A CRITICAL DISCOURSE ANALYSIS OF LANGUAGE USED IN SELECTED COURTS OF LAW IN KENYA

GATITU KIGURU

C82/11300/2008

A THESIS SUBMITTED IN FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY IN APPLIED LINGUISTICS IN THE SCHOOL OF HUMANITIES AND SOCIAL SCIENCES OF KENYATTA UNIVERSITY

OCTOBER, 2014

DECLARATION

I declare that this thesis is my original work, and it has not been submitted for a degree in any other university or for any other award.

Signature: _____ Date: _____

Gatitu Kiguru
C82/11300/2008
Department of English and Linguistics
Kenyatta University

We confirm that the work reported in this thesis was carried out by the candidate under our supervision. This thesis has been submitted with our approval as University Supervisors.

Signature: _____ Date: _____

Dr. Emily A. Ogutu
Department of English and Linguistics
Kenyatta University

Signature: _____ Date: _____

Dr. Martin C. Njoroge
Department of English and Linguistics
Kenyatta University

DEDICATION

To my parents

ACKNOWLEDGEMENTS

The research on which this thesis is based and the writing of the thesis itself would not have been possible without the support and kind help of various people whom I would like to acknowledge and thank. Above all, I would like to express gratitude to my supervisors Dr. Emily A. Ogutu and Dr. Martin C. Njoroge of the Department of English and Linguistics, Kenyatta University for tirelessly walking this long journey with me. Their unsurpassed knowledge and insightful advice were invaluable in shaping this thesis. To them, I owe a lifelong debt.

I also wish to thank my 'on line angels from Colorado' Vicki Santamaria and Maria Santamaria who helped me access literature that was literally out of reach. Though we have never met, it is on them that I depended for current books and journal articles without which this study would never have taken shape. I am also greatly indebted to Dr. June Luchjenbroers whose Australian study inspired this study. Dr. Luchjenbroers provided me with her unpublished dissertation as well as some of her published papers, and in addition took time to personally respond to my requests for clarification on some technical aspects.

My gratitude goes to all the faculty and non-faculty staff of the Department of English and Linguistics, Kenyatta University for their encouragement and support. In particular, I wish to express my gratitude to the current Chair of the Department of English and Linguistics Dr. Phyllis Mwangi and her predecessor Dr. Joyce Wangia for their support.

I am grateful to the Kenyan Judiciary for allowing me to collect data for this study from the courts. In particular, I wish to thank the Registrar of the High Court (now the Supreme Court), the Chief Magistrates, all the Magistrates as well as the Executive Officers at the Milimani Law Courts, Nairobi; Thika Law Courts and Nyeri Law Courts for the welcome and support extended to me in the course of collecting data.

I wish to thank all my family and friends for their support. Specifically, I thank my fellow post-graduate students, Henry Nandelenga, Loise Mwai, Nancy Ikaria and Joshua Itumo, with whom I shared my frustrations and anxieties, and from whom, in return, I received encouragement and inspiration. Special thanks go to my brother James Mwangi Kiguru for his assistance during data collection, and to Joseph Kanyua, my student turned my teacher, for patiently teaching me how to use the SPSS software with which I analysed the data. Finally, special thanks to Paul Kiarie 'Kiwaidi' for so keenly proofreading the data transcripts.

TABLE OF CONTENTS

Declaration ---------- *ii*

Dedication ---------- *iii*

Acknowledgements ---------- *iv*

List of Tables ---------- *xiii*

List of Figures ---------- *xvi*

Operational Definition of Key Terms and Concepts ---------- *xix*

Abbreviations and Acronyms ---------- *xxi*

Symbols and Codes ---------- *xxii*

Abstract ---------- *xxiii*

CHAPTER ONE: BACKGROUND TO THE PROBLEM ---------- 1

1.0 Introduction ---------- 1

1.1 The Relationship between Language and Law ---------- 1

1.2 Statement of the Problem ---------- 8

1.3 Research Questions ---------- 9

1.4 Research Objectives ---------- 9

1.5 Research Assumptions ---------- 10

1.6 Significance and Rationale of the Study ---------- 11

1.7 Scope and Delimits of the Study ---------- 12

1.8 Summary of Chapter ---------- 14

CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAMEWORK ---------- 15

2.0 Introduction ---------- 15

2.1.0 Anchoring Courtroom Discourse ---------- 15

2.1.1 Legal Systems ---------- 15

2.1.2 Trial Phases ---------- 16

2.1.3 The Rules of Procedure ---------- 18

2.2 Language and Power in the Courtroom ---------- 19

2.3.0 Questioning as a Mode of Communication in the Courtroom ---------- 21

2.3.1 Question Classification ---------- 23
2.3.2 Studies on the Use of Question in Legal Settings ---------- 27
2.3.3 Coercion in Questioning ---------- 30
2.4.0 Pragmatic Strategies ---------- 33
2.4.1 Classification of Pragmatic Strategies ---------- 35
2.4.2 Person Targeted Pragmatic Strategies ---------- 35
2.4.3 Idea Targeted Pragmatic Strategies ---------- 37
2.5 Measuring Witness Participation in Courtroom Discourse ---------- 41
2.6 Methods Adopted in Discourse Studies ---------- 45
2.7 Studies on Discourse Analysis in Kenya ---------- 48
2.8 Forensic Linguistics ---------- 50
2.9.0 Theoretical Framework ---------- 53
2.9.1 Critical Discourse Analysis (CDA) ---------- 53
2.9.2 The Speech Act Theory ---------- 56
2.9.3 Conversational Analysis ---------- 61
2.10 Summary of Chapter ---------- 64

CHAPTER THREE: RESEARCH METHODOLOGY ---------- 65
3.0 Introduction ---------- 65
3.1 Research Design ---------- 65
3.2 Population and Area of Study ---------- 66
3.3.0 Sampling Design ---------- 67
3.3.1 Sample Size ---------- 68
3.3.2 Sampling Procedure ---------- 69
3.4.0 Data Collection Methods and Instruments ---------- 70
3.4.1 Data Collection Procedures ---------- 71
3.4.2 Data Analysis Procedures ---------- 73
3.4.3 Ethical and Confidentiality Considerations ---------- 74
3.4.4 Data Presentation ---------- 75
3.4.5 Transcription Symbols ---------- 77

3.5 Summary of Chapter ---------- 79

CHAPTER FOUR: QUESTION TYPES IN DIRECT AND CROSS EXAMINATION PHASES OF THE SAMPLED TRIALS ---------- 80

4.0 Introduction ---------- 80

4.1 Overview of Question Types in the Direct and Cross Examination Phases of the Sampled Trials ---------- 81

4.2.0 Presentation of Question Types in Direct and Cross Examination Phases of the Sampled Trials---------- 83

4.2.1 Tag Questions in Direct Examination ---------- 93

4.2.2 Tag Questions in Cross Examination ---------- 95

4.2.3 Declarative Questions in Direct Examination ---------- 103

4.2.4 Declarative Questions in Cross Examination ---------- 107

4.2.5 Polar and Alternative Questions in Direct Examination ---------- 116

4.2.6 Polar and Alternative Questions in Cross Examination---------- 119

4.2.7 WH- Questions in Direct Examination ---------- 126

4.2.8 WH- Questions in Cross Examination ---------- 131

4.3.0 Discussions on the Use of Various Question Types in Direct and Cross Examination Phases of the Sampled Trials---------- 137

4.3.1 Discussion on the Use of Tag Questions in Direct Examination -------- 138

4.3.2 Discussion on the Use of Tag Questions in Cross Examination --------- 139

4.3.3 Discussion on the Use of Declarative Questions in Direct Examination ---------- 141

4.3.4 Discussion on the Use of Declarative Questions in Cross Examination ---------- 144

4.3.5 Discussion on the Use of Polar and Alternative Questions in Direct Examination ---------- 146

4.3.6 Discussion on the Use of Polar and Alternative Questions in Cross Examination ---------- 148

4.3.7 Discussion on the Use of WH- Questions in Direct Examination ------- 152

4.3.8 Discussion on the Use of WH- Questions in Cross Examination ------- 154
4.4 Discussion on Significant Use of Questions in the Sampled Trials ----- 155
4.5 Summary of Chapter ---------- 160

CHAPTER FIVE: USE OF PRAGMATIC STRATEGIES IN DIRECT AND CROSS EXAMINATION PHASES OF THE SAMPLED TRIALS -------- 161
5.0 Introduction ---------- 161
5.1 Overview of Pragmatic Strategies in Direct and Cross Examination Phases of the Sampled Trials---------- 161
5.2 Person Targeted Pragmatic Strategies by Prosecutors and Counsel in Direct Examination ---------- 171
5.3.0 Idea Targeted Pragmatic Strategies by Prosecutors and Counsel in Direct Examination ---------- 173
5.3.1 'So' Summarisers ---------- 173
5.3.2 Reformulation ---------- 176
5.3.3 Answering Own Question ---------- 176
5.3.4 Interruption ---------- 177
5.3.5 Evaluative Third Turns ---------- 179
5.4.0 Person Targeted Pragmatic Strategies by Counsel and Lay Litigants in Cross Examination ---------- 182
5.4.1 Contrast ---------- 182
5.4.2 Nailing Down ---------- 187
5.4.3 Status Manipulation ---------- 190
5.4.4 False Friend Strategy ---------- 193
5.4.5 Exploitation of Bias ---------- 194
5.4.6 Distorting Modality ---------- 195
5.5.0 Idea Targeted Pragmatic Strategies by Counsel and Lay Litigants in Cross Examination ---------- 196
5.5.1 Interruption ---------- 196
5.5.2 'So' Summarisers ---------- 200

5.5.3 Evaluative Third Parts ---------- 203
5.5.4 Unnatural Narrative Order ---------- 205
5.5.5 Vocabulary Choice / Vocabulary Landscaping ---------- 209
5.6.0 Discussion of the Statistical Results and Use of Pragmatic Strategies in the Sampled Trials ---------- 211
5.6.1 Use of Pragmatic Strategies in the Direct Examination Phases of the Sampled Trials ---------- 211
5.6.2 Use of Pragmatic Strategies in the Cross Examination Phases of Sampled Trials ---------- 214
5.7 Summary of Chapter ---------- 222

CHAPTER SIX: MEASURING WITNESS PARTICIPATION IN AND DIRECT CROSS EXAMINATION PHASES OF THE SAMPLED TRIALS ---------- 223
6.0 Introduction ---------- 223
6.1.0 Overview of Witness Answer Length in Direct and Cross Examination Phases of the Sampled Trials ---------- 224
6.1.1 Presentation of Witness Answer Length in the Direct Examination Phases of the Sampled Trials ---------- 231
6.1.2 Presentation of Witness Answer Length in the Cross Examination Phases of the Sampled Trials ---------- 235
6.2.0 Discussion of Statistics on the Frequencies of Witness Answer Length ---------- 238
6.2.1 Discussion of Statistics on the Frequencies of Witness Answer Length in the Direct Examination Phases of the Sampled Trials -------- 238
6.2.2 Discussion of Statistics on the Frequencies of Witness Answer Length in the Direct Examination Phases of the Sampled Trials -------- 241
6.3.0 Overview of Witness Answer Type in Direct and Cross Examination Phases of the Sampled Trials ---------- 244
6.3.1.0 Presentation of Witness Answer Types in the Direct Examination

Phases of the Sampled Trials ---------- 252
6.3.1.1 Minimal Responses in Direct Examination ---------- 252
6.3.1.2 Elaborate Responses in Direct Examination ---------- 260
6.3.2.0 Presentation of Witness Answer Types in the Cross Examination Phases of the Sampled Trials ---------- 262
6.3.2.1 Minimal Responses in Cross Examination ---------- 262
6.3.2.2 Elaborate Responses in Cross Examination ---------- 266
6.4.0 Discussion of Statistical Results on Answer Types in the Sampled Trials ---------- 275
6.4.1 Answer Types in Direct Examination ---------- 275
6.4.2 Answer Types in Cross Examination ---------- 281
6.5.0 Witness Resistance ---------- 289
6.5.1 Refusing to Respond ---------- 292
6.5.2 Appeal to the Authority Figure ---------- 294
6.5.3 Offering a Competing Description of Reality ---------- 295
6.5.4 Giving Evasive Responses ---------- 300
6.5.5 Questioning the Examiner ---------- 305
6.6 Summary of Chapter ---------- 308

CHAPTER SEVEN: SPEECH ACT FUNCTIONS AND BACKGROUND CONTRIBUTIONS IN DIRECT AND CROSS EXAMINATION PHASES OF THE SAMPLED TRIALS ---------- 310
7.0 Introduction ---------- 310
7.1.0 Speech Act Functions ---------- 310
7.1.1 Overview of Speech Act Functions in the Direct and Cross Examination Phases of the Sampled Trials ---------- 312
7.2.0 Use of the Speech Act functions in Direct Examination Phase ---------- 319
7.2.1 Encouragement ---------- 319
7.2.2 Command ---------- 320
7.2.3 Clarification and Information ---------- 323
7.2.4 Discoursal Indicators ---------- 326

7.2.5 Metadiscoursal Comments ---------- 326
7.2.6 Reformulation ---------- 327
7.3.0 Use of Speech Act Functions in Cross Examination ---------- 329
7.3.1 Summon ---------- 329
7.3.2 Encouragement ---------- 331
7.3.3 Command ---------- 332
7.3.4 Clarification and Information ---------- 333
7.3.5 Discoursal Indicators ---------- 334
7.3.6 Metadiscoursal Comments ---------- 335
7.3.7 Reformulations ---------- 336
7.3.8 Illocutionary Force Indicating Devices (IFIDs) ---------- 339
7.3.9 Appeal to Felicity Conditions ---------- 340
7.4.0 Discussion of the Statistical Results of the Use of Speech Act Functions in the Sampled Trials ---------- 341
7.4.1 Significance of Speech Act Functions in Direct Examination ---------- 341
7.4.2 Significance of Speech Act Functions in Cross examination ---------- 345
7.5.0 Background Contributions ---------- 348
7.5.1 Overview of Background Contributions ---------- 348
7.5.2 Presentation of Background Contributions in the Direct and Cross Examination Phases of the Sampled Trials ---------- 350
7.5.3 Use of Background Contributions in Direct and Cross Examination--- -354
7.6.0 Discussion on the Statistical Results on the Use of Background Contributions in the Sampled Trials ---------- 356
7.6.1 Occurrence and Significance of Background Contributions in Direct Examination ---------- 357
7.6.2 Occurrence and Significance of Background Contributions in Cross Examination ---------- 358
7.7 Summary of Chapter ---------- 362

CHAPTER EIGHT: SUMMARY, CONCLUSION AND RECOMMENDATIONS ---------- 363
8.0 Introduction ---------- 363
8.1.0 Summary of Findings ---------- 364
8.1.1 Question Types in Direct and Cross Examination ---------- 364
8.1.2 Pragmatic Strategies in Direct Examination and Cross Examination--- 367
8.1.3 Measuring Witness Participation in Direct and Cross Examination ---- 369
8.1.4 Speech Act Functions and Background Contributions in Direct and Cross Examination ---------- 372
8.2 Conclusions ---------- 374
8.3 Limitations ---------- 376
8.3 Recommendations ---------- 376
8.4 Suggestions for Further Research ---------- 377
References ---------- 378
Appendix 1: Transcriptions of Data Set One ---------- 389
Appendix 2: Transcriptions of Data Set Two ---------- 453
Appendix 3: Permission to Conduct Research ---------- 518
Appendix 4: Research Authorization ---------- 519

LIST OF TABLES

Table 1: Frequencies of Tag Questions by Prosecutors in Direct Examination in Trials with Pro Se Litigants ---------- 138

Table 2: Comparison of Frequencies of Tag Questions by Prosecutors and Counsel in Direct Examination in Trials with a Defence Counsel ---- 139

Table 3: Comparison of Tag Questions by Counsel and Pro Se Litigants in Cross Examination ---------- 140

Table 4: Frequencies of Declarative Questions by Prosecutors in Direct Examination in Trials with Pro Se Litigants ---------- 143

Table 5: Comparison of Frequencies of Declarative Questions by Prosecutors and Counsel in Direct Examination in Trials with a Defence Counsel ---------- 144

Table 6: Comparison of Frequencies of Declarative Questions by Counsel and Pro Se Litigants in Cross Examination ---------- 145

Table 7: Frequencies of Polar and Alternative Questions by Prosecutors in Direct Examination in Trials with Pro Se Litigants ---------- 147

Table 8: Comparison of Frequencies of Polar and Alternative Questions by Prosecutors and Counsel in Direct Examination ---------- 148

Table 9: Comparison of Frequencies of Polar and Alternative Questions by Counsel and Pro Se Litigants in Cross Examination ---------- 149

Table 10: Frequencies of WH- Questions by Prosecutors in Direct Examination in Trials with Pro Se Litigants ---------- 152

Table 11: Comparison of Frequencies of WH- Questions by Prosecutors and Counsel in Direct Examination in Trials with a Defence Counsel --- 153

Table 12: Comparison of Frequencies of WH- Questions by Counsel and Lay Litigants in Cross Examination in Trials with Pro Se Litigants ----- 154

Table 13: Comparison of Idea Targeted Pragmatic Strategies by Prosecutors and Counsel in Direct Examination ---------- 212

Table 14: Comparison of Idea Targeted Pragmatic Strategies by Prosecutors and Counsel in Direct Examination ---------- 214

Table 15: Comparison of Use of Idea Targeted Pragmatic Strategies by Counsel and Pro Se Litigants in Cross Examination ---------- 218

Table 16: Witness Answer Length in Direct Examination by Prosecutors in Trials with Pro Se Litigants ---------- 239

Table 17: Comparison of Witness Answer Length in Direct Examination by Prosecutors and Counsel ---------- 240

Table 18: Comparison of Witness Answer Length in Cross Examination ------ 242

Table 19: Frequencies Minimal Responses in Direct Examination by Prosecutors in Trials with Pro Se Litigants ---------- 276

Table 20: Frequencies of Elaborate Responses in Direct Examination by Prosecutors in Trials with Pro Se Litigants ---------- 277

Table 21: Comparison of Frequencies of Minimal Responses in Direct Examination by Counsel and Prosecutors in Trials with a Defence Counsel ---------- 278

Table 22: Comparison of Frequencies of Elaborate Responses in Direct Examination by Counsel and Prosecutors in Trials with a Defence Counsel ---------- 279

Table 23: Comparison of Frequencies of Minimal Responses in Cross Examination in by Counsel and Pro Se Litigants ---------- 282

Table 24: Comparison of Frequencies of Elaborate Responses in Cross Examination in by Counsel and Pro Se Litigants ---------- 283

Table 25: Comparison of Use of Speech Act Functions by Prosecutors and Counsel in Direct Examination ---------- 342

Table 26: Comparison of Use of Speech Act Functions by Counsel and Pro Se Litigants in Cross Examination ---------- 345

Table 27: Comparison of Frequencies of Background Contributions by Prosecutors and Counsel in Direct Examination ---------- 357

Table 28: Comparison of Frequencies of Background Contributions by Counsel and Pro Se Litigants in Cross Examination ---------- 359

LIST OF FIGURES

Figure 1: Frequencies of Question Types by Prosecutors in Direct Examination in Trials with Pro Se Litigants ---------- 85

Figure 2: Frequencies of Question Types by Prosecutors in Direct Examination in Trials with a Defence Counsel ---------- 87

Figure 3: Frequencies of Question Types by Counsel in Direct Examination -- 88

Figure 4: Frequencies of Question Types by Counsel in Cross Examination -- 90

Figure 5: Frequencies of Question Types by Pro Se Litigants in Cross Examination ---------- 92

Figure 6: Frequencies of Idea Targeted Pragmatic Strategies by Prosecutors in Direct Examination ---------- 165

Figure 7: Frequencies of Idea Targeted Pragmatic Strategies by Counsel in Direct Examination ---------- 166

Figure 8: Frequencies of Person Targeted Pragmatic Strategies by Counsel in Cross Examination ---------- 167

Figure 9: Frequencies of Person Targeted Pragmatic Strategies by Pro Se Litigants in Cross Examination ---------- 168

Figure 10: Frequencies of Idea Targeted Pragmatic Strategies by Counsel In Cross Examination ---------- 169

Figure 11: Frequencies of Idea Targeted Pragmatic Strategies by Pro Se Litigants in Cross Examination ---------- 170

Figure 12: Frequencies of Witness Answer Length in Direct Examination by Prosecutors in Trials with Pro Se Litigants ---------- 226

Figure 13: Frequencies of Witness Answer Length in Direct Examination by Prosecutors in Trials with a Defence Counsel ---------- 227

Figure 14: Frequencies of Witness Answer Length in Direct Examination by Counsel ---------- 228

Figure 15: Frequencies of Witness Answer Length in Cross Examination by Counsel ---------- 229

Figure 16: Frequencies of Witness Answer Length in Cross Examination by Pro Se Litigants ---------- 230

Figure 17: Frequencies of Witness Answer Types in Direct Examination by Prosecutors in Trials with Pro Se Litigants ---------- 247

Figure 18: Frequencies of Witness Answer Types in Direct Examination by Prosecutors in Trials with a Defence Counsel ---------- 248

Figure 19: Frequencies of Witness Answer Types in Direct Examination by Counsel ---------- 249

Figure 20: Frequencies of Witness Answer Types in Cross Examination by Counsel ---------- 250

Figure 21: Frequencies of Witness Answer Types in Cross Examination by Pro Se Litigants ---------- 251

Figure 22: Frequencies of Speech Act Functions by Prosecutors in Direct Examination in Trials with Pro Se Litigants ---------- 314

Figure 23: Frequencies of Speech Act Functions by Prosecutors in Direct Examination in Trials with a Defence Counsel ---------- 315

Figure 24: Frequencies of Speech Act Functions by Counsel in Direct Examination ---------- 316

Figure 25: Frequencies of Speech Act Functions by Counsel in Cross Examination ---------- 317

Figure 26: Frequencies of Speech Act Functions by Pro Se Litigants in Cross Examination ---------- 318

Figure 27: Frequencies of Background Contributions by Prosecutors in Direct Examination in Trials with a Defence Counsel ---------- 350

Figure 28: Frequencies of Background Contributions by Counsel in Direct Examination ---------- 351

Figure 29: Frequencies of Background Contributions by Counsel in Cross Examination ---------- 352

Figure 30: Frequencies of Background Contributions by Pro Se Litigants in Cross Examination ---------- 353

OPERATIONAL DEFINITION OF KEY TERMS AND CONCEPTS

Coerciveness

The quality of being controlling

Counsel / Lawyer

A person trained in law and representing somebody in a court of law

Cross Examination

The questioning of a witness during trial by the party opposing the one who called the witness

Direct Examination / Examination-in-Chief

The primary questioning of a witness during a trial conducted by the side for which that person is acting as a witness

Discoursal Indicators

Expressions that make it clear in the surface structure of an utterance the intended speaker meaning of an utterance

Discourse Markers

Words placed at the beginning of a unit of speech such as ‘you know’ and ‘well’ to serve a variety of discourse functions

Illocutionary Force Indicating Devices

Expressions whose sense determines the illocutionary force of the sentence containing them

Interlocutors / Discourse participants

People taking part in a conversation

Justice System

Legally established institutions that oversee the interpretation and enforcement of the law in a particular country

