mag: You worked as a conductor without a conductor's PSV licence

Int: *Nitiyo e gari kionge PSV licence mar kondakta*

RT: You worked in the vehicle without having a conductor's PSV licence

Mag: On count three, it is alleged that the accused person being a conductor of the said vehicle

Int: *Mar adek ni wacho ni ka in ne in kondakta mar gari no*

RT: Thirdly, it is said that whilst you were the conductor of that vehicle

Mag: He acted as a conductor without a conductor's badge

Int: *In ne itiyo e gari ka ionge gi baj*

RT: You worked in the vehicle without a badge

Mag: On the fourth count, the accused person is alleged

Int: *To e ketho mar adek no ne iwacho*

RT: And on that third offence, it is being said

Mag: To have failed to report an accident involving one passenger

Int: *Ni ne ok igo ripot mar ajali mane oyudo jawuoth achiel*

RT: That you did not report an accident involving one passenger

Mag: Namely Carolyn Achien'g who fell off from the moving vehicle

Int: *Miluongo ni Caroline Achien'g mane olwar kowuok e gari no*

RT: Named Caroline Achien'g who fell from that vehicle

Mag: The prosecutor's evidence was adduced by three witnesses

Int: *Prosecutor noluongo joneno adek*

RT: The prosecutor called three witnesses

Mag: And they endorsed to the effect that on third of May twenty twelve

Int: *Ni iwacho no tarik adek dwe mar abich higa no*

RT: It is said that on third of May that year

Mag: The complainant who testified as as PW1

Int: *Jadonjo mane owuoyo kaka janeno mokwongo*

RT: The complainant who spoke as the first witness

Mag: Had boarded the vehicle from Kisumu to travel to Katito

Int: *Noidho mtoka kowuok Kisumu ka odhi Katito*

RT: Boarded a vehicle when she was coming from Kisumu going to Katito

Mag: She approached one of the touts and they asked her to pay one hundred shillings

Int: *Ne owuoyo gi kondakta monyise ni mondo ochul siling mia achiel*

RT: She talked to the conductor who told her to pay one hundred shillings

Mag: Then she boarded the said vehicle which she said at that time was still standing

Int: *Moidho mtoka no*

RT: And she boarded that vehicle

Mag: She went on to say that when they reached near the Nakumatt stage in Kisumu

Int: *Nodhi mbele kowacho ni kane gichopo Nakumatt machiegni gi Kisumu*

RT: She went on saying that when they reached Nakumatt near Kisumu

Mag: The conductor of this vehicle asked her for the fare and she gave him the one hundred shillings

Int: *Ne kondakta openje pesa to ne omiye mia achiel no*

RT: The conductor asked her for money and she gave him the one hundred shillings

Mag: And he told her he wanted one hundred and fifty shillings which she said she did not have

Int: *To nonyise ni idwaro siling mia gi prabich mane owacho ni oonge go*

RT: She was told that one hundred and fifty shillings was needed and she said that she did not have

Mag: The conductor then threatened to make her alight if she did not have the one hundred and fifty shillings

Int: *Kondakta ne obuoge ni biro lore piny ka oonge gi siling mia gi prabich*

RT: The conductor threatened that he would make her get off if she did not have one hundred and fifty shillings

Mag: And she agreed to do so

Int: *Noyie motimo kamano*

RT: She agreed and she did so

Mag: But he threatened to give her eighty shillings

Int: *To ne obuoge ni obiro duokone siling praboro*

RT: And he threatened to return to her eighty shillings

Mag: Because he was deducting twenty shillings for the fare; which she found unfair

Int: *Nekech ne on'gado siling prariyo mar gari mane onwan'go ni ok ni kare*

RT: Because he was deducting twenty shillings which she found to be unfair

Mag: He then told her that she would alight at Ahero

Int: *Nonyise ni kare koro odhi lor Ahero*

RT: He then told her that she would now alight at Ahero

Mag: They came to Ahero and then the vehicle stopped at the Total Petrol Station

Int: *Ne gibiro Ahero ma mtoka nochun'g ka petrol*

RT: They came to Ahero and the vehicle stopped at the Petrol place

Mag: The conductor asked her to alight

Int: *Ma kondakta nonyise ni mondo olor*

RT: And the conductor asked her to alight

Mag: She refused coz she wanted to alight at the bus stage

Int: *Nodagi nekech ne odwa lor e stage*

RT: She refused because she wanted to alight at the stage

Mag: So that she could get another vehicle easily

Int: *Kuma ne onyalo yude gari moro machielo mapiyo*

RT: Where she could get another vehicle faster

Mag: The vehicle moved but before they could get to the stage

Int: *Gari no ne odhi mbele to kapok gichopo e stage*

RT: That vehicle moved ahead but before they reached the stage

Mag: The conductor pushed her out and she fell down and bruised her left arm and both knees

Int: *To kondakta nodhire mane owuok e gari mane oridho bade kor acham gi chongene kon gi kon*

RT: And the conductor pushed her so she fell from the vehicle and bruised her left arm and both knees

Mag: She also said she sustained a dislocation and went to Ahero police station to report the matter

Int: *Owacho ni tiende ne owil mane odhi e osiptal ma Ahero modhi kapolis mogo report*

RT: She says that she had a dislocation on her legs and she went to hospital and then to the police to make a report

Mag: The complainant said that on a previous date, she had been told that the conductor as known as Anyumba

Int: *Jadonyo nowacho ni nonyise ni kondakta no iluongo ni Anyumba*

RT: The complainant said that she had been told that the conductor is called Anyumba

Mag: But when the police investigated the case, they established that his real names were Herbert Juma Otieno

Int: *To ka polis notimo nonro to noyudo ni nyingeni en Herbert Juma Otieno*

RT: And when the police did their investigations, they found that your names are Herbert Juma Otieno

Mag: She also went to the Ahero sub-district hospital, she was treated and a P3 form given

Int: *Nodhi e osiptal ma Ahero mane othiedhe momiye P3 form*

RT: She went to the Ahero hospital and she was treated and given a P3 form

Mag: Which was filled and produced

Int: *Mane ojasi ma okel e kot*

RT: Which was filled and brought to the court

Mag: The accused person was arrested by PW3

Int: *In nomaki kod janeno mar adek*

RT: You were arrested by the third witness

Mag: Who said that after receiving the report, he conducted the investigations

Int: *Mane owacho ni kane oseoyo ripodno, to ne ochako timo nonro*

RT: Who said that after receiving that report, he started carrying out the investigations

Mag: And was satisfied that this conductor was Herbert Juma Otieno

Int: *Mane oyudo ni kondakta no ne en Hernert Juma Otieno*

RT: And he found out that that conductor is Herbert Juma Otieno

Mag: He managed to arrest him

Int: *Mane omake*

RT: And he arrested him

Mag: The prosecutor was not able to call the main witness and the case was therefore closed

Int: *Prosecutor ne ok nyal luongo joneno mamoko kasto bura ne olor*

RT: The prosecutor could not call other witnesses and the case was closed

Mag: At this stage, the issue is whether they have established a Prima Facie case against the accused

