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## **MASTERS OF ENGLISH AND APPLIED LINGUISTICS**

**Topic:** A Forensic Linguistics Study of the Spoken Courtroom Language Used in Theft and Burglary cases at the Windhoek Magistrate's Court.

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**Namibia University of Science and Technology**

**A FORENSIC LINGUISTICS STUDY OF THE SPOKEN COURTROOM LANGUAGE USED IN THEFT AND BURGLARY CASES AT THE WINDHOEK MAGISTRATE'S COURT.**

**Marian Tegga Harupe**

**Thesis Presented in Partial Fulfilment of the Requirements for the Degree of Master of English and Applied Linguistics at the Namibian University of Science and Technology.**

**Supervisor: Dr. Niklaas Fredericks**

**October 2019**

**A FORENSIC LINGUISTICS STUDY OF THE SPOKEN COURTROOM LANGUAGE USED IN THEFT AND BURGLARY CASES AT THE WINDHOEK MAGISTRATE'S COURT**

**M.T HARUPE Master Degree of English and Applied Linguistics 2019**

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is a true reflection of my own research, and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.



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## **DEDICATION**

This work is dedicated to my two daughters Joy and Iyaloo for the love and support they always gave me throughout my study.

Finally, I dedicate this work to my husband Ben for the love, encouragement, perseverance and unrelenting support he has given me during my study.



## Abstract

Forensic Linguistics is the application of linguistics to legal issues. It is, rather, the application of linguistic knowledge to a particular social setting. It is an integral part of applied linguistics. Those who do this work analyse statutes, legal procedures, courtroom language, and language used as evidence in criminal and civil court cases. One major difference from other types of applied linguistics is that there is no need to gather data because it is already provided. This means that the linguist has to work with data that already exists, using the major tools of linguistics, including morphology (lexical), and syntax. Throughout the process, the forensic linguist, like any applied linguist, has to teach lawyers, judges, and public prosecutors the way linguistic analysis works in relation to the specific legal issues. This study analyses the nature of courtroom communication in a Namibian context in cases of alleged theft and burglary. The research investigated the language used by both court officials and lay persons during legal proceedings and examined the linguistic and socio-cultural factors that motivate the choice of certain linguistics features. This study employed qualitative method and data was collected through tape-recording and non-participant observation. The tape-recorded data were transcribed using transcribe. wreally.com. The data was then analysed using context, schema and frame theory.

Findings of the study indicate that due to the fact that the lay people find it difficult in legal language comprehension they tend not to give unexpected answers during courtroom conversation. The finding reveals significance of this study to the legal community according to their respective duties. Moreover, the translators and interpreters can use this research to communicate with greater accuracy. Additionally, the power relation of the lawyers and magistrates during the court interactions might be intimidating to the witness which might result to confusion since the witness who are in this instance are ordinary lay people feel powerless. The data indicated that participants in courtroom interactions (especially the accused) use very polite and formal terms of address when addressing court officials especially the magistrate.

**Keywords:** Forensic linguistics, courtroom language, written language evidence, spoken language evidence, ethics, forensic phonetics, voice analysis, language, linguistic, linguistics, legal system.

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## **CHAPTER ONE:**

### **INTRODUCTION**

Namibia is a multilingual country where people speak one or more indigenous languages as their mother tongue or first language and English as the official language. For the vast majority, English is learned formally in schools and remains a second language. Despite this language scenario, English remains the language of the criminal law courts. The importance of courtroom interaction to every society cannot be overemphasised because it represents the justice system of every society.

According to Wardhaugh (1998), people make certain linguistic choices to indicate the relationships between themselves as speakers and their listeners. This is reflected in the naming or addresses systems adopted by interlocutors. Justice is crucial to every social setup because it represents the legal system used to achieve fair treatment of people, a medium to advocate the equality of all citizens before the law and the supremacy of the law above everyone. Language is also crucial to the judicial process of every society because laws, judgments, judicial proceedings are all conducted through language. Among current concerns in Forensic Linguistics are translation issues for people with a limited command of English and this study are important in several ways. Firstly, the role of linguistics in analysing courtroom discourse is not known to have been an object of serious systematic study in the Namibian context. Yet, despite the close connection and importance of language to law, neither local linguists nor lawyers have paid much attention to it. Stubbs (1996), for instance, discusses the nature of courtroom discourse in non-African contexts. It is Van Greisen's (2001) study on the role and effectiveness of court interpreting that places courtroom discourse in the Namibian context.

The context of the present study will mainly focus on the Windhoek Magistrate's Court, in the capital city of Namibia, Windhoek. The Magistrates' court practise criminal law using English. This study will focus on forensic linguistic analysis, analysing the courtroom spoken language used by trial participants. According to McMenamin (2002) Forensic linguistics' application include the analysis of courtroom spoken language used by trial participants, for example, magistrates, lawyers, prosecutors and witnesses.

Therefore, it is important to identify and analyse the specific courtroom spoken language - based challenges such as legal phonetics, lexical phrases, conjunctions, prepositional phrase and framing of questions faced by lay participants in legal process.

## **2. Statement of the Problem**

The Namibia legal system is based upon language and its use: to write contracts, promulgate laws, question suspects, give testimony, confess and deny. Nonetheless, much of the information conveyed by language is overlooked or misinterpreted by legal practitioners, sometimes with dire consequences for victims or defendants.

The premise in this study, is that court officials and unqualified people, mostly in magistrate courts, specifically in Windhoek, use and comprehend the courtroom language differently. This language misalliance is assumed to have a bearing on the legal process.

Legal English jargon used in the Namibian courtroom is distinct from the ordinary language used by lay persons without formal training in the field of law. Even for those who speak English well, the technicality of legal English, for instance its reliance on borrowed Latin terminology and specialised use of ordinary terms, causes great challenges and incomprehensibility. Yet, the magistrates' courts practise criminal law using only the English language. The language of the legal process which govern interaction in courts of law's lexical and phonetic phrases, create miscommunication problems for accused persons such as ordinary persons implicated in theft and burglary cases, vulnerable witnesses and other lay individuals present during court hearings. These people experience difficulties to comprehend the language spoken in the courtroom. Such lay suspects and witnesses may be lacking understanding in both legal language and knowledge of courtroom language and sensible resources employed in formal courtroom conversation.

Consequently, they are likely to encounter language- based problems that could place them at a disadvantage by hindering their full participation in a trial. Therefore, it is important to identify the specific linguistic based challenges such as legal phonetics and lexical phrases faced by lay participants in legal process with a view to describing them and suggesting possible ways of dealing with them. Legal phonetic and lexical phrases are very important for any legal analysis because missing one sound might change the meaning of that word or even a whole phrase. One example is that one mentioned by, Svongoro, et al., (2013),

referring to the rape court cases in Mutare's magistrate courtroom in Zimbabwe, whereby the victims were just ordinary people from different social class without any formal training in the English language and legal language. Although the above –mentioned case occurred outside Namibia, the situation is quite similar to Namibia' court cases of theft and burglary where the suspects or accused persons are mostly ordinary citizen without any formal English language knowledge. In Namibia, current literature reveals that no study of such kind has been conducted in Namibia yet, and this gap should be filled.

### **Objectives of the Study**

The main aim of this study is to investigate how forensic linguistics can be used to explain criminal cases like theft and burglary and the growing need for the application of linguistics in court cases, in order to avoid miscommunication during the court proceedings.

This research's specific objectives are:

- to carry out a forensic linguistic analysis of the spoken language in courtrooms in theft and burglary cases.
- to examine how court participants, comprehend the courtroom language in relation to their cultural background and their goals of interaction in the courtroom.
- to identify the specific linguistic based challenges such as legal lexical phrases faced by lay participants in legal process with a view to describing them.
- to offer suggestions on how forensic linguistics can be used to avoid miscommunication during the court proceedings.

### **1.4. Significance of the study**

This study will benefit lay people and the lay audience e.g. the criminals, witnesses and the general public present during the court proceedings because they are the ones who do not understand court language. This is due to the usage a technical vocabulary, unusual archaic words, the construction and use of multiple negation and long and complex sentences.

This study will also contribute to the improvement of the English language in the Windhoek Magistrate courtrooms. It will also contribute towards reforming the language of the law. This can happen either through simplification or translation by

leaving the legal language essentially as it is but providing better translation to the public in ordinary language when necessary.

This research might also benefit the interpreters as translating from the legal language requires more than a literal, word for word matchup of two languages.

### **1.5 Definition of the technical terms**

**Forensic linguistics:** It is a branch of applied linguistics. The goal of the linguist is to understand units of language their possible rule-governed combination and the conditions of how language is used as well as the norms of correct and appropriate language for a given speech community.

**Burglary:** Burglary is defined as the entry into almost any structure (not just a home or business) with the intent to commit a crime once inside (not just theft).

**Theft:** Theft/larceny is taking almost anything of value, without the consent of the owner. Most states have degrees of theft, like “grand” or “petty.” The degrees usually have a relation to the value of what was taken.

**Interpreter:** a person translating in other language

**Accused:** a person who is appearing in court who has been charged but not yet tried for committing a crime.

**Complainant:** A victim of the crime. Someone who has witnessed or heard something is referred to as the non-complainant witness.

**Witness:** a person who saw a crime or was a victim of a crime.

**A lay person:** The term lay people is used to describe the use of ordinary, non-qualified people in courts to make the system fairer.

**Interlocutors:** People taking part in a conversation

**Criminal Case:** A trial involving a person who has been accused of committing either a misdemeanour or a felony offence.

#### **Cross – examination**

When a person first gives your evidence to the court, you will answer questions asked by the prosecutor, this is called 'evidence in chief'. This is followed by cross

examination, where the defence lawyer will ask you questions about what you said in your statement, and what you have already told the court



## **CHAPTER 2: Literature review**

### **2.1 Introduction**

This chapter discusses the review of related literature. It covers the definitions of Forensic Linguistic analysis theory provided by various authors' studies. The primary focus of this chapter is to review the current literature on factors that contribute to a Forensic linguistics study of the spoken courtroom as well as to make a contribution to the subject of power relation in a way of identifying and discussing additional contributory factors.

### **Overview of Forensic linguistics**

Forensic Linguistics is the application of linguistics to legal issues. Forensic Linguistics is, rather, the application of linguistic knowledge to a particular social setting, namely the legal forum (from which the word *forensic* is derived). Forensic linguistics, legal linguistics, or language and the law, is the application of linguistic knowledge, methods and insights to the forensic context of law, language, crime investigation, trial, and judicial procedure. It is a branch of applied linguistics. The goal of the linguist is to understand units of language their possible rule-governed combination and the conditions of how language is used as well as the norms of correct and appropriate language for a given speech community.

#### **2.1.1 Carrying out a forensic linguistic analysis of the spoken language in courtrooms in theft and burglary cases.**

The object of the forensic linguist is to do the same within the narrower context for example to examine what language users know and do and make everyone in the courtroom a good backyard mechanic of language for the duration of a case.

Blommaert (2005:211) argues that Forensic linguistics studies is real, and often extended, instances of social interaction which take linguistic form. The critical approach is distinctive in its view of the relationship between language and society, and the relationship between analysis and the practices being analysed. Courtroom discourse is viewed as an instrument of power, of increasing importance in contemporary societies. The way this instrument of power works is often visible and transparent in the courts of law. In that sense, Forensic linguistic analysis will be used to contribute to an understanding of contemporary social

reality in the courtroom. Using this perspective, the study also seeks to establish the linguistic and socio-cultural factors that motivate the language used.

Although the above-mentioned studies were carried out outside Namibia, they provide insight into the key role language plays in the courts of law, more so in bilingual courts than in monolingual ones. Apart from showing the utmost social significance of language in the courts of law, these studies shed some light on a number of aspects of courtroom discourse. The current researchers extend the use of Forensic linguistic analysis in studying courtroom discourse in the Namibia context.

According to Shuy (2007) one of the most promising connections that linguistics can make to other fields is to the legal arena, primarily because much of the work in law is done in language and it is often largely about language, either spoken or written. For example, lawsuits, indictments, pleadings, briefs, legal opinions, and, of course, laws and statutes are all revealed and preserved in written language. Courtroom appearances and testimony, although presented orally, end up in written form and even oral evidence gets transformed into written transcripts. We begin with the observation that language and law are close bedfellows.