Lay litigant / Pro Se litigant

A person who is representing himself or herself in legal proceedings

Litigants

People making or defending a claim in a court of law

Litigation

The process of making or defending a claim in a court of law

Power

The right or authority of a person to do something

Power asymmetry

Inequality in the distribution of power

Pragmatics

A branch of linguistics dealing with aspects of meaning that are derived from the context of an utterance or sentence

ABBREVIATIONS AND ACRONYMS

Ac:	–	Accused person
C:	–	Counsel
CA	–	Conversational Analysis
CDA	–	Critical Discourse Analysis
I:	–	Interpreter (also serves as the Court Clerk)
IFIDs	–	Illocutionary Force Indicating Devices
M:	–	Presiding Magistrate
P:	–	Police prosecutor
W:	–	Witness

SYMBOLS AND CODES

Transcription Symbols

[ ]	–	Simultaneous speech
=	–	Latching
( )	–	Transcription doubt
(( ))	–	Descriptions of non-lexical vocalizations or speaker activities
{(( ))}	–	Overlay on non-verbal phenomenon on speech
…	–	Non-timed silence
:::	–	Prolongation / stretched sound
___	–	Intentional ellipsis of proper nouns so as to ensure anonymity
-	–	Interruption or self correction

Codes for Question Types in Order of Coerciveness

WHQ1	–	Requestions without embedded WH- trigger
WHQ2	–	Requestions with embedded WH- trigger
NSQ	–	Non-sentence questions
WHQ3	–	Routine WH- questions
WHQ4	–	Open WH- questions
PYN	–	Positive Yes/No question
NYN	–	Negative Yes/No question
EOQ1	–	Either/Or question with a vacant slot
EOQ2	–	Either/Or question
PDQ	–	Positive declarative question
NDQ	–	Negative declarative question
Proj.	–	Projected statement
Agr.	–	Agreement statement
Mem.	–	Memory/Knowledge question
PCT	–	Positive confirmatory tag question
NCT	–	Negative confirmatory tag question
NTG	–	Negative tag checking tag question
PTG	–	Positive tag checking tag question
CNT	–	Confirmatory negative tag question

ABSTRACT

This study undertook a critical analysis of power asymmetry among discourse participants in sampled Kenyan courts. Specifically, the study investigated the questioning and pragmatic strategies used by lawyers, police prosecutors and unrepresented accused persons during direct examination and cross examination phases of trial, as well as the use of various speech act functions and background contributions by the examiners. In addition, the study also looked at how witness responses exemplify how power and control are achieved and challenged in the courtroom through linguistic means. To study these objectives, the study adopted a descriptive design and, therefore, qualitative methods were used in sampling and data analysis. Purposeful sampling was used to select the three courtrooms where the study took place. The data consisted of 30 hours of audio-recorded court proceedings. The audio recordings featured 10 hours from each of the three courtrooms and these reflected five hours of trials with unrepresented defendants and five hour of trials with a defence counsel. To allow for analysis, the audio recordings were transcribed and the various language features coded. These coded data were analysed using the SPSS version 17 computer software to generate statistics on the frequencies of occurrence of the various language features. These statistical results formed the foundation of the discussion of emerging trends in the analysis chapters. The main theoretical framework informing the analysis of data was Critical Discourse Analysis (CDA). CDA views discourse as a social practice that constitutes the social world and is constituted by other social practices. The theory holds that a study of the micro-discourse structures such as lexical choices and syntactic form in a given context leads to an understanding of the macro-discourse social structures such as power. The other theories that informed the study were Conversational Analysis and the Speech Act Theory. The thesis has four analysis chapters: chapter four focuses on question use by police prosecutors, counsel and pro se litigants; chapter five presents the findings on the use of pragmatic strategies by these discourse participants; chapter six deals with witness answer types, answer length and forms of witness resistance to control by examiners; chapter seven presents findings on the speech act functions and background contributions by examiners. From the analyses in these chapters it is established that evidentiary rules empower those who assume the examiner role by placing them in control of topic choice and change, and giving them the means to constrain the contributions of others. However, lay litigants are not always able to exploit the language and pragmatic resources available to the examiner. It also emerges that witnesses are powerless participants in courtroom discourse and are subjected to various forms of control by examiners. However, it is noted that witness use various strategies to resist this control. Chapter eight presents the summary of findings, conclusions and suggestions for further research and recommends various ways of mitigating the power imbalance in the courtroom.

CHAPTER ONE

BACKGROUND TO THE PROBLEM

1.0 Introduction

This chapter lays foundation for this study by exploring the relationship between language and law. Then, the research questions, objectives and assumptions that guided the study are presented followed by the rationale for the study. The chapter then gives the scope and limitations of the present study and ends with a summary of the main highlights of the chapter.

1.1 Relationship between Language and Law

Studies on the interrelationship between the fields of linguistics and law began in the 1970s. Such studies were part of the wider shift, by linguists and sociologists, from the traditional approaches to linguistics that focused more on abstract and idealized structures of language to new approaches that focused more on language in context (Fillmore, 1973; Gumperz & Hymes, 1972; Shuy & Shnukal, 1980). This decade also saw increasedf attack on the professionals from different fields whom, it was felt, intentionally used arcane and complex jargon to mystify the public and thus discourage debate on their work (Danet, 1980; Edelman, 1977; Gusfield, 1980). In the legal profession, this attack was initially focused on the written language of the law. Legal scholar David Mellinkoff (1963) comprehensively identified the morphological and syntactic features of legal language that made it incomprehensible to many a lay person.

Over the years, focus shifted to the spoken language of the law with several scholars critically examining various aspects of language use in modern dispute resolution processes (Eades, 2000; Farinde, 2009; González, Vásquez, & Mikkelson, 1991; Loftus, 1979; Luchjenbroers, 1997; Mead, 1985). Whereas studies on the relationship between language and law have been prolific in the West, Africa has produced scanty detailed studies on the same. However, a few major studies have been done in South Africa and Nigeria (Farinde, 1998, 2009; Moeketsi, 1999). In Kenya, current literature reveals few studies with such orientation. The most prominent is the pioneering anthropological work of Hirsch (1998) focusing on language ideologies in *Kadhi* courts of coastal Kenya. Also, Ogone (2008), drawing on transcriptions of the proceedings of a judicial commission of inquiry, studies how the examiner uses language to constrain the responses of witnesses in cross-examination. This study sought to make a contribution to the body of knowledge in the area of language and law studies in Kenya.

According to Danet (1980), the law has two primary functions in society: 'the ordering of human relations and the restoration of social order when it breaks down' (p. 449). The first function concerns itself with the formulation and codification of rules that govern human social behaviour. In other words, it is the written letter of the law that tells us what is acceptable or unacceptable as we relate with others. The second function of the law is achieved through the justice

system of which courts of law are an integral part. Courts adjudicate over disputes mainly through listening to oral presentations of conflicting sets of 'facts'. It is this verbal interaction in courts that was the focus of this study.

Courtroom discourse is a sub-genre of professional discourse, and is distinct from common place verbal exchanges that occur in day to day human interaction (Santos, 2004). This distinctiveness can be attributed to a number of factors that range from the explicit rules of evidence that govern verbal interaction in the courtroom to issues of concern to Critical Discourse Analysis theory such as the way language manifests power, control and discrimination among discourse participants in the courtroom (Blommaert & Bulcaen, 2000). In addition, because courtroom discourse involves speech acts that are goal oriented, as distinct from casual conversation, there is emphasis on testimony that is sequential and that deals explicitly with cause and effect as well as an identification of the agent to bear blame for certain commissions or omissions. This is in contrast to informal disputing that emphasizes more on general rules of conduct and in which parties are free to elaborate on details on their personal life that would be deemed irrelevant in the legal setting (Conley and O'Barr, 2005).

As already mentioned above, one of the core businesses of courts is to oversee the restoration of social order when it breaks down. To a large extent, the process of litigation is dependent on language because it involves a presentation of

competing claims through a series of question and answer exchanges between the prosecutor, witnesses and lawyers through which the 'facts' of the case are constructed (Luchjenbroers, 1997). During a trial, the dominant speech act in direct examination, cross examination and re-cross examination is questioning or interrogation. Questions, which belong to Searle's (1976) directive class of illocutionary acts, have been described as weapons that challenge claims made by witnesses and vehicles for making accusations (Danet, 1980). Other common illocutionary acts, as expounded in the Speech Act Theory, found in all phases of the trial include declarations, assertions and explanations (Farinde, 2009; Searle, 1976). These speech acts, as well as other discourse strategies that find use in a trial, where supremacy of either of the parties hinges on one party's ability to use language more persuasively than the adverse party, were the issues of interest for this study.

The question and answer exchanges in a trial are meant to facilitate the construction of a crime narrative on the basis of which decisions on guilt or otherwise are made with regard to the parties to a dispute. These exchanges are divided into two phases the first one being examination-in-chief which is conducted by the party that has called a witness and is meant to build facts favourable to that party's case. The other is cross examination and it is conducted by the adverse party in an attempt to discredit the testimony of a given witness by showing contradictions in it or making it sound less credible (*Laws of Kenya*,

2005). Given these differing goals, it is to be expected that a variety of questioning patterns as well as pragmatic strategies are employed by the discourse participants in these phases of litigation as means to ends (Gibbons, 2003). As already stated, questioning is the dominant speech act and legal professionals use questions as a means to control what witnesses say (Farinde, 2009; Luchjenbroers, 1993). A likely consequence of this is that whereas witnesses have their day in court, as required by law, prosecutors and lawyers could end up having their say. This study focused on these phases of litigation as they are likely to be rich in the data needed to determine the discourse strategies used by various participants to dominate others and to control information in an attempt to attribute or avoid blame.

A noticeable feature in both criminal and civil cases in Kenyan courtrooms is the large number of litigants who are unrepresented by counsel. A report by the International Bar Association (2010) asserts that 'legal fees are too high for most Kenyans' (p. 69), an assertion shared by the Legal Advice Centre (2000) who report that many Kenyans are forced to represent themselves in court due to high legal fees. Such lay litigants are expected to mount their own defence and this involves cross examining witnesses who have testified against them. If we accept the popular metaphor of a trial-as-battle (Hale, 1997; Přidalová, 1999), then we need to recognize it as one 'fought with words and the role of discourse strategies in achieving supremacy becomes all important' (Hale, 1997, p. 201). In such a

battle, a lay participant who is not versed in these strategies, and is expected to mount a defence, is at a clear disadvantage. The rules governing courtroom interaction give authority to the officers of the court while denying witnesses and the accused the same. Accused persons and witnesses 'are constrained to answer questions only and not volunteer information'. In contrast, lawyers 'choose and pursue and change topics' and thus shape both the content and direction of the discourse (Přidalová, 1999, p. 121). Given this disadvantage, this study was also motivated by the desire to find out the discourse strategies unrepresented litigants use as they take on the role of examiner and how such strategies compare with those used by legal professionals.

Another aspect of courtroom interaction that is evidenced in language use is the imbalances in power among the discourse participants in the court setting. The presiding magistrate or judge has super-ordinate authority while prosecutors and defence lawyers have authority that derives from a superior legal knowledge base and from the rules that govern formal interaction in the courtroom. Some of these are evidentiary rules which include the hearsay rule that prevents witnesses from repeating what other persons have said about the events being reported. In addition, the rules of evidence prevent a witness from introducing information he or she believes critical as a preface or qualification or speculate about how the situations or events being reported may have appeared to other people or from other perspectives (Conley & O'Barr, 1990; *Laws of Kenya*, 2005;

Luchjenbroers, 1997). All these are common and acceptable practices in every day conversations but in the court set up, they are objectionable infringements on the rules of testimony that hinder witnesses from giving their accounts in their own words.

The metaphor of a trial-as-battle (Hale, 1997) captures the procedural structuring of a trial where the prosecution builds its version of 'facts' by calling witnesses in an attempt to prove guilt. This is followed by the defence attempting to discredit this version of 'facts' through cross examination of the prosecution's witnesses and calling its own witnesses in an attempt to remove blame from the accused. Thus, the trial is essentially an exercise of 'blame attribution and blame avoidance' through linguistic means (Berk-Seligson, 1990, p. 98).

Further, Atkinson and Drew (cited in Berk-Seligson, 1990) state that the speech acts of blame allocations, accusations, denials and justifications, which are a characteristic of courtroom talk, are interactionally managed. This implys that courtroom discourse is an aforethought and sometimes rehearsed activity that involves a conscious choice of words, syntactic forms and exchange sequences to achieve a given end; therefore, courtroom discourse provides an interesting area of investigation to determine how interactional management of language can be used to attain given ends.

1.2 Statement of the Problem

A trial in a court of law is largely a linguistic activity in which antagonistic sides employ discourse and pragmatic strategies that are meant to develop a particular version of 'facts' and challenge the one advanced by the adverse party. Language is, therefore, a means of achieving control in an attempt to build the case theory each party to a dispute wishes to advance. For the officers of the court, who have had some training in law and language, such control could be easy to achieve through the use of a variety of language resources. However, in some instances in Kenyan courtrooms, the accused person appears pro se, and persons who are not legal professionals may be called as witnesses. Such lay litigants may be lacking in both legal training and knowledge of language and pragmatic resources employed in formal disputing. Consequently, they are likely to encounter language based problems that could place them at a disadvantage by hindering their full participation in a trial. It is important to identify the specific language based challenges faced by lay participants in litigation with a view to describing them and suggesting possible ways of dealing with them. Though there are some studies that have focused on courtroom discourse in Kenya, our literature review has not come up with a study specifically focusing on showing how power asymmetry in the Kenyan courtroom setting could be a factor of litigants having unequal access to both knowledge about the law and the language strategies for disputing in an adversarial legal system. This is the gap that this study set out to fill.

1.3 Research Questions

This study sought to answer the following questions:

1. How do the patterns of questioning adopted by lawyers during direct examination and cross examination compare or contrast with those used by police prosecutors during direct examination, and those used by lay litigants during cross examination?
2. What pragmatic strategies are used by the prosecution and defence during courtroom interrogation to achieve the discourse functions of defence constructing and blame implicating?
3. How do the contributions by witnesses reflect the power asymmetry and competing goals among the discourse participants in direct examination and cross examination phases of trial?
4. How is the power imbalance among participants reflected in their use of various speech act functions that characterise courtroom discourse and in the use of background contributions by examiners?

1.4 Research Objectives

The study was guided by the following objectives:

1. To investigate whether the patterns of questioning adopted by lawyers during direct examination and cross examination compare or contrast with those used by police prosecutors during direct examination, and those used by lay litigants during cross examination.

2. To find out the pragmatic strategies used by the prosecution and defence during courtroom interrogation to achieve the discourse functions of defence constructing and blame implicating.
3. To determine how the contributions by witnesses reflect the power asymmetry and competing goals among the discourse participants in direct examination and cross examination phases of trial.
4. To establish how the power imbalance among participants is reflected in their use of various speech act functions that characterise courtroom discourse and the use of background contributions by examiners.

1.5 Research Assumptions

The study was based on the following assumptions:

1. There are similarities and differences between patterns of questioning adopted by lawyers during direct examination and cross examination similar to or different from those used by police prosecutors during direct examination, and those used by lay litigants during cross examination.
2. The prosecution and defence use certain pragmatic strategies during courtroom interrogation to achieve the discourse functions of defence constructing and blame implicating.
3. The contributions by witnesses reflect the power asymmetry and competing goals among the discourse participants in direct examination and cross examination phases of trial.

4. The imbalance in power among participants is reflected in their use of various speech act functions that characterise courtroom discourse and the use of background contributions by examiners.

1.6 Significance and Rationale of the Study

Through the use of existing linguistic data collection methods, the study hoped to collect accurate data on the basis of which analysis would be done to arrive at credible conclusions with regard to the objectives the study was based on. It was thus expected that the findings of the study would be a contribution to the existing body of knowledge in the general area of discourse analysis and in particular to the sub-genre of courtroom discourse.

The last four decades have witnessed a growth, mostly in America and Europe, in efforts to make the language of the law accessible to lay persons (Conley & O'Barr, 2005; Danet, 1980). Many modern societies have embraced language changes in the legal system backed by research findings in linguistics which have shown that management of language use in dispute processing can make the dispute resolution process fair. This stems from a realization that language is a powerful tool for social control and power (Fairclough, 1989), evidence of which can be seen in the structure and function of courtroom discourse. The study of language use in the legal process has given rise to a new linguistic field namely Forensic Linguistics whose goals include investigating and dealing with linguistic

disadvantages in the legal setup. It was hoped that the findings of this study could help formulate measures that may improve the use of language in the Kenyan judicial system and thus help make the process of litigation level and fair to all parties.

1.7 Scope and Delimits of the Study

Bavelas, Kenwood and Philips (2002) define discourse analysis as 'the systematic study of naturally occurring (as opposed to hypothetical) communication in the broadest sense, at the level of meaning (rather than as physical acts or features)' (p. 102). This communication could be through writing, face to face dialogue or through mediated communication such as the use of a telephone. Courtroom discourse encompasses language, whether written or spoken, used in settings where decisions of a legal nature are to be made and it is of many types. The language of wills, acts of parliament, contracts, police interviews, courtroom testimony, pleas for mitigation are just a few examples of this discourse type and it could occur in a variety of settings such as the courtroom, police interrogation rooms, immigration offices and in the offices of legal counsel (Danet, 1980; Přidalová, 1999). This study, however, restricted itself to spoken discourse used in direct and cross examination phases of trials in courts of law, the reason for this being that the questions the research aimed at answering were focused on verbal discourse.

The hierarchy of courts in Kenya has been evolving and the one presented here is based on *The Constitution of Kenya 2010*, which came into operation in the course of this study. Courts in Kenya can be divided into two broad categories: superior courts and subordinate courts. At the apex of the superior courts is the Supreme Court followed by the Court of Appeal and the High Court. Below the superior courts are subordinate courts which include Resident Magistrate Courts, *Kadhi* Courts, Court Martial and Tribunals. In terms of geographical distribution nationally, the subordinate courts are the most in number and; consequently, handle the bulk of litigation. For this reason, the study's sampling focused on the subordinate courts, specifically Chief Magistrate Courts, and these were taken to be representative of the other courts in Kenya. The core business of courts is adjudication of disputes following laid down procedures and; thus, a study on a small sample of courts was likely to yield the required data which would only be duplicated without necessarily adding any linguistically significant variety if data was to be collected from all the courts in Kenya.

Communication in the court set up includes both verbal and non-verbal aspects. The focus of this study was the verbal interaction in trial proceedings. This was because given that evidentiary rules forbid the communication of substantial information through the use of gestures alone (Conley & O'Barr, 1990), we could ignore the use of gestures in courtroom interaction without compromising the informative content of the data.

The court system in Kenya has various divisions that focus on particular areas of litigation. There is the criminal, civil and anti-corruption divisions as well as children, family and traffic divisions. This study restricted itself to the direct and cross-examination phases of trials sampled from criminal, civil and anti-corruption divisions. An attempt to incorporate all divisions would only have increased the volume of the data without adding new categories for analysis.

1.8 Summary of Chapter

This chapter has stated the research problem and articulated the objectives that guided the study. The following chapter presents a review of relevant literature and also expounds on the theoretical foundations of the present study.

CHAPTER TWO

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.0 Introduction

This chapter presents a panoramic view of courtroom discourse by looking at its legal foundations before moving on to highlighting the specific language based characteristics of courtroom interaction. The chapter ends with a discussion of the theoretical frameworks within which data were presented, analysed and interpreted.

2.1.0 Anchoring Courtroom Discourse

This section seeks to anchor the study by giving a preview of the study setting in terms of classification of modern dispute resolution mechanisms as well as the major stages of dispute resolution from which the data were collected. The conventions that impact on the organisation and nature of discourse in the legal setting are also highlighted.

2.1.1 Legal Systems

The modern dispute resolution systems are products and reflections of different philosophies on how disputes should be resolved. These philosophies are captured in statutes that define what permissible and impermissible behaviour is in a given society, categorization and definitions of behaviour that is impermissible and the institutions as well as procedures for dealing with such

(Mikkelson, 2000). Such defined frameworks and the ways of thinking informing them are known as legal systems. The dominant legal systems in the world are the adversarial (accusatorial) system and the inquisitorial system. The latter is the system used in USA, Britain and most of her former colonies, while the former is the legal system dominant in some countries in continental Europe, notably France and Germany. This study focused on courtroom discourse in Kenyan courts and the Kenyan judicial system falls under the adversarial legal system.

The adversarial legal system has great impact on the way language is used in the courtroom. To begin with, the system had been labeled 'gladiatorial' because parties to a dispute face off with their competing accounts before a neutral umpire (Brouwer, 1981). This facing off is through language and the 'truth' is ultimately the product of the interaction between the defence and the prosecution (Luchjenbroers, 1993). The interaction is mainly through language, and it was the object of interest for this study.

2.1.2 Trial Phases

Interaction in the courtroom set up is rigidly rule governed. The speech event called a trial is a cumulation of other events. The process starts with the arraignment where the defendant is produced before court to answer to charges preferred against him/her and, should he or she plead not guilty, a hearing date is set. Hearing consists of several stages, the first being the presentation of the case

against the defendant by the prosecution. The first phase in the prosecution's case is examination-in-chief or direct examination. In Kenyan courts, direct examination in criminal trials is done by a state counsel or a police prosecutor, and in civil cases it is done by counsel for the plaintiff or the plaintiff in person. It involves eliciting testimony from witnesses through questioning. It needs to be noted that the police prosecutors in Kenyan courts are not lawyers, but they have had some training in law.

The direct examination of each witness is followed by cross examination by the defence. If the accused person has counsel then it is counsel who cross examines the prosecution's witnesses, but in instances where the accused is appearing pro se (i.e. without the services of counsel), he or she cross examines the prosecution's witnesses. For criminal suits, when the prosecution is done presenting its case against the defendant, the presiding magistrate delivers a ruling on whether or not the accused has a case to answer. If not, then the accused person is acquitted, but if he or she has a case to answer then the second stage, the defence, commences and proceeds pretty much the same way as did the prosecution stage (*Laws of Kenya*, 2005; Mikkelson, 2000; Moeketsi, 1999). The focus of this study was the direct and cross examination phases of trial in criminal and civil cases. These phases, and others in a trial, according to Aronsson, Johnson, and Linell (1987), are 'well suited for comparison between linguistic

styles' (p. 103) and therefore provided the data for the study of the stated objectives.

2.1.3 The Rules of Procedure

The rules of procedure are statutes that govern the conduct of the parties in a trial, and specify what is to constitute legally valid testimony from a witness, how testimony is to be obtained from witness and how it is to be presented. It has been noted, with a sense of irony, that these rules, rather than facilitate the flow of information necessary for the reconstruction of the crime events, are 'instrumental in thwarting information' in several ways (Luchjenbroers, 1993 p. 141). First, some of the rules are expressive prohibitions on witnesses from engaging in common everyday conversational behaviour. According to Conley and O'Barr (1990) some of the rules common in adversarial legal systems include the following:

(a) In responding to a question, a witness ordinarily may not digress from the subject of the question to introduce information that he or she believes critical as a preface or qualification.

(b) A witness is generally forbidden to make observations about the question asked or to comment on the process of testifying itself (pp. 13-14).

