

Informal Instant Translation in the Tanzanian Courts: Law Professionals' Perceptions on the Efficacy of English versus Kiswahili in Adjudication of Justice

Simon Mlundi

Institute of Judicial Administration Lushoto (Tanzania)

Simon Mlundi is Assistant Lecturer of Linguistics and Communication Skills at the Institute of Judicial Administration Lushoto, Tanzania. He is also in the final stages of defending his PhD thesis in Linguistics at the University of Dodoma, Tanzania. He has published two papers in form of conference proceedings at the University of Dodoma - College of Education. mlundis@yahoo.com / symonmlundi2017@gmail.com

Abstract

It is widely known that language plays a fundamental role in the administration of justice. Court languages in Tanzania are Kiswahili and English. The English language is used predominantly for recording and writing of judgments in the Subordinate and High Courts of Tanzania. Kiswahili is used for hearing and recording all proceedings in Primary Courts. The magistrates in Subordinate Courts listen to testimonies in Kiswahili and then translate instantly into English when writing court records. This process of translating court hearings on spot has been considered to be problematic among scholars. This study will examine the challenges of informal instant translation of testimonies from Kiswahili to English in the Subordinate Courts of Tanzania. Specifically, it will focus on the perceptions of law professionals towards the efficacy of the English versus Kiswahili in the adjudication of justice. The study was conducted in the cities of Tanga and Dodoma. Data were collected through observations and interviews. It was found that there were a number of challenges faced by magistrates while instantly translating Kiswahili hearings into English for records. There were also contradicting perceptions of law professionals on the efficacy of English versus Kiswahili.

Keywords: Kiswahili, informal instant translation, court language, legal system, adjudication of justice, efficacy of English versus Kiswahili, Tanzanian Court Model

1. Introduction

The Judiciary of Tanzania refers to an independent organ whose primary role is to administer justice to the public of Tanzania. The justice system of Tanzania includes courts, laws, principles, and the language relevant to the administration of rights (The Constitution of the United Republic of Tanzania of 1977). The Judiciary is generally composed of several courts of varying jurisdictions. According to Nyanduga and Manning (2006), the judiciary of Tanzania consists of four tiers. The first tier is the Court of Appeal of the United Republic of

Tanzania which is the highest court in the hierarchy of the Judiciary. This court is established under Article 108 of the Constitution of Tanzania (1977). The second tier is the High Courts for Tanzania Mainland and Tanzania Zanzibar. These courts are established under Article 107 with unlimited original jurisdiction to deal with all types of cases. The third level of the court system is Subordinate or Magistrate Courts which include the Resident Magistrate Courts and the District Courts. These are established under the Magistrate Courts Act of 1984. Although both courts enjoy concurrent jurisdiction, District courts receive appeals from primary courts. The Resident Magistrate Courts, in particular, are located in major towns, or cities, as the regional (provincial) headquarters. District Courts are found in all districts (the local government units) of Tanzania. Finally, the lowest tier of the courts is the primary courts. These are also established under the Magistrate Courts Act of 1984 with jurisdiction in both criminal and civil suits (Nyanduga & Manning, 2006). Magistrates preside over all adjudicative and administrative duties in the Primary and Subordinate Courts. Judges preside over all adjudicative and administrative duties in the High Courts of Tanzania together with the Court of Appeal of Tanzania. Figure 1 shows the hierarchy of courts in Tanzania.

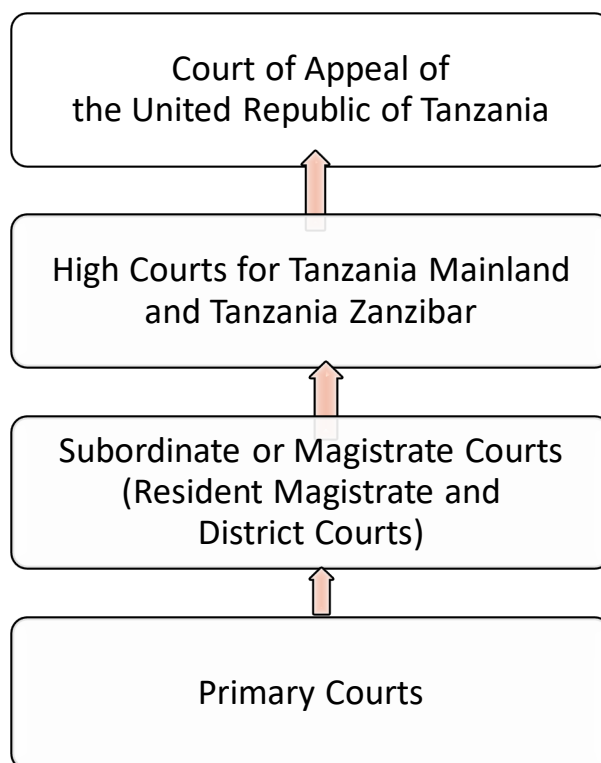


FIGURE 1. Hierarchy of Courts of Tanzania.