Int: *Koro gima idwa n'gi ni be negi wuoyo ma nyalo miyo in n'gama odonjne inyalo keti mondo iwuo korka kori*

RT: Now what is to be looked at is whether they talked in a way that you accused person can be made to talk on your behalf

Mag: And I have gone through the whole evidence

Int: *Kot ose n'giyo kaka ne ji owuoyo te*

RT: The court has looked at how everyone talked

Mag: Regarding counts one that alleged that the accused person was regarded to have acted in uncivil and disorderly manner

Int: *Kaluwore gi ketho mokwongo miwacho ni in ne itimori e yo ma ok ni kare e ketho mokwongo*

RT: In relation to the first offence where it is said that you behaved in a manner that is not right in the first offence

Mag: When he pushed out the complainant from the moving vehicle and she sustained injuries

Int: *Kane idhiro jadona kata janeno mokwongo no oko mar gari ma ohinyore*

RT: When you pushed the complainant or the first witness out of the vehicle and she was injured

Mag: I find that the complainant who testified as PW1 narrated how she boarded the matatu

Int: *No yud ni jardonjo mane owuoyo kaka janeno mokwongo nolero kaka noidho gari*

RT: It was found that the complainant who spoke as the first witness explained how she boarded the vehicle

Mag: Which by her account, she talked to the conductor and as such disagreed over the fare

Int: *Kasto negiyware kaluwore kod pes gari*

RT: And then they disagreed over the fare

Mag: The complainant then said that the conductor pushed her out of the said matatu and she fell down and sustained injuries

Int: *Kasto janeno no wacho ni ne idhire kowuok e gari kasto noluar moyudo hinyruok e chongene*

RT: Then the witness said that you pushed her out of the vehicle and she fell and got injuries on her knees

Mag: She said that it is at the bus stage that she was told that the conductor was known as Anyumba

Int: *Nowacho ni e stage kanyo ema nonyise ni kondakta iluongo ni Anyumba*

RT: She said that it is there at the stage that she was told the conductor is called Anyumba

Mag: PW3 thereafter through investigations established that his real names were Herbert Juma Otieno

Int: *Kane otimo nonro noyudo ni nyingene madiera kaluwore gi janeno mar adek ne en Herbert Juma Otieno*

RT: When he carried out investigations, he found out that his real names according to the third witness was Herbert Juma Onyango

Mag: While I find that there is evidence that indeed the complainant sustained injuries

Int: *Nitie neno mawacho ni n'gama nodonjono ne oyudo hinyruok*

RT: There is evidence that shows that the complainant sustained injuries

Mag: I wish to point out that it is only her who gave the evidence as to what happened at the stage

Int: *Idwa wach ni en kende ema nochiwo neno mare mawacho gino mane otimore*

RT: It is being said that she is the only one who gave evidence on what happened

Mag: There was no eye witness who was called to corroborate her evidence as to what happened between her and the alleged conductor

Int: *Ne onge janeno moro amora mane oluongi mane teno wachne no kata mane siro wechenego*

RT: There wasn't any witness who was called who supported her words

Mag: She mentioned that she was given the conductor's name as Anyumba but she did not indicate to the court who told her this

Int: *Nomiye nying kondakta kaka Anyumba to ne ok onyiso kot ni n'ga ma nomiye nying no*

RT: She was given the name of the conductor as Anyumba but she did not tell the court who gave her that name

Mag: And neither was the person called as a witness to corroborate her evidence

Int: *To kata ka jogo noluong kaka ngat no noluong kaka janeno mondo omi osir wachne*

RT: And even that those people were called. That person was called as a witness so that he could support her evidence

Mag: The PW3 said that he established that the conductor was called Herbert Juma Otieno

Int: *Janeno mar adek nowacho ni nofwenyo ni kondakta no iluongo ni Herbert Juma Otieno*

RT: The third witness said that he discovered that the conductor was called Herbert Juma Otieno

Mag: But he does not tell this court who gave him that information and how then he connected that the conductor was Herbert Juma Otieno and also known as Anyumba

Int: *Ne ok owacho ni ngano mane onyise gi kaka noteno wachno ni kondakta no iluongo ni Herbert Juma Otieno to nyinge machielo Anyumba*

RT: And he did not say who told him and how he connected that information that the conductor is Herbert Juma Otieno and his other name is Anyumba

Mag: This kind of evidence gives us doubt as to whether the PW3 arrested the right person especially considering that the complainant herself said that she never saw the accused person again until the day she saw him in court

Int: *Neno go kelo chich ni janeno mar adek be nomako ngat maber adier. Jadonjo no nowacho ni ne ok oneno ngano modonjne no nyaka doduogo onene e kot*

RT: That evidence brings about suspicion whether the third witness arrested the correct person. The complainant said that she did not see the accused until when she saw him again at the court

Mag: It would have been very important for this person who gave this information identifying the accused person to come to court and testify as to the fact that the accused person was indeed the conductor who was in the vehicle at the time when the complainant was allegedly pushed out of the vehicle

Int: *koro ne en gima nyalo bedo gi pek ka nokelo n'gat manofulo ne nying ngatno mondo omi oler ni in n'gama odonjne in e mane in kondakta mar gari no e seche mane jadona no odhir oko mar gari*

RT: Now it would have been weighty if he would have brought the person who told him the conductor's name so as to explain that the accused was the conductor of that vehicle when the complainant was pushed out of the vehicle

Mag: And he knew him and identified him

Int: *Ni ne on'geye ma n'gano ofweny*

RT: That he knew him and the person be identified

Mag: So the evidence against the accused person in respect of the charge of count one is insufficient to warrant him to be asked to be put on his defence

Int: *Koro ketho modonjni go e ketho mokwongo go onge gi neno morormo*

RT: Now the offence which you were charged with as the first offence does not have enough evidence

Mag: In regards to charges in counts two and three

Int: *E ketho mar ariyo gi mar adek*

RT: In the second and third offence

Mag: The accused person is alleged to have acted as a conductor of a matatu without a conductor's PSV licence and a conductor's badge

Int: *Kama iwache ni ne itiyo kaka kondakta mar matatu kionge gi PSV mar kondakta gi baj*

RT: Where it is said that you worked as a matatu conductor without a conductor's PSV license and badge

Mag: I managed to go through the evidence and find that none of the witnesses gave evidence in support of this

Int: *Kot osesomo kaka joneno ne wuoyo ni onge n'gato an'gata mane owuoyo kalure kod mano*

RT: The court has read the evidence of the witnesses and there is not one person who testified in relation to that

Mag: PW3 who arrested the accused person

Int: *Janeno mar adek mane omako n'gama omaki ne onge kuma gino notimore*

RT: The third witness who arrested the person that was arrested was not at the scene