Secondly, the rules introduce power asymmetry in the interaction by requiring that 'lawyers ask questions and that witness answers them' and the consequence is that the rules end up 'empowering lawyers linguistically over the witnesses

they examine' (Conley & O'Barr, 2005, p.21). This unequal distribution in power among participants in courtroom discourse is what this study set out to highlight by showing how unequal distribution of language resources can used to create the imbalance.

2.2 Language and Power in the Courtroom

According to Gibbons (2003), "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).

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). With regard to discourse, Wang (2006) notes that:

> Power can be characterized as the ability to control and constrain others; as the capacity to achieve one's aim; as the freedom to achieve one's goals and as the competence to impose one's will on others (p. 531).

Power is an inescapable reality in all aspects of society and the institutions the society has created. According to Fairclough (1989) power 'exists in various modalities' (p.3) with physical force or violence being just one of these modalities. More subtle, and perhaps more difficult to detect, is power exercised 'through the manufacture of consent to or at least acquiescence towards it' (Fairclough, 1989, p. 4). He further argues that language is one of the means through which inequality in the distribution of power is created and perpetuated, and through which this inequality can be remedied. This is because it is through the use of language, especially in institutional settings, that conventions are created, and, through their recurrence, developed into ways of behaving that are deemed 'correct'.

This study set out to critically analyse the language used in the sampled courts in Kenya with the stated objectives of exposing the way various participants use the formal language and pragmatic resources available to them. The findings showed how some participants have more power than others and demonstrated how they used this power to dominate others. Conley and O'Barr (2005) aptly note that 'power may exclude, but those excluded remain on the scene, ready to turn local-level episodes of oppression into moments of resistance' (p. 9). With this in mind, the study also sought to find out the various ways in which powerless participants in courtroom discourse resist domination by the powerful participants.

Gibbons (2003) discusses the discourse strategies used in the courtroom to control less powerful participants. Their distribution serves as an indicator of power asymmetry. These strategies can be grouped into two broad categories namely the use of questions and pragmatic strategies.

2.3.0 Questioning as a Mode of Communication in the Courtroom

A trial is largely a linguistic event in which one party is placed in a position in which he or she needs to prove innocence to a crime or misdemeanor, or non culpability (or not being in breach of a duty imposed by law) or legally liable for something. Trials are part and parcel of modern dispute resolution systems which are, in turn, hallmarks of good social practice. The antagonistic parties to a dispute present and seek to advance their claims through language. The presence of a third party arbiter (a judge or a magistrate) requires that the facts in dispute are discovered and assembled in a systematic way that will enable the third party to get to have a clear understanding of what happened so as to make a ruling (Danet, 1980).

In the adversarial legal system, questions are the primary mode of communication adopted for the discovery and development of the competing sets of facts in a dispute. The alternative would be for the parties to appear before a trier of fact and present their claims in the narrative mode, but questions are favoured for several reasons. In the first place, litigants are required by due process to restrict

themselves to giving facts. Questioning is therefore used to ensure litigants do not wander or give information that is inadmissible as per the requirements of the law. Secondly, the dictates of fairness in a trial provide opportunity for the parties not only to present their version of facts, but also to challenge the one advanced by the opposing party. This challenge is done through asking questions whose aim is to elicit responses that will discredit the story of the antagonistic party. It is important to acknowledge that apart from the courtroom, there are many other formal settings in which questions are a primary mode of communication. Such settings include media interviews, job interviews, teacher-student classroom interaction, doctor-patient communication and police interrogation.

The overall goal of language use by litigants and other participants in a trial such as prosecutors and counsel is to persuade the triers of fact to accept their version of facts. Questioning, which is used to either elicit information or to obtain confirmation of a particular version of events that the questioner has in mind, becomes the vehicle of this persuasion (Gibbons, 2003). According to Bülow-Møller (1991) the questioning techniques used in the courtroom are geared towards winning rather than helping the court discover facts, an assessment shared by Jacquemet (cited in Gibbons, 2003). Questioning in courtroom interrogation is thus, in the view of Baldwin (1993), a pursuit of proof rather than a pursuit of truth. Needless to say, the use of questions to achieve such ends calls for great skill on the part of the questioner. He or she can only use questions and

the challenge is to use them in a way that produces the desired facts he or she wants to create.

2.3.1 Question Classification

Literature on the formal properties and typologies of questions is vast. Despite the vast literature on questions, there is no consensus on the best way of classifying them. The challenge is in attempting to merge the formal properties of questions and their pragmatic functions. Lyons (1977) makes a fundamental distinction between interrogative sentences and questions. To him, questions are utterances used by speakers of a language in a given context to achieve a given communicative function. It is this view of questions that this study adopted so that assigning meaning to questions used in direct and cross examination phases of a trial was guided by the knowledge that interrogative utterances are speech acts, and, as such, their interpretation is dependent not just on their propositional content but also the pragmatic link they have to their context of use.

In both speech and writing, questions are interrogative forms that are marked through punctuation (a question mark in writing), and through word order, intonation or the presence of an interrogative word. The classification of questions by Quirk, Greenbaum, Leech and Stravik (1985) into three major types, with a fourth open ended class (minor types of questions) to take care of other types of

questions, has remained a solid bedrock of classifying questions not just in English but in other languages.

The three major types are Yes/No questions which expect an answer that confirms or negates what the question asks, WH- questions which are often marked by the presence of an interrogative word (which, what, when, why, how) that specifies the element the answer is to be oriented to and the third type are alternative questions. The answer to questions in the third category is one of the options contained in the questions themselves (Quirk et al., 1985).

Crystal (1985, p. 254) adds an important distinction to the definition of a question by noting that the definition of a question can be based on grammatical grounds and sometimes semantic or sociolinguistic grounds; the former primarily focusing on formal syntactic properties only (interrogative) while the latter definition takes into account the pragmatic reality in which the question is used.

The three broad categories of questions proposed by Quirk et al. (1985) are further divided into sub-classes. Yes/No questions can be those with subject operator inversion (Has the bus left?) or they can be declarative in form. In such a case, they do not have subject operator inversion and in speech they are marked as questions through final rising intonation (The bus has left). Another sub-class of the Yes/No questions is tag questions (The bus has left, hasn't it? The bus hasn't

left, has it?). As the examples show, they have a tag question appended to a statement (Quirk et al. 1985, p.810).

The discourse function of questions is "to seek information on a specific point" (Quirk et al., 1985, p.804) but this seeking is not always unbiased or neutral. This is because questions can be formed in a way that shows bias of expectation to a given response. For this reason, 'questions may be conducive, i.e. they may indicate that the speaker is predisposed, to the kind of answer he has wanted or expected' (Quirk et al., 1985, p.808).

The notion of conduciveness of questions has become central to the study of the use of questions in the legal process discourse (Danet, 1980; Eades, 2000; Harris, 1984; Luchjenbroers, 1993; Woodbury, 1984). Such studies have adopted question typologies that show the relationship between question form and its conduciveness. Generally negative Yes/No questions formed by subject operator inversion are more conducive that their positive counterparts. Thus 'Don't you like my new shirt?' is more predisposed to a YES response than 'Do you like my new shirt?'. Quirk et al. (1985) assert that tag questions and declarative questions express maximum conduciveness as they seem to demand for 'the hearer's verification of the proposition contained in the question' (p. 814).

The WH- questions are also called information questions. They invite the learner to provide information and the only aspect of conduciveness in them is in the WH- word which indicates the element the response is to orient itself to. For example in ‘Where did you place it?’ the word ‘where’ expects a response relating to a place rather than say a person or time.

The conduciveness of alternative questions lies in the fact that the hearer’s response is tied to a choice of one of the options presented in the question. Given the context of use, the receiver may have no other option as illustrated below.

Speaker A: Would you like a drink?

Speaker B: Sure.

Speaker A: Tea or coffee?

Speaker B: Tea please.

The classification by Quirk et al. (1985) is based on answer types with the argument that Yes/No questions expect an affirmative or negating response while WH- questions are open but oriented to the WH- word. Alternative questions provide the expected response in the question. This sytem of classification has come under criticism from scholars like Tsui (1994) who argues that alternative questions can attract the same type of responses as WH- questions. However, given the difficulty of marrying the formal and pragmatic properties of questions

to the answer types they elicit, the typology proposed by Quirk et al. (1985) still holds much sway.

With slight modification, the same classification has been adopted by Huddleston and Pullum (2002) in an attempt to capture both the formal properties of questions and pragmatic aspects of expected responses. These scholars categorise questions into open and closed questions. WH- questions are open questions because they place no restriction on the expected response while Yes/No questions, alternative questions, declarative questions and tag questions attract minimal responses and are thus closed questions. These broad categories of questions and their subtypes have been linked to the notion of coercion in questions to come up with the question typology for this study. This is driven by the study's objectives of linking the formal language structures in the study sample to power and asymmetry in courtroom discourse.

2.3.2 Studies on the Use of Questions in Legal Settings

Several studies have focused on the use of questions in legal settings (Danet, 1980; Farinde, 2009; Harris, 1984; Luchejenbroers, 1993; Tkačuková, 2010; Woodbury, 1984). Harris (1984) studied the use of questions as modes of control in magistrate's courts where she adopts a classification system based on broad categories which are then broken down into several sub-classes to allow for analysis. She starts with three major classes the first being **interrogatives** which

she defines as utterances with interrogative syntax. They include polar disjunctives (alternative questions), tag interrogatives and WH- interrogatives. The latter are sub-categorised as per the interrogative word they have. The second major class is **declaratives** containing information which is assumed the witness or defendant has and the questioner wishes to confirm it. She argues that these are declaratives which are distinguished from 'informing statements' (p.9) because they contain events which one of the parties is seeking a confirmation of. Consider the examples below:

So you saw him there?

You were on duty that day?

This category is of significance to this study as a number of constructions which are assigned to the category of declarative questions are of this kind. They differ from the declarative questions in that they may not be marked with any rising intonation. In the third class of questions types by Harris (1984) are **moodless items** uttered with level or rising pitch which can be frameless (Cross examination?) or with a frame (You mean you saw him?).

Harris' (1984) conclusions are insightful for our study. Questions, she asserts, are used for two functions: primarily they are used by magistrates and clerks to obtain information, but they are also used to make accusations with 'these two functions often overlapping' (Harris, 1984, p. 22). She also established that about two thirds of the questions in her data are those that require minimal Yes/No or disjunctive

response. Another 20% are those which request the naming of a specific item leaving only about 17% to questions to which respondents give substantial information. These findings clearly show that questions are used to control witnesses by limiting their verbal output.

Luchjenbroers (1991) collected data from a six day murder trial in the Supreme Court at Melbourne, Australia and came up with a typology to capture the questions and other contributions by participants in the data. She came up with four broad categories of No Question, Positive Bias, Negative Bias and WH-Questions to capture the examiners' contributions in a way that also factors in the witnesses' ambivalence to the parties in the dispute. No Questions are contributions by examiners that do not have the question syntax. Apart from these, the other broad categories had subtypes. For WH- questions, the subtypes were WH- questions and alternative questions. The category of Positive Bias had the sub categories of positive Yes/No questions, positive tag questions and positive declarative questions. The same categories were found in the category of Negative Bias, only this time they are prefaced by the word 'negative'. She found that the negatively biased types, which are more controlling, dominated the cross examination phase while WH- questions dominated in the direct examination phase. We sought to determine the question patterns in these two phases of trial from our data.

Tkačuková (2010) studied the linguistic and pragmatic strategies used by pro se litigants in cross examination, her focus being on a single trial (Libel Case of McDonalds Corporation vs. Helen Steel and David Morris). Her typology of questions results in five categories. These include WH- questions, Yes/No questions and declarative questions. The others are tag questions and non-sentence questions. These are some of the labels that were adopted for the question categories in this thesis. Her study compares the grammatical syntactic features of questions used by the lawyer and the lay litigants in cross examination, over a period of time. She found out that the lay persons initially are unable to use the highly coercive tag and declarative questions to their advantage, but this, she noted, changed with time and the lay litigants were able to use highly coercive question types to their advantage. However, she also established that the pro se litigants are also unable to use the WH- and non-sentence questions to their advantage. Her findings are of significance to this study as one of the objectives is to determine how pro se litigants fair with regard to use of various question types compared to defence counsel.

2.3.3 Coercion in Questioning

The argument behind the classification of questions in terms of their coerciveness is that an analysis of question type can lead us to the logically expected response in terms of both form and content. Thus, whereas WH- questions invite a narrative response with little degree of restriction, a declarative plus tag question

provides a proposition and then demands the respondent to either agree or disagree with it (Danet, 1980). The form of this agreement or disagreement could vary from a yes/no response to an elaboration but essentially these questions do not request for information because they have supplied it and the response only reacts to it.

Question – Answer exchanges are common examples of the basic unit of social interaction referred to as an adjacency pair (Sacks, 1972; Schegloff & Sacks 1973; Sacks, Schegloff & Jefferson, 1974). The adjacency pair is made up of two utterances made by different people in a fixed sequence such as one asking a question and the other one responding to it. In this regard, questions can be defined as 'summons to reply, a means to compel, require or demand a response' from another person (Danet, 1980, p. 515). This is because it is universal that when faced with a question, most people feel compeled to provide information they deem relevant as per the question (Leech & Svartvik, 2003). Primarily, we use questions to seek for information. However, Danet (1980) notes that in dispute, questions are used both as a means to seek information and exert control. Moreover, questions posed in declarative plus tag questions supply information and at the same time demand a response that confirms the information supplied. It has long been recognized that the form of a question influences the form and content of the answer. In addition, it is documented that the memory of a witness can be influenced by a questioner (Loftus, 1979). This is critical in a trial where

the parties in dispute come before court with the singular goal of making the fact finder to 'assent to a particular version of events' (Gibbons, 2003, p. 97). For defence lawyers, questions are a means of controlling what a witness says and by extension what the fact finder thinks (Stygall, 1994).

Questioning is one aspect that differentiates institutional talk from everyday conversation because when one speaker is given the right to question and another can only respond, an imbalance in power is created. The questioner is vested with the power to persuade and influence other people's behaviour (Gibbons, 2003; Loftus, 1979). This potential influence can be achieved through the inclusion of desired information in the question and then structuring the question in a way that makes it difficult to deny. In this way, the questioner has control over both the information and the answer (Gibbons, 2003). Control can also be achieved by structuring a question in a way that restricts the possible answers. One can also manipulate the modality of questions. Like commands, questions vary from the most polite to the brusque. The choice of question modality (i.e. the strength with which the demand for information is made) depends on the power relations between two people with more powerful individuals expecting their questions to be answered and for answers to agree with them (Gibbons, 2003).

The discussion above highlights the fact that the coerciveness inherent in questions can be exploited by an examiner providing propositions while the

witness is unwittingly confined to the role of confirming such propositions. Tkačuková (2010, p. 43) has come up with a rough ranking of questions by degree of coerciveness in the following way:

Least Coercive Questions	WH- Questions
	Routinised WH- Questions
	Grammatical yes/no Questions
	Negative grammatical yes/no Questions
	Declarative Questions
Most Coercive Questions	Tag Questions

The current study investigated how the prosecution and the defence utilize turns and questions to control witnesses and their testimony. The typology of questions adopted for the study was of four broad categories: WH- questions, polar and alternative questions, declarative questions and tag questions. The typology, which includes subtypes for each of the broad question types, is meant to reflect the coerciveness of the questions encountered in the data.

2.4.0 Pragmatic Strategies

Crystal (2011) is of the view that the development of pragmatics as a distinct branch of linguistics stemmed from the realization that the structural levels of linguistic enquiry (phonology, grammar, semantics) were not enough to explain language use. Pragmatics developed to fill this gap and he defines it as ‘the study

of the choices we make when we use language. The intentions that lay behind our choices and the effects our choices convey.'

Levinson, (1983) broadly defines pragmatics as the study of language usage. The overall concern of the sub discipline is 'to identify the fundamental and underlying principles of interactive communication' (Harris, 1995, p. 1). Influential in this theoretical approach to pragmatics includes the work of Grice (1975) whose Cooperative Principle governing language use is a fundamental reference point in the analysis of conversation strategies. Equally influential are the validity claims proposed by Habermas (cited in Harris, 1995) which include truth, truthfulness and rightness.

But Harris (1995) calls into question the ability of these principles to handle the analysis of discourse in the courtroom noting that their shortcoming lies in the fact that they assume an idealized state of discourse where 'access to speech acts is symmetrically distributed' (Harris, 1995, p. 3). In the courtroom, as is also the case in many other types of institutional settings, discourse is characterized by power differentials and non-cooperative goals which avail asymmetrical access to conversation strategies to the discourse participants.

2.4.1 Classification of Pragmatic Strategies

Given its comprehensiveness, the typology of pragmatic strategies developed by Gibbons (2003) has been adopted in categorizing the pragmatic strategies in this study. The same classification is adopted by Tkačuková (2010). Gibbons (2003) divides pragmatic strategies used in courtroom discourse into two types. The first type are the strategies that try to influence 'by shaping perceptions of the person giving the testimony, often by enhancing or diminishing their credibility' (person targeted) and the second those targeted 'at the portrayal of the event itself' (idea targeted). However, he adds that the distinction between the two types can get blurred (Gibbons, 2003, p. 112).

2.4.2 Person Targeted Pragmatic Strategies

These strategies include status manipulation which could be done so as to achieve status support or status reduction (Gibbons, 2003). The latter refers to attacks on the character of the witness so as to reduce their credibility. In the courtroom, this could be directed at witness or victims who are made to look worthy of their predicament or being responsible for a crime. Status reduction can also be achieved through sarcastic remarks, ironic use of titles or an overt challenge to professional or mental capabilities of a witness. Status support does the reverse and is mainly used by friendly interrogators who seek to build up the credibility of their witnesses. These two strategies are mainly used while examining expert witnesses (Gibbons, 2003).

The use of address forms, pronouns and labeling can also be used to achieve status manipulation. The first two are treated as distinct strategies by Gibbons (2003) but in this study, their use is subsumed under status manipulation. Address forms include the use of titles such as ‘Doctor’ and ‘Mister’ with people’s names or the use of their first names. In Jury trials the use of the plural ‘we’ pronoun is often meant to create a feeling of solidarity with the jury while the third person pronouns are mainly used when referring to the antagonistic party.

Contrast is another tactic where the examiner formulates questions that aim to make the witness statements or actions at an earlier time seem to contradict what is generally expected in particular situations (Drew, 1990; Gibbons, 2003). The witnesses’ actions or utterances are made to be in contrast to what is logically expected in a given situation, and thus their reliability is undermined.

At times, questioners strive to elicit responses from witnesses that make them sound over confident about something. Having stated something with so much certainty, a witness finds him or herself in an awkward position should he or she be forced later to admit that the earlier forceful assertion may not hold true in certain circumstances. This strategy is called distorting modality or the infallibility trap, and is especially targeted at expert witnesses. It can also be used in the reverse where a witness is made to give responses that are so modulated as to sound totally unsure of their testimony (Bülow-Møller 1991; Gibbons, 2003).

Accommodation is yet another strategy and it is borrowed from the Accommodation Theory advanced by Giles and Powesland (1975). Examiners could choose to make their language more like that of the witnesses or more distant. The choice could involve making one's style and register more like those of a witness or more different including, as observed in the data, a switch to a different language.

Whereas it is normal in any conversation for speakers to change turns, turn-taking is of strategic use in the courtroom. Even in institutional settings where questions dominate, the question-answer adjacency pair holds so that in the courtroom it is expected that the prosecutor or counsel will ask questions while the witness will answer. But as O'Barr (1982) notes the witness's turn to answer can be violated through interruption or the order of turn taking violated through lengthy silence and gaze which intimidate the witnesses and make the atmosphere of the whole encounter tense and uncomfortable for the less powerful participants (Gibbons, 2003). The last of the person targeted pragmatic strategies is exploitation of bias. Questions can be framed in such a way that they are loaded with cultural, gender or ethnic bias and this could possibly intimidate or embarrass a witness.

2.4.3 Idea Targeted Pragmatic Strategies

There are strategies that focus more on the message. The first is vocabulary choice where words with certain connotations are chosen depending on the reality

a questioner wishes to represent. For instance words like ‘baby’ and ‘foetus’; ‘freedom fighter’ and ‘guerrilla’ or even ‘terrorist’ can have the same reference, but their use is meant to convey a positive or negative evaluation of the referent (Danet, 1980). In addition, word choice can be used to influence a witness’s memory of an event as famously illustrated by Loftus (1979) in an experiment where, after watching a film on an accident, viewers gave varying responses to the questions: ‘About how fast were the cars going when they **smashed** into each other?’ and ‘About how fast were the cars going when they **hit** each other?’ with the first question attracting higher speed estimates.

Through repetition of questions on a given issue a cross examiner can produce inconsistent responses from a witness thus negatively impacting on the credibility of the witness’ testimony. Related to repetition is the strategy of reformulation where the examiner formulates questions by summing up, giving a ‘gist’ or ‘upshot’ of what was said (Gibbons, 2003, p.120). Drew (1990, p.121) gives an example of an attorney trying to construct a different version of reality through reformulation but also shows that witness in this case resists these attempts.

There is also the use of presuppositions whereby information that has not been established to be fact is presented as such. A question like ‘When did you see him hit her?’ presupposes that the ‘he’ hit ‘her’ and in a context where this is in

dispute, a ‘yes’ or ‘no’ response to this question would make the witness seem to be in agreement with the underlying presupposition (Büllow- Møller, 1991).

Ideally, the natural order in the construction of the trial narrative is for examiners to ask a question and then allow for a witness or defendant to respond to the question. But O’Barr (1982) documents instances where, in cross examination, a witness is subjected to a series of questions which ultimately end in a Yes/No question. Alternatively, lawyers could preface their questions with a series of statements portraying events in a manner that may not be shared by the witness. When witnesses are not allowed to respond to such prefacing questions or statements, then they are curtailed in giving testimony in their own words. This strategy known as unnatural narrative order places the questioner in a position of making propositions to which the respondent is not given time to respond (Gibbons, 2003).

Negative suggestion is a pragmatic strategy that involves asking the opposite of what one wants to find out. Another strategy is the use of evaluative third parts. Sinclair and Coulthand (1975) demonstrated the use of third evaluative structure at the end of elicitation-reply sequence in classroom discourse. In such a setting the third part, usually by the teacher, gives feedback to the learner on whether their response was correct. This strategy can be person or idea targeted. In courtroom discourse, third parts can be used to give an evaluation of the witness’s

response in a supportive way (Correct; Good; That's right) or in a challenging way (No; That's not what I asked you; No, no, no) (Gibbons, 2003).

Interruption is another strategy especially common in cross-examination. It is different from violation of turn-taking (as discussed under the person targeted strategies (cf 2.4.2)) in that the examiner interrupts the witness so that he or she does not 'finish what he or she is saying particularly if it contradicts some element of the 'story' that counsel is trying to construct' (Gibbons, 2003, p.125). Other strategies identified by Gibbons (2003) include rhythm and pace as well as silence. These, however, were not taken into account in this study because the practice of presiding magistrates taking down the court record by hand means that participants adjust their pace for the convenience of the magistrate. Consequently, it is difficult to isolate silences that are meant to have a pragmatic effect from those meant to allow the magistrate finish recording a given exchange.