The administration of justice is carried out through the use of language, as language plays a significant role in the entire process of adjudicating proceedings in the courts of law (Khalfan, 2018; Rwezaura, 1993). Language is the tool that brings together all parties of the court by facilitating communication among them. According to Khalfan (2018), "language is the oxygen of law and it is a core foundation for justice" (p.viii). In other words, language is used in courts of law as a medium to access justice. In the Tanzanian context, Kiswahili and English are official languages used in the courts of law. Kiswahili is used for adjudicating all proceedings in primary courts but for hearings only in Subordinate Courts, the High Courts and the Court of Appeal of Tanzania. English is used for the recording all court proceedings and writing of judgments in Magistrate Courts and High Courts of Tanzania (The Magistrate Courts Act Cap. 11 s.13). This study will focus on only the Subordinate Courts such as the Resident Magistrate and the District Courts.

Law professionals, who include among others, magistrates, judges, and licensed advocates are the key players in the administration of justice. They are responsible for both adjudicative and administrative duties. According to the Code of Conduct for Judicial Officers of Tanzania (1993), law professionals especially magistrates and judges actively participate in establishing, maintaining, and enforcing a high standard of conduct to fulfill all duties prescribed by law. These duties include hearing cases, giving court orders, ruling, and finally pronouncing judgment.

In fulfilling their adjudicative and administrative duties, the magistrates of District and Resident Magistrate Courts and judges of the High Court translate oral testimonies of witnesses from Kiswahili into English. Together with these multitasking activities of the magistrates, they usually write court records in English with a translation of the Kiswahili oral testimonies. Magistrates also translate into the record arguments given in Kiswahili by the licensed advocates into English during the cross-examination and examination-in-chief sessions. The literature is silent about this kind of translation which involves the transfer of oral text of the source language into the written target text. This is a reversal of the well-known "sight translation." According to American Bar Association (2012), sight translation as a hybrid of interpretation and translation involves interpreters reading a document written in one language while translating it orally in another language without any advance notice.

Several challenges are facing the magistrates in the Subordinate Courts and the High Courts in Tanzania where the languages used in court proceedings change from Kiswahili to English. In these courts (District Courts, Resident Magistrate Courts, High Courts and the Court of Appeal), the languages used are either English or Kiswahili. As stated earlier, the

English language is used for taking and keeping court records during a trial and for issuing judgments, while, Kiswahili is used for hearing of cases only (The Magistrates Courts Act Cap. 11 s. 13 (1) and (2)). The legal language used in the judiciary is expected to facilitate effective communication between parties involved. It is supposed to allow court processes and proceedings to be conducted effectively (Rwezaura, 1993; Wanitzek & Twaib, 1996).

The challenge is caused by the fact that when adjudicating the court's proceedings, magistrates usually listen to testimonies in Kiswahili and then translate them instantly in English as they listen. It is reported that magistrates, interpreters, and translators experienced difficulty in translating testimonies. This has impacted the parties involved (Kasonde, 2017). This study will examine the challenges of informal instant translation done by magistrates in courts when dealing with court proceedings.

2. Literature Review

Magistrates' translation of witnesses' oral testimonies and lawyers' arguments into English records is referred to in this study as Informal Instant Translation (IIT). It is another novel hybrid of interpretation and translation service in courts. IIT is *informal* translation because it does not adhere to the professional standards of the translation procedure. The professional standard of courts' translation as stated by the American Bar Association (2012) should involve competent language access providers, including court interpreters and translators. These standards include using translators who are fluent in the working languages with professional interpreting and translating skills, familiarity with technical terms and courts' culture as well as adherence to codes of professional conduct for court interpreters and translators (American Bar Association, 2012). According to Wang (2013), translation is a language skill which integrates factors such as the style of the source text and the untranslatable cultural information in the source text. It is *instant* because it is carried out on spot by magistrates during the actual testimonies as witnesses continue to testify. Licensed advocates during the cross-examination and examination session usually argue in the Kiswahili language while magistrates translate such arguments into the English language as a way of keeping court records. Usually, these arguments and witnesses' oral testimonies are not recorded in audiotapes or other audio-recording tools but are translated instantly during testimonies.