Mag: Was not at the scene where the conductor allegedly pushed out the conductor

Int: *Kuma iwacho ni in ni in kondakta mane odhiro jadona no*

RT: Where it is said that you were the conductor who pushed that passenger

Mag: So as to ascertain whether the said conductor was acting when in possession of a conductor's PSV licence or the badge

Int: *Mondo omi oler ni ka ne kondakta no ne ni gi PSV licence kata baj*

RT: So as to determine whether that conductor had a PSV licence or badge

Mag: He testified how he investigated the case which was after third

Int: *Nowuoyo mana kak notimo nonro mano ban'g tarik adek*

RT: He just talked about how he did investigations, that was after third

Mag: But he never testified as to how he found him acting as a conductor

Int: *To ne ok olero kaka ne oyude kotiyo kaka kondakta*

RT: And he did not explain if he found him acting as a conductor

Mag: Therefore I find that the evidence adduced against the accused person in support of the charges of counts two and three

Int: *Kendo oyud ni neno mane ogol kowuok kuomi e ketho mar ariyo go ketho mar adek*

RT: And it has been found that the evidence given about you in the first offence and in the second offence

Mag: Are insufficient

Int: Ok oromo

RT: Is not enough

Mag: In count four

Int: *E ketho mar an'gwen*

RT: In the fourth offence

Mag: The accused person is alleged to have failed to report an accident

Int: *Ne owach ni ne ok igo report mar ajali*

RT: It was said that you did not make a report of an accident

Mag: Having clearly come out that the prosecution never satisfied this court as to whether the accused person was indeed the conductor who pushed out the complainant or if he was the conductor who was working in the matatu from which the complainant fell out

Int: *Kaka osewuok maber ni prosecutor ne ok olero ne kot maler ni in n'gama odonjne e ma ne in kondakta mane odhiro n'gama odonjne n'gama odonjone. Kata ka in ema ne in kondakta mar gari mane n'gano odhir ma oluare no*

RT: As it has been shown well that the prosecutor did not explain to the court clearly that the accused person was the conductor who pushed out the accused person the complainant. Or if you were the conductor of the vehicle from which the person who was pushed fell from

Mag: It will be difficult to find that he was the one supposed to report the accident

Int: *Koro tek mondo omi oyudi ni in ema moromo ibed ni igo ripot mar accident no*

RT: Now it is difficult for it to be found that you were the one supposed to report that accident

Mag: In view of my findings and the charges against the accused

Int: *Kaluwore gi kaka kot oyudo*

RT: In view of the court's findings

Mag: I find that the prosecution has failed to establish a Prima-facie case against him and he is released under section two eleven

Int: *Onge neno morormo ma Prosecutor ogolo madimi keti iwuo korka kori oyud ni ketho gi onge momuli*

RT: There is not enough evidence that the prosecutor has given that can make you be put on your defence. All these offences do not touch on you

Mag: And I find him not guilty under section 210 of the CPC on all the four counts

Int: *Oweyi e bwo chik number mia ariyo gi apar e ketho go te*

RT: You are released under the law number 210 on all those offences

### **Judgement 3**

Mag: The Accused

Int: *In n' gama odonjne*

RT: You the accused

Mag: He was charged with two counts

Int: *Nodonjni kod ketho ariyo*

RT: You were charged with two offences

Mag: On count one, he is charged with forgery

Int: *E ketho mokuongo nodonj ni gi kao gik moko e yo ma ok owinjore*

RT: On the first offence, you are charged that you took some things in an unacceptable way

Mag: It is alleged that on the twenty second of November twenty twelve in Ahero Township in Nyando District

Int: *Ni tarik pra riyo gi ariyo dwe mar apar gi achiel higa mar alufu ariyo pra riyo gi apar gi ariyo*

RT: That on the twenty second of November twenty twelve

Mag: In an attempt to defraud, the accused person forged an Equity agent transaction register purporting to have been signed by Teresa Ochien'g; a fact he knew to be false

Int: *Kane itemo mayo, in ne iloso gimoro ma en Equity agent transaction register mane iwacho ni nokete sei gi Teresa Ochien'g mane in'geyo ni en miriasia*

RT: You attempted to steal and you made something which is the Equity agent transaction register that you said had been signed by Teresa Ochien'g and you knew that to be untrue

Mag: On count two

Int: *E ketho mar ariyo*

RT: In the second offence

Mag: The accused person is charged with obtaining money under false pretence

Int: *Nodonjni ni ne ikawo pesa e yo ma ok owinjore*

RT: You were charged that you took money in a way that is not right

Mag: Whereby it is alleged that on the twenty second of November at Ahero township

Int: *Kuma iwache ni tarik prariyo gariyo dwe mar apar gi achiel higa mar alufu ariyo gi apar gariyo*

RT: Where it is said that on twenty second of November twenty twelve

Mag: The accused person with the intent to defraud obtained from the account of Teresa Juma Ochien'g

Int: *In kane idwa mayo niyudo kowuok e account mar Tereza Juma Ochien'g*

RT: You, in attempt to rob, you got from the account of Tereza Juma Ochien'g

Mag: Who holds an account with Equity Bank Gilgil a sum of sixty thousand shillings by falsely pretending in Ahero agency saying that he had been sent by the same Tereza Juma Ochien'g. While in Ahero Township he withdrew the said amount and that he had been sent by the said Tereza Ochien'g

Int: *Ni noori gi Tereza ma igolo pesa no kuom agent ka iwacho ni nomiyo thuolo gi Tereza Ochien'g*

RT: That you had been sent to withdraw the money from the agent saying that you were given permission by Tereza Ochien'g

Mag: The prosecutor adduced evidence from six witnesses

Int: *Prosecutor noluongo joneno auchiel*

RT: The prosecutor called six witnesses

Mag: No seven witnesses

Int: *Joneno abiriyo*

RT: Seven witnesses

Mag: And the accused person was placed on defence and he chose to give unsworn statement

Int: *Kasto noketi ni iwuo korka kori kasto ne iyiero ni itimo neno ka ok ikuon'gori*

RT: And you were made to talk on your behalf and then you chose to give evidence without swearing in

Mag: And he called no witnesses

Int: *Kasto be onge janeno mane iluongo*

RT: And then again there was no witness that you called

Mag: In analyzing the evidence of all the witnesses from both sides

Int: *Ka kot n'giyo neno mane joneno ma kon gi kon owuoye*

RT: When the court examines the evidence from witnesses from both sides

Mag: I find that the court is expected to determine

Int: *Koro kot ineno ni kot eeh ohh onego n'gad bura ni ka n'giyo*

RT: Now the court sees that the court eeh oohh should determine this case looking at

Mag: a) whether the accused person forged a document i.e. the Equity agent transaction register

Int: *N'game ne odonjne ni ne oloso otas moro mar jo Equity*

RT: The accused made a certain paper from Equity

Mag: Purporting to have been signed by Tereza Juma Ochien'g; the complainant

Int: *Kane owuondore ni gino oket e seii gi Tereza Ochien'g ma en jardonjo*

RT: When he was pretending that that thing had been signed by Tereza Ochien'g who is the complainant