Matoesian (2005) identifies the tactic of nailing down a witness where 'counsel will ask a series of repetitive questions sometimes intertwined with reformulation in order to extract a preferred answer from a witness' (p. 755). This is usually to extract a response that will have an overall damaging effect on the witness or their testimony. Chang (2004) identifies the tactic of answering one's own questions as one encountered in Chinese courtrooms. On their part Aldridge and Luchjenbroers (2007) talk of the false friend strategy where counsel positively

acknowledge a witnesses' expertise or display sympathy with their position only to turn round and discredit the witness on the same point.

Cotteril (2004) talks of the use of the 'so' summarizers which are the same as reformulation but are distinct in that they are always prefaced by the particle 'so'. She notes that they also play an evaluative role and in a way that expects and assumes agreement. As such in this study the 'so' summarizers have been assigned a category of their own due to their high incidence of occurrence. We will seek to establish and discuss the use of these strategies in the data.

2.5 Measuring Witness Participation in Courtroom Discourse

As Gibbons (2003) explains, the two realities at the heart of formal dispute resolution processes are the primary and secondary realities. The former is the here and now: it comprises of the physical courtroom setting and the participants in this setting; it also includes the discourse through which the secondary reality is recreated. This secondary reality is the reason for the legal process, including crimes and disputed events; in other words, 'the events that are the subject of the litigation' (Gibbons, 2003, p. 78). Given that the officers of the court are, presumably, absent during the initial occurrence of the crimes or disputed events leading to litigation, and given that the justice system bestows these officers with key roles in the determining guilt or responsibility for acts committed, it is essential that they access this secondary reality. This access involves a

reconstruction of what happened, and the reconstruction is mainly done through witness testimony and production of various forms of material evidence.

Witnesses are thus, in a manner of speaking, the stars of the trial who should not only have their day in court but, even more importantly, have their say. Ideally, given their initial participation in the events leading to the dispute (for eye witnesses), or their participation after the fact due to their professional expertise (for expert witnesses), witnesses should present their testimony in their own words. This would involve witnesses giving a narrative account of their participation in the matters before the court. But, in reality, the presentation of testimony is hedged about by legal requirements which establish questioning as the mode of eliciting witness testimony (in direct examination), challenging such testimony (in cross examination) and also forbids hearsay evidence such as a witness giving opinions shaped by other people's representations of reality.

The witness is thus a primary participant in a trial but his or her participation is subject to rules of procedure and prone to manipulation by others through questioning. Conley and O'Barr (1990) note that many witnesses feel contained in the courtroom setting and, after participation in trial, many are of the opinion that 'they did not get an opportunity to tell their story' (p. 172).

Given this discontent among witnesses, several scholars have highlighted the obstacles witness face in their endeavor to tell their story in their own words. Matoesian (1993) shows that rape victims are usually re-victimized during cross examination and their testimony, as well as their character, disparaged through a barrage of tactics by defence lawyers. But focusing on the witness as a discourse participant, Lunchjenbroers (1993) comes up with a typology of the answer types from witnesses. The classification identifies three broad categories of answer types, the first one being Background Responses. This category has subtypes like No Answer, Background, Tag Questions and Two Part Questions. All these are regarded as Background Responses in the sense that the witness does not respond or is not given opportunity to respond to the propositions contained in the contributions that preface the question.

The second broad category is of Minimal Responses which has the subtypes of Minimal Response (YES), Minimal Response (NO) and Content (WH-Q). The last refers to instances in which witnesses gives a minimal response by providing just what is directly requested for by the WH- word in the preceding question. The other two Minimal Response subtypes occur when a witness, faced with a Yes/No question, gives a one word response which is ‘yes’ or ‘no’ or any other word with the same meaning of agreeing or disagreeing. The final broad category of answer types are Elaborate Responses which are of several subtypes. The first is the Content Evasive Response in which a witness gives an elaborated response

but the information in it is actually an avoidance of responding to the specific issue of the question. Then there are Content Elaborate (YES) and Content Elaborate (NO) responses where a witness gives a 'yes' or 'no' response followed by an elaboration. Finally, we have Content Elaborate (WH-Q) where a witness gives an elaborate response to a WH- question.

This classification, which was also adopted by Farinde (2009), was adopted for the current study but with several modifications. The modifications were necessitated by the fact that this study has adopted a more diversified typology of questions than the one by Luchjenbroers (1993) with the implication that coding of responses has to anticipate more diversity in response types.

The answer types in the data for this study have been classified into two broad categories namely Minimal Responses and Elaborate Responses. The Minimal Responses have six sub-categories: No Answer, Minimal Response (YES), Minimal Response (NO), Minimal Response (WH-Q), Minimal Response (ATQ), Minimal Response (Command) and Minimal Response (Statement). The last two refer to minimal responses to alternative questions and minimal responses to commands respectively. The Elaborate Responses have six subtypes: Elaborate Response (YES), Elaborate Response (NO), Elaborate Response (Evasive), Elaborate Response (WH-Q), Elaborate Response (ATQ), Elaborate Response (Command) and Elaborate Response (Statement). The category of Background

Responses identified in Luchjenbroers (1993) will be discussed separate from the responses (cf. chapter 8).

For her Australian courtroom data, Eades (2000) sought to measure how powerful participants dominate the less powerful Aboriginal witnesses in court. Conley et al. (cited in Eades, 2000) hold that a witness's testimony is judged to be more credible when presented in a narrative style which is not fragmented. The fragmentation would come from frequent interruption by questions from the examining party especially when such questions are full of back grounded contributions but the responses elicited are minimal. This would mean that the bulk of what is said in reconstructing the secondary reality is from the questioner with the witness's role being reduced to filling in missing details from the story rather than being the primary storyteller. This could account for litigants dissatisfaction with their participating in adversarial trials mentioned earlier. Eades (2000) looks at answer length in four types namely one word, between one word and one line, between one line and three lines, and more than three lines. These dimensions of answer length were also adopted for the present study.

2.6 Methods Adopted in Discourse Studies

Discourse analysis can be broadly defined as the systematic study of naturally occurring language above the clause level (Bavelas et al., 2002). It is crucial to note that such studies span across several disciplines such as linguistics,

sociology and literary theory and employ different methods to achieve diverse goals. In the courtroom, studies involving the analysis of language use in trial have been numerous and they have employed a variety of methods for data collection and analysis. Where spoken language is the object of study, audio-recording is the favoured data collection method (Eades, 2000; Farinde, 2009; Luchjenbroers, 1993) as it guarantees a permanent record of the verbal interaction that can be played back at the researcher's convenience. The present study also used audio-recording to capture the verbal interaction in the sampled courts and these recordings, together with the researcher's observation notes, constituted the data through which the study's objectives were pursued.

The other central methodological issue for discourse studies 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 is able to 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. 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 pragmatic 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) and used in CA. In terms of transcription notation, the present study has borrowed from Atkinson and Heritage (1984), Gumperz and Berenz, (1993) and Matoesian (1993). A list of the transcription symbols used for the present study is given at the end of chapter three, immediately before the start of the analyses chapters (cf. 3.4.5).

Apart from the transcription notation, the type of orthography used in writing down the transcription is of importance. Some scholars advocate for the use of 'a modified orthography that captures talk as it sounds to the hearer' (Matoesian, 1993, p. 52) and symbols that capture significant vocal and contextual features such as pauses and speaker overlaps. However, in this study, standard orthography was used when writing down the transcriptions. In making this decision, the researcher was guided by the need to balance between accuracy and detail on one hand and readability of the transcription on the other hand. As Cameron (2001) notes, in doing a transcription, one has to be aware that 'too

much detail can be as unsatisfactory as too little' (p. 39). With this in mind, standard orthography was used because the syntactic forms and pragmatic strategies being studied do not require phonetic detail to be identified. In addition, the pragmatic strategies of pause and silence were left out of the analysis because the method or capturing the court record through writing meant that participants had stretches of silence to allow for this and it was difficult to isolate silences with a pragmatic effect and those without.

2.7 Studies on Discourse Analysis in Kenya

There are a number studies focusing on discourse in various contexts in Kenya (Hassan, 2000; Hirsch, 1998; Mwai, 2008; Walya, 1996). Mention will only be made to a few that relate to the present study. Hassan (2000) focused on the interaction between tourists and tour guides in Mombasa. Her interest was to find out the discourse strategies evident in the interaction between these two parties. Her study was grounded in the Speech Act Theory (Searle, 1969) which she used to identify communicative acts of declaratives, commissives, expressives and directives within which she looked for strategies used to make communication to be effective. Likewise, the current study also used the Speech Act Theory to determine the speech acts prevalent in courtroom discourse and how they bring out the power and asymmetry in the discourse.

Gathumbi (1995), Walya, (1996) and Mwai (2008) examined discourse in formal settings just as the present study focused on a formal setting, namely the courtroom. Gathumbi (1995) looked at discourse events in bilingual classrooms. Her outlook in terms of theory was pedagogical and thus different from the current study whose outlook is linguistic. However, she used note taking, audio-recording and video recording to collect data. For our study, we used note taking and audio-recording as the data collection methods.

Walya (1996), on the other hand, studied the structure of banking discourse and the strategies employed by discourse participants in this setting. Her study, like the present one, was grounded in the notion of discourse as interaction where participants use a variety of strategies to negotiate for meaning. She noted that given that banking is a business, bankers and their customers employ both verbal and non-verbal forms of communication to create rapport. Such forms include gaze, smiling and nodding. It would be of interest to find out whether such strategies are in use during the direct examination phase of litigation which has been dubbed co-operative and friendly and absent during cross examination which is deemed to be hostile (Farinde, 2009; Luchjenbroers, 1993).

Hirsch (1998) examined the construction of gender identity through language in divorce proceedings in *Kadhi* Courts at the Kenyan coast. Her study was anthropological and it focused on the strategies women adopted when they

brought divorce proceedings against their husbands as by doing so they were also seen as challenging popular cultural ideals. Given that our research is grounded in Critical Discourse Analysis, it is inescapably a study on language ideology as, in describing the linguistic strategies adopted by discourse participants, the study sought to find out 'why they do what they do' (Conley & O'Barr, 2005, p. 146). The present study investigated the power relations between participants in the courtroom, meaning the focus is more on the non-referential functions of language and hence an ideological orientation.

2.8 Forensic Linguistics

Forensic Linguistics emerged as a field of study in the 1970's and over the years it has rapidly grown in its scope of interest. The *Oxford Advanced Learner's Dictionary of Current English* (2000) defines the term forensic as 'connected with or used in a court of law' (p. 464). This gives the term Forensic Linguistic a direct meaning of linguistic expertise used in a court of law to help in determining cases (Conley & O' Barr, 2005). Trudgill (2003) grounds Forensic Linguistic in the context of applied linguistics which he defines as 'the application of linguistic research…to different societal issues' (p. ii). This sets ground for a distinction between a narrow and broad definition of Forensic Linguistics.

The narrow definition looks at Forensic Linguistics as being concerned with language evidence such as expert testimony on handwriting, to determine the author of a given text. However, Gibbons (2003) adopts a broader definition of Forensic Linguistics that encompasses a wide range of language and law issues. Conley and O' Barr (2005) and Gibbons (2003) identify the range of issues of interest to Forensic Linguists, and these include the written language of the law as well as the spoken language used in the justice system. Other issues of interest are alleviation of linguistic disadvantages in the justice system and expert testimony given by linguists in courts of law.

Most of the documented studies under the banner of Forensic Linguistics have been done in Western countries. A few of these include a study by Loftus (1979) which proved that 'the formation of memory is an ongoing process subject to external influences not a discrete event that creates an immutable record' (Conley & O' Barr, 2005, p. 167). Her experiments made legal practitioners to question the law's historical high regard and reliance on eyewitness testimony and led to emphasis on convictions based on eyewitness testimony that is supported by Forensic Evidence. Another scholar, Shuy (1993), details the ways in which lack of basic understanding of the working of speech acts like bribing, threatening, admitting and promising can lead to wrongful convictions.

Thus, issues in courtroom discourse, ranging from issues of power, control and interpreting, have generally received a lot of scholarly attention in the West (Berk-Seligson, 1990; Eades, 2000; Harris, 1984; Luchjenbroers, 1993). The findings of these scholars have led to implementation of radical changes in the justice systems of their respective countries. However, whereas in the West research in Forensic Linguistics has proliferated in various areas of interest, our literature review leads us to conclude that in Africa, this area is just beginning to attract scholarly interest.

Locally in Kenya, Ogone (2008) identified constraining linguistic strategies used in a judicial setting. These strategies include discrediting believability through labeling a witness's response as being false, or through question formulation and framing as well as constraining a witness's responses through interruptions. Other strategies include the use of interwoven questions and the bullying of witnesses through sarcastic remarks. The present study adopted some of these categories of linguistic strategies of control as we examined the collected courtroom data for evidence of power asymmetry as a result of language use. Further afield in Nigeria, Farinde (1998, 2009) has studied courtroom discourse and police-accused discourse, and in South Africa, Moeketsi (1992, 1999) has studied discourse in multilingual and multicultural courtrooms. It is on the shoulders of these scholars - their typologies, methods, findings, conclusions and insights - that we stood on as we sought to study language use in sampled Kenyan courts.

2.9.0 Theoretical Framework

We now turn attention to the theories that informed the study in terms of understanding and delineating our subject of study, as well as giving analytical focus to enable the analysis and interpretation of the data collected.

2.9.1 Critical Discourse Analysis (CDA)

Critical Discourse Analysis (hereafter CDA) was the main theory adopted for the present study as it is in light of its tenets that the fidings from analysis of data were interpreted. As a distinct framework for analyzing discourse, CDA was spearheaded in early 1990s by a small group of scholars meeting at the University of Amsterdam. These were Norman Fairclough, Ruth Wodak, Gunther Kress, Theo van Leeuvem and Teun van Dijk. The roots of CDA are, however, diverse and old with some of the concepts central to CDA being traceable to sociology, ethnography, philosophy, applied linguistics and pragmatics.

Van Dijk (2001) defines CDA as ‘a type of discourse analytical research that primarily studies the way social power abuse, dominance and inequality are enacted, reproduced and resisted by text and talk in the social and political context’ (p. 1). CDA views ‘dominance, discrimination, power and control’ as social concepts that are manifest in language (Wodak, 1995. P. 204) and the work of the critical discourse analyst is to reveal how language is an ‘instrument of power and control’ (Caldas-Coulthard & Coulthard, 1996, p. xi).

Borrowing from Habermas' (cited in Harris, 1995) and Fairclough's (1989) expositions on the relationship between language and power relations in society, CDA defines its goal as being to show 'social inequality as it is expressed, signaled, constituted, legitimized and so on, by language use (or in discourse)' (Wodak, 2001 p. 2). This, explicitly stated and vigorously pursued goal to show cause and effect relationships in day to day human affairs through research, is what makes the approach 'critical' a term which is not just confined to research in linguistics. For the critical analyst, the purpose of undertaking research is to expose a social problem by shedding light on the structures and practices that constitute and perpetuate the problem (van Dijk, 1986).

Jørgensen & Philips (2002) note that CDA can also be viewed as a label of abroader movement in discourse analysis. In this view, CDA encompasses several approaches that are distinct in their techniques for linguistic analysis, but they all share some common views to discourse which are the central tenets of CDA. Some of these include the view that discourse constitutes and is constituted by society and culture. There is also the principle that CDA addresses social problems and its approach is both interpretative and explanatory. Another tenet is that discourse functions ideologically and thus a critical analysis of discourse can show the role of discursive practices in the creation, maintenance and challenge of unequal relations of power in society (Fairclough & Wodak, 1997).

The present study adoted Fairclough's (1992) approach to CDA. This approach holds that discourse is manifest at two levels, namely, the macro and micro levels. At the macro level of discourse are social concepts like social order, power, dominance and inequality. These social realities are abstract and they find expression at the micro level of discourse which deals with linguistic concepts like grammar, speech acts, style and rhetoric (Conley & O' Barr, 2005; Jørgensen & Philips, 2002; van Dijk, 2001). Thus the discourse analyst's aim under this theory is revealing how linguistic micro discourse structures reproduce, challenge or perpetuate social macro discourse realities. The present study collected courtroom proceedings, and their analysis helped us to study how the macro concepts of dominance and control were evidenced in the day to day verbal interaction in courts.

Fairclough (1992) approaches the analysis of verbal interaction from three dimensions. The first, discourse-as-text, is concerned with choices interlocutors make about vocabulary, grammar and cohesive devices. The second dimension, discourse-as-discursive-practice, analyses how the choices made in vocabulary, grammar and cohesive device are a means of grounding a given verbal exchange in a particular social context. The third dimension, discourse-as-social-practice, views discourse as a product and determinant of ideology (Fairclough, 1992; Jørgensen & Philips, 2002). Thus, the ideology at play in a given society is articulated and challenged through discourse (Blommaert & Bulcean, 2000). This

was the approach taken during the analysis of data collected in this study. The linguistic choices made by the interlocutors were identified and then discussed with reference to whether they occurred in the direct examination or cross examination phases of the trial. Finally, an evaluation was made on how power asymmetry in the courtroom was produced and or challenged through the language choices of the discourse participants.

2.9.2 The Speech Act Theory

The Speech Act Theory is attributed to philosopher J. L. Austin whose ideas were published posthumously in 1962 under the title *How to do Things with Words*. He was reacting to the popular view then among philosophers of language that all utterances could be classified as verifiable true or false statements. Austin asserted that there were utterances that could not be verified as true or false and yet uttering them constituted part of or the doing of an action. Austin named such utterances as performatives adding that they contained performative verbs like 'declare', 'promise' and so on. For utterances that could be assessed in terms of truth values, he assigned the label constatives. Austin concedes that a rigid division between constatives and performatives can be misleading because it is possible to express performative utterances through non performative utterances such as: I **declare** you guilty / I **find** you guilty /I **hereby find** you guilty / Guilty! / You did it.

In the examples above, only the first three have explicit performative verbs (in bold) while the last two do not, but they can still comprise the act of convicting. Austin reserved the term **explicit performatives** for utterances containing verbs naming the act that is being performed. The other kind of speech acts, without performative verbs, he called **implicit performatives**.

Austin identified six devices which can be used to identify implicit speech acts. The devices include mood, tone, voice, adverbs and adverbial phrases, connecting particles, accompaniments of the utterance and the circumstances of the utterance. Mood is the grammatical category on the main verb to indicate whether the utterance is imperative, declarative or interrogative. Mood, in conjunction with other devices, can help us determine the act being performed. Tone or voice brings out aspects of emphasis which can also indicate the act performed by an utterance. Adverbs and adverbial phrases like ‘without fail’, ‘probably’, ‘timely’, ‘most likely’ capture the definiteness or indefiniteness of an utterance and can help us characterize the act it performs. An utterance like ‘I will definitely be there’ can be taken to be performing the act of promising the same as ‘I promise I will be there’. Connecting particles like ‘so’ can have the interpretation ‘I conclude that’ same as ‘therefore’ ‘still’ can have the meaning ‘I insist that’. Austin concedes that these linguistic markers can have several uses in utterances one of which is acting as performative markers.

Accompaniments of an utterance include aspects of body language such as gestures, frowns and smiles. These can be useful clues, especially in spoken language, as to the speech act being performed. The circumstance of the utterance is the last of the devices that help us to arrive at implicit speech acts. It includes features of context such as backgrounds of the conversationalists and place of discourse. In our case, whether an utterance was part of direct or cross examination phases of trial was an important circumstance in classifying it.

Also central to the Speech Act Theory are the three types of acts performed by an utterance in a conversation. First is the **locutionary act** which is the act of uttering something meaningful. Second is the **illocutionary act** which is what an utterance does when uttered, for example, promising, commanding, offering and naming. Then there is the **perlocutionary act** which refers to the effect an utterance has on the audience. For instance if a receiver is warned by the utterance 'Do not come near the dog' then this (the fact of the receiver being warned) is the perlocutionary effect.

The theory has been further developed and used by scholars to analyse verbal interaction (Allan, 1986; Farinde, 2009; Searle, 1969, 1979; Thomas, 1986). Another contribution of the Speech Act Theory was the identification and classification of speech acts. To Austin's five classes of illocutionary acts namely expositives, exercitives, commissives, verdictives and behabitives, other scholars

have added other classes (Searle 1969, 1979; Searle and Vanderveken, 1985), and this has become a very dynamic area of the theory. Searle (1969) is of the view that each utterance has both a propositional indicator and illocutionary force indicator. The latter include illocutionary verbs, word order, stress intonation contour and mood of the verb, and they are referred to as illocutionary force indicating devices (IFIDs).

In courtroom discourse, for example, the dominant speech act function is questioning or interrogating, which is not surprising given the overall goals of discovering events that transpired at an earlier time and that led to the dispute before the court. However, given the different goals being pursued by the parties to the dispute before court, the questioning during the speech event of a trial is not neutral or just aimed at discovering what happened. For the complainant / plaintiff and the prosecutor the overall discourse function in a trial is blaming the defendant; whereas, for the defendant and the defence counsel (if one is present), the overall discourse function in a trial is avoiding blame and /or shifting blame. These macro discourse functions are achieved through specific speech acts such as questioning. The use of interrogative forms in the data has been analysed in a variety of ways (cf. chapter four) guided by the objectives of this study. Thus, the acts that are identified and analysed under the framework of the Speech Act Theory (cf. chapter seven) are those achieved through other structures than questions, but also include speech act functions that co-occur with interrogative

forms. For example, the utterance ‘So you are saying you could not see clearly?’ can be analysed as achieving the speech acts of reformulating the testimony of the witness and summarizing witness testimony using a ‘so’ summarizer. These are functions that occur together with the speech act of questioning which is also achieved by the same structure. All these are micro-discourse functions that can be analysed as achieving a macro discourse function of, say, casting doubt or challenging previous testimony.

Searle (1969) argued that all utterances comprise of two main components which are illocutionary force indicating device (IFID) and the propositional content. It is on the basis of illocutionary force that Searle (1969) categorised speech acts into five types namely representatives, directives, commissives, expressives and declarations. Of importance to our research is the fact that the study of speech acts requires an acknowledgement of the crucial interplay between language and social context to arrive at an interpretation of utterances (Searle, 1969; Stubbs, 1983). For instance, the successful performance of declaratives at times requires appeal to non-linguistic institutions such as courts which vest some individuals with social power and authority over others.

Equally relevant is the distinction made by Searle (1969) between conventional (direct) and non-conventional (indirect) speech acts. The former are explicitly marked with an illocutionary force indicating device (IFID) such as a

performative verb while the latter are unmarked, and to understand their force, one has to rely on knowledge about context and mutually shared knowledge between the speaker and the hearer. Allan (1986, 2007) also expounds on the importance of mood in determining the primary illocutionary force of an utterance. These distinctions offered valuable insights as we coded the various contribution types in the data that were collected.

Thomas (1985, 1986) in her studies on discourse of unequal encounters identifies what she calls metapragmatic acts that are based on the goal-orientation and interpersonal pragmatics of the speakers and argues that these are used by powerful speakers to control the discourse. The same are identified by Farinde (2009) in his study on courtroom discourse in Nigeria and they include commands, encouragement, clarification, reformulation, discoursal indicators, IFIDs and metadiscoursal comments. These categories were used to identify and discuss the use of such pragmatic speech acts in the courtroom data.