In addition, Shuy (2007), further states that the major issue for linguists in a court case is not necessarily to improve the language of contracts, but to figure out what the meaning is. One thing a linguist easily can say about this is that the text is often written in a legal register that non-lawyers are not likely to comprehend, one that may have led to the dispute in the first place.

Hence, O'Barr(1987) stated that the variety of spoken language typically used in the courtroom that most closely parallel written language used by judges, magistrate in instructing the prosecutors, passing judgement and speaking to the record, used by the lawyers when addressing the court, making the motion and requests, linguistically characterised by the length sentences containing much professional jargon and employing a complex syntax. Moreover, O'Barr (1987) further stated that most of English sentences tend to be right branching e.g. the verb in the sentences, and complex construction and instruction to be followed in some instances are poorly understood.

Meanwhile, Oluwole (2016) Forensic linguists should be integrated in every court cross - examinations to play interpretative roles to witnesses when being cross-examined so as to unearth to them the pragmatic, semantic and discourse implications of every question and statement asked by the cross-examining lawyer so they do not fall into murky waters.

### 2.1.2 Examining how court participants comprehend the courtroom language

A fair criminal justice system would ensure that both the accused and the witness understand the courtroom proceedings, and that both parties are also understood by the court. This fairness cannot be attainable in instances where court interpreters cannot be provided for court participants who do not speak or understand the language used during court proceedings.

Shi (2008) states that the courtroom interaction is generally controlled by the powerful judges in all trials, magistrate and public prosecutors in criminal ones. Courtroom interaction is generally controlled by the powerful (judges in all trials, judges and public prosecutors in criminal ones). Occasionally, the non-powerful (plaintiffs, defendants, appellants, apples, witnesses, etc.) attempt to challenge the authority of the powerful. In such cases, the powerful will seek to reassert their control in various ways. This is comparable to the Namibian magistrate courtroom whereby the magistrate controls the courtroom interaction or discourse.

Occasionally, the non-powerful (plaintiffs, defendants, and witnesses attempt to challenge the authority of the powerful. In such cases, the powerful will seek to reassert their control in various ways. A fair criminal justice system would ensure that both the accused and the witness understand the courtroom proceedings, and that both parties are also understood by the court. This fairness cannot be attainable in instances where court interpreters cannot be provided for court participants who do not speak or understand the language used during court proceedings.

### 2.1.3 Identifying linguistic based challenges faced by lay participants in legal process.

The issue of language rights becomes infinitely more complex when there is only single official language to be provided for out of 27 indigenous languages Namibia and all are living languages. Of these, twenty – two (22) languages are indigenous and five (5) languages are non-indigenous., as has been set out very clearly by our Constitution.

Ideally, all court officials should be able to speak one official languages. The reality, however, is that presently, and for some time to come, this will not be possible. Part of the answer, it would seem, lies in the provision of a professional interpreting service. Failure to provide such a service will render the constitutional provisions meaningless and do great damage to the delivery of justice by the courts.

In his book, Fairclough (1989, p. 46) explores various dimensions of the relation of power and language. He focuses on two major aspects of the power language relationship: Power in discourse and Power behind discourse. "Power in discourse has to do with powerful participants controlling and constraining the contributions of non-powerful participants." (Fairclough (1989, p. 46)

Moreover, Fairclough (1989) believe that this constraint rests on three factors which are (i) contents (on what is said or done); (ii) relations (the social relations people enter in discourse); (iii) subjects (the subject positions people can occupy. Language heard in the courtroom and other legal settings contains many standardized expressions and set phrases, and their equivalents in the target language should be familiar to the legal interpreter.

Correspondingly, De Jong (2004) he had given an example of a court case where a certain accused who had pleaded no contest to stealing a toolbox, 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 "toolbox" 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.

Courtroom discourse, as Penman (1987) argues, is highly established, giving rise to specifications regarding what, how and to whom things are said. It is as such a regulated speech characterized using honorific 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.

Additionally, Katas (2005) views a trial in a court of law as a battle fought with words, and that such battles are fought by people who cannot speak and understand the legal language of the setting. Therefore, the presence of an interpreter, as a mediator and a necessary contributor in overcoming language barriers and ensuring communication, is considered essential.

The issue of language rights becomes infinitely more complex when there are eleven official languages to be provided for, as has been set out very clearly by our Constitution. Ideally, all court officials should be able to speak all official languages. The reality, however, is that presently, and for some time to come, this will not be possible. Part of the answer, it would seem, lies in the provision of a professional interpreting service. Failure to provide such a service will render the constitutional provisions meaningless and do great damage to the delivery of justice by the courts.

According to Sloan (2000) the law is, much of the time, concerned with the meaning(s) that ordinary speakers attach to words and expressions. Even so, Solan (2000) argues that there is still a role for the linguist, who is to explain and elucidate facts about language and usage as a result of which judge and jury will then be in the same position as the linguist and so can make linguistically informed decisions.

Furthermore, Hlope (2014) language in the courts also needs to be seen within a broader context relating to transformational issues concerning the judiciary and the legal system. It is essential that the courtroom language should be accessible to all because of the fundamental role of the courts in society.

In his study, Viljoen (1992) pays particular attention to how language is used in courtroom procedures such as the direct and cross examination of witnesses and sentencing procedures as well as during court interpreting. This establishes the linguistic and socio-cultural factors that motivate the language used. Viljoen (1992) further notes that while it is common for casual conversation to consist of repeating and commenting on what other people have said, witnesses in a trial are not allowed to repeat such hearsay evidence. For

this reason, many lay people find these restrictions difficult to come to terms with. Shuy (2007) stated that a linguist could be contracted, because anyone can use any word at any time and therefore shared vocabulary can have no diagnostic significance. The linguist could single out words and phrases for criticism, on the grounds that they were items that could be expected to occur in any text that was arguing a case.

Additionally, Moeketsi (1999) also laments the loss of meaning in courtroom translations through such techniques as approximation and lexical simplification which court interpreters often resort to. In some cases, she argues that there is outright falsification of source information by interpreters due to the limitations arising from lack of direct linguistic equivalents between different languages giving rise to the possibility of miscarriage of justice. The second similarity between the Namibian, Zimbabwean and South African court systems is that the dominance of English in the legal system leaves out the potential utility of African languages in legal practice. A study by Fernandez (1993), investigates how language policy in the law curriculum affected South Africa's legal system. The language setup observed by Fernandez (1993) in South Africa is similar to Namibia's in two ways, mainly which in both systems, English occupies a pre-eminent position in the legal system, and that the dominance of English in the legal system leaves out the potential usefulness of African languages in legal practice.

Furthermore, Svongoro, et al., (2013), state that the criminal law inherited from the British differs in several ways from the customary law which is practised by the chiefs and their people in the medium of local languages. Thetela (2003) studied crosstalk in courtroom discourse in an African context. The study illustrates the complex challenges facing communication in bilingual courtrooms, where a foreign, but official language, is used in a bilingual situation in which most participants speak languages other than English.

#### 2.1.4 How forensic linguistics can be used to avoid miscommunication during the court proceedings.

According to Tiersma (2002), Forensic linguists are involved in many areas that relate to crime, both solving crime and absolving people wrongly accused of committing crimes.

Court officials must obey a different principle when they speak: they must speak neither for non-legal people or any lay person; rather, they must speak to meet the demands of conceptual thought.

Moeketsi and Wallmach (2005) conducted a study on the profile of the court interpreter and the quality of the services rendered. In this study, the communications made by magistrates were analysed to determine whether the court interpreters had correctly interpreted these communications. The findings reveal that African languages lack linguistic equivalents of crucial words used in the court room. In instances like these, interpreters are obliged to go beyond the surface meaning of what has been said, to the values embedded in the language and culture of the discourse participants. The court translator becomes a “cultural broker” whose participation involves “mediating ideas, laws, customs and symbolism” (Moeketsi 1999b:4)

Similarly, Erasmus (2009) is of the same opinion and believes that from the first appearance of an undefended accused in court until the imposition of a sentence in the event of a conviction, explanations should be directed at the accused by the presiding officer. Erasmus (2009) cites the case of *S v Kester* 1996 (1) SACR 461 (B) and states that the court held that:

...it is the duty of a judicial officer to diligently, deliberately and painstakingly explain the rights of an unrepresented accused and to ensure and confirm that it was understood. This duty should not be delegated to an interpreter, but it is the duty of the presiding officer (Erasmus 2009: 16).

Once more, 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

The outdated legal terms used such as "hereinbefore," "notwithstanding," and "arguendo," legal doublets such as "null and void" and "cease and desist," compound prepositions like "in the event that" and "with reference to," 1. general verbosity, 2 multiple negatives, 3 frequent qualification and exception, the corruption of common words by assigning to them purely legal meanings, 5 dangling modifiers, long strings of nouns, poor punctuation, convoluted.

Moreover, Shuy (2007) stated that one of the most promising connections that linguistics can make to other fields is to the legal arena, primarily because much of the work in law is conducted in language and it is often largely about language, either spoken or written.

Yet again, Shuy (2007) further states that the major issue for linguists in a court case is not necessarily to improve the language of contracts, but to establish what the meaning is. Although the above-mentioned studies were not conducted in Namibia, they provide insight into the key role that language plays in the courts of law, more so in bilingual courts than in monolingual ones.

Viljoen ((1992) mentions to the fact that language is the medium through which courtroom procedures are carried out, he points out that it is through language usage that power relations are established and maintained. In his study Viljoen (1992) pays attention to how language is used in courtroom procedures such as direct and cross examination of witnesses and sentencing procedures as well as during court interpreting.

The concept of power has been defined differently by scholars in different disciplines. In sociology, power is defined as the ability of an individual or a group of individuals to carry out their will even in the face of resistance from others, and it includes the ability to control the behaviour of others, at times against their will (Giddens, 2009). Shi (2008) states that the issue of power relations are replicated by, and in turn affect, the linguistic structures used by subjects during the courtroom dialog.

Additionally, Fairclough (1989, p. 46) explores various dimensions of the relation of power and language. He focuses on two major aspects of the power language relationship: Power



in discourse and Power behind discourse. Power in discourse has to do with powerful participants controlling and constraining the contributions of non-powerful participants.

Gibbons (2003), opined that “the justice system is arguably the most directly powerful institution in societies subject to the ‘rule of law’ ” (p.75) and the interest of the present study was to find out how this power manifests itself in courtroom interaction. As already indicated, interaction in the courtroom is mainly linguistic and we need to note that ‘an important manifestation of power relations is language behaviour’ (Gibbons, 2003, p.75)

According to Wang (2006) explains that power relation is the inborn features of questions make them naturally bound up with power in that questions possess the ability to dominate and control. By the mere act of asking a question, the questioner chooses the speaker, takes a turn, and defines the type of the following turn (i.e. questions are typically followed by responses. Sacks et al. 1974). What is more important, though, is that the questioner can define the topic, type and length of a response. Farinde (2008) regarded as ‘an institutional discourse where power is pervasive’. He opines further that courtroom discourse is arguably the most direct powerful institution. Once more, Farinde (2008) postulates that even the furniture in the courtroom is indiscretion in relationship.

Power can be found in any conversation of everyday life. Ideal dialogue (as coined by scholars such as Maranhao, 1990; Crowell, 1990; Linell, 1998) which is supposed to be exempted from power is believed to be unattainable and unrealistic. “Power is coherent in all dialogue whether in casual conversation or in institutional settings” (Wang 2006, p. 929).

According to Hlophe (2004) it is through language that we are able to form concepts; to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another; and thus, to live in society.’ He further states that language in the courts also needs to be seen within a broader context relating to transformational issues concerning the judiciary and the legal system. Because of the fundamental role of the courts in society, it is essential that they should be accessible to all. For too many years ordinary citizens have been subject to the terrifying ordeal of dealing with a court situation where judicial officers

and public prosecutors neither understand nor speak African languages. The court environment is intimidating, and the language issue complicates matters,

Furthermore, 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.

Language rights are mentioned explicitly in several sections of the Constitution of the Republic of Namibia (Chapter 2, Article 3). General protection is afforded by sub -section 30 which provides that 'Nothing contained in Sub-Article (1) hereof shall preclude legislation by Parliament which permits the use of a language other than English for legislative, administrative and judicial purposes in regions or areas where such other language or languages are spoken by a substantial component of the population. '

Fairclough (1989, p. 46) explores various dimensions of the relation of power and language. He focuses on two major aspects of the power language relationship: Power in discourse and Power behind discourse. Power in discourse has to do with powerful participants controlling and constraining the contributions of non-powerful participants. Fairclough (1989) believe that this constraint rests on three factors which are (i) contents (on what is said or done); (ii) relations (the social relations people enter into in discourse); (iii) subjects (the subject positions people can occupy).