According to Bassnett (2002), translation procedure involved four stages: reading of the source text, analyzing the source text (ST), restructuring the target text (TT) and finally translating to the TT. Just like writing, translation involves a language skill which combines knowledge of vocabulary, grammar, pragmatics, paragraph writing and organization of the

larger discourse (Wang, 2013). In formal translation, the translators are supposed to be recording the oral text, transcribing the oral text into written text, then analyzing the source text (ST), restructuring in the target text (TT), and finally translating it in the written target text with all revision, editing, and proofreading. However, since the translation of hearings is not done by professional translators but with magistrates with limited translation skills, these instant translations do not adhere to translation standards. Instead, the magistrates in these subordinate courts and judges in the High Courts and the Court of Appeal are the ones who perform such Informal Instant Translations (IIT) in the courtrooms. This is labeled as the “Tanzanian Court Model” in this study, whereby, magistrates and judges have been tasked to hear testimonies in Kiswahili and record them with the English translation (Magistrates Court Act of 1984 Cap 11, section 13(b)).

The choice of court languages is highly debated among scholars and it is reported to cause ineffective communication in courts of law. Several scholars from different fields have discussed various causes of communication barriers in courtroom settings. Scholars' opinions diverge based on the fields and nature of the causes (Khalfan, 2018).

The first group of scholars has argued that the use of Kiswahili both in education and in courtrooms would solve communication barriers (Mazrui, n.d; Rwezaura, 1993). This group of scholars argues that English is the main source of a barrier to communication and the use of Kiswahili will eliminate the barrier and would allow access to justice since the majority of Tanzanians are conversant in Kiswahili (Khalfan, 2018; Rwezaura, 1993).

The second group of scholars has not associated these challenges with the use of a certain language but rather with the legal system itself. They argue that law, as a specialized field or profession, is the main hindrance to effective communication in courtrooms. These scholars argue further that the language barrier would continue to exist regardless of the languages used in courts (Khalfan, 2018; Mukoyogo, 1991). There is a growing debate that calls for using Kiswahili not only in courts of law but also across the education system (Kavugha & Bobb, 1980; Mukoyogo, 1991; Rwezaura, 1993).

Other scholars have pointed out the challenges of using English and Kiswahili in Tanzania and translation problems are not necessarily associated with them. They indicated that the language problem is associated with the nature of the justice system (Blommaert, 2005; DuBow, 1976; Karton, 2008; Namakula, 2014). Thus, these scholars looked at the language challenges from an international criminal justice point of view (Karton, 2008; Namakula, 2014).

Since Kiswahili is used for both the hearing and recording of proceedings in Primary Courts (Khalfan, 2018; Rwezaura, 1993), there are a few problems associated with this level

such as failure to understand testimonies when a witness or a litigant does not understand Kiswahili. This occurs because these courts have less formal proceedings; they exclude the presence of lawyers and Kiswahili is understood by the majority of Tanzanians (Blommaert, 2005; DuBow, 1976). This situation helps lay people participate in decision processes (Wanitzek & Twaib, 1996). However, not all court clients understand Kiswahili as aforementioned. Some clients, especially those in rural areas, understand only ethnic community languages. It was reported that there are few problems in rural Primary Courts (Rwezaura, 1993). This is because the language barrier in the Primary Courts has been overcome by the courts' assessors who interpret from witnesses' vernacular language to Kiswahili (Mukoyogo, 1991).

Most of the scholars recommended various solutions to overcome communication barriers in the courtrooms based on their professional points of view (Karton, 2008; Kasonde, 2017). This study starts from the presumption that participants' perceptions and attitudes play a significant role in understanding the phenomena under-study, and will investigate perceptions of law professionals on the efficacy of English versus Kiswahili in adjudicating court proceedings. The study will also examine the challenges faced by magistrates when listening to testimonies in Kiswahili and translating them instantly into English.

3. Theoretical Framework

This study is guided by the Communicative Functional Approach of Translation which was introduced by Zinaida Lvovskaya in the 1980s (Sdobnikov, 2011). According to this theory, the translation process is not a mere replacement of SL words or structures by the TL words or structures, but rather it presents the act of communication between the three participants (trio); the author of the ST, the translator, and the receivers of the TT (Sdobnikov, 2011). According to the Communicative Functional Approach, translation scholars investigate a translation event in the framework of one specific communication situation within which the translation is done, taking into consideration both linguistic and extra-linguistic factors (Sdobnikov, 2017). These include the communicative intention of the source text sender, the character of the communicative effect produced on the TT recipients (Sdobnikov, 2017).