2.9.3 Conversational Analysis

The theory has its origins in the work of Erving Goffman (1955) and Harold Garfinked (1967). Early work focused on ordinary conversations, a term that represents spontaneous verbal interactions that take place in non-specialized settings. The broad goal of Conversational Analysis (hereafter C.A.) was to identify the interaction rules and practices drawn upon by participants in a

conversation to construct shared and specific understandings of where they are within a social interaction (Heritage, 1998).

In the 1970's, C.A. methods started being used to study conversations in restricted environments in which the goals of participants are more goal oriented and institutional restrictions on the interaction are in force. Institutional talk is seen as restrictive to participants in terms of the interactional practices allowed and the context in which these practices occur (Heritage, 1998). Such restrictions, it is noted, are often described as constraining, troublesome and threatening by lay participants (Atkinson, 1982). Courtroom discourse, which was the focus of the present study, falls within the definition of institutional talk and thus the methods of C.A. were of use to the study.

C.A. theory holds that participants in a conversation orient their talk to preceding talk and, in doing the current action, create context for the next. By producing next action, participants demonstrate their understanding of prior action. For instance, a response demonstrates understanding that the prior action is complete and that it was a question (Heritage, 1998; Sacks, 1987; Schegloff, 1992). This has implications for the way institutional talk is identified and analysed. For example, if we are to label a phase of a trial as a cross-examination, we should, through analysis, demonstrate how the participants incrementally, and turn by turn, construct it as a cross-examination.

Heritage (1998) identifies six domains whose study enables an in-depth description of institutional interaction. These are turn-taking organization, overall structural organization of the interaction and sequence organization. Other domains are turn design, lexical choice and epistemological as well as other forms of asymmetry. Heritage (1998) notes in institutional settings such as the courtroom, turns, as well as topics, contributions and order of speakership, are predetermined from the outset. A description of the organization of turns can show adherence to this predetermined allocation as well as instances when participants depart from the order of speakership or in the types of contributions expected from them.

Drew (1985) also shows how an analysis of lexical choice can reveal how courtroom discourse participants orient their contributions to their context. Adverse witnesses are aware that they are in a trial and they attempt to produce 'alternative and competing descriptions in cross-examination' from those advanced by the examiners (Drew, 1985, p. 38). The present study sought to investigate how differences in power relations among the participants in courts are reflected in the discourse. It also sought to find out the strategies of blame avoidance and blame implication used by participants. The six domains underlying institutional talk formed the basis of investigation of these issues.

2.10 Summary of Chapter

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. CDA has been presented as the major theory within which the data were analysed and discussed. The other theories, Converational Analysis and the Speech Act Theory, provided domains for identifying and coding various aspects of verbal interaction in the sampled courts. The next chapter presents a discussion of the research methodology adopted for the present study.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

This chapter presents a discussion of the methodology adopted for the study. It begins with the research design and then presents the population and area where the study was undertaken. This then paves way for a discussion of the study sample in terms of the sampling design, sample size and the procedures used to obtain the study sample. The data collection methods, instruments and procedures are then discussed followed by data analysis procedures as well as ways of presenting the data. The chapter ends with a look at the ethical and confidentiality issues that the study had to address.

3.1 Research Design

The study adopted a descriptive research design and employed qualitative procedures in sampling, data collection and data analysis. Descriptive research is concerned 'with describing the characteristics of a particular individual, or a group' (Kothari, 2004, p. 34). Descriptive studies are mainly used to investigate social issues, and they enable researchers to come up with solutions or recommendations on how to deal with the disparities observed (Mugenda, 2008). The present study sought to describe courtroom discourse and discover how power and control is produced and resisted through linguistic means by identifying the questioning and pragmatic strategies used by discourse

participants across the direct examination and cross examination phases of trial. These are issues best studied within the framework of a descriptive design using qualitative methods and hence the adoption of this design for this study. The sampling, collection of data and their analysis were done in ways meant to meet and uphold the standards necessary to ensure validity, reliability and objectivity of findings (Daly, McDonald, & Willis, 1992; Denzin & Lincoln, 1994; Hewitt, 2006).

3.2 Population and Area of Study

The study focused on courtroom discourse in Kenya and this meant that all courtrooms in Kenya constituted the population of interest to the study. Between April and August, 2011, the researcher collected data from subordinate courts; specifically, data were obtained from three chief magistrates' courts namely the Chief Magistrate's Court in Nairobi, the Chief Magistrate's Court in Thika and the Chief Magistrate's Court in Nyeri. These constituted the accessible population defined as 'that part of the target population which the researcher can practically reach' (Mugenda, 2008 p. 182).

The reason for selecting the chief magistrates' courts was that they are in fact a cluster of courtrooms presided over by magistrates under the direction of a Chief Magistrate (Kiguru, 2008). A Chief Magistrate oversees several courts presided over by senior principal magistrates, principal magistrates, senior resident

magistrates and resident magistrates. Thus, by focusing on chief magistrates' courts one is able to capture the hierarchical variety of the subordinate courts in Kenya. The data from these three courts were taken to be generalizeable to the rest of the population because the court procedures and the rules of evidence that apply in these courts are also applied in all the other courts in Kenya. The choice of the three locations i.e. Nairobi, Thika and Nyeri was based on the fact that they were easily accessible to the researcher making the coordination of data collection practical given the resources available to the researcher.

3.3.0 Sampling Design

The study used purposive sampling which is one of the non-probability sampling techniques. Milroy and Gordon (2003, p. 33) assert that 'in most cases, judgment sampling is more appropriate for linguistic work' and specifically advocate for quota sampling whereby the researcher deliberately focuses on including some pre-determined relevant characteristics of the population in the sample. These assertions and practical considerations led to the adoption of purposive sampling for the present study. Courts in Kenya produce cause lists that show the cases that will be heard on a given day by the various magistrates. The cause lists are availed to the public only hours before commencement of hearings by the court. In addition, the listing of a case does not guarantee that it will be heard because any of the parties could apply for an adjournment. Thus, it is possible for a cause list to indicate that a given court is set to try ten cases and eventually none of

them is heard. These are the practical apects of collecting data in the Kenyan courtrooms that necessitated for the use of purposive sampling.

In quota sampling, the researcher is expected to determine given characteristics which are then assigned quotas that sampling should fill (Cooper & Schindler, 2003; Kothari, 2004). Our study investigated the strategies used to achieve control in courtroom discourse. Given that some cases are tried with the accused person being unrepresented by legal counsel, we sought a sample with a 50 to 50 percent ratio of trials with unrepresented litigants and those where accused persons were represented. This allowed for comparison of the extent to which the two trials were similar in terms of linguistic strategies employed by participants.

3.3.1 Sample Size

The sample size comprised a total of 30 hours of digital audio-taped courtroom trial proceedings and these hours were sub-divided into10 hours in each of the three sampled courts reflecting the direct examination and cross examination phases of trials in which the accused was represented by legal counsel and those in which the accused was unrepresented in a 50 to 50 percent ratio. The justification for this sample size was that courtroom discourse is rule governed, and participants are bound by evidentiary rules that control the form and content of their contributions. Therefore, it was expected that the entire population that was of interest to this study was highly homogenous on the variables under study,

and this justified the use of a relatively small sample (Mugenda & Mugenda, 1999). Further, it has been observed that linguistic studies do not require large samples as small samples are able to provide data that is representative of the wider reality (Cheshire, 1982; Mesthrie, Swann, Deumart, & Leap, 2000; Trudgill, 1974). In fact, the use of large samples in linguistic studies is likely to bring about redundancy and data handling problems. Thus, 30 hours of data were deemed adequate to allow for the study of the research questions the study was based on without bringing about redundancy in data (Milroy and Gordon, 2003; Rubin, 1987).

3.3.2 Sampling Procedure

From the population of all the courts in Kenya, the researcher purposively sampled three chief magistrates' courts namely, the Chief Magistrate's Court in Nairobi, the Chief Magistrate's Court in Thika and the Chief Magistrate's Court in Nyeri. As mentioned above (cf. 3.2) the choice of these courts was hinged on their accessibility to the researcher given the resources available for the exercise of data collection. This study narrowed focus on the verbal interaction during the direct examination and cross examination phases of trial. In each of the courts, the researcher used purposeful sampling to obtain data to fill the quotas of 5 hours of digital audio-recorded trial proceedings in cases where the accused is unrepresented and 5 hours of digital audio-taped trial proceedings of cases where

the accused is represented by counsel. This accounted for 10 hours for each of the sampled courts to add up to a total of 30 hours for the three sampled courts.

3.4.0 Data Collection Methods and Instruments

Given the complexity of interaction in the courtroom, it was advisable to use a triangular method while collecting data. The triangular methods involves collecting data using multiple methods so as to strengthen their reliability as the researcher is able to observe phenomenon from different points of view each of which strengthens the other (Gathumbi, 1995; Hewitt, 2006; Webb, Campbell, & Sechres, 1966). For this study, the researcher used two methods to collect data namely, recording and observation. Each of these methods involved the use of a particular instrument to capture data.

As metioned one of the methods was recording, and it involved the audio recording of court proceedings. A Sony Wireless Microphone System (WCS-999) was used together with a Sony IC Recorder (ICD-MX20) audio-recorder to capture the verbal discourse in the sampled trials; this being the primary linguistic data of the study. The wireless microphone, which has a transmitter and receiver system, allowed the researcher to capture the linguistic data needed unobtrusively and with fewer disruptions as it eliminated movement when trials were in progress, and this minimized the researchers impact on the discourse participants which helped deal with the observer's paradox (Milroy, 1987; Milroy and

Gordon, 2003). In addition, the recording devices came with software, Sound Organizer Ver.1.1.0, which allowed for uploading of the recordings to a computer. This enusured storage of data and allowed for playback to facilitate transcription. The software had several features of playback control which ensured quality transcriptions. The second data collection method was observation, and it involved taking of freehand observation notes of any behaviour, paralinguistic features or features in the physical context which were helpful in the transcription and analysis of the data. Thus, a notebook was the instrument used to capture relevant observations.

3.4.1 Data Collection Procedures

The researcher obtained permission to conduct research from relevant bodies. First, the researcher obtained permission from the Registrar of the High Court (now the Supreme Court) to conduct research in courts and to audio-record the proceedings. Secondly, a research permit, number NCST/RRI/12/1/SS-011/388, was obtained from the National Council for Science and Technology.

The researcher then presented himself to the Executive Officer in each of the sampled courts who in turn facilitated introduction to the Chief Magistrate and other magistrates in the court. The researcher was also introduced to the court clerks and prosecutors in the various courtrooms. To all these parties, the researcher explained his presence and showed the recording device to be used;

this was necessary to create rapport and goodwill among all parties. The assistance of court clerks was sought in placing the transmitting device strategically in the courtroom and switching it on once proceedings commenced. The researcher then sat in the area reserved for the public and was able to record remotely using the receiver piece which was attached to the digital recorder.

Milroy and Gordon (2003) note that in studies involving lengthy recordings, 'the borderline between overt and covert recording can become blurred' (p. 83). This assertion holds true in the court set up where it would be impractical for the researcher to negotiate permission to record with every participant. In this regard, the permission by the Registrar of the High Court and that of the magistrates presiding in the sampled courts were taken to be enough to meet the ethical demands of data collection. Thus, the recording, though unobtrusive, was not surreptitious as the transmitter gadget was placed, mainly by the court clerks, in plain view.

In this way the verbal discourse in the sampled trials was captured reflecting the examination and cross examination of witnesses. This provided data on both the questioning patterns, pragmatic strategies and speech act functions used by various discourse participants in an attempt to win the trial. The recordings constituted the linguistic data that were analysed to determine how power asymmetry was produced and challenged in courtroom discourse. Taking of

freehand notes by the researcher on other features relevant to the trial participants, contributions and context was also done to assist in accurate transcription of data.

3.4.2 Data Analysis Procedures

Every evening during the data collection period, the digital audio recordings were uploaded to a computer and the verbal interaction was transcribed. The transcription was a very involving exercise and it included playing back the recordings several times in order to accurately capture what the participants were saying. These transcriptions provided a permanent record of data that were subjected to analysis. Transcription was done using standard orthography rather than a phonetic transcription because the research objectives did not require phonetic details. During transcription, the researcher constantly referred to the observation notes made for places where the tapes were not clear or where some external feature could have impacted on the dialogue.

The transcriptions made were then studied and participant contribution types, question types and various speech act types as well as pragmatic strategies evident during examination-in-chief and cross examination identified on the basis of the typologies identified in the literature review and coded appropriately. The responses by witnesses were also coded for type and length.

The codes of examiners' contribution types in terms question types, pragmatic strategies, speech act functions and witnesses' responses were analysed using the Statistical Program for Social Sciences (SPSS) version 17 computer software to come up with the frequencies of occurrence and percentages of each in the recorded trials. On the basis of these statistics, it was possible to account for the questioning strategies used by lawyers and compare them with those employed by unrepresented accused persons. In addition, it was possible to account for similarities and differences in patterns of questioning between the direct and cross examination phases of trial. The transcriptions were also studied so as to establish any pragmatic strategies used by various discourse participants. Those found were illustrated and discussed and arguments made of how the emerging patterns of questioning and pragmatic strategies reflect the power asymmetry expected to characterize this type of discourse. The theories on which the study was based namely Critical Discourse Analysis, Conversational Analysis and The Speech Act Theory provided the framework within which patterns in the data were identified, categorised and the emerging patterns discussed.

3.4.3 Ethical and Confidentiality Considerations

Potentially sensitive and private matters are handled in courts and precautions were taken in an attempt to preserve the anonymity and confidentiality of the participants. To start with, the researcher obtained a research permit from the relevant government department. In addition, permission, to conduct the study

and to audio-record trial proceedings, was sought from the Registrar of the High Court (now the Supreme Court). Secondly, an undertaking was made to ensure that the audio-recordings of the court proceedings and notes were accessible only to the researcher and the university appointed supervisors and kept in a secure place during transcription and data analysis. Thirdly, during transcription, discourse participants were identified by titles and where proper nouns referring to people, institutions and localities were used in the discourse, only the first letter of the name was used followed by a dash (e.g. He told us that K____ had gone to see him) so as to ensure anonymity of the participants.

3.4.4 Data Presentation

The statistical findings on the examiners' contribution types, question types, witnesses' response types and other speech act functions during direct examination and cross examination were presented in bar graphs showing frequencies of occurrence and percentages. These formed the basis for discussions on the emerging patterns on differences and similarities of strategies adopted by legal professionals and those used by unrepresented litigants. Tables of frequencies on question types and witness responses in the two phases of a trial were generated and they facilitated a comparison between direct examination and cross examination and discussions on who was in charge of discourse in these phases of litigation and thus allowed for conclusions to be drawn on sources of power asymmetry in courtroom discourse. The pragmatic strategies used to

achieve blame attribution and avoidance were also tabulated and their frequency of occurrence across trials calculated. The use of all these grammatical and syntactic features was then discussed and conclusions made.

The other issue of presentation touched on data that were originally in a language other than English. The two other languages encountered in the study were Kiswahili and Gĩkũyũ. For such data, Gumperz and Berenz (1993) suggest that transcription be done in the original language and then a translation done. For purposes of presentation, they suggest a three line layout whereby the first is the original language, the second has a literal translation and the third line has the normal English translation. It was felt that this system would best serve for studies in which focus is on highlighting specific issues in the translation of particular forms. For this study a two line layout has been adopted with the first line capturing the original language in normal font type while the second line, in italic font type, presents the researcher's translation into English.

The transcribed data form part of the appendices of this report. These transcriptions are divided into two sets. The first set has trials with counsel for the defence while in the second set the accused person is unrepresented by counsel. It is from these two data sets that examples were drawn to illustrate given points in the discussion sections of chapters four to seven. The examples were labeled in a way that allowed for easy identification of the data set they were drawn from. The

labeling adopted shows the example number, the data set (abbreviated DS) from which it is drawn, the case number and an indication whether the example is from the direct examination (DE) or cross examination (CE) phase of the given trial. Thus, a label like 'Example 1.5: DS1Case01DE' means the illustration is the first example in chapter five and is from data set one, case number one in the direct examination phase.

3.4.5 Transcription Symbols

As mentioned, several symbols were adopted in the presentation of transcribed data (cf. 3.4.2). The following is a list of the transcription symbols used.

1. Overlapping utterance – used to enclose speakers' utterances occurring simultaneously

   A: Yesterday at the mall I [saw Bill.]

   B: [You went] to the mall?

2. Latching – used to indicate one speaker immediately follows the speaker before without any pause between their utterances.

   A: I never said he was there=

   B: =But you said you saw him.

   Note: this is also used with 1 above to indicate instances when a speaker is interrupted by another speaker but the first speaker continues with his / her flow of speech.

   A: Yesterday at the mall I [saw Bill=

B: [You went to the mall?

A: =and he completely ignored me.

3. Truncation – used to indicate when a speaker breaks off followed by self repair or a speaker's breaks off because of interruption from another speaker.

   A: I told him that-

   B: =You said you never spoke to him.

   or

   A: I told him [that-]

   B: [You] said you never spoke to him.

   A: It was not- I just told him a few words.

4. Transcription doubt – used to show omission in a transcription because the recording is not clear or to enclose an expression that is in doubt.

   A: They were asked to ( ) but they refused.

5. Sound or activities – used to enclose vocalizations that are non-lexical or descriptions of activities by the interlocutors.

   A: Are you sure ((clears throat)) about that.

6. Overlays – used to enclose non-verbal phenomenon / activity that occurs simultaneously with the utterance.

   A: Confirm whether this {((handing witness a paper))} is the statement you recorded.

7. Silence – used to show non-timed silence when it is ones turn to speak.

   A: Were you there?

B: …

A: Were you?

8. Prolongation – used to indicate a stretched sound

   A: It was ee:::

9. Ellipsis – used to indicate intentional omission of proper nouns, dates etc by the researcher to ensure anonymity and hence safeguard confidentiality.

   A: I told Mr. C___ that I was to travel to T___ the following day.

3.5 Summary of Chapter

The focus of this chapter was the research methodology adopted for the present study. The chapter has presented the sampling design and procedures used as well as the methods of data analysis and presentation. Chapter four that follows, the first of the four chapters in which the study's findings are presented, focuses on the findings on question types encountered in the study sample.

CHAPTER FOUR

QUESTION TYPES IN DIRECT AND CROSS EXAMINATION PHASES OF THE SAMPLED TRIALS

4.0 Introduction

In line with the first objective of the study, this chapter gives an analysis of questions types used in both direct and cross examination phases of the sampled trials. The chapter begins with an overview of question types observed in the study sample followed by a presentation of examples to show how these question types were used by the discourse participants in the direct examination and cross examination phases of the sampled trials. The statistical results for the analysis of question types encountered in the study are then presented, and they inform the discussion on the significance of the occurrence and use of various question types by different participants.

The discussions in this chapter, on the implications of the use of questioning as the dominant method of eliciting information from a witness in examination-in-chief and also challenging the same in cross examination, are done under the framework of CDA. The discussions seek to show and account for power asymmetry in the courtroom setting in line with the tenet of CDA which holds that power relations in society are discursive; meaning it is through discourse that such relations are manifested and negotiated (Fairclough & Wodak, 1997).

4.1 Overview of Question Types in the Direct and Cross Examination Phases of the Sampled Trials

The classification of question types in the courtroom setting has over the years been along the continuum of coerciveness (Danet, 1980; Harris, 1984; Woodbury, 1984). These earlier typologies have been adopted with changes by various scholars whose studies have involved classifying questions in the courtroom set up (Berk-Seligson, 1999; Farinde, 2009; Luchjenbroers, 1993; Tkačuková, 2010). The present study takes the same approach in classifying the questions found in use by participants in the study sample. From the review of literature done on question classification (cf. 2.3.1 and 2.3.2) this section gives an overview of the question types in the study sample and how they were classified.

The classification of questions for the present study involved placing questions into four broad categories namely WH- Questions, Polar and Alternative Questions, Declarative Questions and Tag Questions. This ordering was meant to reflect the degree of coerciveness of the questions as suggested by various scholars (Berk-Seligson, 1999; Tkačuková, 2010; Woodbury, 1984). This would mean that WH- Questions are the least coercive while Tag Questions are typically taken to be the most coercive (cf. 2.3.3 for a review of the notion of coerciveness in questions). Within each broad category are subtypes which were also arranged in order of coerciveness. The general guiding principle in this arrangement was

that where a positive and a negative pair of a subtype occurred, the negative member was more coercive (Luchjenbroers, 1993).

Among the WH- Questions, the subtypes observed in use in the study sample included Requestion without an Embedded WH- Trigger (Can you introduce yourself to the court?) and Requestion with an Embedded WH- Trigger (Can you remember what he said?). Others questions grouped under the WH- Questions included Non-Sentence Questions (Then?), Routine WH- Questions (What do you do for a living?) and the Open WH- Questions (So, what did you do next?).

The broad category of Polar and Alternative Questions had four subtypes. These were Positive Yes/No Question (Did you see him leaving the house?) and Negative Yes/No Question (Wasn't it after she called you?). The other two pairs were Either/Or Question with a Vacant Slot (You posted it or what?) and Either/Or Question (You posted it or you hand delivered it?).

Moving to the Declarative Questions, five subtypes were found in use by discourse participants in the study sample. The subtypes were Positive Declarative Question (He was carrying a bag as he left the house?) and Negative Declarative Question (He was not carrying anything as he left the house?). There were also Project Statement (Witness) (You are saying she called on that day?),

Agreement Statement (You accept there is no way he could have signed it?) and Memory/Knowledge Statement (You know what the law requires in such a case?).

The Tag Questions, deemed to be the most coercive, had the following subtypes. There was the pair of Positive Confirmatory Tag Question (You called that number, right?) and the Negative Confirmatory Tag Question (You never called that number, correct?). Then there was the pair of the Positive Checking Tag Question (You saw him leaving the house, didn't you?) and the Negative Checking Tag Question (You didn't see him leaving the house, did you?). And finally there was the Confirmatory Negative Tag Question (You accepted some money from him, isn't that right?).

4.2.0 Presentation of Question Types in Direct and Cross Examination Phases of the Sampled Trials

The data for this study comprised transcriptions of a total of 30 hours of audio recorded court proceedings from three sampled courts (cf. 3.3.1). The data were divided into two sets to make the analysis easier. The first data set (cf. Appendix 1), which featured criminal, corruption and civil cases, had defendants who were represented by counsel. This means that whereas a police prosecutor or a state counsel (for criminal and corruption cases) or a lawyer (for civil cases) did the questioning during direct examination, cross examination was done by the counsel for the defence. In the second data set (cf. Appendix 2), which

exclusively featured criminal cases, the defendants were unrepresented and, thus, did the questioning in cross-examination; however, the examination-in-chief was done by a police prosecutor.

Figures 1 to 5 that follow present the percentage frequencies of the various question subtypes identified in section 4.1 as they were used by different examiners in the direct examination and cross examination phases of the sampled trials. Figure 1 shows the percentage frequencies of question types used by prosecutors during examination-in-chief in trials without a defence counsel; meaning the defendants appeared pro se. These are the trials in data set two (cf. Appendix 2).