Language heard in the courtroom and other legal settings contains many standardized expressions and set phrases, and their equivalents in the target language should be familiar to the legal interpreter. De Jongh (2004) he had given an example of a court case where a certain accused named Alonzo Juan Raman, case number (2004-34473), in 2006 in Florida, who had pleaded no contest to stealing a toolbox, 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. 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 "toolbox" 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.

This can be related to Loftus (1998), in his study demonstrated that "extremely subtle changes in the wording of questions [regarding a crime may alter the witness's coding of the memory in question; for example, if asked, "Did you see the bike" rather than "Did you see a bike," a witness is more likely to answer "Yes" because the existence of the bike is strongly suggested by the use of the question. Consequently, when later questioned regarding the existence of the bike, the witness is likely to remember there being a bike even if there was not one in actuality. Similarly, verbs with different nuances may influence a witness' memory, as when "smash" is used instead of "hit", implying a more destructive action (p. 11). It should be emphasized that Loftus's study was not conducted in an actual court setting or with specific reference to legal implications, although can have a substantial effect on the answers given" (p. 3). The wording of a question studies have followed which more directly relate (Maher & Rokosz, 1992).

Language is also crucial to the judicial process of every society because laws, judgments, judicial proceedings are all conducted through language. Courtroom interaction is significant because it provides insights into the language used in the process of delivering justice. It is in this bid that this study seeks to examine a legal process called cross examination which should be an area of interest for forensic linguists, since it is a legal process in which language is implicated because it has some underlying assumptions which make the legal activity to be hostile and uncooperative. The assumptions are that the power relation between lawyers and witnesses is asymmetrical; that lawyers deploy vindictive and exercitives paralinguistic acts in court cross-examinations; and that lawyers are usually impolite in the process of cross-examination.

This study not only shed light on our understanding of the nature and characteristics of courtroom discourse, but also provided implications for judges and prosecutors as well as other courtroom subjects to reflect on and, thus, improve their language performance in court trials. The courtroom discourse represents an irregular established communication in which the powerful interactant, such as lawyers are more likely to dominate the interchange while powerless interactants usually the accused, defendants and witnesses are less

convincing and wield little or no power. Berk-Seligson (1999) stated that courtroom interaction has been researched from various linguistic perspectives: It has been analysed grammatically from the question types prevalent in courtroom interactions). He focused on the categorisation of question types, ranging from Yes/No questions, prosodic questions, and truth questioning. Gibbons (2003) on the other hand researched into the speech attributes that make speakers seem less powerful which are: hedges, hesitations, uncertainty, and use of your worship, intensifiers, time taken, and mitigation.

Additionally, Viljoen (1992) looks at the relationship between discourse and power in the South African courtroom. Viljoen's study pays attention to how language is used in courtroom procedures such as direct and cross examination of witnesses and sentencing procedures as well as during court interpreting.

In another study, Loftus (1998) demonstrated that "extremely subtle changes in the wording of questions [regarding a crime] can have a substantial effect on the answers given" (p. 3). The wording of a question may alter the witness's coding of the memory in question; for example, if asked, "Did you see the bike" rather than "Did you see a bike," a witness is more likely to answer "Yes" because the existence of the bike is strongly suggested by the use of the word.

Subsequently, when later questioned regarding the existence of the bike, the witness is likely to remember there being a bike even if there was not one. Similarly, verbs with different nuances may influence a witness's memory, as when "smash" is used instead of "hit", implying a more destructive action (p. 11). It should be emphasized that Loftus's study was not conducted in an actual court setting or with specific reference to legal implications, although later studies have followed which more directly relate (Maher & Rokosz, 1992).

According to Gibbons (1999) discusses court interpreting internationally, as well as some of the on-going issues of interpreting culture. Language legislation encompasses a vast range of issues from language policy to bilingual education. Language policy revolves around which language or languages is/are given official or national language status, which minority languages are recognized and accommodated (i.e., translations provided in public settings

and interpreters provided in court), and which are ignored (for example, those consciously or unconsciously considered substandard. Therefore, as recognized 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.

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)

Opeibi (2003) states that the dialogue acts that are embedded in the text further highlight how meaning is constructed and achieved in the course of the legal proceeding. Some utterances, apart from being propositional, they also carry conventional communicative force that simultaneously achieve the intended action. The 'saying' of those utterances is taken as the 'doing'.

According to Hlophe (2004), The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through language that we are able to form concepts; to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another; and thus, to live in society.' He further states that language in the courts also needs to be seen within a broader context relating to transformational issues concerning the judiciary and the legal system. Because of the fundamental role of the courts in society, it is essential that they should be accessible to all. For too many years ordinary citizens have been subject to the terrifying ordeal of dealing with a court situation where judicial officers and public prosecutors neither understand nor speak African languages. The court environment is intimidating, and the language issue complicates matters.

## **2.2 Theoretical framework**

Forensic Linguistics analysis will be applicable for this study. It is defined by McMenamin, (2000) as the language of the courtroom discourse, including analyses of the language of witnesses, lawyers and judges. Forensic linguistics is applied in these different areas: legal

language, judicial procedure language and linguistic evidence in judicial procedure. Although the application of forensic linguistics includes voice identification, interpretation of expressed meaning in law and legal writings and analysing of discourse in legal settings. Context, Schema, Frame and Script will be used in approaching the problem.

According to Yule (2000), context is one of the most common and important elements in interpreting the text. Context usually refers to an environment in which utterances are produced. A schema is a pre-existing knowledge structure in memory. Whenever there is a fixed static pattern discerned in the schema, it is called a frame.

Again, Liao (2003) explains the various types of schema of the court trial which an activity usually involves a macro and micro schema. These schemata are organically linked to each other. The macro schema of the court trial is comprising of physical schema of the courtroom; schema of court rules; schema of trial procedures; schema of oral interactions; schema of trial principles (Liao 2003: 50–54).

A frame shared by everyone within a social group would be like a proto- typical version. Schema, Frame and Script apply sequentially in the context and function like familiar patterns from previous experience that we use to interpret new experiences.

However, this study falls under Sociolinguistics which is the study of language use within or among groups of speakers. Coulmas (2013) stated that Sociolinguistics is interested in investigating how we speak differently in varying social contexts, and how we may use of specific functions of language to convey social meaning.

## **SUMMARY**

This chapter presented a review of literature from which the issues of concern for the present study have been expounded and grounded. The chapter has also presented the theoretical framework on which the study was based. Forensic Linguistics has been presented as the major theory within which the data were analysed and discussed. The other theories, Conversational Analysis, provided domains for identifying and coding various aspects of verbal interaction in the sampled courts.

This chapter has also attempted to explain error analysis, the cause of errors as well as the significance of the errors as outlined by various authors. It has also outlined interlanguage from its theoretical input that as the learner acquires a second language, he or she goes through various processes, and in the process a lot of errors are committed, and the way in which they are committed can be attributed to a variety of reasons as it has been shown in this chapter. Throughout this chapter, emphasis was placed on the purpose of the error analysis, which aims to ascertain the cause of the learners writing problems which is a huge challenge to them and determine the cause of the frequent occurrence year after year with different learners. The value of this chapter has, among other things, been that, it has tried to shed some light on factors that contribute to the commitment of errors by the learners of the second language. Some factors, as they have been highlighted in the chapter are power relations, conversational analysis approach; context, schema and theory, the interrelation of sociolinguistics and forensic linguistics. The next chapter will describe the research methodology.

## **CHAPTER 3**

### **Research methods and procedures**

#### **3.1 Introduction**

The previous chapter gave an overview of literature on Forensic linguistic analysis studies and interpretations of these studies. This chapter outlines the methodology and research design used in this study.

#### **3.2 Research design**

Qualitative research design was used in this study. Creswell (2013) asserted that qualitative research is a system of inquiry which seeks to build a holistic, mostly narrative, description to inform the researcher's understanding of a social or cultural phenomenon. Qualitative research focuses on empowering people to tell their stories, listen to their cries, and reduce the power relationships that often occur between a researcher and the participants in a study (Creswell, 2013). Furthermore, qualitative research is an attempt to understand the world from the subjects' points of view, to uncover the meaning of their experiences (Brinkman & Kvale, 2008,). The research tools used were observation and audio tape recordings. . Using this method, the researchers in the present study observed the interlocutors' linguistic behaviour in the courtroom.

Robson (1997: 97) makes a crucial point that: "Observation enables phenomena to be observed in a more natural setting than using second-hand information". Observation is perceived therefore as the appropriate technique of extracting real life' from the 'real world'.

McLeod (1994) noted that observation can be employed from various dimensions, with observer roles varying from full participant to complete outsider, the latter extreme of which was used in this study. With full participation, the researcher is involved or takes part in the activities being observed.

As complete outsider, the researcher sat in the background, observing 'from a distance' the group under observation. Using this method, the researchers in the present study observed the interlocutors' linguistic behaviour in the courtroom.



Robson (1997:97) makes a crucial point that: 'Observation enables phenomena to be observed in a more natural setting than using second-hand information'. Observation was therefore seen as the appropriate technique of getting at 'real life' in the 'real world'.

On the other hand, 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.

### **3.3. Research Setting**

This research was conducted in Khomas region specifically at the Windhoek Magistrate courtrooms Court A, C, and D. The indicated courtrooms deal with criminal cases unlike the others like Court B deal with maintenance and E deals with traffic offences.

### **3.4. Study Population**

This research was conducted in the magistrate courtrooms. The participants are the court officials. The study population may vary in various occasions; it was therefore determined by the court participants during the theft and burglary court proceedings.

Due to the limited study population, the population of this research was made up of three (3) magistrates, six (6) public prosecutors, five (5) interpreters, (4) lawyers and five (4) witnesses. The participants will be exclusively court officials, excluding four selected witnesses. This will give a total of a population of 21.

### **3.4 Sampling and sample size**

The study applied the Purposive sampling method which is a non- probability sample based on the characteristics of a population and the objective of the study. The sample size of this study is 20.

### **3.5 Data Analysis**

The data was analysed using Conversational Analysis approach. According to Fairclough, (2001), Conversational Analysis recognises the interaction dimension of language and attends to sequential phenomena in text and talk. This was conducted by analysing verbal cues accompanying talk such as the organisation of turn-taking and language structures.

The relation between Forensic and Conversational Analysis become related because of in each one's spoken word has iconic meaning (Kramsch, 1998). Conversational Analysis (CA) is an approach which is particularly concerned with structure, pattern and regularities of naturally occurring conversation and entirely with how language is used in context (Chapman, 2011).

While according to McMenamin, (2000) Forensic linguistics is the theory applied in different areas such as legal language, judicial procedure language and linguistic evidence in judicial procedure. Conversational analysis represents spontaneous verbal interactions that take place in non-specialized settings, in this study, the courtroom. It recognises the interaction dimension of language and attends to sequential phenomena in text and talk (Fairclough, 2001:142). Considering this, conversational analysis will be adopted to analyse non-verbal cues accompanying talk such as the organisation of turn-taking, moves and move structures. The frequent occurrence of the linguistic features such as the use of legal language, understatements, and syntactic difficulty will be taken into consideration to indicate the importance of these features as part of the language used by court officials and the accused and/or witnesses and not something that was unexpected. The researcher selected all the potential structures for analysis which various studies have shown to convey important social meanings, in order to select only certain aspects for closer scrutiny.

Apart from showing the linguistic features used by the interactants in the courtroom, this section also attempted to give the linguistic and socio-cultural factors that motivate the linguistic choices made.

Data in the form of audio recording (voice) from the selected theft and burglary from Windhoek magistrate courtrooms proceedings were collected and analysed. The researcher applied conversational analysis. Conversational analysis represents spontaneous verbal interactions that take place in non-specialized settings, in this study, the courtroom. It recognises the interaction dimension of language and attends to sequential phenomena in text and talk (Fairclough, 2001:142). In light of this, conversational analysis was adopted to analyse non-verbal cues accompanying talk such as the organisation of turn-taking, moves and move structures.