This means that the approach establishes communication between representatives of different cultures, contexts and that a translator is a mediator in the communication whereby the author of the SL message is communicated to the receivers of the TL message (Sdobnikov, 2011). This theory is used to guide this study in investigating communicative challenges in the

courtrooms by viewing context of communication environments such as speakers (witnesses or litigants), the recipients of the hearing such as parties of the courts and the magistrates, the translators (magistrates in this case who translate oral testimonies into English records translated from Kiswahili) and parties of the case who are the receivers of TT.

4. Methods

This study was carried out in two regions: Dodoma and Tanga. It involved 20 law professionals, including 8 court magistrates, 10 licensed advocates, and 2 lecturers of law. Magistrates and licensed and practicing advocates were sampled purposively. According to Taherdoost (2016), a purposive or judgmental sampling involves selecting settings, persons or events deliberately in order to provide important information that cannot be obtained from other choices. In this study, sampling of these law professionals was determined based on those who had great legal knowledge and, for those involved in court proceedings, only those who had legal experience of more than four (4) years. The sampling of participants also considered language competence, where all participants were those who had basic interpersonal communication skills in both Kiswahili and English. Convenience sampling was adopted to sample lecturers of law: under this selection process, two lecturers were selected because they were available during the holiday season for the period of the data collection. Some scholars emphasize that convenience sampling can be used when they were easily available and ready to participate in the study (Alvi, 2016; Taherdoost, 2016).

Data of this study were collected through observation, in-depth interviews with these law professionals, note-taking, and focus group discussion. The researcher observed the practice of courts' trial processes and interviewed law professionals. Data were collected from August 2019 up to November 2019. They were collected in courtrooms, law chambers and at the Institute of Judicial Administration Lushoto. Data were collected in Lushoto, Korogwe, and Dodoma involving both District and Resident Magistrate Courts. The collected data involved those which were about challenges and effects of informal instant translation in magistrates' adjudication of justice. In addition, the collected data involved those that concerned perceptions of these law professionals on the efficacy of English or Kiswahili in the administration of justice.

Data were analyzed by using Thematic Coding Approach with the help of the NVivo 10 software. Thematic analysis has been considered to be one of the best approaches to analyze qualitative data, particularly when it involves analyzing themes (patterns) found in the study or that relate to the data collected (Alhojailan, 2012; Nowell, Norris, & White, 2017; Rahimi,

2014). Several scholars in different fields have indicated the importance of using thematic analysis and they have used this approach to analyze their data (Alhojailan, 2012; Nowell, Norris, & White, 2017; Rahimi, 2014). Alhojailan, (2012:40) contended “thematic analysis is considered the most appropriate for any study that seeks to discover using interpretation.” NVivo software also has become a very useful tool to analyze qualitative data. A number of scholars have adopted the NVivo programme when they analyzed their findings across different fields (Nowell, Norris, & White, 2017; Wei, 2014; Zamawe, 2015).

5. Findings and Discussion

The findings presented and discussed in this section are based on the analysis of interviews and focus group discussion (FGD) with magistrates, lawyers, and lecturers of law from the two regions. Since this study used a phenomenological research design, lawyers’ points of view and their lived-experiences were the major focus of this study. The findings of this study are based on twenty (20) law professionals from Tanga and Dodoma. The findings of this study are analyzed into four themes including the role of court languages in promoting economic development of the country, challenges facing the magistrates when they translate testimonies instantly, effects of such instant translations, and perceptions of lawyers on the efficacy of English versus Kiswahili.

5.1 The Role of Court Languages

The role of the court language was explained by all lawyers who were interviewed during data collection. Almost all participants agreed that languages of the court play a significant role not only in running the court business but also in promoting the economic development of the country. In discussing the reasons behind the selection of these court languages, some participants illustrated the reasons for selecting English to be the legal language in Tanzania. Participant J contended,

English is chosen because it is the legal language. And this is arising from the fact that our legal system is English based; the legal term in the Common law. It is Common legal system which has its root from England. And because of this, England colonized Tanzania by then was called Tanganyika and many East African countries or we can call it Common East African countries. So, the legal language is from Common Western countries.

English was made the legal language in Tanzania because it originated from Common law (Nyanduga & Manning, 2006). In addition, lawyers revealed reasons behind selecting Kiswahili to be used in the courtrooms. They argued that Kiswahili is the medium of instruction

and it is understood by the majority of Tanzanians. Thus, it is used as a way of honouring the national language and facilitating communication among court clients. Participant G illustrated,

But, in order to honour and respect our national language which is commonly spoken by the majority of Tanzanians, we are using Swahili. So, the legal languages are English and Kiswahili. But according to law, although the legal language is English, someone can speak in Kiswahili. However, the records of the courts must be in English. The primary courts have to use Kiswahili which is the official language for primary courts. It is not English.