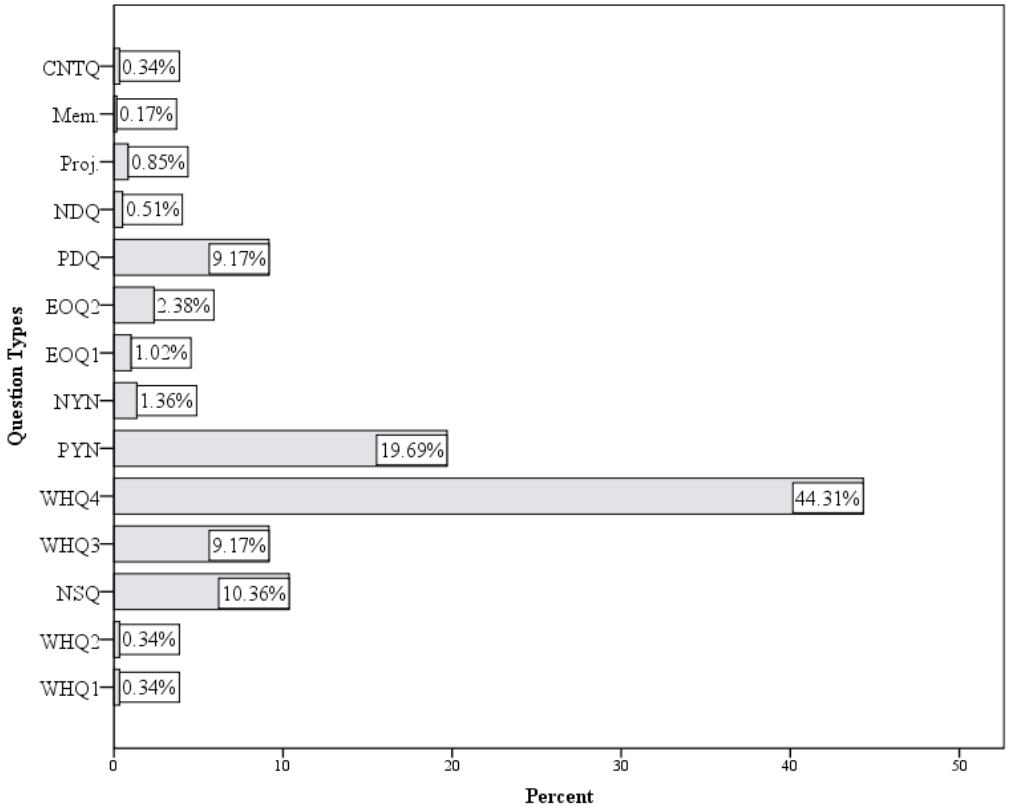

Figure 1: Frequencies of Question Types by Prosecutors in Direct Examination in Trials with Pro Se Litigants

Key:

WHQ1	=	Requestion without Embedded WH- Trigger	PDQ	=	Positive Declarative Question
WHQ2	=	Requestion with Embedded WH- Trigger	NDQ	=	Negative Declarative Question
NSQ	=	Non-sentence Question	Proj.	=	Projected Statement
WHQ3	=	Routine WH- Question	Agr.	=	Agreement Statement
WHQ4	=	Open WH- Question	Mem.	=	Memory/Knowledge Question
PYN	=	Positive Yes/No Question	CNT	=	Confirmatory Negative Tag Question
NYN	=	Negative Yes/No Question			
EOQ1	=	Either/Or Question with a Vacant Slot			
EOQ2	=	Either/Or Question			

Figure 1 shows that in the second data set, featuring trials with no defence counsel, the total number of questions asked by the police prosecutors in direct examination were 589 out of which 261 (44.31%) were Open WH- Questions. Next in frequency of occurrence were Positive Yes/No Questions which occurred 116 times (19.69%). The two question types constituted 64% of all the questions asked. Interestingly, Non-Sentence Questions with a frequency count of 61 (10.36%) were third while Routine WH- Questions and Positive Declarative Questions tied with an occurrence of 54 (9.17%) each. Each of the other WH-Questions subtypes had a less than 10 frequency of occurrence as shown in Figure 1.

The first data set (cf. Appendix 1) featured trials where the defendant was represented by counsel. As mentioned earlier (cf. 4.2.0), this data set had trials in which the direct examination was conducted by counsel (for civil cases) and others where direct examination was done by a police prosecutor (for criminal cases). Figure 2 that follows shows the distribution of question types used by police prosecutors during examination-in-chief in trials with a defence counsel.

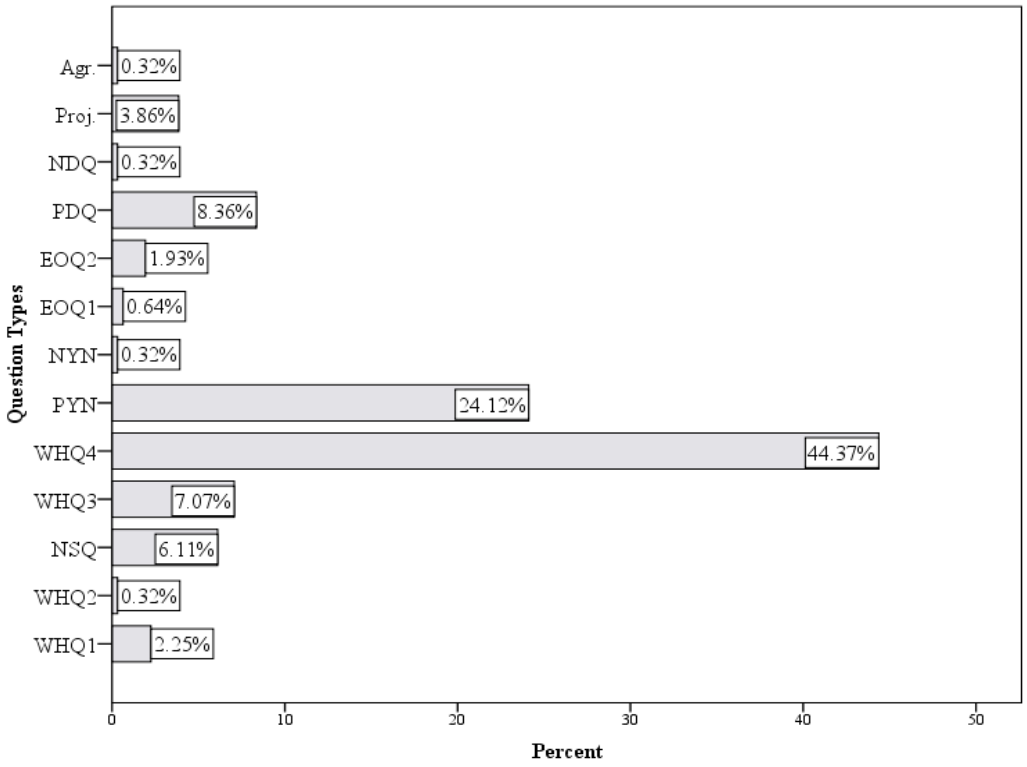

Figure 2: Frequencies of Question Types by Prosecutors in Direct Examination in Trials with a Defence Counsel

Key

WHQ1 =	Requestion without Embedded WH- Trigger	EOQ1 =	Either/Or Question with a Vacant Slot
WHQ2 =	Requestion with Embedded WH- Trigger	EOQ2 =	Either/Or Question
NSQ =	Non-Sentence Question	PDQ =	Positive Declarative Question
WHQ3 =	Routine WH- Question	NDQ =	Negative Declarative Question
WHQ4 =	Open WH- Question	Proj. =	Projected Statement
PYN =	Positive Yes/No Question	Agr. =	Agreement Statement
NYN =	Negative Yes/No Question		

As captured in Figure 2, Open WH- Questions were the most frequently used with a count of 138 (44.37%) followed by Positive Yes/No Questions whose frequency was 75 (24.12%). These two constituted over two thirds of the 311 questions

asked by the prosecutors. At a distant third were Positive Declarative Questions with a frequency of 26 (8.36%) and fourth were Routine WH- Questions with a frequency of 22 (7.07%). Non-Sentence Questions and Projected Statements, each with a frequency of 19 (6.11%) and 12 (3.86%), were the only other question types with frequency counts of more than ten.

Turning to direct examination conducted by counsel in the same data set, an almost similar situation as the one in direct examination by police prosecutors was observed (cf. Figure 2). Figure 3 attests to this.

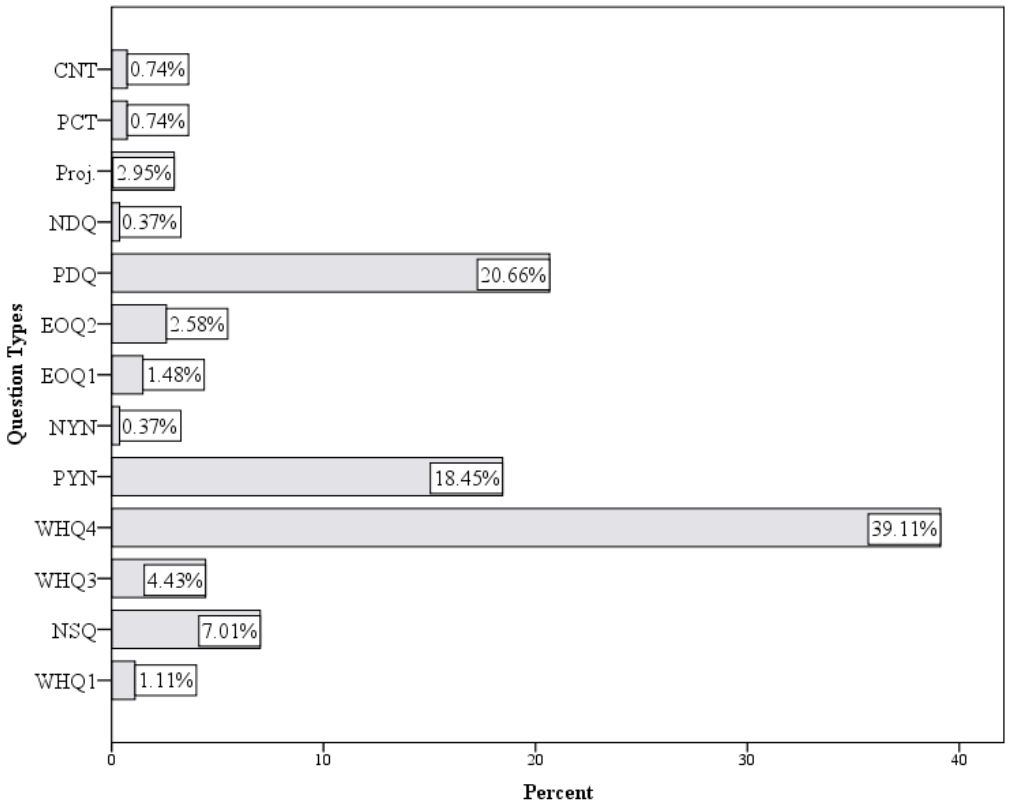

Figure 3: Frequencies of Question Types by Counsel in Direct Examination

Key

WHQ1 =	Requestion without Embedded WH- Trigger	EOQ2 =	Either/Or Question
NSQ =	Non-Sentence Question	PDQ =	Positive Declarative Question
WHQ3 =	Routine WH- Question	NDQ =	Negative Declarative Question
WHQ4 =	Open WH- Question	Proj. =	Projected Statement
PYN =	Positive Yes/No Question	PCT	Positive Confirmatory Tag Question
NYN =	Negative Yes/No Question	CNT =	Confirmatory Negative Tag Question
EOQ1 =	Either/Or Question with a Vacant Slot		

Figure 3 shows that Open WH- Questions had the highest frequency of 106 (39.11%) followed by a virtual tie between Positive Declarative Questions and Positive Yes/No Questions which had frequencies of 56 (20.66%) and 50 (18.45%) respectively. The only other question types with percentage frequency counts of more than ten were Non-Sentence Questions 19 (7.01%) and Routine WH- Questions 12 (4.43%).

We now turn to the cross examination where there were trials that featured counsel as cross examiners while others had unrepresented accused persons cross examining the prosecution's witnesses. The bar graph in Figure 4 shows the percentage frequencies of the various question types used by lawyers in the cross examination phase.

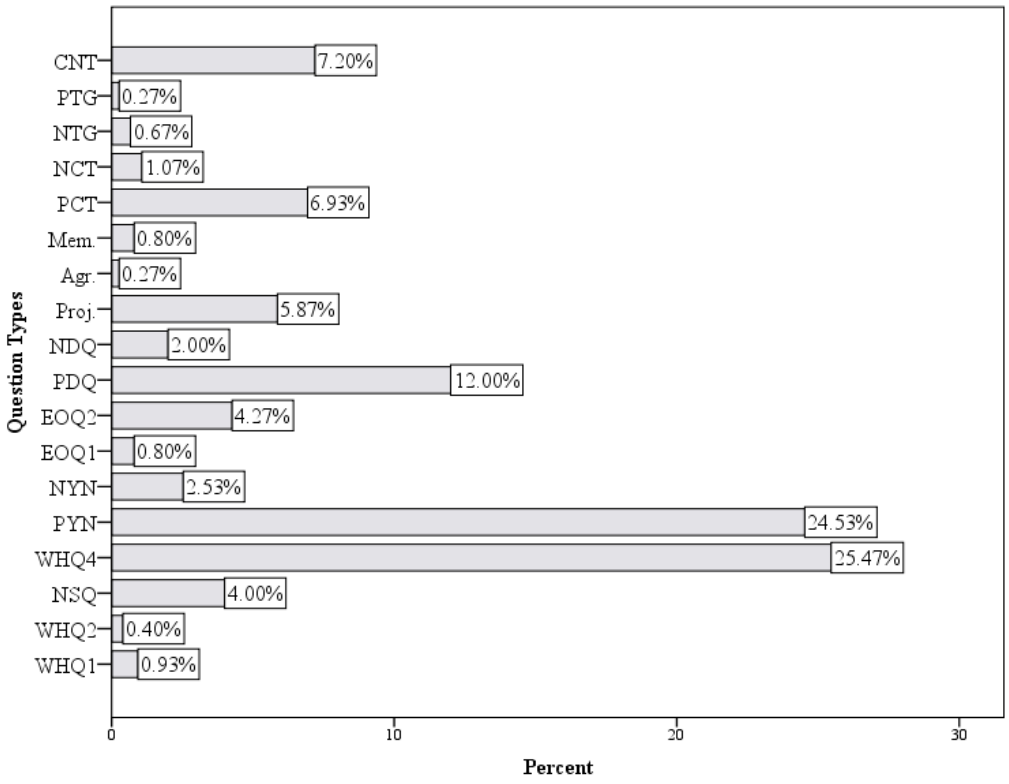

Figure 4: Frequencies of Question Types by Counsel in Cross Examination

Key

WHQ1 =	Requestion without Embedded WH- Trigger	NDQ =	Negative Declarative Question
WHQ2 =	Requestion with Embedded WH- Trigger	Proj. =	Projected Statement
NSQ =	Non-sentence Question	Agr. =	Agreement Statement
WHQ4 =	Open WH- Question	Mem. =	Memory/Knowledge Question
PYN =	Positive Yes/No Question	PCT =	Positive Confirmatory Tag Question
NYN =	Negative Yes/No Question	NCT =	Negative Confirmatory Tag Question
EOQ1 =	Either/Or Question with a Vacant Slot	NTG =	Negative Tag Checking Tag Question
EOQ2 =	Either/Or Question	PTG =	Positive Tag Checking Tag Question
PDQ =	Positive Declarative Question	CNT =	Confirmatory Negative Tag Question

Figure 4 shows the distribution frequencies of the total 750 questions asked by counsel as cross examiners. Of these, 191 (25.47%) were Open WH- Questions followed by Positive Yes/No Questions 184 (24.53%), the two accounting for about 50% of the total. These were followed by Positive Declarative Questions with a frequency of 90 (12.00%) and a virtual tie between Confirmatory Negative Tag Questions and Positive Confirmatory Tag Questions with frequency counts of 54 (7.20%) and 52 (6.93%) respectively. Projected Statements, projected from what the witness has stated earlier, had a frequency count of 44 (5.87 %).

Turning to cross examination by lay witnesses, the graph in Figure 5 shows percentage frequencies of question types used by pro se litigants in the second data set as they cross examined the prosecution's witnesses.

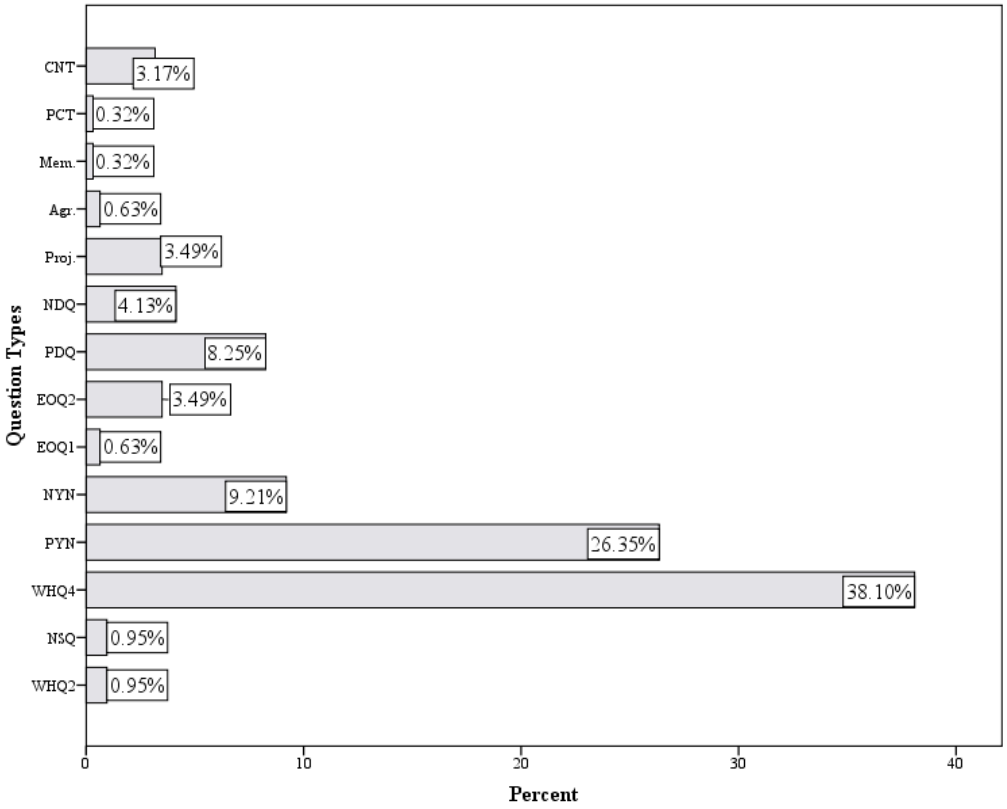

Figure 5: Frequencies of Question Types by Pro Se Litigants in Cross Examination

Key

WHQ2 =	Requestion with Embedded WH- Trigger	PDQ =	Positive Declarative Question
NSQ =	Non-Sentence Question	NDQ =	Negative Declarative Question
WHQ4 =	Open WH- Question	Proj. =	Projected Statement
PYN =	Positive Yes/No Question	Agr. =	Agreement Statement
NYN =	Negative Yes/No Question	Mem. =	Memory/Knowledge Question
EOQ1 =	Either/Or question with a Vacant Slot	PCT =	Positive Confirmatory Tag Question
EOQ2 =	Either/Or Question	CNT =	Confirmatory Negative Tag Question

According to Figure 5, Open WH- Questions had the highest frequency of 120 (38.10%) followed by Positive Yes/No Questions whose frequency of occurrence

was 83 (26.35%). The two question types are of special significance for this group of examiners given that they accounted for over 60% of all the question types used by pro se litigants and, for this group, they were the only ones with frequencies of more than 10%. In sections 4.2.1 to 4.2.2 that follow, the use of various question types in both the direct examination and cross examination phases is exemplified.

4.2.1 Tag Questions in Direct Examination

As noted in section 4.1.0, Tag Questions are the most coercive in the typology of question coerciveness adopted for the present study. Tag Questions derive their coerciveness from their structure where the user makes a statement containing the proposition he or she wants to advance and then follows it with a question which places a demand on the listener to confirm (by affirming or negating) the proposition advanced in the statement. Therefore, the tag appended at the end of the declarative statement is 'a request for the confirmation of the declarative' (Loftus, 1980, p. 261). Moeketsi (1999) further underscores the fact that 'the syntactic structure of Tag Questions, therefore, stresses the power the examiner has to elicit evidence from a witness' (p. 54). The examples that follow demonstrate this fact.

Example 1 that follows shows the use of a Confirmatory Negative Tag Question by a lawyer in direct examination.

Example 1.4: DS1Case01DE

C1: Nyumbani ni wapi?
Where is your home?
W: Nyumbani ni K___
C1: Wapi K__? K__ ni kubwa.
Where in K__? K__ is large.
W: Naishi W__ irrigation scheme.
I stay at W__ irrigation scheme.
C1: **Uko na shamba, unaishi na unalima W__ irrigation scheme, si ndio?**
You own land, live and farm at W__ irrigation scheme, isn't that so?
W: Ndio.
Yes.

This example (1.4) is from the start of direct examination signaled by the routine questions about where the witness resides. The witness responds by naming his district of residence, and, in the next question, the lawyer asks him to narrow down to a more specific location. The witness now names an irrigation scheme in the district. This is followed by a statement by the counsel asserting that the witness owns, farms and lives on a piece of land in the irrigation scheme. It is to this declarative assertion that the tag 'isn't that so' is appended, and the witness's response is an affirmation of all the information the lawyer has packaged in the preceding statement. It is important to avoid making a hasty conclusion that all Tag Questions are necessarily controlling. In example 1.4 above, despite the tag structure, the question is not serving any coercive purpose as the question form 'inquires but does not challenge' (Gibbons, 2003, p. 97). But still, it is hard to escape the fact that the witness is restricted to a Yes/No response, and this, in itself, is indicative of the 'power' alluded to by Moeketsi (1999) above.

4.2.2 Tag Questions in Cross Examination

The general observation in the data of the present study was that more of the various subtypes of Tag Questions occurred in cross examination as compared to direct examination (cf. Figures 1 to 5). An analysis of Tag Questions in cross examination led to the conclusion that in this phase of trial such questions were mainly targeted at controlling witnesses. The following are some examples that show how Tag Questions achieved the function of witness control in cross examination. Example 2.4 below is drawn from cross examination in a civil suit in which an electricity distribution company has been sued to compensate a boy who had sustained serious burns from some high voltage power lines.

Example 2.4: DS1Case01CE

C2: **Baada ya hio ajali watu wa K__ Power walikuja pale, si ndio?**
After that accident personnel from K__ Power come there, isn't that so?

W: Walikuja.
They came.

C2: Wakafanya nini?
What did they do?

W: Sasa walikuja- unajua hio ni mambo ya stima. Sijui walifanya nini.
Now they came- you know that has to do with electricity. I don't know what they did.

C2: Lakini uliona wakiangalia hizo vikingi?
But you saw them inspecting those poles?

W: Walikuja, wengine walipanda juu ya hizo vikingi. Sijui walifanya nini. Mimi nilikuwa nashugulika na mambo ya mtoto.
They came, some of them went up those poles. I don't know what they did. I was busy with the child.