Mag: And secondly whether the accused person obtained

Int: *To mar ariyo ka in ne iyudo*

RT: And secondly whether you got

Mag: Sixty shillings from the account of Tereza Ochien'g with Equity Bank Gilgil

Int: *Siling alufu prauchiel kowuok kuom account mar Equity mar Tereza Gilgil*

RT: Sixty thousand shillings from the account in Equity of Tereza in Gilgil

Mag: Pretending that he had been sent by the same by the same Tereza Juma Ochien'g to withdraw the same amount

Int: *Kane iwacho ni in Tereza Juma ni Tereza Juma omiyi thuolo mar golo pesa go*

RT: When you were claiming that you were Tereza Juma that Tereza Juma gave you permission to withdraw that money

Mag: With regards to the first issue

Int: *Kin'giyo ketho mokuongo*

RT: When examining the first offence

Mag: Which is the allegations regarding the particulars of count one

Int: *Wach mokuongo kaluwore kod neno e ketho mokuongo*

RT: The first issue in relation to the first offence

Mag: I find that it was the evidence of the complainant

Int: *Iyudo ni en neno mar jardonjo*

RT: It is found that it was the evidence of the complainant

Mag: That on the twenty sixth of December twenty twelve

Int: *Ni tarik prariyo gi auchiel dwe mar apar gi ariyo higa alufu ariyo gi apar gi ariyo*

RT: That on the twenty sixth of December twenty twelve

Mag: She went to Equity Bank Kisumu branch

Int: *Nodhi e bank ma Equity ma Kisumu*

RT: She went to the Equity Bank Kisumu

Mag: To withdraw some cash

Int: *Mondo omi odhi ogol pesa moko*

RT: So that she could go and withdraw some money

Mag: Then she found... then she was informed

Int: *Kame ne onyisi*

RT: Where she was told

Mag: That sixty thousand shillings had been withdrawn from her account

Int: *Ni siling alufu prauchiel nose gol kowuok e account ne*

RT: That sixty thousand shillings had already been withdrawn from her account

Mag: She then produced a statement from Equity Bank as exhibit two

Int: *Nogolo statement mowuok ka Equity kaka exhibit mar ariyo*

RT: She produced a statement from Equity as the second exhibit

Mag: To confirm that indeed sixty thousand shillings had been withdrawn from her account on the twenty second November twenty twelve

Int: *Mane nyiso ni adiera pesa siling alufu prauchiel ne ogol e account ne tarik prariyo gi ariyo dwe mar apar gi auchiel*

RT: That showed that truly money, sixty thousand shillings had been withdrawn from her account on twenty second November

Mag: PW1 told the court she had not made such a withdrawal from the said account

Int: *Janeno no nowacho ni en pok notimo ga golo pesa machalo kamano e account ne*

RT: That witness said that she had not made to withdraw that kind of money from her account

Mag: And when she made further inquiries she said that she was then told that the withdrawal had been made at Equity Agency at Ahero

Int: *Kane odhi mbele gi nonro mane onyise ni pesa no nogol e Equity agent Ahero*

RT: When she went ahead with the investigations, she was told that that money had been withdrawn at the Equity agent in Ahero

Mag: And she denied that she had not been to this agency

Int: *To ne otamore ni en pok ne odhiga kuro*

RT: And she denied ever going there

Mag: She then told the court further that she then went to the Equity agency in Ahero

Int: *Nowacho ni ne odhi ir Equity agent man Ahero no*

RT: She said that she went to that Equity agent in Ahero

Mag: Where she inquired about the withdrawal and on being shown the register, the transaction register

Int: *Kuma niwacho ni nogolo pesa no to kane onyise register no*

RT: Where it was said that she had withdrawn the money and when she was shown the register

Mag: She confirmed the withdrawal had been done and saw a signature against the withdrawal

Int: *Noyudo ni pesa no nogol to oneno seii koket kama nose gol e pesano*

RT: She found the money had been withdrawn and she saw a signature where the money had been withdrawn

Mag: Which she said was not hers and she recognised as the accused person's signature

Int: *Ne owacho ni mano ne ok en mare to nowacho ni nofuenyo ni mano ni seii no ne en mar n'gama odonjne*

RT: She said that that one was not hers and she said that she discovered that the signature belonged to the accused person

Mag: She said that she had seen the accused person's signature at the time when she had gone to register her phone

Int: *Owacho ni nonone seii no mar n'gama odonjne no e seche mane odhi ndiko simbe*

RT: She said that she had seen the accused person's signature at the time when she had gone to register her phone

Mag: PW2 gave evidence to confirm that her mother who is the complainant in this case

Int: *Janeno mar ariyo nowuoyo kane wacho ni mamagi ma en jardonjo*

RT: The second witness testified that her mother who is the complainant

Mag: Had opened an account with Equity Bank at Gilgil

Int: *Noyawo account gi Equity Bank ma Gilgil*

RT: Had opened an account with Equity Bank in Gilgil

Mag: And she then told the court how she had assisted her mother in investigating how and who had withdrawn the sixty thousand from her account

Int: *Nowacho ni ne okonyo mingi timo nonro mondo gi n'ge ni en n'ga to gi kaka nogol siling alufu prauchiel kowuok e account ne*

RT: She said that she helped her mother do investigations so that they could know who and how sixty thousand shillings was withdrawn from her account

Mag: She identified the registration slip and the bank statement in her mother's name in court and confirmed that the accused person was arrested by the police

Int: *Ne gi kelo registration slip no gi bank statement mar mamagi e kot kasto in n'gama odonjne nomaki*

RT: They brought the registration slip and her mother's bank statement and then you the accused were arrested

Mag: PW4 who is the agent for the equity Bank at Ahero

Int: *Janeno mar an'gwen ma en agent mar Equity*

RT: The fourth witness who is the agent of Equity Bank

Mag: Gave evidence in which she confirmed that indeed there had been a withdrawal

Int: *Nowacho ni negigolo. Nitie pesa mane gigolo*

RT: He said that they withdrew. There is some money that they withdrew

Mag: On November twenty second twenty twelve

Int: *Tarik prariyo gariyo dwe mar apar gi achiel higa mar alufu ariyo gi apar gariyo*

RT: On twenty second November twenty twelve

Mag: Although she had left the said agency then, she identified the transaction in her transaction register as transaction number eighty

Int: *To kane oluwo gigo, ma indike kakogol pesa, noyudo ni gino nondik kaka namba aboro*

RT: And when she examined those things that are written when withdrawing money, she found that that thing was written as number eighty

Mag: She confirmed that the withdrawal

Int: *Nowacho ni golo pesa no*

RT: She said that the withdrawal of that money

Mag: Had been made on twenty second November twenty twelve for the amount of sixty thousand shillings by one Tereza Ochien'g

Int: *Notimore tarik prariyo gariyo dwe mar apar gachiel higa mar alufu ariyo gi apar kod ariyo*