The researcher has conducted the analysis by transcribing the voice recordings into texts. The data for this study comprised transcriptions of a total of 30 hours of audio recorded court proceedings from three sampled courts. The data were divided into two sets to make the analysis easier.

The other central methodological issue for discourse studies data analysis dealing with tape recorded data is transcription. Transcription, which is putting down in writing the audio-recorded data, is considered a part of the process of analysis and a prerequisite in discourse studies that involve audio-recording. Cameron (2001) notes that it is necessary to put down discourse in writing before we can say anything about it given that spoken language, because of its ephemeral nature, is difficult to analyse. In addition, Gumperz and Berenz (1993, p. 94) assert that 'transcription is an integral part of an overall process of interpretive analysis' that reflects the theoretical framework informing a given analysis. This means that transcription is a means by which a researcher can bring into focus the characteristics of spoken discourse that are the object of study. In audio-recording courtroom proceedings, this study sought to capture the contributions of various discourse participants which could then be categorised into different subtypes. Collected data were transcribed according to notation rules which have become increasingly detailed in order to support an expanding range of analytic projects (see section 4). Data in the form of audio recording (voice) from the selected theft and burglary from Windhoek magistrate courtrooms proceedings were collected and analysed. The researcher had applied conversational analysis. Conversational analysis represents spontaneous verbal interactions that take place in non-specialized settings, in this study, the courtroom. It recognises the interaction dimension of language and attends to sequential phenomena in text and talk (Fairclough, 2001:142). Considering this, conversational analysis was adopted to analyse non-verbal cues accompanying talk such as the organisation of turn-taking, moves and move structures. The researcher had conducted the analysis by transcribing the voice recordings into texts. The data for this study comprised transcriptions of a total of 30 hours of audio recorded court proceedings from three sampled courts. The data were divided into two sets to make the analysis easier.

Data analysis typically starts in data sessions (Antaki et al. 2008; Bushnell, 2012) where data segments are discussed in great detail after viewing and listening to them repeatedly. Typically, data segments are broken down into actions and close attention is given to how actions are packaged and turns designed. Following a data session, the researcher built up a collection of comparable instances and develop the precise description of the phenomenon.

In order to achieve analytic generalization (Have, 2007, p. 149-51), collections need to draw on a variety of data. The size of collections varies depending on the frequency of actions or practices in available corpora. CA transcriptions are principally different since they are equally concerned with *how* something is said (Hepburn & Bolden, 2013; Jenks, 2011).

### **3.6 Ethical clearance**

The researcher obtained ethical clearance from Namibia University of Science and Technology Faculty Research and Publication Committee and adhere to the ethical clearance policy accordingly.

Permission to attend court proceedings will be obtained from the Chief magistrate at the Ministry of Justice. Permission was similarly requested for observation and audio recording during court proceedings.

### **3.7. Significance of the study**

This study will contribute to the improvement of the English language at the Windhoek Magistrate courtroom. It will also contribute towards restructuring the language of the law. It will benefit lay people and the lay audience, for instance, criminals, witnesses and the general public present during the court proceeding because they are the ones who might not understand court language. This research might also benefit the interpreters as translating from a legal language requires more than a literal, word for word matchup of two languages.

## **SUMMARY**

In this chapter the researcher has attempted to give the details of the research methods used in conducting this study. This included the selection and description of the tools or instruments used, how the population was selected, what sampling procedure and administration was followed and why. It has also provided details about the tools or instruments used to collect the data. The next chapter will be present the Data Analysis and

## **Chapter 4: Data Analysis and Discussion of findings**

### **4.1 Introduction**

This chapter presents the findings of the study. The data presented here comes from specific trials which took place at the Windhoek magistrates' courtroom. From a practical point of view, the choice to focus on these trial lies in a personal familiarity with the specific legal system, the accessibility of language, and the possibility of accessing data in a time- and cost-effective manner. The following linguistic features were discussed: pronunciation, than lexical(morphology) and than (syntax) syntactic errors.

The first data set features criminal cases of theft and burglary during which some defendants were represented by lawyers. This means that whereas a public prosecutor or a state counsel (for criminal and theft cases) and a lawyer did the questioning during direct examination, cross examination was done by the counsel for the defence. In the second set, the accused person was not represented by a lawyer. In the third case, the accused was also charged for theft. He was not represented by a private lawyer neither by any representative from the legal assistance centre. There is another set where the accused person's lawyer challenged the power of the magistrate.

Audio recordings were first identified and classified accordingly in their categories where they appear per case. In order to analyse the spoken courtroom language, the researcher used tables where the voice -texts were recorded in order to be described.

The concentration was more on the trial cases with frequent interaction between the magistrate, the prosecutors and the defendants per trial. The courtroom language was analysed according to the cross - questioning occurred to determine the occurrence of power relations and linguistic features used which may hamper lay people's comprehensibility of the courtroom language. Forensic Linguistics has been presented as the major theory within which the data were analysed and discussed. The other approach, Conversational Analysis, provided domains for identifying and coding various aspects of verbal interaction in the sampled courts.

## 4.2 Findings and Discussion

The following abbreviation will be used during the analysis:

**P: Prosecutor**

**M: Magistrate**

**A: Accused person**

**W: Witness**

### 4.2.1 Morphology (lexical features)

Finegan (2008) claimed that words have meaningful parts and principles that govern their composition and functions in sentences. In addition, Finegan (2008) further stressed that morphology shows three methods through which words can be expounded. First, people can make new words from existing words and different word parts. Second, people can borrow words from other languages. Various lexical features were analysed.

#### Extract 1

*1. The accused is here for the charge of theft. The case is appearing for plea and trial. On the 28 of September 2018, while she was on custody and came to court and appealed on both cases. However, she was arrested while she was on bail, I refused because she was already in custody.*

*2. She appealed only for domestic violence court because she was expected to appear on both cases in the same day. The court made a mistake by placing her court cases on the same day. The witness was subpoenaed but the subpoena was not served.*

*3. Thus your worship, receive this application case to be remanded to April. The complainant on that day he was not being ready and he is Ausenkar, he does not have money ,he indicated, he said he does not transport money, I told him that he must apply for transport money or borrow money, but he said he does not have anyone to borrow money. Thus, the witness could not be present in the court today.*

*4. She appealed only for domestic violence court because she was expected to appear on both cases in the same day. The court made a mistake by placing her court cases in the same day. The witness was subpoenaed but subpoena was not given to him on time.*

*She was arrested while she was on bail. I refused because she was already on custody*

*The accused person to be put on warning as the bail money was forfeited. This matter be remanded on the 8<sup>th</sup> February. The accused person will remain in custody.*

Apart from the frequent use of any and must, there are some morphological words used whereby the suffixes are added to the root words. Words such as:

Complainant – ‘the complainant is not here’

Remanded – ‘the case is remanded to next month’

Forfeited - ‘the bail money was forfeited, and the accused person appealed in court’

Adjourned -The case is adjourned until next year

It also sounds like a journey

Postponed – The case is postponed to next month

Acquitted – the accused has been acquitted

The table below indicates how the meaning of words completely differs in different standpoints as used in the courtroom

Root word	Meaning	Affix	Legal Meaning
<b>Complain</b>	Dissatisfaction	complainant	a plaintiff in certain lawsuit.
<b>Remand</b>	to place a defendant on bail or in custody, especially when the trial is adjourned	remanded	to return to the lower court for reconsideration
<b>Journey</b>	the act of travelling from one place to another	<b>Adjourned</b>	to suspend the court proceeding until a later stage
<b>Fine</b>	Much better than average, healthy and well	<b>Fined</b>	A punishment whereby the accused must pay a fee or an amount of money when you

			break the law
<b>Feat</b>	Borrowed word from the Norwegian word 'fiat' meaning fat	<b>Forfeited</b>	to lose the right to do something because you have broken the law e.g failing to appear in court

**Table 1 (a)**

The meanings as indicated in the table above are clearly not the same but are it one word that is used metaphorically in and literally meaning. e.g. remanded, e.g. the case is remanded to next year' and adjourned e.g. The case is adjourned, sentenced and fined; the accused is sentenced and fined. Looking at the example provided, the inflectional morphemes -ed is added to the base word to indicate the tense of the verb. The present perfect verb tenses are used when talking or writing about actions that are completed by the present or by a specific moment in the past or future.

The sentences provided where the inflectional morpheme - ed is used, are in present perfect tense in order to indicate the action and time. Legal language does not follow the grammar and sentence structure of the English language but focus mainly is on the delivery of the message. These words might create difficulty in understanding because the meanings of the root words have a completely different meaning from words with affixes added.

It is recommended that in order to sound professional, whenever the legal officials have to use a specific legal term and there is any question that the parties may not comprehend, he/she should provide a brief, clear explanation of the term.

In addition to the use of - **ed** polysomic words were also prominent as can be seen in the table below. Polysemy words are the words with multiple meanings. Polysemy words can cause difficulty in contexts where the meaning is other than the primary meaning of the word. Primary refers to the sense of the word that the lay people or accused persons knew before.



The table below indicated the list of polysemous words used

Word	Example from the	Different meaning	Legal meaning
<b>Custody</b>	'You remain in custody'	A legal right or duty to take care of someone or something	To remain in jail while waiting for bail application
<b>Oppose</b>	'Why do you oppose this?'	To obstruct or play off or to provide resistance	Disagree with something or against a sentence in court <sup>i</sup>
<b>Dawn</b>	'You are going down together'	Any beginning, from early morning until evening	The two people are going to be charged and sentence together
<b>Stand</b>	What is your stand on this case? ' '	to maintain an upright position	What is his /her opinion in the case at hand?
<b>Charged</b>	'You are charged and fined'	-filled with excitement, tension or emotion.  -to ask an amount of money for something especially for a service or activity.	You are sentenced and punished to pay a certain amount of money
<b>Fined</b>	'You are fined'  'Pay you fine'	thin, or become thin, or narrow	Pay the amount of money instead of imprisonment
<b>Proceed</b>	'You may now proceed'	To make progress to achieve something, or to move to a direction	To move on with the court proceedings
<b>Matter</b>	The matter is remanded	physical substance, or the	The case is postponed to

	to next year	consequence, weight	next year
<b>Appeared</b>	She appeared in both theft and burglary and for domestic violence	Come into sight, become visible or noticeable	To present oneself in court to participate in the lawsuit

**Table 1 (b)**

There are many terminological polysemous used in legal English and requiring very accurate and precise choice of equivalents in the target language and legal system.

This concerns mainly the figurative language and when words are used figuratively, not in their real sense.

The example is illustrated in these sentences “What is your **stand**”. ‘Stand’ is used here not to say that a person should stand up but to refer to his/her opinion. Hence, figurative language may be metaphorical, indirect, and, sometimes, unclear. Another example is ‘You are **charged**’. The word charge here does not refer to electrical charged or charging something to receive energy, but the literal meaning here is referring to the sentence in the courtroom. Polysemous words can cause difficulty in contexts where the meaning is other than the primary meaning of the word.

Apart from the use of polysemy, the court officials also used words that caused confusion, for instance, the homonyms - appeared – to show up, come into sight, or become visible -appealed – to apply to a high court for a reversal of the decision of law court

The use of homonyms and polysemous words during the trial can result to miscommunication. Miscommunications in the courtroom occurs as the results of various contributing factors which power relation linguistic features are among many, which may impede the lay person to misinterpret the content during the court proceeding most especially during cross – questioning. Technical terms are special vocabulary or terms of art used in every profession and occupation. Only the judicial officials which comprises of the magistrates, public prosecutors, lawyers and the police officers assisting during the court hearing understand these terms.

The terms below are some examples of technical terms used during court proceedings. The following technical terms has no equivalent meaning in the language of the accused.

**Subpoena:** *The witness was subpoenaed but subpoena was not served.*

**Warrant of arrest:** *If you fail to be on court on time, the warrant of arrest will be issued to you and your bail will be forfeited*

**Custody:** You must come to court on time, if you have a funeral or whatever you have you must inform the court on time, if you don't, your bail money will be forfeited and you will remain in custody.

Custody here refer to remain in jail or in prison.

**Object:** *I object the bail because she was already on custody*

Object here refer to the question whether the complainant has anything to oppose the sentence

**Sentence:** You are **sentenced** you to one-year prison term

Sentence here refer to be punished or to be sent to jail.

**The stand:** *What is your stand on this case? The literal meaning of this phrase is 'What is your opinion in this case? Or 'Is the accused guilty or not guilty according to your opinion?'*

This might impede comprehension of technical terms since only a legal person could understand it.