In summary, the above quotation reveals that English is used because the legal system is English-based and many kinds of literature and the education system use English. Kiswahili is adopted in order to simplify the communication in the courts of law because it is the lingua franca, hence; it is understood by the majority of Tanzanians.

Coming to the role of the court languages, all lawyers who were interviewed revealed that court languages play a very imperative role. The appropriate use of certain languages can help in the timely administration of justice. These lawyers' propositions concur with the American Bar Association, (2012) which emphasized the importance of maintaining standards access to language in courts. Again, according to the American Bar Association, these standards aimed at facilitating courts in implementing, designing and enforcing a comprehensive system of language access services. This means that courts are supposed to make sure that access to justice among people with limited English proficiency is guaranteed (American Bar Association, 2012). Thus, most participants of this study highlighted the importance of court languages in accessing justice.

Court languages are reported by the lawyers to promote economic development including industrial development. This is true because when the right language is used in the courts of law, people will access their rights on time and they will go to participate in the various economic activities. In addition, the right choice of language will enable other countries to see what is going on in the legal system of the country. If the country is governed by the rule of law, it will be easy for the developed countries to invest in different sectors including the industrial sector. To easily access justice in courts, different countries and international organizations such as the European Union since the 1950s have insisted on the importance of providing language assistance in different cases including criminal proceedings. According to Brannan (2016), the European Union (EU) in the 2010s incorporated the right of language assistance in the European Court of Human Rights to address and guarantee quality language assistance. In this case, every person who is arrested or charged with criminal offenses was

supposed to be informed in the language he/she understands and to freely access the interpreter (Brannan, 2016).

Following quality language assistance in courts, justice is administered on time and people can engage in different economic activities. Participants of this study emphasized the importance of court languages in bringing development. Participant L, a lecturer of law, stated “I think no development can be established without communication. So, lack of development indeed must be resolved and this must be through court law where the language is again important.”

It should therefore be emphasized that language of whatever setting plays a significant role in promoting economic development, including industrial development in the country. In summary, the above section demonstrated that a good selection of court languages plays a significant role in the administration of justice and for economic development.

5.2. Challenges facing the Magistrates in Performing Informal Instant Translation

Translation is a professional occupation that requires professional skills (Bassnett, 2002). Translation in the courtrooms can be done in two ways. Firstly, it can be done in the form of interpretation whereby the parties can be speaking in the language which is not known by the courts. In this regard, court interpreters can be used to interpret to facilitate communication during the interview sessions, proceedings and witness testimonies (American Bar Association, 2012). In the Tanzanian Primary Courts, assessors sometimes are used for interpreting testimonies presented in the vernacular languages. Translation on the other side can be done during the hearing process of parties of the courts whereby some documents can be translated orally (sight translation) or in written form as part of the evidence (American Bar Association, 2012; Brannan, 2016).

In the Tanzanian context, the magistrate who runs courts’ proceedings listens to the testimonies in Kiswahili and at the same time translates them in English on spot (Informal Instant Translation). This process was reported by various lawyers participating in this study to create various challenges. Participant C remarked,

I think the practice of taking or listening [to] proceedings in Kiswahili and making records or recording in English is a big challenge to most of the magistrates and most judges. This is because; it is very hard to listen and write at the same time. But it is quite too hard to listen in one language and to write it in another language. So, this is a very big challenge

Most participants of this study highlighted the difficulties experienced by magistrates as they struggle listening to testimonies in Kiswahili then writing them into English. They

revealed that some magistrates concentrate more either in listening to cases leaving out writing translation or they focus more on translating testimonies leaving out intensive listening to the cases. Participant C continued, "Some magistrates fail to listen at the same time to write in another language. They either pay more attention on hearing or writing translation".

Participant (D) supported the above assertion by revealing that the challenges are obvious because the magistrates are not very conversant in spoken English. So, in most cases, they failed to render the equivalent terminologies to the court's legal language. He commented,

The problems are obvious; the challenges are obvious. We don't have a good mastery of the English language. Or to be specific we are poor in English. But still, we are applying English. And in many cases, witnesses may give their evidence in Kiswahili. Magistrates translate testimonies in English from Kiswahili with the poor command of English. Therefore, the challenges are obvious. The record-keeping sometimes may need some important facts because of ignorance of the magistrate to what the witness might have said and what the magistrate might have recorded. I can give you some examples. For example, a certain witness said: "alikuwa amevaa nguo yenye viraka viraka" ["he was wearing clothes with patches"]. Now how can that magistrate translate [this] in[to] English?

This participant went further by indicating how most of courts in Tanzania lack appropriate recording tools such as audio-recorders and how such incident affects their adjudication of justice. He (participant D) argued, "Most of courts in Tanzania lack recording tools. This makes them fail to record all the important information which could assist the litigant."