RT: Took place on the twenty second of November twenty twelve

Mag: Of ID number 30599123

Int: *Gi n'gat ma iluongo ni Tereza Ochien'g ma namba ne en nono adek prariyo gachiel*

RT: By someone called Tereza Ochien'g whose number is 03201

Mag: She also said that the customer had signed against the transaction

Int: *Kendo nowacho ni n'gano noketo seii kane osekao pesa*

RT: And she that that the person had signed after taking the money

Mag: PW5

Int: *Janeno mar abich*

RT: The fifth witness

Mag: Was the lady working at the Equity agency in Ahero for PW4

Int: *Ne en nyako mane tiyo gi Equity agent Ahero manotiyo ne janeno mar an'gwen*

RT: Was the girl who was working with Equity agent in Ahero and was working for the fourth witness

Mag: And she confirmed that there was a customer who had gone to her on twenty second of November twenty twelve

Int: *Nowacho ni nitie customer mane odhi ire tarik prariyo gariyo higa mar alufu ariyo gi apar gariyo*

RT: She said that there was a customer who had gone to her on the twenty second of November twenty twelve

Mag: Wanting to withdraw cash from his mother's account

Int: *Nowacho ni n'gatno nonyise ni odwa golo pesa e account mar mamagi*

RT: She said that that person told her he wanted to withdraw money from his mother's account

Mag: And she said that the person went ahead to make this withdrawal and gave her an ID card number 30599123 in the names of Tereza Ochien'g

Int: *Kasto nomiye ID ma namba ne en 30599123 mane mar Tereza Ochien'g*

RT: Then he gave her an ID whose number was 30599123 which belongs to Tereza Ochien'g

Mag: And she said that the person then withdrew sixty thousand shillings

Int: *Kasto customer no nogolo siling alufu prauchiel*

RT: And then that customer withdrew sixty thousand shillings

Mag: And she identified the accused person as the said customer

Int: *Kasto nowacho ni in n'gama odonjne ema ne in customer no*

RT: And then she said that you; the accused was that customer

Mag: On cross examination

Int: *Kane ipenje penjo*

RT: When she was being asked questions

Mag: She said that she could identify the accused person by appearance

Int: *Nowacho ni nonyalo fuenyo n'gama odonjne no gi suche*

RT: She said that she could identify the accused person by appearance

Mag: Although she had not bothered with the signature

Int: *To ne ok odewo n'giyo seii*

RT: And she had not bothered to look at the signature

Mag: That was indicated in the transaction register

Int: *Mane oket eee. Kama ... e transaction register*

RT: That was put on the eee where... on the transaction register

Mag: But that she had only bothered with the ID number

Int: *To en non'giyo mana kipande. Namba kipande*

RT: But she only looked at the ID. The ID number

Mag: The investigating officer

Int: *Polis mane timo nonro*

RT: The policeman who was doing the investigations

Mag: Said that when he received the complaint

Int: *Nowacho ni kane oseyudo repodno*

RT: Said that when he had received that report

Mag: He recorded statements

Int: *Notimo nonro*

RT: He made investigations

Mag: And took the alleged specimen signatures of the complainant and the accused person

Int: *Kasto nokao seii mar n'gama odonjo gi mar n'gama odonjne*

RT: And then he took the signatures of the complainant and the accused person

Mag: So he took them to the document examiner for comparison

Int: *Mondo omi ne oorgi kuma itime nonro mondo opim on'gi ka gichalre*

RT: So that they could be sent where investigations are done so that they can be examined to see whether they look similar

Mag: The signatures were on the registration form and the transaction register

Int: *Seii go no nie registration form to gi transaction register*

RT: Those signatures were on the registration form and the transaction register

Mag: The document examiner who testified as PW6

Int: *Document examiner mane owuoyo kaka janeno mar auchiel*

RT: The document examiner who talked as the sixth witness

Mag: Compared the signature from the Equity agency and the transaction register

Int: *Non'giyo sei mane owuok e Equity agency transaction register*

RT: He looked at the signature that came from the Equity agency transaction register

Mag: With the alleged signature of the complainant marked C

Int: *Mane owacho ni seii mar janeno mokwongo kata jardonjo ne oket kaka C*

RT: That he was saying was the signature of the first witness or the complainant which was put as C

Mag: And the signature of the M-Pesa registration form marked B

Int: *To mane nitie gi Equity agent ne oket kaka B*

RT: And the one which was with the Equity agent was put as B

Mag: And he then formed the opinion that the signatures had not been made by the same author

Int: *To nowacho ni seii go ok nogo gi n'gato achiel*

RT: And he said that those signatures were not made by the same person

Mag: He also examined the signature of the transaction register marked A

Int: *Non'giyo nyaka seii mane ni e transaction register mane ondik kaka A*

RT: He also looked at the signature that was in the transaction register that was recorded as A

Mag: And the signature of the registration form marked B

Int: *To gi signature mane ni e registration form mane en B*

RT: And the signature that was in the registration form that was B

Mag: And compared it with the signature marked D which is alleged to be from the accused person

Int: *Kasto ne opimo kod seii mane ni e otas mane oket ni D mane iwacho ni n'gama odonjne ema nolososo*

RT: And he compared to the signature on the paper which was marked as D which was said to have been made by the accused person

Mag: And he formed an opinion that the signatures had been made by the same person and prepared a report to this effect

Int: *Kasto nolososo report kaluwore gi mano*

RT: Then he made a report in relation to that

Mag: From the evidence, I find that it has not been contested by the accused person in his defence

Int: *Kaluwore gi kaka ne iwuoyo, ni in ne ok ikwedo kata ipingo*

RT: In relation to how you talked, you did not deny or refute

Mag: That sixty thousand shillings was found withdrawn from the account of Tereza Juma Ochien'g

Int: *Ni siling alufu prauchiel nogol kowuok e account mar Tereza Juma Ochien'g*

RT: That sixty thousand shillings was withdrawn from the account of Tereza Juma Ochien'g

Mag: Of Equity Bank Gilgil

Int: *Mar Equity Bank Gilgil*

RT: Of Equity Bank Gilgil

Mag: On twenty second November twenty twelve

Int: *Tarik prariyo gariyo dwe mar apar gachiel higa alufu ariyo gi apar gi ariyo*

RT: On the twenty second of November two thousand and twelve

Mag: It is also confirmed by both the complainant and the accused person

Int: *En gima noler gi jadona jo gi n'game ne odonjne*

RT: It was made clear by the complainant and the accused person

Mag: That the complainant went to the M-Pesa shop where the accused was working; to register her phone

Int: *Ni n'gama nodonjo nodhi e M-Pesa kama n'gama odonjne ni ne tie mondo omi odhi ondik simbe*

RT: That the complainant went to the M-Pesa where the accused person was working in order to register her phone

Mag: On the twenty second of November twenty twelve

Int: *Tarik prariyo gi ariyo dwe mar apar gachiel higa mar alufu ariyo gi apar gariyo*