The analysis has indicated that the certain linguistics terminology used by both court officials during legal proceedings such as custody, subpoena, appeared and subpoenaed, create difficulties to lay people present in the courtroom, to comprehend the language spoken in the courtroom because they do not have equivalent meaning in the accused ' language. Such lay suspects and witnesses may be lacking understanding in both legal language and knowledge of courtroom language and sensible resources employed in formal courtroom conversation. As mentioned above, these words have their basic or core meaning which is always there despite their different uses in different situational context. The accused persons who were involved in the plea and trial during the collection of data were from various indigenous groups in Namibia, and could only speak Khoekhoegab,

Oshiwambo and Herero language. Thus, they were communicating through the translators. These technical words pose problems for translators although they can be translated independently.

The law can be confusing and scary at the same time, especially when the legal terminologies are technically complex. Much of the reason behind the confusion is the difference between how we use certain words like 'What is your stand on this case', 'charged and fined'. These words can be used colloquially but in the court of law mean something different. The lay person experience difficulties to comprehend the legal terms and most often used by the layman incorrectly during the court proceeding.

#### **4.2. Syntactic features**

Syntactic errors in word order and concord agreement and excessive use of prepositional phrases. Various sentences are analysed according. The focus is more given to concord agreement, word order and excessive use of prepositional phrases. The sentences construction of the sentences below which the prosecutor and the magistrate used are quite incorrect, they utter the English sentences the way the wish which could create a different perspective to the lay people and the witnesses.

*P: The magistrate is no more living here; she is going to be somewhere else.*

*M: You must come to court on time, if you have a funeral or whatever you have you must inform the court on time, if you don't, your bail money will be forfeited and you will remain in custody.*

Another example from extract 1 'I did what? Instead of 'What did I say?'

The above extracts illustrate the complexity of dealing with language in the courts of law in which there is the language used in the courtroom does not follow linguistic features of concord agreement, the magistrate use a direct translation from his mother tongue, as a result, the witness are forced to code-switch in order to be able to proceed with their presentation of evidence. Instance such of this kind require an intervention of the forensic linguistics to assist the legal official in order to construct the sentence in English properly because this may results into the accused person or a witness to give an incorrect answer. The magistrate should take into cognition that the sentences in English have a different meaning in other language e.g. "*I did what?*" Means "What have I done in Oshiwambo".

During the courtroom proceeding of that specific the magistrate meant to ask the accused person to repeat what she said.

The data also reveals that the legal official apply excessive use of prepositional phrase during the court proceedings.

*'Where is the other witness? You can stand up; the matter is remanded to next year.'*

This statement indicated that the criminals in court are sometimes not allocated time to respond, they are bombarded with a lot of information at once and this could lead the accused person to consent to something they could hardly comprehend.

The use of the word 'tate' and 'meme' which are Oshiwambo dialect by the state prosecutor when referring to the witness who are not Oshiwambo speaking is unacceptable, since the official medium of instruction in the courtroom is English.

Data collected also shows that there is an excessive use of prepositional phrases and poor usage of conjunctions by courtroom interlocutors. Prepositional phrases are formed by a preposition as a headword and a noun phrase. When excessively used in the courtroom, they have an effect of further complicating the syntax of a sentence. *'You must come to court on time, if you have a funeral or whatever you have, you must inform the court on time, if you don't, your bail money will be forfeited and you will remain in custody.'*

Examples of Frequency use of 'any' and 'must' extracted from an extract above: **'Any** charges against you'

*'If **anyone** of you fail to appear on that day'*

*'Is there **anything** that you would to say?*

*'you **must** come to court on time'*

*'you **must** stand up'*

*'you **must** inform the court on time,'*

Any is used in two ways , first it is used usually in negatives or questions or used instead of 'some' for saying or asking whether there is a small amount of something or a small number of people or things. The use of 'any 'is also remarkable. Any means no matter which.

It indicates that no item of the class is left out and therefore all items are considered. The importance of the accused person and witness to comprehend the meaning of any is crucial, because they might not take it into consideration because of simplicity but deeper meaning. Thus, might results to the accused person not to appear in court or to continue commit crime.

‘Any’ is also used when it is not important to say which person or a thing that you are referring to, because what you are saying applies to everyone or everything.

The modal verb ‘must’ is used in expressions of obligation and necessity. It also used to emphasise when we want to say that it is necessary or very important that something happens in the present or future. The use of ‘must’ infinitives to talk about obligation, things that are necessary to do, or to give advice about things that are a good idea to do. The accused person is obligated to obey what the magistrate is passing on to him/her. A lay person without English language background will not consider it as an obligatory due to poor understanding of English language. Using the modal verb in the courtroom also have a sense of power relation, as the magistrate obligate the accused person to do what he is told without fail.

A prepositional phrase can string out one after another, and she further claimed that prepositional. There is evidence from the data collected that complainants and witnesses, often use prepositional phrases when recounting their experiences. Apart from witnesses, court officials, notably magistrates and public prosecutors, demand full explanations and to make intense narratives of theft encounters. As a result, the theft encounters strived to provide sufficient and accurate information by uttering a lengthy statement which could hinder the justice to take place. Prepositional phrases consist of a preposition and the words which follow it (a complement)

These prepositional phrases have lasting effects on the views of court officials about the deeds and acts under consideration

a) *You must come to court on time, if you have a funeral or whatever you have you must inform the court on time, if you don’t, your bail money will be forfeited and you will remain in custody.*

The paragraph above contains a lot of prepositional phrases used as follows;

- to court (preposition + noun phrase)
- on time- (preposition + noun phrase)
- in custody (preposition + noun phrase)

*b) She was arrested while she was on bail. I refused because she was already in custody*

*The accused person to be put on warning as the bail money was forfeited. This matter be remanded until the 8<sup>th</sup> February. The accused person will remain in the custody.*

There is a string of prepositional phrase as well as the repetition of some prepositional noun phrase e.g

- She was already in custody ((preposition + noun phrase)
- The accused person to be put on warning ((preposition + noun phrase)
- This matter be remanded until the 8<sup>th</sup>February (preposition+ adverb).
- The accused person will remain in the custody. (preposition + noun phrase)

Although a preposition is still the head word in a prepositional phrase, it must be accompanied by another element- or prepositional complement - if the phrase is to be complete. Most typically, the prepositional complement will be a noun phrase.

*c) The complainant was not in the region ,she was not in Windhoek as she is not staying in Windhoek, she has also indicated that she does not have transport money I inform him to borrow money ,he said he does not have transport money or anyone to borrow money from. The case will be remanded to next year.*

Example of noun prepositional phrase used;

- 'The case will be remanded to next year.' (preposition + adverbial phrase)
- 'The complainant was in the region. (preposition + noun phrase)
- '*she was not in Windhoek* in Windhoek'. (preposition + noun phrase)
- 'She is not staying in Windhoek, (preposition + noun phrase)
- I inform him to borrow money, (preposition + verb phrase)

- 'anyone to borrow money from' (. (preposition + noun phrase)
- to borrow money from' (noun +preposition)

There is a cumbersome string of noun prepositional phrases in one sentence which make the sentence verbose and irregular. The excessive use of prepositional phrase may impede the comprehension of the whole statement. As most of the theft and burglary offenders are ordinary lay people from the community without any background knowledge of English and the only means of understanding English was through the interpreter in order hear what is being said in the courtroom. Thus, the forensic linguist should then analyse the language spoken in the courtroom in order to identify the words used with the possibility of resulting into miscommunication.

### **Extract 2**

*M: Accused where were you on 14 of December? You did not appear in court on time.*

*Why did not come on time? the court require a full explanation.*

*A: I did*

*M: I did what?*

*Why didn't you make it on time? Because if you don't give proper explanation your bail will be forfeited.*

*A: I went to the funeral and the car broke down.*

*M: Where is the proof that the car has broken down?*

*M: You were supposed to go to Botswana on the 27 Dec your passport does not have that show it*

*M: I do what?*

*M: You must come to court on time, if you have a funeral or something, you must inform the court. If you fail to be on court on time, the warrant of arrest will be issued to you and your bail will be forfeited.*

The above examples show extensive redundancy, repetition and re-wording that is characteristic of courtroom discourse used by court officials.

Repetition - *You must come to court on time*



*If you fail to be on court on time*

This is a clear indication that, forensic linguists' professional opinions are required, in all these areas thus concretising the expertise of forensic linguistics in resolving or amending complicated issues in the purview of the law where language is implicated.

Formal connections between sentences in the above extracts are achieved by the use of logical connectors such as 'if, 'which mark various logical relationships between sentences.

These local connectors, however, make the sentences unnecessarily long for the ordinary person and therefore more difficult to understand. According to Stubbs (1996), most sentences in English have the main verb early, followed (immediately) by qualifying clauses.

Sentences like the above which violate this order are more difficult to understand.

- i. *All the two of your*
- ii. *yeh?*
- iii. *What is your name meme?*
- iv. *Where is the other witness? You can stand up, the matter is remanded to next year*
- v. *Give your full name, stand up, all of you,*

The word order used, the language used in the courtroom might cause confusion to the interpreter and witness due to the sentence construction. This might results to the confusion and misinterpretation of context.

Examples below is drawn from the very first extract, help illustrate the inappropriate use of conjunctions in cases of alleged theft.

*'Thus, your worship, receive this application case to be remanded to April. The complainant on that day he was not being ready and he is Ausekar, he does not have money ,he indicated, he said he does not transport money, I told him that he must apply for transport money or borrow money ,but he said he does not have anyone to borrow money. Thus, the witness could not be present in the court today.'*

Apart from this sentence above being a compound - complex sentence, the syntactic structure of this sentence is completely incorrect, the is no conjunction used to join sentences together, wrong word order and incorrect prepositional phrase used.

The process is prolonged by the courtroom routine whereby the prosecutor must announce the next accused person, enter the information into system while the accused person is

standing and hand over the file to the police officer who will hand it over to the magistrate. The magistrate then again has to repeat the same process by entering the information into the system, the gap is about 15 to 20 minutes after, to proceed to the next case. The court proceedings are quite exhausting for the lay person sitting in the gallery including the witnesses.

Offering suggestions on how forensic linguistics can be used to avoid miscommunication during the court proceedings. Miscommunications in the courtroom occurs as the results of various contributing factors which power relation linguistic features are among many, which may impede the lay person to misinterpret the content during the court proceeding most especially during cross - questioning.

The examples below show extensive redundancy, repetition and re-wording that is characteristic of courtroom discourse used by court officials in cases of alleged theft.

*"We don't have dates now, the magistrate is no longer staying here,"*

*"From where you are coming tate?"*

Questioning has often been the focus of institutional legal discourse research across the domains of police interviews and courtroom interaction both in terms of the institutional participants and the lay respondents for example. Drew et al mention that questioning of the laymen, Archer 2005; Newbury and Johnson 2006; Tracy and Parks 2012)

An analysis of these contribution types and subtypes was done with the aim of characterising the power unevenness among the participants in courtroom interaction as revealed by the questioning and conversational strategies the participants employ to achieve their ends. To achieve these objectives, the present study adopted the transcription techniques developed by Jefferson (cited in Atkinson & Heritage, 1984). For example, the public prosecutor addresses the magistrate as "your worship" and they give their submissions in a humble way with words like "respectfully", "I humbly" as can be seen in the table above and this is due to the position the magistrate occupies, the prosecutor on the other hand addresses one another "my learned senior colleagues and my learned junior colleague" as the case may be.

An analysis of these contribution types and subtypes was done with the aim of characterising the power asymmetry among the participants in courtroom interaction as revealed by the questioning and conversational strategies the participants employ to achieve their ends. To achieve these objectives, extract below shows that only the magistrate has the power to decide the verdict.

*Magistrate: You are charged for theft and sentences to pay the fine of 1000.00 or 9 nine months of imprisonment. The accused is sentence to 1000 or 9months in prison (final).*

In addition, another example of power relation is when the prosecutor will announce, for example the next case: Theft of goods of the value 800 Namibian dollars

The state prosecutor, who a male person speaking with the very low voice which lacks authority. He introduced the case by calling the suspect to stand in the dock and the prosecutor resume the court hearing by reading the details out for court hearing.