The above quotations confirmed the presence of difficulties encountered by magistrates when they instantly translate testimonies from Kiswahili to English. These challenges are exacerbated by the lack of enough linguistic competence and translation skills among the magistrates.

5.3. The Effects of Informal Instant Translation in the Courtrooms

Poor language competences and translation skills of the magistrates are said to generate a number of negative impacts, including the misinterpretation of testimonies, delay of cases, and even miscarriage of justice. Various scholars have reported the need for court interpreters to aid in the smooth running of everyday court proceedings (Aliverti & Seoighe, 2017; Kasonde, 2017; Northcott, 1997). Specifically, Aliverti and Seoighe (2017) highlighted that the presence of court interpreters significantly shapes the court's proceedings and impacts interactions inside and beyond courtrooms. The reverse is also true. Failure for courts to use court interpreters or

translators is likely to cause numerous challenges (Aliverti & Seoighe, 2017). Different challenges have been described by various participants of this study. Participant I asserted,

There is a delay in cases. This is because the magistrate will not be fast in record taking. There will be a miscarriage of justice because the magistrate may have failed to put in record some important facts which would be relevant in the determination and resolution of the case. Again, the magistrate may misinterpret some words which can bring the wrong meaning which misleads the reader.

The above quote indicates that there are many effects of the instant translations performed by the magistrates in the Subordinate Courts of Tanzania. These effects include a miscarriage of justice, misinterpretation and sometimes a delay of cases.

Miscarriage of justice happens when the magistrate records something different from what the witness has said. Kasonde, (2017) remarked that, “lack of standard interpretation – translation services in Zambia and other multilingual African countries in the judiciary remains a daunting challenge” (p.23). And if the distorted evidence was important in supporting the case, then the magistrate may not adjudicate the case rightly.

Misinterpretation of evidence happens when the magistrates fail to translate the source speech faithfully because of lack of professionalism in translation, or lack of equivalent terminologies in the target language or due to the pressure of time of rendition (Kasonde, 2017). This occurs when the witness keeps on speaking while the magistrate struggles to capture the message correctly in another language.

Delay of cases happens when the witness does not speak the court’s languages or the magistrate has failed to find equivalent words for use in the records. According to Kasonde (2017), these deficits are characterized by a lack of professionalization in the judiciary sector. Consequently, the magistrate may adjourn the case until he/she can write a good record or to find the interpreter in case the witness uses a different language.

In addition, some participants have reported that the effects of this poor recording system caused by Informal Instant Translation can go on even to the Court of Appeal. Participant I, a lecturer from Tanga, revealed,

Remember, the Higher Courts, when they entertain the appeal, they don’t call witnesses. These High Courts just rely on the records which were taken by the lower courts. So, they don’t have witnesses. They just rely on the records which were taken by the prior magistrates. So, they decide that appeal based on the records taken by prior magistrates.

This becomes a very serious matter as by relying solely on the records which were taken by the magistrates from the lower courts could bring another challenge in the case where the records were wrongly taken. Participant I continued,

Suppose the magistrate misinterpreted or missed some parts. That error is incurable. So, the challenges are obvious. The next court in dealing with the appeal will not have the opportunity to hear the witness. We will not have an opportunity to get the facts. So, it will rely on the facts which were wrongly taken or wrongly interpreted or some facts which maybe was not recorded.

So, the miscarriage of justice may be obvious.

Thus, mistranslations that were done by the presiding lower courts do not affect only witness testimonies in the said courts but also will affect in appeals to the High Courts. The results of their appeal may be constrained by the same mistranslations that were done by the prior magistrates.

In short, this section discussed the effects of informal instant translation in the administration of justice. It concludes that magistrates encounter translation problems in courtrooms due to insufficient language and interpretation skills. There are delays of cases, misinterpretation of testimonies as well as the miscarriage of justice. The miscarriage can also be extended to the Court of Appeal since they rely on the same information which was wrongly recorded.

5.4. Perceptions of Lawyers on the Efficacy of English versus Kiswahili

Lawyers also were given time to present their perceptions on the efficacy of English versus Kiswahili in running court proceedings. Their perceptions can be divided into three groups, namely those who proposed making Kiswahili as solely court language, those who proposed English and Kiswahili to remain as languages of courts, and those who propose Kiswahili to be used also in the recording. Figure 1 indicates the frequency distribution of the perceptions of the lawyers who were interviewed in this study.