RT: On the twenty second of November twenty twelve

Mag: Which is the same day of the transaction

Int: *Mano e odiechien'g mane golo pesa no be otimore*

RT: That is also the day when the withdrawal of the money took place

Mag: The accused person on the other hand did not indicate the date on which the complainant went to the said shop

Int: *N'gama odonjne ne ok owacho chien'g mane jadona jo no nodhi e duka ne*

RT: The accused person did not say the date the complainant went to his shop

Mag: It is the complainant's evidence that she had left the phone and ID card with the accused person on the alleged date

Int: *Janeno ma jadona jo nowacho ni nowe simbe gi kipande ne e duka kama ne n'gama odonjne ne nitie*

RT: The complainat said that she had left her phone and her ID card at the shop where the accused was

Mag: And I am informed this is what led to the accused person being held suspect, arrested and charged in court

Int: *Mano ema omiyo nichich ni n'gama ne tiyo e dukani momake modonjne kod ketho ni*

RT: That is why the person working in this shop was suspected, arrested and charged with this offence

Mag: I find that the investigating officer took specimens of signatures of the complainant and the accused person

Int: *Iyudo ni polis mane otimo nonro nokao seii mar n'gama odonjne gi mar jadona*

RT: It is found that the investigating policeman took the signatures of the accused person and the complainant

Mag: And sent them for comparison of the signatures and the Equity agent's transaction register

Int: *Mane okaw gi mondo omi odhi opimgi ka ne gin ema ne gintie e Equity Transaction*

RT: And they were taken so as to be examined to see whether they were the ones in the Equity transaction

Mag: And M-Pesa registration

Int: *Gi M-Pesa agent transaction*

RT: And the M-Pesa agent transaction

Mag: According to the PW6; the specimen signature marked D was compared to the signature pointed in red arrow

Int: *Janeno mar auchiel nowacho ni specimen mane ondik ni D gi mane oket gi alama ma rakwar*

RT: The sixth witness said that the specimen that was written D and the one that had a red mark

Mag: In the exhibit marked A; the Equity agent transaction

Int: *mane oket A*

RT: That was put as A

Mag: And the one pointed in pencil on the exhibit marked B; the M-Pesa registration form

Int: *To gi mane ondik gi pencil mane exhibit B mane en M-Pesa registration form*

RT: And the one that was written in pencil that was exhibit B which was the M-Pesa registration form

Mag: Were found to have been made by the same person

Int: *Noyud ni gigo nolos gi n'gato achiel*

RT: It was found that those things were made by one person

Mag: Which according to PW7; the investigating officer is the accused person

Int: *Mane janeno mar abiriyo ma ne en polis mane timo nonro nowacho ni en n'gama odonjne*

RT: That the seventh witness who was the policeman who investigated the case said that is you the accused person

Mag: However, I have issues with the specimen signatures marked C and D. It is exhibit E9 and 10

Int: *Kot on'giyo exhibit namba ochiko gi namba apar mane ondik gi kaka C gi D*

RT: The court has looked at the exhibits numbers nine and ten that were recorded as C and D

Mag: And find that although they are alleged to belong to the complainant and the accused person respectively

Int: *Ni ne iwacho ni ne gin mar jadona to kod n'gama odonjne*

RT: That it is said they belong to the complainant and the accused person

Mag: There is no certificate on them to confirm that they were made by the complainant and the accused person

Int: *Ne onge certificate mane okel mane wacho ni nolosgi gi n'gama odonjo gi n'gama odonjne*

RT: There was no certificate to show that they had been made by the complainant and the accused person

Mag: They are just impressions made without signifying whom they belong to

Int: *Ne okelgi to ne ok oler ni gin mag n'ga*

RT: They were brought but it was not explained whom they belonged to

Mag: In fact the two documents that is exhibit 9 and 10 have no stamp to confirm that they were originated from the CID Nyando

Int: *Gik moko ariyo go ma en exhibit namba ochiko gi exhibit namba apar ne onge gi stamp mane wacho ni ne oyudgi ka CID ma Nyando*

RT: Those two things that is exhibit number nine and exhibit number ten had no stamp to show that they had been found at the CID Nyando

Mag: And that the signatures had been taken by the CID. They only bare the stamp for the forensic document examiner

Int: *Ne en mana gi stamp mar jogo mane dhi pimo ndiko go*

RT: It just had the stamp of those people who were going to examine those writings

Mag: To confirm they had reached there

Int: *Mane nyiso ni gichopo kuro*

RT: That showed that they had reached there

Mag: I also find that it was the evidence of the complainant

Int: *Kot yudo ni kendo ne en neno mar jadona*

RT: The court finds that it was the complainant's evidence

Mag: That the accused person paid her thirty thousand shillings by a written agreement

Int: *Mane owacho ni in n'gama odonjne ne ichule siling alufu pradek*

RT: Where she said that you the accused person had paid her thirty thousand shillings

Mag: A deal that was witnessed by her daughter PW2, one sibling and the accused person's mother and sister

Int: *Mane one gi nyar jadona to gi mamau gi nyameru ne nitie*

RT: That was seen by the daughter of the complainant and your sister and your mother was also there

Mag: Which was then adduced as confirming that he was admitting that he had taken her sixty thousand

Int: *Mane ni n'gama nodonjne no ne wacho ni ne iyie ni nokao siling alufu prauchiel no*

RT: That the accused person was saying that he had accepted that he had taken that sixty thousand shillings

Mag: The accused person on the other hand, in his unsworn statement

Int: *N'gama nodonjne kane wuoyo korka kore ka ok okuon'gore*

RT: The accused person when talking on his behalf without swearing

Mag: Said that on the seventeenth of December 2012,

Int: *Ne wacho Ni tarik apar gi abiriyo dwe mar apar gi ariyo*

RT: Said that on the seventeenth of December

Mag: His cousin was sent by his employer to bail him out on cash bail

Int: *Ni ja ... eee... owadu ma bathe ne oor mondo obi ogoli e cash bail no...no or mondo obi ogoli*

RT: That the...eee.. your cousin was sent to come and get you out on cash bail he.. he was sent to come and get you

Mag: And he managed to do this

Mag: I find that this evidence by the complainant was not corroborated by any of the witnesses she had mentioned witnessed the agreement

Int: *Ni gigo ne ok odhi kamoro achiel nekech onge n'gato an'gata mane iluongo kaka janeno mane oketo seii e gigo*

RT: That those things were not coordinated because there was nobody whom you had called as a witness who had signed those things

Mag: It is worth noting that her daughter Beatrice whom she had indicated witnessed this agreement

Int: *Mane nyare ma iluongo ni Beatrice mane owuoyo kaka janeno mar ariyo*

RT: That her daughter called Beatrice who talked as the second witness

Mag: Testified as PW2 but she did not mention that she witnessed the agreement where the accused person was making a payment to her mother of thirty thousand shillings

Int: *Ne ok owacho kane oketo seii kata noneno ka in n'gama odonjne ne ichulo mamagi pesa siling alufu pradek*

RT: Did not say whether she had signed or she saw the accused person pay her mother thirty thousand shillings