The prosecutor will only proceed with court proceeding provided that the magistrate authorises him/her to do so. The Magistrate will then authorize him to proceed. For instance, 'You may now proceed' in the word 'proceed' is symbolic of the magistrate's influence in court. It shows his/ her ability to direct the talk by encouraging as she is requiring it. Thereafter *the* court will respond: 'As y worship pleases'.

Power is the ability of an individual or a group of individuals to carry out their will even in the face of resistance from others, and it includes the ability to control the behaviour of others, at times against their will, Gibbons (2009).

For instance, the magistrate: 'I hereby adjourn the case till the 24th of July 2019'

This is an indication that the magistrate takes decision without consideration whether the new date is convenient or not as a lay litigant it is never as you please, but as 'Your Worship pleases!'. This phrase indicate that this power gives the magistrate the ability to bend your will to his /her will, and the convention makes you subscribe "as your worship pleases!" This has caused cases to linger for several years, as the magistrate adjourns a case however and whenever, thereby also making the Namibian justice system very slow.

M: *'Give your full name, stand up, all of you.'*

According to Stubbs (1996) form terms of address repeatedly acknowledge the status and role of court officials. When other court officials, particularly the public prosecutor, address the magistrate as 'Your Worship', this instils in other interactants some sense of confidence that the magistrate's legal decision is the best possible and hence reliable. Apart from this, they serve a significant ideological function, showing respectful politeness or submission's. The courtroom environment itself is unpleasant, and only the magistrate has the power to make decision even though the prosecutor attempted to suggest the decreasing of the sentence or rather for the case to be acquitted it is however fruitless as only the magistrate possess the power to decide. Additionally, the magistrates are either too fast or too low which impede the accused and the witness who are just ordinary lay people to comprehend the language spoken in the courtroom. Therefore, it is imperative for the forensic linguistic to intervene by stating clearly the intention of the magistrate or the court outcome. Looking at the following example provided.

This point is strongly supported by Farinde (2008), when he states further that courtroom discourse is arguably the most direct powerful institution. "the bail money was forfeited, and the accused person appealed in court". A female magistrate crosses –questioned the accused person and inform her to answer all the questions before she gives the final verdict.

### **Extract 3**

The state prosecutor resumes the hearing with this long sentence

*1. The accused is here for the charge of theft. The case is appearing for plea and trial. On the 28 of September 2018, while she was on custody and come to court and appealed on both cases however, she was arrested while she was on bail, I refused because she was already on custody.*

*She appealed only for domestic violence court because she was expected to appear on both cases in the same day. The court made a mistake by placing her court cases in the same day. The witness was subpoenaed but subpoena was not served.*

*2. Thus your worship, receive this application case to be remanded to April. The complainant on that day he was not being ready and he is Ausonia, he does not have money ,he indicated, he said he does not transport money, I told him that he must apply for transport*

*money or borrow money ,but he said he does not have anyone to borrow money. Thus, the witness could not be present in the court today.*

*3. She appealed only for domestic violence court because she was expected to appear on both cases in the same day. The court made a mistake by placing her court cases in the same day. The witness was subpoenaed but subpoena was not served.*

*She was arrested while she was on bail. I refused because she was already in custody  
The accused person to be put on warning as the bail money was forfeited. This matter be remanded until the 8<sup>th</sup> February. The accused person will remain in the custody.*

The first point is that the third paragraph is very complex and difficult to comprehend by an ordinary lay person. It lacks connectivity, conjunction, and meaning which could create challenges in understanding what the prosecutor really meant.

*4. Thus your worship, receive this application case to be remanded to April. The complainant on that day he was not being ready ad he is Askar, he does not have money ,he indicated, he said he does not transport money, I told him that he must apply for transport money or borrow money ,but he said he does not have anyone to borrow money. Thus, the witness could not be present in the court today.*

The second point is that the sentence provided above is very perplexing, looking at the schema and the context of it, only a linguistic person can comprehend it because of its content and the structure. It will require a thorough listening skills and analysis in order to determine what the prosecutor point of view.

*‘. She was arrested while she was on bail. I refused because she was already on custody. She appeared only for domestic violence court because she was expected to appear on both cases in the same day. The court made a mistake by placing her court cases in the same day. The witness was subpoenaed but subpoena was not served.*

The analysis has indicated that the certain linguistics terminology used by both court officials during legal proceedings such ad custody, subpoena, appeared and subpoenaed, create difficulties to lay people present in the courtroom, to comprehend the language

spoken in the courtroom. Such lay suspects and witnesses may be lacking understanding in both legal language and knowledge of courtroom language and sensible resources employed in formal courtroom conversation.

Additionally, the courtroom process is very tiring as there is a big pause between cases and the prosecutor interacting with the magistrate and the accused person. It is very intimidating to people even though they have committed crimes. The prosecutor fails to separate the sentences for the lay people (witnesses and accused person) to understand. The sentence is too long, which makes even the interpreter to make a longer statement during the translation.

Furthermore, the magistrate speaks too fast and with soft voice and depends on the interpreter to convey the message. It is difficult to confirm whether the interpreter is conveying the correct message since the accused person did not hear what the magistrate is saying and do not understand English.

#### **Extract 4**

In this extract the magistrate is cross – questioning the accused person before handing over the verdict. (M = magistrate; A= accused person) The turns of the dialogue are numbered from 1 (one) to 32 (twenty-eight)

- 1) *M: I am going to ask you questions, you must answer them clearly. Do you understand?*
- 2) *A: yes*
- 3) *M; Did you steal or not*
- 4) *A: No, itook the things*
- 5) *M: Are you guilty or not guilty*
- 6) *A: I am guilty*
- 7) *M: Are you married?*
- 8) *A; No*
- 9) *M: Do you have children*
- 10) *A: Yes*
- 11) *M: How many?*

- 12) A: *Who is staying with the baby?*
- 13) M: *How old are you?*
- 14) A: *20*
- 15) M: *Are you married?*
- 16) A: *No*
- 17) M: *Where is the child staying?*
- 18) A: *With my grandmother at the North.*
- 19) M: *What do you do for a living?*
- 20) A: *I am s student*
- 21) M: *Where?*
- 22) A: *At Wellwitchia College*
- 23) M: *What are doing?*
- 24) A: *Studying Nursing*
- 25) M: *Do you want community works or granted bail? Do you have money for bail?*
- 26) M: *Who will pay for you?*
- 27) A: *I can afford 500*
- 28) M: *From where?*
- 29) A: *I will try myself. I will get money at the ATM*
- 30) M: *Is there anything that you would to say?*
- 31) A: *No, your worship*
- 32) Pro; *Your worship, Theft is a serious act but because she is first time offender, she can sentence to 500 hundred Namibian dollars, since she is the first-time offender, your worship,*
- 33) M: *You are charged for theft and I sentence you to pay the fine of 1000.00 or 9 nine months of imprisonment. The accused is sentence to 1000 or 9months in prison (final)*

Turn 30 '*Is there anything that you would to say?*' These are used to ask the accused if she has any requests to place before the court before receiving the final judgement or the verdict. The accused person nods his head as a non-verbal expression of a 'Yes' or 'No' response that follows in Turn 26 '*No, Your worship*'

*P: Your worship, theft is a serious act but because she is first time offender*

*She can sentence to 500 hundred dollars, your worship*

Turn 32: M: The accused is charged with theft which is a serious offence and punishable by law. Therefore, I sentence to pay the fine of 1000.00 or 9 nine months of imprisonment.

The accused is sentence to 1000 or 9months in prison (final verdict)

The magistrate speaks straight forward without taking into consideration that the accused person is understanding or not. The forensic linguists can intervene by explaining to the accused person what the magistrate meant by stating:

*“The accused is charged with theft which is a serious offence and punishable by law.”*

Providing the meaning of serious offence and the phrase punishable bylaw. This will benefit the accused person to understand why he/she is receiving hat punishment.

*P: Your worship, Theft is a serious act but because she is first time offender*

*She can sentence to 500 hundred dollars, your worship.*

*M: The accused is charged with theft which is a serious offence and punishable by law.*

*Therefore, I sentence to pay the fine of 1000.00 or 9 nine months of imprisonment. The accused is sentence to 1000 or 9months in prison (final verdict)*

The analysis has indicated that the possibility of the accused person to be sentences because prosecutor and the magistrate only cross – questioning the culprits without offering them opportunity to give full explanations of their plea.

Hence forth, there is a sign power relation in the extract above due to the fact that the magistrate is in charge and control of the proceeding and her language is full of power and authority which no one else in the courtroom could challenge or overstep.

This point is also strongly supported by Farida (2008), he states further that courtroom discourse is arguably and it is the most direct powerful institution.

Once more, in the extract above, the magistrate further uses words like ‘charged and ‘imprisonment’. These rely on the codified convention of the court institution. The magistrates can perform certain acts using such words by benefit of the law gives them. With this authoritative statement, the magistrate is passing verdict to the accused by virtue of what is to be the case if the fines are not paid. The example of the dialogue above reflect



the power in institutional discourse pays special attention to the role of questioning and inequalities created by the fact that institutional participants are expected to ask questions as well as insist on replies (e.g. Wang, 2006).

#### **Extract 4**

Represented by the lawyer (He was charged of alleged murder which was committed during the theft and burglary act). The accused lawyer would like to apply for bail which was objected or opposed by the witness.

*(W: witness, Lawyer)*

*Witness; a police officer who investigating the case*

*L: What do for a living*

*W: What is your stand on this case?*

*L: Objection to bail*

*W: The case is serious offence is involving the loss of life of someone*

*L: The accused might interfere with witness*

*W: Why do you say is the serious case*

*L: It is involving life; the deceased was stabbed several times*

*W: According to your investigation who inflicted the stab wound ‘*

*L: Why do you say so?*

*W: He admitted killed the guy. Seeing that and seriousness of the case and that may be sentence, he may abscond the law.*

*L: What is your take in this case?*

*W: Sentence and convicted, YES*

*L: He might be sentences or convicted?*

*We, knowing that he might abscond the law*

*L: Why do you say the accused is guilty?*

*W: The accused has more than one case, the accused before court is the one who committed the crime*

*L: Why do you say the accused is guilty?*

*W: The accused person state witness has indicated he is the one committed*

*L: This independent witness where are they coming from?*

*L: The alleged accused was also charged with murder; you say the accused might abscond*

*Am I correct?*

*L: Now, why did you not oppose his bail?*

*W: He was charged and chose to be silent*

*W: If could have his docket before me I world be able to testify*

*L: If he agreed that he had stabbed the deceased. How do you know that he is the one who killed him?*

*W: I don't know but he has admitted killing him*

*L; Can you say that?*

*L: Saying that he stabs him does indicate how much the accused stabbed the person*

The witness who is also a police detective changed the tide of the cross examination.

In the extract above, the witness wiels more powerless than the cross-examining lawyer as seen in the questioning back the lawyer and topically and quantitatively controlling the discourse. The cross questioning of the witness might even lead to the witness testify wrong and incorrect information. The tactics of repetition and contrast are generally very frequent cross-examination techniques. The tactic of repetition has already been exemplified within person targeted strategies in Extract 4 (lines 18 and 20). *What is your stand?* The literal meaning is, *(Why do you say the accused is guilty?)*

In the example provided above, repetitive questions are incorporated into a contrastive list, a tactic observed by Matoesian (2005). The contrastive list combines both repetition and contrast. Extract 6 shows a lawyer cross-examining a witness who is police detective who arrested the alleged accused of theft and burglary where someone was stabbed with the sharp object to death.

However, the analysis of power relations is not the primary aim of this dissertation. It is only through the analysis of cross-examination question types and strategies that Steel and Morris's control over witness replies and the course of cross-examination is considered.

The foregoing explains the need for forensic linguists' intervention in in this legal process by mitigating on the deployment of face threats cross-examination. Furthermore, witnesses are put in the corner by being expected to give polar responses to questions which might put them in murky waters. While polar questions could be helpful, it could be detrimental

because the aim of a cross examining lawyer is to invalidate all the testimonies of the witnesses and not justify responses whenever the questions demand polar responses.

Farinde (2008) opines that the aim of cross-examining lawyer is to discredit the witnesses' testimonies, which he describes as a tense confrontation between an aggressive lawyer and the witness. In addition, Manet (1980: 247-249) sees the aim of a cross-examining lawyer as to derive testimonies that would be favourable to him from the witness.