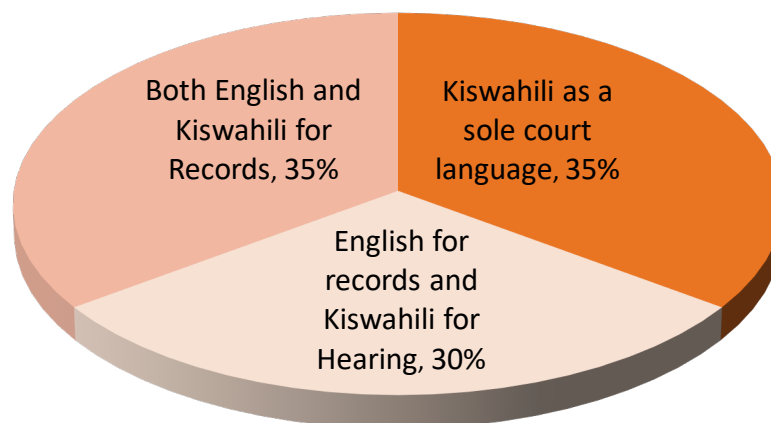


FIGURE 2. Law Professionals' Perceptions Frequency Distribution.

The first group of lawyers proposed Kiswahili to be the sole court language at all levels of the courts. 35% of all participants proposed that the court language should be solely Kiswahili for both hearing and recording. They said that Kiswahili is understood by the majority of people and it is the national language of Tanzania. Specifically, participant G held,

The problem with us Tanzanians is that we don't understand English. So, many Tanzanians know Kiswahili. It is the media of communication. And Kiswahili is the unifying language known by the majority of Tanzanians. So, Kiswahili is preferable.

This group of lawyers concurred with the scholars who proposed the change of court languages from English to Kiswahili language (Mazrui, n.d; Rwezaura, 1993). Those scholars suggested that Kiswahili should be made the sole court language because it is understood by the majority of Tanzanians. It can also help all parties of the court to freely participate in the entire court proceedings. Although these participants proposed the shift, they recognized the difficulty of changing language. They declared that the legal system of Tanzania has its roots from Common law. It has literature written in English. There is a lack of sufficient professional translators as well as legal training to be done. Changing the court language from English brings a new challenge, as revealed by participant L ,

The problem arises as I said; English is the legal language that traditionally is rooted in England. So, our laws and principles are imported. Most of them are not only in the English language but also the literature is in English as well. So, many books we use them as references are written in English. So for now, we are lacking material resources and experts to have those materials translated.

This group of participants identified several factors that drew back initiatives to change English to Kiswahili. They alleged that the whole process was constrained by the root of the English legal system in Tanzania and the education system of the country where the medium of instruction and the teaching materials are all written in the English language. As a strategy to overcome the stated challenges, these participants proposed that the government should start the movement of translating different material resources such as books, statutes, papers, judgments, law reports into Kiswahili. The government should start training law students in Kiswahili and finally should start using Kiswahili for both hearing and recording in the Subordinate Courts of Tanzania. Participant G contended,

The English language as I said is a foreign culture. If at all we need to have our own culture, we must have some mechanisms. We must be in a process or a place. We should have sound mechanisms, and full determination to have Kiswahili promoted. So, we must do so much. We must invest in Kiswahili; we must be serious to change.

The proposition was also agreed to by scholars who are supporters of this school of thought (Mazrui, n.d; Rwezaura, 1993). These scholars suggested that the training of legal students should be done in the Kiswahili language. There should also be some initiatives of translating different legal documents such as statutes, law reports, and reference books into the Kiswahili language (DuBow, 1976; Mazrui, n.d; Rwezaura, 1993).

Coming to the second group of participants, they proposed English and Kiswahili to remain as they are used now in the courtrooms. They have affirmed that English should remain as the legal language for recording and Kiswahili for hearing. They said that the Tanzanian legal system originated from England and any attempt to translate them in Kiswahili would lose their meanings and bring confusion. Participant C expressed his thoughts as

Kwangu mimi lugha fanisi ni lugha ya Kingereza itabaki pale pale sababu mfumo wa kisheria tunaotumia sasa ni mfumo ambao chimbuko lake ni Uingereza. Kwa hiyo kuna kanuni nyingi ambazo zimeainishwa kwa lugha ya Kingereza ambazo ukijaribu kuzitafsiri zinapoteza maana. Kwa hiyo lugha ambayo italetu ufanisi kwa majaji na mahakimu ni kutumia Kingereza ili iwe rahisi kwa watu ambao hawajui kusoma kwa Kiswahili waweze kusoma maamuzi yetu na kuweza kuyakosoa. [To my side, the efficient language is English. It has to remain the same as the court language since our legal system is rooted from England. Therefore, there are many rules and principles which are English-based and trying to translate them would lose

their original meanings. So, the English language will bring efficiency to the judges and the magistrates. This will also enable other people who do not understand Kiswahili to access our judgments.]