C2: Na pia mbeleni uliona watu wa Power walikuwa wakija pale?
And even there before personnel from Power used to come there?

W: Masaa ya jioni siku hiyo [wali-]
The evening hours of that day they-

C2: **[Sio siku] ya ajali. Hapo mbeleni ulikuwa unawaona wakija routine inspection, si ndio?**
Not on the day of the accident. There before you used to see them come for routine inspection, isn't that true?

W: Ee, wanakujanga, naona hizo magari zao.
Ee, they usually come, I see their vehicles.

C2: Wanakujanga. Na wana kuja after how long?
They usually come. They come after how long?

From the line of questioning in example 2.4, it would seem that the counsel's line of defence is to attempt to shift blame from the company by showing its personnel not only responded promptly to the particular accident that is the subject of litigation but also the said personnel made regular maintenance checks on the power lines, so the company cannot be said to have been negligent. In the first Tag Question, counsel asserts that the personnel from the power company came to the site of the accident and uses the tag 'isn't that so?' to get the witness to confirm this assertion. But what could be more damaging to the plaintiff's case is the second Tag Question in the exchange. It contains the proposition that personnel from the power utility company regularly came to conduct routine inspections on the power lines, a proposition that originates from the defence counsel but the witness is asked to confirm through the tag 'isn't that true?' The affirmative response by the witness can thus be taken to be a confirmation of the said proposition, something that the examining counsel emphasizes by repeating the witness's response before formulating the next question.

In the same case, (cf. 3.4 below) the defence counsel seeks to show weakness in the witness's claim that the power lines or the poles supporting them were 'bending' and this is what led to the accident. Through Tag Questions, the lawyer seeks to show a contrast between the witness's claim and the reality on the ground for the time the power lines had been in that place.

Example 3.4: DS1Case01CE

C2: **Kwa hivyo nataka ujue mtoto alishabisha ajali kwa sababu yakucheza na wire za stima, kuziguza na pipe ya aluminum. Na pia wewe ni responsible sababu umesema haukuwa unamsupervise kwa shamba na hukuwahi kumuonya juu ya hatari za kucheza na wire za stima. Hiyo si ni ukweli?**
So I want you to know the child caused the accident because of playing with electricity wires, touching them with an aluminum pipe. And even you are responsible because you have said you were not supervising him and you have never warned him of the dangers of playing with electricity wires. Is that not true?

W: Hapana hakuwa ana [cheza ni-]
No he was not playing-

C2: [Kuna mtu] mwingine amechomeka na hizo wire hapo?
Has anyone else been burnt by those wires there?

W: Iko wengi zimechoma [tangu-]
There are many people they have burnt since-

C2: Unaweza kututajia mmoja amechomeka kwa shamba yako?
Can you name for us one who got burnt in your farm?

W: Sio kwa shamba yangu [lakini-]
Not in my farm but-

C2: **[Kwa hivyo] kwa shamba yako hizo wire unasema zimebend hazijawahi choma mtu, si dio?** Hapo kwa shamba yako.
So in your farm those wires you are saying have bent have never burnt anyone, isn't that so? *There in your farm.*

W: Ndio.
Yes.

C2: Na umesema zimekaa hapo muda mrefu, kama miaka ngapi?
And you have said they have been there for a long time. Like how many years?

W: Ziliwekwa 70s.
They were put in the 70s.

C2: Kwa hivyo over thirty years wire zimekaa hapo kwa shamba na hazijachoma mtu, si ndio?
So over thirty years the wires have been there on the farm and they have not burnt anyone, isn't that so?

The exchange in example 3.4 starts with a series of statements by the counsel that seem to serve the function of implicating blame on the witness for the accident because he was not supervising his son (the plaintiff) as he was changing irrigation pipes in the farm and for not having warned the son on the dangers of 'playing' with electricity. As such, the plaintiff, the counsel argues, caused the accident by touching the electricity wires using an aluminum pipe. The repeated use of the expression 'playing with electricity wires' by the defence counsel is

significant. This is because throughout the cross examination, the lawyer uses the pragmatic strategy of vocabulary landscaping (cf. 5.5.5) by repeatedly using various expressions in the discourse that imply the plaintiff was playing with the electricity wires. A possible reason for this could be an attempt to construct a defence by shifting blame for the accident from the power utility company to the plaintiff. The Tag Question 'Is that not true?' seeks to get the witness to confirm all the assertions the counsel has made and also the version of the facts the counsel had been building in the whole case. Further, the assertion by the witness that many people have suffered similar injuries is discredited using Tag Questions that constrain the witness response to affirming assertions in the preceding statement. The witness is forced to admit that no other person has sustained injuries from the wires passing through his farm despite the fact that the wires have been there for over thirty years. This contrasts with the witness's earlier assertion that the said wires were bending and hence posed a danger to all.

Following the observation by Quirk and Greenbaum (1973) that the statement in Tag Questions 'expresses an assumption, and the question an expectation' (p. 194), we can account for how the counsel is able to make the witness's responses affirm a set of facts that are detrimental to his case. With regard to the assumption in the preceding statement, the expectation behind a negatively formulated tag is a 'yes' response, while the expectation behind a positively formulated tag is a 'no' response. Thus the confirmatory negative Tag Questions in examples 2.4 and 3.4

require that the witness positively affirms the assumptions that counsel has embedded in the preceding statement. The counsel's ability to control the witness is further reinforced by factors beyond the syntax of Tag Questions. Cross examination is a discursive event (Fairclough, 1992) and thus the production and interpretation of what is said must take into account the institutional practices at play. Such practices include the fact that turn order, turn size and turn type are, to a large extent, pre-allocated in favour of the counsel: the counsel asks questions and witness answers the questions, and the answers' content and length are to an extent determined by the question type (Matoesia, 1993). This is seen subsequent to the first Tag Question in example 3.4 where the witness attempts to resist affirming the lawyer's assumptions in the statements preceding the tag. The counsel controls the witness's turn by interrupting him mid-sentence and asks another question. On their part, witnesses do not have such control over the content or length of turns by counsel.

From these examples in the data we could, therefore, deduce that the use of Tag Questions in cross examination by counsel demonstrates a perpetuation of the status quo by strengthening the unequal power relations between participants in a trial not only on the basis of the different phases of trial but also on the basis of unequal access to discourse resources by the participants.

Although it was observed that lay litigants in the study sample did not use as many Tag Questions in cross examination as did the counsel, some pro se litigants still did manage to use Tag Questions to constrain responses by witnesses and thus force concession to propositions contained in the preceding statements as examples 4.4(a)-(b) and 4.5 illustrate.

Example 4.4: DS2Case02CE

(a) Ac2: Hii chuma unasema inavunja kifuli. Unajuaje?
This metal bar you are saying it breaks padlocks. How do you know?

W: Ndio mnaitumia. Hata polisi walisema ni nyumba nyingi sana W_____ mmevunja hivyo.
That is how you use it. Even the police said that there are many houses in W____ you have broken like that.

Ac2: **Kwa hivyo hiyo maneno yote unasema niyakuambiwa na polisi, si ndio?**
So all the things you are saying you were told by the police, isn't that so?

W: Walisema na hata kwangu mlivunja hivyo.
They said and even my place you broke it like that.

(b) Ac2: **Kwa hivyo tuseme wewe ushahidi wako wote ni mambo uliambiwa na polisi kunihusu, si ndio?**
So we can say all your evidence is about what the police told you about me, isn't that so?

W: Ee.

The accused challenges the validity of the witness's testimony through the two Tag Questions in example 4.4(a)-(b) by showing it to be hearsay. In the courtroom setting, the rules of procedure require witnesses to give first hand evidence as opposed to information that they received from secondary parties (Conley & O'Barr, 1990). The witness in 4.4(a) has asserted that the accused persons broke the padlocks on the door to gain access to her premises and in direct examination had identified a metal bar she was shown by the prosecutor to be the one used to break the padlocks. Her assertion is based on the police having told her that that was how many houses had been broken into, not from having

witnessed the accused persons using the metal bar. The accused person, as the examiner, points out that what she has to say is only based on what she was told and the witness cannot but affirm this. Such an affirmation could negatively impacts on her whole testimony by showing it to be based on hearsay.

In addition, pro se litigants were also observed to embed propositions, in statements preceding the Tag Question characterizing events in ways that were not the witness's and through Tag Questions made witnesses agree to such characterizations. Example 5.4 illustrates such use.

Example 5.4: DS2Case13CE

Ac3: Na sasa uliwezaje kuona mtu ambaye amekushika na ako nyuma?
And now how were you able to see the person holding you and he is behind?

W: Katika ile hali ya maumivu na [kung'ang'ana-]
In that state of pain and struggling-

Ac3: [Jibu swali langu.] Mtu alikufinya akiwa pande gani?
Answer my question. The person squeezed you being on which side?

W: Ulikuwa nyuma, [sasa-]
You were behind, now-

Ac3: **[Na] uliambia mahakama ulikuwa confused, ulipoteza fahamu haukujua kitu inaendelea, si ndio**?
And you told the court you were confused, you lost consciousness and you did not know what was happening, isn't it?

W: Mimi nilikuwa confused because ulikuwa [umenishika-]
I was confused because you were grabbing-

Ac3: [Haukuwa] unaelewa kitu inaendelea?
You did not understand what was happening?

W: Sikuwa naelewa nini inaendelea.
I wasn't comprehending what was happening.

Ac3: Kwa hivyo hungeweza kuona nani amekushika?
So you couldn't see who was holding you?

Though the witness had earlier characterized his state after the violent robbery attack as one of 'shock' and 'confusion' there is nowhere in the preceding transcript (cf. Appendix 2) he says he lost consciousness. Yet this is the assertion

the examiner embeds into the statement preceding the tag ‘You told the court…you lost consciousness…, isn’t it? But not getting a ‘yes’ response to the negative tag, the defendant them picks up the word ‘confused’ that was used by the witness. The examiner asserts, in a Declarative Question, that the witness did not comprehend what was going on to which the witness agrees. The likely intention of the examiner becomes clear in the following question which is prefaced with a ‘so’ summariser which is another controlling device (cf. 5.3.1 and 5.5.2). In this case, the ‘so’ summariser is used to arrive at what the accused wants to show as the logical conclusion; if the witness did not understand what was happening because he had lost consciousness then there is no way he could have seen who had grabbed him.

Tag Questions are a major source of asymmetry in courtroom discourse as one party is coerced by the use of questions that highly constrain the range of responses given. It needs to be noted that Tag Questions usually demand for minimal Yes/No responses. Their disproportionate use in cross examination is thus typical of the discourse goals of this phase of trial; namely to ask questions that seek to discredit witnesses and their testimony and yet allow witnesses little room to maneuver in terms of giving elaborations that could well work against the view of facts the questioner seeks to advance. The high frequency of Tag Questions during cross examination in our data confirms earlier findings by different scholars. In her Australian data, Luchjenbroers (1993) found about 7.3%

of the Tag Questions being used in cross examination and 2.3% in direct examination and concluded that despite the low incidence of Tag Questions in general, their higher incidence in cross examination affirms the combative nature of this phase of trial. Even more in line with the present study, which compares the use of question types between counsel and pro se litigants, Tkačuková (2010) asserted that 'the most striking difference between counsel and the pro se litigants is in the occurrence of Tag Questions' (p. 47) with the former using Tag Questions more than the latter.

4.2.3 Declarative Questions in Direct Examination

Declarative Questions are second in the hierarchy of question coerciveness. As with Tag Questions, Declarative Questions involved the examiner making a statement which he or she expects the respondent to affirm either positively or negatively. In direct examination, such an affirmation could be necessary to clarify issues and reinforce the version of facts that the direct examiner wishes to build as examples 6.4 (a)-(d) show.

Example 6.4: DS1Case05DE

(a) C1: **You wanted to withdraw all the money?**
W2: Yes that is what Mr. C____ wanted. I talked to the manager but he said his branch couldn't handle the whole amount so we withdrew 5 million.
C1: **When you say 'we', it was your account so you withdrew the money?**
W2: We were with them but yes I withdrew the money and gave it to them [and-]

(b) C1: **So you witnessed Mr. C_____ giving Mr. O_____ the money?**
W2: Yes.

(c) C1: **You were to withdraw the remaining 5 million the following day?**
W2: Yes.

(d) C1: **You went together?**
W2: No. I drove my car and they drove theirs.
C1: **They drove together?**
W2: Yes.

The extracts in example 6.4(a)-(d) are from an anti-corruption case and they feature a series of Declarative Questions from the state counsel prosecuting the case. The witness responds to the questions with a 'yes' or 'no' with or without elaboration. The Declarative Questions contain information that is likely to be of significance in the case. For instance, in example 6.4(a) the first question is on the intention to withdraw 'all the money' which might be of significance because some money had been deposited in the account on the same day and it was all being withdrawn in cash. In the second question of 6.4(a), the lawyer wants the witness to confirm that it is he (the witness) who withdrew the money, which would serve as a clarification of the plural 'we' the witness has used in reference to the withdrawal transaction.

The Declarative Question in 6.4(b) deals with the fact of the witness having been an eye witness to money changing hands between two of the accused persons, and in affirming the proposition of the Declarative Question, the witness provides emphasis on the prosecution's assertion that two of the accused persons before the court were the beneficiaries of the corrupt deal. This version of events is further emphasized by the two Declarative Questions in 6.4(d) as the witness confirms that even on the following day, the two accused persons rode in one car as they went to withdraw the remainder of the money. These are representations of the

secondary reality that are originating from the examiner and all the eye witness is doing is confirming their occurrence. This shows that Declarative Questions can give power to the examiner to control not just the discourse topic but the development of that topic.

In an almost similar vein, examiners can use Declarative Questions to draw conclusions not explicitly stated by the witness and then get the witness to affirm such conclusions. This is shown in example 7.4(a)-(b) below.

Example 7.4: DS2Case12DE

(a) P: Na hii kisu ilipatikana wapi?
And where did you get this knife?
W: Hapo alikuwa analala.
Where he was sleeping.
P: **Aliacha hapo?**
He left it there?
W: Wakati alishtuka hivi akaona kumekucha aliamka akakimbia.
When he started and saw it was daylight he got up and fled.
P: Ukapeleka wapi hii kisu?
Where did you take this knife?
W: Nikapeleka polisi.
I took it to the police.
P: **Ukapeleka polisi ya O___?**
You took it to the police at O__?
W: Ee.

(b) W: Wakati nilipotoka nje, alitaka kuninduga. Na mimi nilikuwa na panga. Sasa nilisi mama na nilikuwa na [fimbo-]
When I got out he wanted to stab me. And I had a machete. Now I stood and I had a club-
P: **[Kwa] hivyo hiyo panga ndio ilimzuia kukundunga.**=
So that machete is what prevented him from stabbing you?
W: =Ee na hiyo siku si mara ya kwanza. [Ali-]
Ee and that is not the first day. He-

In example 7.4(a), the prosecutor uses two Declarative Questions to provide certain facts in line with his case theory. The witness says the knife that has been produced before court was found where the accused person had been sleeping and

the prosecutor uses the first Declarative Question in the exchange to create a link between the knife and the accused by declaring that it is ‘he’, the accused person who left it there. Given that this is a trial, one cannot but wonder at the significance of the fact that the witness does not affirm the prosecutor’s assertion that links the knife with the accused person. However, the prosecutor does not revisit the issue but moves on to what the witness did after recovering the knife. The second Declarative Question in 7.4(a) serves to make the witness’s previous response fit the specificity required of the court record. The witness says he took the knife that is an exhibit in the case to a police station without specifying the particular station. The prosecutor names the station in the Declarative Question and the witness confirms it.

In example 7.4(b), the prosecutor concludes that the accused intended to stab the witness and was only prevented from doing so by the fact that the witness was also armed. Through this question, the prosecutor seems to be seeking to have the witness rubberstamp one element of the charge the accused is facing; namely, having threatened another with a dangerous weapon. Though the witness affirms this assertion, the use of the Declarative Question seems calculated on the part of the prosecutor. The witness is describing a situation where there is a standoff between himself and the accused person and both had weapons. Given this, it might be detrimental to the prosecution’s case if the witness were to give a lengthy account that might blur the ‘facts’ on just who the aggressor was. Thus,

the Declarative Question gives a conclusion that the accused was the aggressor and the witness concurs. However, the witness's attempt to elaborate his answer to the Declarative Question is interrupted by the prosecutor.

The other subtype of Declarative Questions observed in the data were Projected Statements in which the examiner quoted back to the witness what he or she had said earlier in testimony. Such questions are signaled by expressions like 'you said…' 'you testified earlier…' In direct examination, such questions were seen to be used in a supportive way by giving the witness a chance to rectify inconsistencies in their testimony as example 8.4 shows.

Example 8.4: DS1Case02DE

P: Ulisema wewe haukugongwa na gari natena unatibiwa?
You said you were not hit by the vehicle and then you are being treated?

W: Sikugongwa lakini wakati niliruka nilianguka na nikaumia hapa {((pointing))} na kwa mguu. Nilikuwa natokwa na damu na niliwekwa bandage.
I wasn't hit but when I jumped I fell and I got hurt here and at the leg. I was bleeding and I was bandaged.

Here the prosecutor quotes back to the witness his earlier testimony so that he can clarify why he needed treatment at the hospital and yet he was not hit by the car. The witness clarifies that the injuries he sustained were not from being hit by the vehicle but from having landed in a ditch as he ran away from the vehicle.

4.2.4 Declarative Questions in Cross Examination

The analysis of the data for the present study revealed both Negative and Positive Declarative Questions being used in the cross examination phase. The first observation to make in presenting the use of Declarative Questions is that these

were frequently formulated starting with a ‘so’ summariser (cf. 5.3.1 and 5.5.2). The prefacing discourse particle ‘so’ is a marker of coercion as it makes the declarative statement it preceeds sound like the only logical conclusion one can reach or the only explanation there is for an occurrence. Thus, it places an even greater demand on the witness to agree with the assertion of the question (Farinde, 2009). Consider example 9.4 that follows.

Example 9.4: DS2Case09CE

Ac1:	**Kwa hivyo hukupiga ripoti ya mshukiwa yeyote?**
	So you never made a report about any suspect?
W:	Hapana.
	No.
Ac1:	Na polisi waliwezaje kujua waliokuibia?
	And how were the police able to know who had stolen from you.
W:	Hiyo utauliza polisi. Mimi niliitiwa watu tu.
	That you will ask the police. I was just called to see people.
Ac1:	Polisi alikuwa kwa kitendo?
	Were the police at the scene of the incident?
W:	Hapana, walikuja baadaye.
	No, they came afterwards.
Ac1:	**Unasema mshukiwa aliye mbele ya mahakama unajua jina lake?**
	You are saying the suspect before court you know his name?
W:	Niliuliza after identification.
	I asked after identification.
Ac1:	**Kwa hivyo wewe uliambiwa?**
	So you were told?
W:	Ndio, niliambiwa na polisi.
	Yes, I was told by the police.
Ac1:	**Kwa hivyo hii ripoti si wewe uliripoti?**
	So you are not the one who made this report?
W:	Unajua wewe ndio umeshika hivyo. Sijui kama unayoshika ndiyo niliandikisha.
	You know that is what you have understood. I don’t know whether what you have understood is what I recorded.

Despite the resistance from the witness, the unrepresented accused person in example 9.4 above uses ‘so’ prefaced Declarative Questions to challenge some aspects of the witness’s testimony. In responding to the first such question, which is actually a Negative Declarative Question, the witness concurs with the assertion in the question that in his initial report to the police, he did not name specific

suspects. Given this concurrence, the second ‘so’ prefaced question could thus have been used to portray the witness’s testimony as hearsay as it is what he was told by the police, rather than what he came to know of firsthand, and before this is a Projected Statement of what the witness has said. The last question in the exchange is a conclusion by the accused that it is not the witness, who was also a victim of the crime that was the subject of the trial, who made the report that led to the arrest of the accused persons to the police. This question is probably meant to impute improper motives on the part of the police in arresting and charging the accused persons with robbery. The power of Declarative Questions to challenge witness testimony and impute improper motives on the witness or other parties lies in the fact that such questions avail the examiner with means to word his or her ‘beliefs about the truth of the evidence’ (Woodbury, 1984, p. 217). This is what the lay litigant seems to be doing in example 9.4 with an almost formulaic repetition of the words ‘so you…’ followed by what he believes the witness did or did not do.

A second observation with reference to Declarative Questions was that they can also be used to coerce a witness to accept facts that are contrary to what he or she knows or witnessed as examples 10.4(a)-(c) below show.

Example 10.4: DS1Case03CE

(a) W: Tulikuwa tunaenda hivi sasa tukiwa upande huu. {((demonstrating))}
We were going this way on this side

C: **Kwa hivyo hiyo gari ulisema, ilitoka nyuma yenu?**
So the vehicle you were saying, came from behind you?

W: Hapana. Ilitoka upande wa mbele. Mahali tulikuwa tunaenda.
No. It came from in front. The place where we were going.

(b) C: Sasa mkitembea kwa barabara, mlikuwa aje wewe na huyo mtoto?
Ni wewe ulikuwa mbele au ni yeye?
Now as you walked on the road, how were you and that child? Were you in front or it was the child?

W: Alikuwa mbele.
He was infront.

C: **Kwa hivyo wewe ulikuwa unatembea nyuma yake?**
So you were walking behind him?

W: Ndiyo.

(c) C: **Lakini haukuwa umemshika mkono kwa sababu alikuwa mbele yako?**
But you were not holding him or her by hand as he or she was in front of you?

The defence counsel's questions in example 10.4 appear to be seeking to establish pertinent facts regarding the case whose subject is a fatal road accident. She first seeks to establish the direction from which the vehicle approached with a question that declares it came from the back; a declaration the witness disagrees with. The second question seeks to establish that the witness and the child who was hit were not walking together and it leads to the third Declarative Question which is a conclusion that the witness was not holding the child's hand. This third question is more coercive as it is negatively formulated making it even more difficult for the witness to reject the proposition it contains. The trap in Declarative Questions lies in the fact that a skillful examiner utters them with 'a rather casual tone, which suggests that the speaker takes the yes or no as a foregone conclusion' (Quirk and Greenbaum, 1973, p.195). The counsel in this case was observed to ask such questions in a casual way while even perusing her files. Such an offhand manner might obscure the real import of the proposition expressed in the declarative and make a witness who is not keen to agree to damaging propositions.

The third observation made was that Declarative Questions were at times combined with other question forms to mount and sustain an attack on a witness's testimony on a given issue. Such a use of questions is partly what achieves the pragmatic effect that Matoesian (1993) refers to as nailing down (cf. 5.1). Consider the question forms in example 11.4 below.

Example 11.4: DS1Case03CE

C: **Lakini umesema barabara ina mashimo mengi, si ndio?**
But you have said the road has many pot-holes, isn't that so?

W: Ndio [kuna-]
Yes there is-

C: **[Kwa hivyo] gari haiwezi kwenda kasi, si ndio?**
So a vehicle can't move fast, isn't that so?

W: Ilikuwa ikienda mbio ina hepa hepa hizo mashimo.
It was moving very fast, it was evading the potholes.

C: **Lakini dereva alishindwa kuhepa shimo kwa sababu alikuwa anazuia kugonga mtoto?**
But the driver was unable to avoid one of the pot-holes as he tried to evade hitting the child?