Mag: The others were not called

Int: *Jok moko ne ok oluongi*

RT: The other people were not called

Mag: Furthermore, I find that the agreement which had been subjected to forensic examination by the document examiner to confirm the signatures was supposed to be brought but it was not

Int: *Koluwore gi mane iwacho ni otas winjruok mane oter ka joma ne n'giyo lwedo kata ndiko go mondo odhi on'gi seii go ne ok okel*

RT: In relation to that, it is being said that the agreement paper that had been taken to the handwriting or writing examiners was not brought

Mag: PW7 the investigating officer never mentioned the issue of any payment between the accused person and the complainant in this case

Int: *Janeno mar abiriyo polis mane timo nonro ne ok owacho wach moro amora mar chudo e kind jardonjo gi n'gama odonjne*

RT: The seventh witness; the police who was doing investigations did not say anything about any payment between the accused and the complainant

Mag: Or any agreement that had been made between the complainant and the accused person

Int: *Kata winjruok moro amora mane giseketo e kindgi*

RT: Or any agreement that they had made between them

Mag: Had this been done, then the court would have found this one as having been an admission of the accused person that he had paid the thirty thousand shillings

Int: *Dine tim mano, dine kot oyudo ni n'gatno mane odonjne noyie ni ne ochulo pesa no mane ochulo siling alufu pradek no*

RT: Had that been done, the court would have found that the accused person had agreed that he had paid that money, the thirty thousand shillings

Mag: In confirmation that had indeed stolen the sixty thousand shillings from the account of the complainant

Int: *Ni mano ne nyiso ni kare ne okwalo siling alufu prauchiel mane owuok kuom jadona no*

RT: That that could have indeed shown that he had stolen sixty thousand shillings from that complainant

Mag: I further find that PW5 stated that the withdrawal of the sixty thousand shillings was done through the phone at the Equity agent where she was working

Int: *Janeno mar abich nowacho ni siling alufu prauchiel notim kaluwore kod simu e kama ne otiye*

RT: The fifth witness said that the withdrawal of sixty thousand shillings was done using a phone at the place where she was working

Mag: The complainant said that she left her phone and ID with the accused person on this date

Int: *Janeno mokwongo kata janeno nowacho ni noweyo kipande ne gi simu gi n'gama odonjne*

RT: The first witness or the complainant said that she had left her ID card and phone with the accused person

Mag: She however did not reveal her phone number which she said she had not memorized

Int: *To ne ok ochiwo namba mar simo mane owacho ni ok omako*

RT: But she did not give her phone number which she said that she had not memorized

Mag: PW2 told the court that the police had sent her to check the Safaricom records but it was clear from her evidence that she did not do the same

Int: *Janeno mar ariyo nowacho ni polis noore mondo odhi okel record mowuok ka Safaricom to wacho ni ok okelo*

RT: The second witness said that the police had sent her to go and bring the records from Safaricom but she said that she did not bring them

Mag: Upon cross examination, PW7 told the court that he did not seek any verification from the Equity Bank or Safaricom

Int: *Ka janeno mar abiriyo ne wuoyo, mane en polis mane timo nonro, ne owacho ni en ne ok okawo ler moro amora kowuok kuom Safaricom kata Equity*

RT: When the seventh witness was talking; who was the investigating police officer, he said that he did not seek any clarification from Safaricom or Equity

Mag: We should point out that for the withdrawal transaction having been said to have been done via a phone there was a need to bring the complainant's phone number to court and avail data from Safaricom confirming that the said transaction had been made using this phone

Int: *Idwa ni gimoro amora motin kakadho kuom simu ne onego bed ni ichiwo namba simb n'gano ma odonjo nikelo report kata data mowuok ka Safaricom mondo omi onyis ni n'gama ne tiyo gi simu no*

RT: It is required that anything done through the phone the complainant's phone number should have been brought and the report or data from Safaricom to show who was using the phone

Mag: This was not done

Int: *Mano ne ok otim*

RT: This was not done

Mag: I find that the prosecution evidence against the accused person is loaded with anomalies and missing links

Int: *Oyud ni neneo mar joneno mag prosecutor ogolo ne ni kod fuok moko kata gik moko mane ok odhi kare*

RT: It has been found that the evidence given by the prosecutor's witnesses have some gaps or some things that are not right

Mag: Which allows us to create a doubt in the case and grant the accused person the benefit of the doubt

Int: *Koro kot chich gi mano kasto imiye*

RT: Now the court is suspicious of that and he has been given

Mag: The accused person has denied the offence and in his defence implied that he was arrested for no wrong

Int: *Kasto kane iwuoyo kori niwacho ni ne omaki ka ne onge gima itimo*

RT: And when you were talking on your behalf, you said that you were arrested and there was nothing you had done

Mag: In conclusion, I find that the prosecution has failed to prove their case against the accused person

Int: *Ka kot ngado bura oyudo ni prosecutor ok gi keto buchgi moromo*

RT: In deciding the case, the court finds that the prosecutor did not present their case well

Mag: For the particulars involving the offence of forgery in count one, I find him not guilty and I acquit him under section 215 of the CPC

Int: *Mondo omi otweyi e ketho mokuongo mane iwacho ni niloso otasno koro iweyi a buo chik namba mia ariyo gi apa gabich*

RT: Enough to warrant you to be imprisoned on the first offence where it is said that you made that paper and you have been freed under the law number 215

Mag: As for the offence in count two where he is alleged to have obtained sixty thousand shillings

Int: *E ketho mar ariyo kuma niwache ni nikawo siling alufu prauchiel*

RT: In the second offence where it is said that you took sixty thousand shillings

Mag: From the account of the complainant in Equity Gilgil

Int: *Kowuok kuom account mar jadona e Equity Gilgil*

RT: From the account of the complainant in Equity Gilgil

Mag: I find that there was a doubt in the evidence of the prosecution witness who claimed that the accused person forged the document so as to withdraw a sum of sixty thousand shillings from the complainant's account with Equity Bank

Int: *Ni koro onwan'go ni nitiera kiawa e weche prosecutor mane iwacho ni en adieri ni ne iloso otese moko mar mondo omi igol pesa kowuok e account n'gama odonjo no*

RT: And now he finds that there is doubt on the prosecutor's claim that you actually made some papers so as to withdraw money from that complainant

Mag: In the same vein, I find that it is not certain that he indeed received this sixty thousand shillings from the account of the said Tereza Ochien'g

Int: *Iwacho ni ok ne ka en adiera ni ne ikawo siling alufu prauchiel kowuok e account mar Tereza Achien'g*

RT: It is being said that they do not view it as the truth that you took sixty thousand shillings from the account of Tereza Ochien'g

Mag: I also find that the case was poorly investigated and has anomalies

Int: *Iwacho ni nonro mar bura no notim ma ok ni kare kasto ne nitie weche moko ma ok nodhi kare*

RT: It is being said that the investigation of this case was not done well and that there were some issues which were not right