This group of participants made up 30% of the interviewed participants. They agreed that although Kiswahili is understood by the majority of the people it has its challenges to be adopted as the court language. They provided several challenges that face Kiswahili as sole court language including legal training to not be done in Kiswahili, Kiswahili has limited technical terminologies and many kinds of literature are written in the English language. Therefore, they proposed the English language to remain the language of records and Kiswahili would be used by witnesses when they are giving their testimonies.

The last group of lawyers proposed both Kiswahili and English to be languages of records. This group made 35% of all sampled populations. The group observed that the magistrates and judges are confronted with the problem of translation. As a result, they ended up mistranslating the testimonies or sometimes they failed to record equivalent terminologies of Kiswahili testimonies into English records. As a strategy to overcome such a challenge, these lawyers proposed Kiswahili to be used for recording in the same manner as English. By so doing, all Kiswahili testimonies will be recorded in Kiswahili and judgments can be written in both Kiswahili and English. Participant K argued,

Mimi ninaamini lugha zote tu ni fanisi kwa sababu ukija kwa Kiswahili, mahakama hizi za kitanzania maana hata zile hukumu zinazotolewa kwa lugha zote mbili yaani zinapaswa kila mtanzania akitaka kujua kesi fulani aijue” [I believe both languages are efficient in court proceedings. This is because when judgments are written in both languages, it will be very easy for any Tanzanian to access and understand the judgment written in Kiswahili.]

So, these lawyers proposed both Kiswahili and English should be used as the court languages. They proposed that Kiswahili also should be used to record the proceedings as well to write judgments. That is to say both Kiswahili and English should be languages used for hearing, taking records and writing of judgments. The magistrates with the aid of court translators can prepare two judgments; one in Kiswahili and another version in the English language. Participant B emphasized, “Nasema zote zitumike lakini zaidi Kiswahili nacho kiruhusiwe kuingia katika records.” [“I say that both languages should be used as the court languages. Kiswahili should also be used for recording court proceedings.”]

In short, this group of participants calls for the government to allow Kiswahili to also be the language of the records and judgments. This will solve the problem of mistranslation. It will also simplify the communication process among various court parties. The normal citizens will have access to understand and participate in the whole adjudication process because they will understand everything said during and after the judgments.

6. Recommendations and Conclusion

This study examined the challenges and effects of the informal instant translation of Kiswahili oral testimonies to English records which are performed by magistrates in the Subordinate or Magistrate Courts of Tanzania. The study also considered the perceptions of law professionals towards the efficacy of English versus Kiswahili as court languages. It was observed that practices of courts in Tanzania raise a concern. Magistrates in courts become so busy when they translate testimonies at the same time fulfilling adjudicative duties. This means that they either pay more attention to listening to cases than writing a translation, or they do not pay attention to the broader testimony while being immersed in the writing of a translation for court records. Furthermore, there is no audio recording during the hearing of testimonies. In addition, if a judgment is in an error and includes the fact that the translation record is either incomplete or erroneous, there is nothing that can be viewed by an appellate court except the magistrate's record. This situation calls for the immediate use of professional court interpreters and translators. This also necessitates the use of modern tools such as audio recorders and other information technologies to be used in the courtrooms. If these two options are not adopted by the judiciary, magistrates will continue to be confronted with the challenge of mistranslation during the court proceedings. This will also mean that the identified effects, including the delay of cases, miscarriage of justice as well as misinterpretation of witnesses' testimonies, will continue to persist.

Coming to the efficacy between English and Kiswahili as court languages, this researcher is in favour of using Kiswahili for recording and writing judgments. This means that both Kiswahili and English can be used for both hearing and keeping of records. The shift will be advantageous to all parties of the courts. This change will help magistrates to do away with the translation challenges because all Kiswahili testimonies will be recorded in Kiswahili. Judgments can also be written in both Kiswahili and English. Professional court translators and interpreters will be used for translating and interpreting texts, including judgments, from Kiswahili to English. This will help also the majority of Tanzanians to easily access judgments.

Although this study used only the reduced number of twenty (20) participants, and does not discuss concrete practical examples of the challenges and effects from the courtrooms, this paper acts as the starting point for further studies, particularly those involving larger groups of informants and including both qualitative and quantitative approaches. Further research can be developed in the practical challenges of informal instant translations in courtrooms. Informal instant translation is still a novel hybrid of interpretation-translation service in courtrooms; hence it requires further studies incorporating different approaches, designs and theories other than the Communicative Functional Approach.

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