Courtroom interaction is significant because it provides insights into the language used in the process of delivering justice. It is in this offer that this study seeks to examine a legal process called cross examination which should be an area of interest for forensic linguists since it is a legal process in which language is implicated because it has some underlying assumptions which make the legal activity to be hostile and uncooperative.

#### **Extract 5**

*P: Your worship, the accused fail to attend the court hearing.*

*M.: Why didn't you come to court? What is your explanation?*

*A: I went to Botswana and the car broke down.*

*M: Do you have the papers to proof that?*

*A: For car? No, Your worship*

*M: The matter is remanded to next year and failing to appeal the warrant of arrest will be issued so that you will be arrested, and the bail money will be forfeited. Do you understand?*

*A: Yes, your worship*

The extract above indicate the instance of 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. Penman (1987), states that 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 lay people.

### **Extract 6C-court**

Viljoen (1992) looks at the relationship between discourse and power in the South African courtroom. Viljoen's study pays particular attention to how language is used in courtroom procedures such as direct and cross examination of witnesses and sentencing procedures as well as during court interpretation.

P: The docket is before the court .The accused person is charged with theft of property worth N\$1500, 00.

The prosecutor read the case.

M: Are you guilty or not guilty?

A: I have already pleaded guilty, your worship.

M: I am asking you, now, are you guilty or not guilty?

A: I am guilty my worship

A: I am sorry my worship, I will never repeat it again

M: Theft is a very serious offence; you took someone's properties without his permission.

*I hereby sentence you to 12 months imprisonment. Because you are a first-time offender, your sentence is suspended, if you do not commit a crime in two years. Do you understand?*

The assumption in the above extract indicated that the power relation between lawyers and witnesses, the magistrate and the accused is asymmetrical; the lawyers are usually impolite in the process of cross-examination. Due to the power relations which the lawyers have, they might intimidate the witness during cross – questioning which might result in confusion, and cause the witnesses feel powerless. However, the magistrate is a powerful person who can sentence and acquit the accused person by giving a final verdict.

Referring the to extract, the cross examination is always face-threatening in which the lawyer forcefully demonstrates his/her power since he/she knows that he/she employs unlimited power, while the witness has none (unless his lawyer intervenes).

## **SUMMARY**

To summarise, various lexical features from morphology and Syntactic errors in word order and concord agreement and excessive use of conjunctions and prepositional phrases and were analysed. The inflectional morpheme - ed is used, is used even if the sentence is in future tense, that is a clear indication that legal language does not follow the grammar and sentence structure of the English language but focus mainly is on the delivery of the message .Apart from inflectional morpheme, there are many terminological polysemous used in legal English and requiring very accurate and precise choice of equivalents in the target language and legal system which are used by court officials which are difficult to a lay person to understand. The analysis has also indicated that the certain linguistics terminology used by both court officials during legal proceedings such ad custody, subpoena, appeared and subpoenaed; create difficulties to lay people present in the courtroom, to comprehend the language spoken in the courtroom. Issues concerning power relations were analysed, however, the analysis of power relations is not the primary aim of this dissertation. The foregoing explains the need for forensic linguists' intervention. The following chapter will tackle the recommendation and the conclusion of this study.

## **Chapter 5: Conclusion and Recommendations**

This research has attempted to carry out a forensic linguistic analysis of the spoken language in courtrooms in theft and burglary cases and the degree to which instructions are understood.

In instances where there is less than full understanding, the study attempts to isolate the particular aspect of legal language most significantly related to difficulties in the comprehension of formal language, concentrating on the pattern of instruction, most particularly its syntax, which is the basis for incomprehensibility of typical jury instructions. Forensic linguistics experts should be allowed by law to identify specific linguistic based challenges such as lexical phrases faced by lay participants in the legal process with a view to describing them, because it is not only written legal language that presents difficulties for the lay person; spoken language is even more difficult.

Another unique feature found during the courtroom proceedings is the use of a string of prepositions in sentences and excessive use of prepositional phrases by courtroom interlocutors. Prepositional phrases are formed by using a preposition as a headword and a noun phrase. When excessively used in the courtroom, they have the effect of further complicating the syntax of a sentence. Data collected had also shown that there is excessive poor usage of conjunctions by courtroom interlocutors.

This study has also discovered that there is frequent usage of the word “any” and the modal verb “must”. “Any” is frequently used in a legal text to deal equally with men and women using gender-neutral language. In addition, language is a constructive and destructive mechanism used by users to achieve their targeted goals. The language used in the courtroom is completely different from the language used for normal conversation because of its richness in legal vocabulary. For formality, the use of “must” is explained by its double possibility of expressing obligation, prohibitions and futurity which is connected to power relations in the courtroom. Another distinguishing feature of reference in legal texts is the frequent use of specific legal technical terms which do not exist in the language of the accused persons. Morphology showed three methods through which words can be expounded. First, people can make new words from existing words and different word parts. Second, people can borrow words from other languages. The use of the inflectional

morpheme – ed is used, although some sentences are in the future tense. The sentences with the inflectional morpheme - ed are used and are spoken using the present perfect tense in order to indicate the action and time. Legal language does not follow the grammar and sentence structure of the English language; the focus is mainly on the delivery of the message. Apart from the inflectional morpheme -ed, the usage of polysomic words during trials, are also confusing since they have different meaning in English, and they do not have an equivalent meaning in the accuser's language. These words might create difficulty in understanding because the meanings of the root words have a completely different meaning from words with affixes added.

Forensic linguistics experts are required to be present in the courtroom in order to examine how court participants comprehend the courtroom language in relation to their cultural background and their goals of interaction in the courtroom. Example of linguistic features which tend to cause confusion during plea and trial are adjourn, the matter, appear, appeal, custody, object and remanded. Due to the fact that lay people find it difficult in legal language comprehension, they tend not to give unexpected answers. In addition, forensic linguistic analysts are required to be present in the courtroom during a legal process in which language is implicated because it has some underlying assumptions which enable the legal activity to be friendly and cooperative as well as to analyse all the linguistics features. It makes it easier for the ordinary person during the courtroom proceedings. The fact remains that innocent people might be wrongly sentenced due to linguistic problems therefore the presence of a forensic linguistic professional is of great significance in order to assist the legal official with linguistic problems. It has often been said that it is the language that treasures the law. Not only do we need language to frame the law, but we need language to understand the court proceedings.

This study offers suggestions on how forensic linguistics can be used to avoid miscommunication during court proceedings. Miscommunication in the courtroom occurs as a result of various contributing factors. There are many power relation linguistic features which may impede the lay person and cause them to misinterpret the content during the court proceeding - most especially during cross – questioning. The use of polysemy words during court proceedings are an example of this. When a word or phrase means different

things it is called polysemy, for example, the verb 'proceeds' which means to go or to advance.

However, when legal luminaries are in the witness box, they dexterously avoid answering polar questions, since they know the implications which non-lawyers cannot know, since they will be threatened with a charge of contempt. This shows impartiality and a challenge to the claim that everyone is equal before the law.

Forensic linguistics experts are able to discover how the power relations of the lawyers and magistrates during court interactions might be intimidating to ordinary lay people. Apart from linguistic complications, this study has also discovered that another important aspect of the legal system is the strict adherence to doctrines. This is due to power - relation language used in the courtroom which is intimidating. Subsequently, due to the power relations which the lawyers have, they might intimidate the witness during cross – questioning which might result in confusion, and that the witnesses feel powerless. However, the magistrate is a powerful person who can sentence and acquit the accused person by giving a final verdict. Magistrates can perform certain acts of power relations using words which the law gives them. They also use declarative statements, when passing a verdict to the accused persons. In addition, the lawyers' cross examination is always face-threatening in which they forcefully demonstrate their power since they are aware that they employ unlimited power, while the witness has none (unless his lawyer intervenes).

As a result of the foregoing, the following recommendations are proffered:

- Whenever legal officials have to use a specific legal term and there is any question that the parties may not comprehend, he/she should provide a brief, clear explanation of the term. For every response, during the cross –questioning, the witness should be allowed to clarify themselves and not have to wait until re-examination;
- The cross-examining lawyer should be cautious in maintaining the face of witnesses. They should be gentlemen as they claim, in discrediting witnesses' testimonies.



The forensic linguist should help disambiguate sentence constructions that put witnesses at a disadvantage and should help clarify polysemous expressions, among others.

- Forensic linguists should be involved in every cross-examination process and caution lawyers whenever they sense the face of the witness.
- Every person that is cross-examined should be entitled to understand the legal language used.
- For every cross-examination there should be a forensic linguist who should give an impartial evaluation of the process.
- The courtroom should be a place of justice where every person, irrespective of their status, will be willing to testify, to witness, to listen, and to comprehend the legal language.

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# **APPENDICES**

**FACULTY RESEARCH ETHICS COMMITTEE (F-REC)**

**DECISION: ETHICS APPROVAL**

Ref: S006/2019

Student no.: 9512829

Date Approved: 26 November 2018

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**RESEARCH TOPIC**

**Title: A Forensic Linguistics study of the spoken courtroom language used in theft and burglary cases at the Windhoek Magistrate's Court**

**Researcher (s):** Mrs Marian Tegga Harupe

**Tel:** +264 81 2857 407

**E-mail:** [mteggag@gmail.com](mailto:mteggag@gmail.com)

**Supervisor(s):** Dr Niklaas Fredericks

**E-mail:** [nfredericks@nust.na](mailto:nfredericks@nust.na)

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Dear Mrs MT Harupe,

The Faculty of Human Sciences Research Ethics Committee (F-REC) of the Namibia University of Science and Technology reviewed your application for the above-mentioned research. The research as set out in the application has been approved.

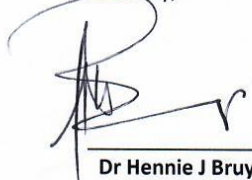
We would like to point out that you, as principal investigator, are obliged to:

- maintain the ethical integrity of your research,
- adhere to the Research policy and ethical guidelines of NUST, and
- remain within the scope of your research proposal and supporting evidence as submitted to the F-REC.

Should any aspect of your research change from the information as presented to the F-REC, which could have an effect on the possibility of harm to any research subject, you are under the obligation to report it immediately to your supervisor or F-REC as applicable in writing. Should there be any uncertainty in this regard, you have to consult with the F-REC.

We wish you success with your research, and trust that it will make a positive contribution to the quest for knowledge at NUST.

Sincerely,



**Dr Hennie J Bruyns**

**Chairperson: F-REC**

**Tel:** +264 61 207-2988/7

**E-mail:** [hjbruyns@nust.na](mailto:hjbruyns@nust.na)



**Prof Alinah K Segobye**

**Dean: FoHS**

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NAMIBIA

16 April 2018

Mrs. Unengu

Acting Chief Magistrate

Ministry of Justice Private

Bag 13248 WINDHOEK

Dear Mrs .Unengu

**RE: RESEARCH RESPONDENTS**

I am a MEAL (Masters of English and Applied Linguistics) student at the Namibian University of Science and Technology. I am currently conducting research on the topic: A Forensic Linguistics study of the spoken courtroom language used in theft and burglary cases in Windhoek Magistrate court.

I would like to request for permission to attend court proceedings in order to conduct my research observation during the theft and burglary criminal cases at Katutura and Windhoek Magistrate Court.

Please note that information obtained during the observation of court proceedings will be used for academic purpose only and will be treated confidential.

In the event of queries, feel free to ask or contact us:

Dr. N.Fredericks:+26481 2041575 /264 61-2072410

Marian Tegga Harupe :+26481- 144 7878 / +26481 -2857407

**Mrs. M.T. Harupe**

**Researcher**

**Dr.N.Fredericks**

**Supervisor**



16 April 2018

Advocate O. M. Imalwa  
Prosecutor General  
Private Bag 13191  
WINDHOEK

Dear Adv. Imalwa

**RE: RESEARCH RESPONDENTS**

I am a MEAL (Masters of English and Applied Linguistics) student at the Namibia University of Science and Technology .I am currently conducting research on the topic: A Forensic Linguistics study of the spoken courtroom language used in theft and burglary cases in at the Windhoek Magistrate Court.

I need to interview the Prosecutors (respondents) of the criminal court at the Windhoek and Katutura Magistrate Court. I will make use of a tape recorder and take narrative notes during the interview session. Please note that information obtained during the interview will be used for academic purpose only and will be treated confidential.