Mag: I therefore find the accused person also not guilty in the second offence

Int: *Oyud ni ketho no ok omuli e ketho mar ariyo ichak iweyi e mano e buo chik namba mia ariyo gapar gabich*

RT: It has been found that you are free in that offence in that second offence and again you are freed on that under the law number 215

Charge Sheet Plea 1

POLICE 5

THE KENYA POLICE

POLICE CASE NO. 634/335/2013

O.B. No. 9/28/12/13

CHARGE SHEET

DATE TO COURT 30/12/2013

COURT FILE NO. 945/13

Christian Names in full or Name <u>KEVIN OKOTH APUT</u>	Surname or Father's Name <u>APUT</u>	Identification <u>APUT</u>	Marital Status <u>M</u>	Nationality <u>Kenya</u>	Address (include District and Location where applicable) <u>9/10/4640</u>
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CHARGE CREATING DISTURBANCE IN A MANNER LIKELY TO CAUSE A BREACH OF THE PEACE / SECTION 95(B) OF THE PENAL CODE

PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)  
KEVIN OKOTH APUT On the 28th day of December 2013 at Koyoyo & Location in Siaya Sub district in Siaya County created disturbance in a manner likely to cause a breach of the peace by throwing stones to mourners at home of one FUNEL ODHAMBO OCHINGI

*Kevin Aput*

If Accused Arrested	Date of Arrest	Without or with Warrant	Date Apprehension Report to Court	Bond or Bail and Amount	Is Application made for Summons to Issue
Yes	<u>29/12/13</u>	<u>W/O</u>	<u>30/12/13</u>	<u>IN CUSTODY</u>	<u>a</u> <u>11</u> <u>11</u>

Remanded or Adjudged to  
Complainant and Address FUNEL ODHAMBO OCHINGI CP JAJIGAY

THE OFFICE IN CHARGE  
PROSECUTION  
SIAYA LAW COURT  
P. O. 572, SIAYA - 46000

- Witnesses
- Funel Odhamb
  - Letcha Ocheno
  - David Omoch
  - Pu Kosen
  - .....
  - .....
  - .....
  - .....
  - .....
  - .....

Sentence ..  
Court and date Siaya court Siaya on 30/12/13 fine paid ..

Officer in Charge Siaya Police Station [P.T.O.]

Charge Sheet Plea 2

POLICE 5

THE KENYA POLICE

633/216/20  
POLICE CASE No.

CHARGE SHEET

DATE TO COURT 30/12/13

O.B. No. 24

COURT FILE No. 942/13

Christian Names in full or Name <b>JOSEPH OTIENO</b>	Surname or Father's Name <b>ONIANGO</b>	Identity Certificate No. <b>N/A</b>	Sex <b>E</b>	Nationality or Tribe <b>L</b>	Age <b>0</b>	Apparent Age <b>A</b>	ADDRESS (include District and Location where applicable)
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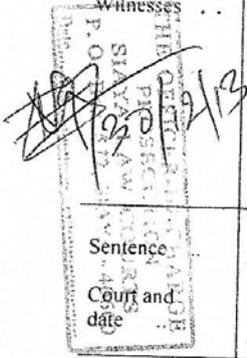
CHARGE: **ASSAULT CAUSING ACTUAL BODILY HARM CONTRARY TO SECTION 251 OF THE PENAL CODE.**

PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)  
**JOSEPH OTIENO ONIANGO:- On the 4th Day of October 2013 at Bar-Kalate, Linanda Sub-Location within Gem District in Siaya County. Unlawfully assaulted Margaret Atieno Onyango thereby occasioning her actual bodily harm.**

If Accused Arrested	Date of Arrest	Without or with Warrant	Date Apprehension Report to Court	Bond or Bail and Amount	Is Application made for Summons to Issue
<b>YES</b>	<b>25/10/13</b>	<b>W</b>	<b>30/12/13</b>	<b>IN-CUSTODY</b>	<b>- - -</b>

Remanded or Adjudged to: \_\_\_\_\_  
Complainant and Address: **MARGRET ATIENO ONYANGO LINANDA SUB-LO.**

Witnesses ...  
1. **BENYA AMAYA OSWANGA**  
2. **APC VICTOR ROT**  
3. **CPIK KAMAU**  
4. \_\_\_\_\_  
5. \_\_\_\_\_  
6. \_\_\_\_\_  
7. \_\_\_\_\_  
8. \_\_\_\_\_  
9. \_\_\_\_\_  
10. \_\_\_\_\_



Sentence: \_\_\_\_\_  
Court and date: **Pris SIAYA 30/12/2013**

Officer in Charge: \_\_\_\_\_ Police Station: \_\_\_\_\_  
if fine paid \_\_\_\_\_

Charge Sheet Plea 3

POLICE 5

THE KENYA POLICE

POLICE CASE No. K.C.H.W.A. 2014

DATE TO COURT 06/01/2014

COURT FILE No. 27/2014

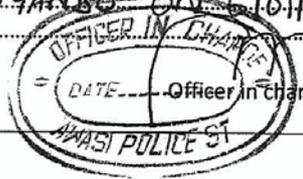
OB No. 20/5/01/2014

CHARGE SHEET

*open file*

*Bond 500000*

*6/1/14  
30/1/14*

Christian Names in full or Name 1. HENRY JUMA 2. ALEX ODEK		Surname or Father's Name JABUYA MAMBO		Identity certificate No. N/A	Sex M	Nationality or Tribe LUDIS	Apparent Age ADULTS	Address (include District and Location where applicable) C/O AWASI LOCATION
Charge	BEING IN POSSESSION OF CHANG'AA CONTRARILY TO SECTION 27(1)(b) AS READ WITH SECTION 27(4) OF THE ALCOHOLIC DRINKS CONTROL ACT NO 4 OF 2010							
PARTICULARS OF OFFENCE (See second Schedule of C.P.C)	1) HENRY JUMA JABUYA (2) ALEX ODEK MAMBO: - On 5th day of January 2014 at NYAKONGO AWASI Location in NYAMBO District within KISUMU County were jointly found being in possession of Chang'aa to wit fifty litres (50LTS) without a permit from the District Alcoholic drinks Regulation committee. <i>Abel</i>							
If accused arrested	Date of arrest	Without or with Warrant	Date Apprehension Report to court	Bond or Bail and Amount	Is application made for Summons to Issue			
YES	5/01/2014	W/O	6/01/2014	IN CUSTODY	=	=	=	
Remanded or Adjourned								
Complainant and Address	REPUBLIC THROUGH KENYA POLICE AWASI							
Witnesses..	1. S/SGT ADWOKA 2. APC OGALLA 3. APC ARINA 4. APC CHANZU 5. ....			6. .... 7. .... 8. .... 9. .... 10. ....				
Sentence..	<i>both</i> Accused person hereby <i>f</i>							
Court and date	SPM'S COURT NYAMBO ON 6/01/2014							
				 If fine paid _____ Officer in charge <u>AWASI</u> police station				

*[Signature]*