In the event of queries, feel free to ask or contact us:

Dr. N.Fredericks: +264 81 2041575 /264 61-2072410

Marian Tegga Harupe : +26481- 144 7878 / +26481 -2857407

**Mrs. M.T. Harupe**

**Researcher**

**Dr. N. Fredericks**

**Supervisor**



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**Observation Checklist**

**Katutura/Windhoek Magistrate Court  
Courtroom Observation Checklist**

**1. Demographic Information.**

1. Criminal case observed:
2. Language used:
3. Gender of accused person
4. Total number of cases per day:

Theft  
English / Khoeckhweyowab  
1  
2

**2. Rating the communication between the accused person and prosecutor and magistrate in courtroom. Circle your answer for below each item.**

1. The prosecutor open the court proceeding in a friendly manner.
2. The prosecutor announce the cases clearly.
3. The prosecutor speaks English well.
4. The prosecutor treats all the accused person equally.
5. The prosecutor allows the accused person to have a translator.
6. The prosecutor explains the rights to legal representation to the accused person clearly.
7. The prosecutor uses legal vocabulary/terminology during the court proceedings.
8. The prosecutor tries his/her level best to make the accused person/witness to understand the cross-questions during trials.
9. The magistrate pays attention during the court proceedings. (Look at them, listen to them), and take note.
10. The prosecutor allows the witnesses to provide evidence of the case in the language they understand.
11. Lawyers are allowed ample time to cross-question the defendants, witness and complainants.
12. The majority accused persons in theft and burglary are ordinary citizen without any background of English language.
13. Most accused persons can communicate well in English.

poor	fair	Good	very good	excellent
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5

①

2. From your observation, what are the contributing factors that hinder the understanding of the courtroom spoken language effectively?

1. English is the language in the courtroom, the legal English is difficult to understand
  2. The prosecutor, the lawyer use vocabulary that are different but have different meaning
  3. The translator could not translate English words properly because of their existence in his mother tongue.
- \* The sentence used are lengthy without the use of prepositional phrase,

3. According to your observation in the courtroom, what language barriers have identified that could cause the misinterpretation of facts between the prosecutor and the defendant, complainant and translator?

- Lengthy sentences without prepositions or prepositional phrase are confusing.
- The translator only translate the words that he knows.
- Legal terminology is very challenging / difficult to understand by someone without English language knowledge.

## Katutura/Windhoek Magistrate Court

### Courtroom Observation Checklist

1. Criminal case observed:
2. Language used:
3. Gender of accused person
4. Total number of cases per day:

Theft and burglary  
English / KhoeKhuegswab  
1 female 2 male  
it

**2. Rating the communication between the accused person and prosecutor and magistrate in courtroom. Circle your answer for below each item.**

1. The prosecutor open the court proceeding in a friendly manner.
2. The prosecutor announce the cases clearly.
3. The prosecutor speaks English well.
4. The prosecutor treats all the accused person equally.
5. The prosecutor allows the accused person to have a translator.
6. The prosecutor explains the rights to legal representation to the accused person clearly.
7. The prosecutor uses legal vocabulary/terminology during the court proceedings.
8. The prosecutor tries his/her level best to make the accused person/witness to understand the cross-questions during trials.
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11. Lawyers are allowed ample time to cross-question the defendants, witness and complainants.
12. The majority accused persons in theft and burglary are ordinary citizen without any background of English language.
13. Most accused persons can communicate well in English.

poor	fair	Good	very good	excellent
1	2	3	(4)	5
1	2	(3)	4	5
1	2	(3)	4	5
1	2	3	(4)	5
1	2	3	4	5
1	2	3	(4)	5
1	2	3	(4)	5
1	2	(3)	4	5
1	2	3	(4)	5
1	2	3	(4)	5
1	2	3	(4)	5
1	2	(3)	4	5
1	2	3	4	5
(1)	2	(3)	4	5
1	(2)	3	4	5

2. From your observation, what are the contributing factors that hinder the understanding of the courtroom spoken language effectively?

1. The accused person kept on asking the translators to repeat what he said because he could not hear properly or does not understand.
2. The language used in the courtroom is English.
3. There are some polysomic words used. The use of modal verbs was very common in the courtroom, such as 'must', 'can'.
4. There are no prepositions used in some sentences.

3. According to your observation in the courtroom, what language barriers have identified that could cause the misinterpretation of facts between the prosecutor and the defendant, complainant and translator?

The use of legal terminologies, during court proceedings. The lengthy sentences could also create confusion to the translator.



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## Observation Checklist

## Katutura/Windhoek Magistrate Court

## Courtroom Observation Checklist

### 1. Demographic Information.

1. Criminal case observed:
2. Language used:
3. Gender of accused person
4. Total number of cases per day:

Theft and burglary  
English / Oshiwambo  
male  
3

**2. Rating the communication between the accused person and prosecutor and magistrate in courtroom. Circle your answer for below each item.**

1. The prosecutor open the court proceeding in a friendly manner.
2. The prosecutor announce the cases clearly.
3. The prosecutor speaks English well.
4. The prosecutor treats all the accused person equally.
5. The prosecutor allows the accused person to have a translator.
6. The prosecutor explains the rights to legal representation to the accused person clearly.
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poor	fair	Good	very good	excellent
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1	2	3	(4)	5
1	2	(3)	4	5
1	2	3	(4)	5
1	2	3	(4)	5
1	2	(3)	4	5
1	2	3	4	(5)
1	2	(3)	4	5
1	2	3	4	5
1	2	3	(4)	5
1	2	3	(4)	5
1	2	(3)	4	5
1	2	(3)	4	5
1	2	(3)	4	5
1	(2)	3	4	5

3

2. From your observation, what are the contributing factors that hinder the understanding of the courtroom spoken language effectively?

1. The language used in the courtroom is English, legal English.

2. There are some legal terms used in the courtroom such as 'custody' and 'subpoena' - that

3. are difficult to translate into local language

4. It is very easy to detect that most people present in the courtroom have difficulties to understand English.

3. According to your observation in the courtroom, what language barriers have identified that could cause the misinterpretation of facts between the prosecutor and the defendant, complainant and translator?

The language used in the courtroom is English which is legal English

④

## Observation Checklist

Katutura/Windhoek Magistrate Court

## Courtroom Observation Checklist

### 1. Demographic Information.

1. Criminal case observed:
2. Language used:
3. Gender of accused person
4. Total number of cases per day:

Theft and burglary  
English / Khoekhoeweb  
male  
4

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1	2	(3)	4	5
1	2	3	4	(5)
1	2	3	(4)	5
1	2	3	(4)	5
1	2	3	(4)	5
1	2	(3)	4	5
1	2	3	4	(5)
1	2	3	4	5
1	2	3	(4)	5
1	2	3	(4)	5
1	2	3	(4)	5
1	(2)	3	4	5

(4)

2. From your observation, what are the contributing factors that hinder the understanding of the courtroom spoken language effectively?

1. The magistrate is such low voice which is difficult to comprehend, probably depending on the translator to speak loud.
2. Most of the legal words used in the courtroom has no translation in English or perhaps the translator does not know how to translate it.
4. The prosecutor at times she mixed English and her mother tongue which can lead to confusion

3. According to your observation in the courtroom, what language barriers have identified that could cause the misinterpretation of facts between the prosecutor and the defendant, complainant and translator?

The legal terminologies such as 'subpoena', warrant of arrest, remanded could be misinterpreted by any lay person.

There are some words which exist in English but not are not in Oshiwambo.





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## Observation Checklist

Katutura/Windhoek Magistrate Court  
Courtroom Observation Checklist

### 1. Demographic Information.

1. Criminal case observed :
2. Languages used :
3. Gender of accused person
4. Total number of cases per day:

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English / Oshiwambo  
male  
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### 2. Rating the communication between the accused person and prosecutor and magistrate in courtroom. Circle your answer for below each item.

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1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5
1	2	3	4	5

(5)

2. From your observation, what are the contributing factors that hinder the understanding of the courtroom spoken language effectively?

1. The prosecutor is not fluent in English and speaks long sentences which are difficult to translate
2. There are words that are used such as 'stand', and there is a lot of repetition of
3. sentences.
4. The prosecutor speaks so fast and at a very low voice which impedes understanding,
5. The

3. According to your observation in the courtroom, what language barriers have identified that could cause the misinterpretation of facts between the prosecutor and the defendant, complainant and translator?

The translator is not fluent in English and translates some words using English, which indicate that he does not know English very well, especially legal English

## Voice recordings

### Extract 1

The state prosecutor resumed the hearing by reading this long sentence.

1. The accused is here for the charge of theft. The case is appearing for plea and trial. On the 28 of September 2018, while she was in custody and come to court and appealed on both cases however.

2. She was arrested while she was on bail, I refused because she was already on custody..

3. Thus your worship, receive this application case to be remanded to April. The complainant on that day he was not being ready and he is Ausekar, he does not have money, he indicated, he said he does not transport money, I told him that he must apply for transport money or borrow money, but he said he does not have anyone to borrow money. Thus the witness could not be present in the court today.

. The accused is here for the charge of theft. The case is appearing for plea and trial. On the 28 of September 2018, while she was in custody and come to court and appealed on both cases however.

2. She was arrested while she was on bail, I refused because she was already on custody..

She appealed only for domestic violence court because she was expected to appear on both cases in the same day. The court made a mistake by placing her court cases in the same day. The witness was subpoenaed but subpoena was not served.

3. Thus your worship, receive this application case to be remanded to April. The complainant on that day he was not being ready and he is Ausekar, he does not have money, he indicated, he said he does not transport money, I told him that he must apply for transport money or borrow money, but he said he does not have anyone to borrow money. Thus the witness could not be present in the court today.

4. She appealed only for domestic violence court because she was expected to appear on both cases in the same day. The court made a mistake by placing her court cases in the same day. The witness was subpoenaed but subpoena was not served.

She was arrested while she was on bail. I refused because she was already on custody.

L: He might be sentenced or convicted?

W: Me knowing that he might abscond the law.

L: Why do you say the accused is guilty?

W: The accused has more than one case, the accused before court is the one who committed the crime.

L: Why do you say the accused is guilty?

W: The accused person state witness has indicated he is the one committed.

L: This independent witness where are they coming from?

L: The alleged accused was also charged with murder, you say the accused might abscond Am I correct?

L: Now, why did you not oppose his bail?

W: He was charged and chose to be silent.

W: If I could have the docket before me I would be able to testify.

#### **Extract 5**

P: Your worship, the accused fail to attend the court hearing.

M: Why didn't you come to court? What is your explanation?

A: I went to Botswana and the car broke down.

M: Do you have the papers to proof that?

A: For car? No, Your worship.

M: The matter is remanded to next year and failing to appeal the warrant of arrest will be issued so that you will be arrested and the bail money will be forfeited. Do you understand?

A: Yes, your worship.

#### **Extract 6 C-court**

P: The docket is before the court. The accused person is charged with theft of property worth N\$1500, 00.

The prosecutor read the case.

M: Are you guilty or not guilty?



The accused person to be put on warning as the bail money was forfeited. This matter be remanded to the 8<sup>th</sup> February. The accused person will remain in the custody.

#### Frequency of 'any and must'

Any charges against you,

'Is there **anything** that you would like to say?

'you **must** come to court on time'

'you **must** stand up'

'you **must** inform the court on time,'

#### Extract 4

The accused person was represented by the lawyer. (He was charged of alleged murder which was committed during the theft and burglary act). The accused person's lawyer would like to apply for bail which was objected or opposed by the witness. (W: witness, L: Lawyer)  
Witness: A policer officer who investigated the case.

L: What do you do for a living?

W: What is your stand on this case?

L: Objection to bail.

W: The case is serious offence is involving the lost of life of someone.

L: The accused might interfere with witness.

W: Why do you say is the serious case?

L: It is involving life, the deceased was stabbed several times.

W: According to your investigation who inflicted the stab wound?

L: Why do you say so?

W: He admitted killed the guy. Seeing that and seriousness of the case and that may be sentence, he may abscond the law.

L: What is your take in this case?

W: Sentence and convicted, yes.

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A: I have already pleaded guilty, your worship.

M: I am asking you, now, are you guilty or not guilty?

A: I am guilty my worship.

A: I am sorry my worship, I will never repeat it again.

M: Theft is a very serious offence, you took someone's properties without his permission.

You are sentence to 12 months imprisonment. Because you are the first time offender, you sentence is suspended provided that you don't commit a crime in two years.

Do you understand?