W: Hapana. Aligonga shimo, sasa gari ikakuja ikagonga mtoto.
No. He hit a pot hole and the vehicle came and hit the child.

C: **Wewe umesema haukugongwa na gari, si ndio?**
You have said the vehicle didn't hit you, isn't that so?

W: Ndio [nili-]
Yes I-

C: **[Ndio.] Ulikuwa kando na ukatoroka ukaacha mtoto mwenye alikuwa mbele yako kwa barabara, si ndio**?
Yes. You were on the side and you ran away and left the child who was ahead of you on the road, isn't that so?

W: Sote tulijaribu kutoroka.
Both of us tried to run.

C: Lakini wewe haukugongwa. Umesema uliruka mtaro. **Mtoto aligongwa kwa sababu alibaki kwa barabara, si ndivyo?**
But you were not hit. You said you jumped over a ditch. ***The child was hit because he or she remained on the road, isn't that so?***

W: Hapana. [Alikuwa-]
No. He was-

C: [Ilikuwa saa] ngapi wakati accident ilitokea?
What time was it when the accident occurred?

W: Ilikuwa jioni
It was in the evening

C: Usiku?
At night?

W: Hapana. Kama saa kumi.
No. It was around 4 o'clock.

C: Kulikuwa kunanyesha?
Was it raining?

W: Hapana.
No.
C: **Ilikuwa mchana na hakukuwa kunanyesha, kwa hivyo dereva aliwaona vizuri?**
It was during the day and it was not raining, so the diver could see you clearly?

Example 11.4 shows that a combination of Tag and Declaragtive Questions, each containing propositions that mean to weaken prosecution's case, could make it difficult for the witness to resist the version of facts the cross examiner is portraying. The overriding assertion in the Tag and Declarative Questions in example 11.4 is that the vehicle was not moving fast, the driver saw the child but could not avoid hitting him or her as he or she was on the road and the person who should have prevented it all, the witness, ran and left a small child on the road. The accusations are made and sustained through declarations in the statements preceding Tag Questions. One notes that some of these statements are pre faced by 'so' or 'but' which increase the demand on the witness to agree with what is said.

In addition, some of the statements preceding the tags take the form of Projected Statements. Projected Statements are a subtype of Declarative Questions where the questioner quotes back to the witness something they said earlier when giving testimony. Projected Statements are hard to deny because denying them would seem like denying one's testimony. Example 11.4 also has two Declarative Questions, and coupled with this, one notes that in the extract, the counsel violates the witness's turn three times through interruption, so the witness is not allowed to elaborate on his responses to the questions. The cumulative effect is that the

witness, who witnessed the events that are the subject of litigation firsthand, is a constrained party in the attempt to reconstruct what had happened. The final picture that emerges is made to reflect more what the lawyer wants the court to believe happened. This happens because courtroom discourse empowers attorneys to pursue a particular response. Matoesian (1993) notes that the 'conversational resources for initiating a topic…and deleting/overriding a response…are asymmetrically distributed' (p. 180) in courtroom discourse. Given this, the exchange in example 11.4 is reproducing and affirming the power relations among the discourse participants in line with the third tenet of CDA which holds that discourse constitutes society and culture (Fairclough & Wodak, 1997).

The most conducive type of Declarative Questions is the negatively formulated Declarative Question. The negatively formulated Declarative Questions not only make assertions but also sound like accusations that the witness did something wrong. Consider the following exchange in example 12.4(a)-(b).

Example 12.4: DS1Case07CE

(a) C: **So as you were there at ___ Law Courts you did not record whatever happened did the normal occurrence book?**
W1: Yes, I recorded at the ____ Police Station.
C: But you never reported anything of what you had done. **In other words, _____ Security has no record from you as their employee as to what happened that day?**

(b) C: The paper bag which you referred to- have you produced any paper bag?
W1: No.
C: **So you never found a paper bag?**

The three questions in example 12.4 use the negative words 'not', 'no' and 'never'. The first and second questions paint the witness as negligent for not

having made a record of what had transpired at her work place with regard to the case at hand. The last question seems to be an attempt to show a contradiction in the witness's testimony that she found drugs on the accused that were wrapped in a paper bag, yet she has not produced it as evidence. This makes the counsel declare the paper bag not to have been there in the first place thus, placing blame on the witness for things beyond her control because a witness is not in charge of handling exhibits and deciding which one is produced during trial.

Finally, we go back to the subtype of Declarative Questions already mentioned in example 11.4 that is Projected Statements. Projected Statements are questions in which the examiner quotes back to the witness something the witness had said earlier. Such questions are powerful resources of control especially when paired with pragmatic strategies like reformulations, as they call for agreement with what the examiner is asserting. Whereas in example 8.4 Projected Statements were shown to serve supporting functions in direct examination, in cross examination, Declarative Questions formulated as Projected Statements, were mainly used to pin down the witness on certain aspects of their testimony by pushing them into a dilemma. The witnesses have to choose between giving a response that could make them sound unsure or untruthful, or a response which makes them reject their earlier own words. This is illustrated in example 13.4 below.

Example 13.4: DS1Case02CE

C: Umesema kwamba sista yako alikutuma sukari na unga dukani?
You said that your sister sent you sugar and flour at the shops?

W: Ndiyo.
Yes.

C: Halafu ukasema mtoto wake alikufuata, si ndivyo?
Then you said her child followed you, isn't it?
W: Ndio.
Yes.
C: Kwa hivyo wewe ulitoka ukienda halafu yeye akakufuata nyuma?
So you left and then he followed you from behind?
W: Tulitoka pamoja.
We left together.
C: Kwani huna uhakika vile unasema? Ulitoka nayeye akakufuata, si ndio umesema?
Are you not sure of what you are saying? You left and he followed you, isn't that what you have said?

Only the first question, in example 13.4, is categorised as a Declarative Question with the other three being categorised as Tag Questions but there is no mistaking that their prefacing statements are projections of the witness's earlier testimony. The first two questions elicit affirmative responses from the witness, and they are followed by a positive Declarative Question in which counsel asserts that the witness and the child who was hit did not leave home together. This could have an implication that a young child had wandered into the road alone attempting to go after his uncle. Such an assertion would be damaging to the prosecution's case as it imputes negligence on the part of the child's caretakers. When the witness disagrees with this assertion, the counsel casts doubt on his testimony by declaring he seems not to be sure of what he has said. So the witness is in a dilemma: to accept the damaging allegations or to reject them and seem to be rejecting the testimony he has just given in examination-in-chief.

Moreover, as example 14.4 illustrates, Projected Statements can be used to get the witness agree with something which is then made the subject of antagonism.

Example 14.4: DS1Case03CE
C: You said you sought treatment the following day?

W: Yes.
C: How come you didn't go to hospital that night if you were badly hurt?
W: At 11 am on my own. It was very late and bleeding stopped after I was given first aid.
C: It was late. But you had gone to a bar alone at night and you finally went home alone right?
W: The clinic I went to does not operate at night.
C: KNH operates 24 hours.

The witness in the example above admits seeking treatment the following day after being assaulted at night, an assertion which is put to her in the declarative Projected Statement. The defence counsel immediately picks on this concession to show the witness's actions are contrary to what would be expected from someone who has just sustained serious injuries in a fight. Thus, the examples show that in cross examination, Projected Statements are almost always traps for the witness 'because they have an inbuilt mechanism of repeating what was said earlier, commenting on it and focusing the attention of the court on what the examiner deems important' and there is little the witness can do to resist (Moeketsi, 1999, p. 53). This is further evidence of the combative nature of the cross examination phase of trial.

4.2.5 Polar and Alternative Questions in Direct Examination

In the present study, Polar and Alternative Questions were grouped together in the analysis of questions in the study sample. The reason for this is that both question types are framed in a way that explicitly or otherwise provides the recipient with a choice between alternatives which are usually two. Moeketsi (1999) notes that Polar Questions (she uses the term 'grammatical yes-no questions') achieve

control by forcing a witness to make a commitment and give information in the form dictated by the questioner, and the same can be said of Alternative Questions.

If both Polar and Alternative Questions are linked to witness control, then their presence in direct examination could be viewed as a misnomer given that this trial phase has so far been characterized as having a high degree of cooperation between the examiner and the witness. However, as the following examples show, the control achieved through the use of such questions is context dependent and in examination-in-chief such control could be viewed as witness support. Example 15.4(a)-(b) and 16.4 illustrate this.

Example 15.4: DS2Case01DE

(a) P: Wote wawili uliwapata wapi? **Nje au ndani ya club?**
Both of them where did you find them? ***Outside or inside the club?***

(b) P: **Ilikuwa na soda ama empty?**
Did it have a soda or was it empty?

The examples in 15.4 are from a case where the accused is facing a charge of causing grievous bodily harm by allegedly hitting the victim, who is the witness on the stand, on the head with a soda bottle after a disagreement. The prosecutor in 15.4(a) wants to establish from the witness where he had found the accused, and for purposes of specificity gives him the choice between 'in the club' or 'outside the club'. In example 15.4(b), the focus is on the bottle that was used to hit the victim and the prosecutor wants the witness to establish whether it had soda or it did not. Such questions seem in line with the assertion by Beach (1985)

that legal officers always seek for a systematic step-by-step reconstruction of the crime narrative. It is such an incremental build up, consisting of minute details, that produces the final coherent whole of the version of events that the prosecutor seeks to build.

Example 16.4 that follows also shows the prosecutor using Yes/No questions to ensure the witnesses testimony and production of exhibits is systematic.

Example 16.4: DS1Case06DE

P: But you managed to arrest two?
W: We arrested two your Honour.
P: **Are they before the court, those you arrested?**
W: Yes they are there the 1st and the 2nd accused your Honour.
P: **Did you get them with anything? Did you search them?**
W: Yes we searched them [and-]
P: **[While] there or at the station?**
W: There. We found five mobile phones [and-]
P: [Now be] systematic. What did you find on the first accused?
W: The 1st accused your Honour had two mobile phones and two ID cards.
P: Two ID's. In his name?
W: Yes. One was original and the other was a scanned and sealed your Honour.
P: The mobile phones. Which makes:::
W: Nokia ____ and Samsung _____ your Honour.
P: And the second accused? **Did you search him?**
W: Yes your Honour. We searched him and found him with three mobile phones. Nokia ____, Nokia ____ and Sony Ericson ___.
P: **Are the items you have described the ones before court?**
W: Yes.
P: Look at them. Take them out of the paper. **Are they the ones?**
W: They are the ones your Honour.
P: **Would you like to give them as evidence in this case?**
W: Yes your Honour.

Using the Positive Yes/No Questions, in combination with other question types, the prosecutor systematically takes the witness through the crucial information meant to achieve the speech act functions of identifying the accused persons, explaining the search conducted after arrest, identifying the exhibits before court

as the ones found on the accused persons during arrest and formally producing the same as evidence in the trial. While conceeding that such an approach results in a coherent crime narrative being reconstructed for the court, there is no escaping the fact that even in direct examination Polar and Alternative Questions are evidence how the officers of the court, as the powerful discourse participants, exercise control over witnesses, who are the less powerful discourse participants. This is because the responses of the witnesses to Polar and Alternative Questions 'transform the [prosecutors] utterances into evidence'; it is the prosecutor presenting the evidence and the witness is just affirming or denying what the prosecutors says (Woodbury, 1984, p. 215).

4.2.6 Polar and Alternative Questions in Cross Examination

In contrast to the witness support exemplified in 4.2.5, Polar and Alternative Questions were observed to be used to achieve the functions of witness control in cross examination. Through the use of Polar and Alternative questions, the cross examining parties were observed to dismantle the prosecution's case by making witnesses admit to actions or explanations of actions that were to the detriment of the prosecution's case. Consider the contrast in example 17.4 achieved through the use of Positive Yes/No Questions by counsel in the cross examination phase of the same trial from which example 16.4 is obtained.

Example 17.4: DS1Case06CE

C: **Now tell us officer, is owning two, three or four mobile phones a crime in this country?**

W: We suspected [that the-]

C: [Don't give] me suspicions. I asked you a direct question. **Is it a crime to own a phone in this country?** One phone? **Yes or no?**
W: No.
C: **Is it a crime to own two? Yes or no?**
W: No.
C: Which number of phones is it a crime to own?
W: If they are stolen it is crime.
C: Good, if they are stolen. **Are the phones before the court stolen?**
W: We suspected they were stolen.
C: And what have you established? **Are they? Has anyone come forward to say, 'this here is my phone that was stolen'?**
W: No.
C: Thank you. **Is it a crime to have a photocopy of an ID in this country?**
W: This one was scanned.
C: And that makes it a copy of the original ID, right?
W: Yes.
C: **Is that a crime?**
W: No.
C: Now between them which is the original?
W: This one {((picking one of the exhibits))}.
C: It is in whose name?
W: P____.
C: **As far as you can tell, as per your own investigations, is that ID forged?** The one you are saying is the original one?
W: No.
C: So having it- the accused having it is in fact a requirement of the law, right?
W: Yes.

Example 17.4 shows how, using tightly controlled Yes/No and Tag Questions, the counsel nails down (to use the expression by Matoesian, 1993) the witness and elicits responses that throw into question the validity of the items before court as exhibits to prove the charge facing the accused persons. The witness, who is the investigating officer, cannot prove that the mobile phones before court were stolen. The counsel uses the questions 'Is it a crime to own X number of phones in this country?' to further discredit the notion that the phones were stolen because each of the accused persons was found in possession of more than one. Equally, the witness is forced to admit that having an ID is a legal requirement and making a copy of the same is not a crime. The questions help dismantle the

case build up earlier using similar questions around these items (cf.16.4) the prosecution has produced before court as evidence.

It was observed that in cross examination, the questioners insisted on the witness sticking to the alternatives implied by the question. For instance, when asked **'**Now tell us officer, is owning two, three or four mobile phones a crime in this country?' the witness attempts, in example 17.4, at an elaborate response is interrupted by the counsel with the demand that the witness gives a 'yes' or 'no' response. This is what makes the Polar and Alternative questions so coercive because the examiner not only supplies the possible responses but can insist on a choice between these alternatives should 'the witness attempt to avoid providing the expected answer by trying to explain or justify' his or her responses (Moeketsi, 1999, p. 50). Example 18.4(a)-(c) further emphasises this point.

Example 18.4: DS2Case11CE

(a) C: **Is that the voice that was calling you? Did he speak like a woman?**
W: No.
C: He did not. **And did his voice sound like the one of the person you have said called you on __ saying she sent you money by mistake?**
W: You know at that [time he-]
C: [It is a] simple yes or no question. **Did the voice you heard from the accused today sound like that of the woman you spoke to on ___?**
W: No, [but-]
C: [No.] **Now, Mr.__ do you have evidence, any documentary evidence pertaining to what you said that on this day you loaded your phone with ten thousand shillings?**

(b) C: **[Did you] report to S___?**
W: S____- I reported the first thing- Immediately the same day, the same hour Monday 29th and they confirmed [to me that-]
C: [Can you listen] to my questions Mr.___ and stop adding unnecessary things. **When you came back from M__ did you make a formal report to S____?**
W: They had told [me to-]
C: [Did you] make a formal report? **Yes or No**.
W: No

(c) C: [I am] asking you a simple question. Don't add anything. **Yes or no whether M__ was arrested. Yes or no**?

As examples 18.4(a)-(c) above show, any attempts by the witness to give a response other than the ones the interrogator has meant his question to elicit, or any attempts by the witness to explain a response are resisted by the examiner. The counsel controls the witness through violation of turn followed by meta-talk commenting on what the witness has said and directing what he should say. Comments like 'I am asking you a simple question…', 'Can you listen to my questions Mr.___ and stop adding unnecessary things' and 'It is a simple yes or no question' are all meant to make the witness give the response the lawyer is seeking and in the form he is seeking it. The fact that such forms are only found in cross examination is further evidence of the combative nature of this phase of trial.

In cross examination, the use of Polar and Alternative Questions was not a preserve of counsel alone. The unrepresented accused persons also used these question types (cf. Table 9) with varying degree of success in controlling witnesses. This is discussed with the aid of examples 19.4 to 21.4.

Example 19.4: DS2Case15CE

W: Nilishtuka hata ilikuwa ni kama natoroka juu I was shocked.
I was shocked even it is like I was running away because I was shocked.
Ac1: Ulitoroka ama nikama ulitoroka?
You ran away or it is like you ran away?
W: Nilitoroka kidogo [lakini-]
I ran away a little but-
Ac1: [Baas,] [ulitoroka=
Enough, you ran away=
W: [Yeah lakini-
Yeah but

Ac1: =nani alikupasha habari baada ya wewe kutoroka ya kwamba washukiwa walikuja kushikwa na polisi?
who informed you the news after you ran away that suspects came to be arrested by the police?
W: Sinilikuwa hapo. Niliona. Si kwenda mbali si hapo tu kushtuka.
Was I not there. I saw. I didn't go far it is just there being shocked.
Ac1: Umesema ulishtuka ukatoroka, si ndio?
You have said you got shocked and ran away, isn't it?

In example 19.4, the accused as the cross examiner uses the Alternative Question to get the witness to state his reaction in an equivocal way by making him choose between saying either he ran away or he did not. The witness's attempt at explaining his unequivocal response that he 'ran a little but' is curtailed by the examiner through interruption and a restatement of the part of the response he wishes to highlight 'you ran away'. His reason becomes obvious in the subsequent questioning. It seems the accused is intent on showing that the witness, the victim of the robbery that is the issue before the court, ran away and could not have witnessed police officers apprehending the suspects before the court.

The next example, 20(a)-(b) shows the lay litigant using a series of positive Yes/No questions to elicit responses favourable to his defence from the witness.

Example 20.4: DS2Case06CE

(a) Ac: Yes your Honour. Corporal M___, **Kabla ya siku hiyo umesema, umewahi kuniona hapo mbeleni?**
Before that day you are saying had you seen me there before?
W: No your Honour.

(b) Ac: Ulinishika nayo kitu yeyote ambayo inahusiana na hii kesi?
Did you arrest me with anything related to this case?
W: No the only items I recovered from you are the ones before the court your Honour.
Ac: Kuna silaha yoyote ulinipata nayo?
Did you find me with any weapon?

W: No your Honour
Ac: Na wakati mlinisimamisha, nilitoroka?
And when you stopped me, did I run away?
W: No your Honour.

The accused in example 20.4 gets the witness confirm that he did not know him prior to the day of arresting him, that he did not arrest him with any of the exhibits that had been produced as evidence in the case or with a weapon. Further, he uses Yes/No Questions to get the witness confirm that on being challenged to stop by police officers he did not attempt to escape. The last three questions, which are affirmed in the negative by the witness who is the arresting officer in the case, could be important concessions for the defence. This is because they get the arresting officer to confirm to the court that the accused was not arrested with an incriminating item and his actions, on being challenged to stop by police officers, are more consistent with those of an innocent person rather than with that of a person guilty of a crime: he did not attempt to run away. This way, the accused shows great skill in using questions that allow him to portray himself favourably to the court and get the witness to affirm this portrayal.

Such skill was, however, lacking in some of the unrepresented litigants who made use of Polar and Alternative Questions as example 21.4 illustrates.

Example 21.4: DS2Case05CE

Ac: [Siwe we ndiye] alikuwa unaniambia nikubali hii maeno nirudishe vitu ili tumalize? Wakati ulinifungia Saturday, Sunday hao watu walikuja ukaniita kwa cell, ukaanza [kuniambia-]
Aren't you the one who was telling me I accept the allegations, I return the goods and we finish the case? *When you locked me up on Saturday, on Sunday those people came and you called me from the cell, you started telling me-*

M: [Sasa hayo] yote hayatakusaidia. Uliza swali. Muulize swali uache kuelezea.
Now all that will not help you. Ask a question. Ask him a question and stop explaining
Ac: Si mliniita kwa station na hao watu Sunday?
Didn't you call me at the station with those people on Sunday?
W: Walikuja na mliongea na hao. Mimi sijui kitu mliongea. Kama mlitaka kusikizana hayo ni mambo yenu.
They came and you talked with them. I don't know what you talked about. If you wanted to come to an agreement that is between you.
Ac: Wewe sindiye uliyenitoa kwa cell?
Aren't you the one who got me from the cell?
W: Ulikuwa rumande. Hawangekuja huko ndani kukutoa.
You were in remand. They wouldn't have come in there to get you.

In the first Negative Yes/No Question in example 21.4, the accused person wants to make the witness, who is the investigating officer, to admit having tried to talk him into confessing of having committed the alleged crime. The question is disallowed by the magistrate who rules it to be impertinent to the matter at hand. Undeterred, the accused follows this with another Negative Yes/No Question that seeks to get the witness agree that he (the witness) together with the complainant had fetched the accused from the remand cells on a Sunday so that the complainant could talk to him. An affirmative response could imply that the witness, who is the investigating officer, could have been influenced by the complainant. Aware of the possible implications of this and the earlier question, the witness does not give a 'yes' or 'no' response but instead explains that the accused and the complainant had met but disassociates himself from what they discussed. The third question seeks to make the witness party to the said meeting as he is the one who had called the accused from the cell, but the witness once again responds indirectly that he called the accused since he was under police remand and the complainant could not get into remand cells. One notes that this

examiner does not use violation of turn through interruption to prevent the witness from explaining his responses. Equally, the accused person as the cross examiner does not insist that the witness sticks to giving a 'yes' or 'no' response.

4.2.7 WH- Questions in Direct Examination

WH- Questions are the least coercive as compared to the other question types whose use has been presented so far in this chapter. Various subtypes of WH-Questions were observed in use in the direct examination phases of the sampled trials. First were routine WH- Questions which dealt with preliminaries of establishing the name, residence and occupation of witnesses, and in the data of the present study they were, predictably, found tofeature at the start of direct examination in all trials as shown in example 22.4.

Example 22.4: DS1Case07DE

C1: Fahamisha korti majina yako.
Inform the court your names.
W1: Naitwa____
My name is __
M: Nani?
Who?
C1: Hebu rudia majina.
Repeat the names.
W1: ____ your Honour.
C1: Na Bw. ___unaishi wapi?
And Mr.__ where do you live?
W1: Mimi naishi___.
I live at __.
C1: Unafanya kazi gani?
What work do you do?
W1: Sifanyi kazi.
I don't do any work.

As example 22.4 shows, the routine WH- questions are sometimes combined with imperative sentences that require the witness to provide their name, occupation

and place of residence. The choice of form is sometimes tied to the type of witness. For example, lay witnesses are subjected to the routine WH- questions plus imperative combinations as in the example 22.4, or just the routine WH-questions as in the example 23.4 below.

Example 23.4: DS2Case08DE

P: Wewe ni nani?
Who are you?
W2: Mimi naitwa W___.
I am called W___
P: Kutoka wapi?
From where?
W2: Kutoka B__.
From B___.
P: Na unaishi wapi?
Where do you live?
W2: Hapa T__.
Here at T__.
P: Unafanya kazi gani?
Which work do you do?
W2: Nafanya kazi ya watchman.
I work as a watchman.
P: Unachunga kwa nani?
Whose premises do you guard?
W2: Nachunga kwa mzee anaitwa M__.
P: Unachunga nini?
What do you guard?
W2: Nachunga kwa bar.
I guard at a bar.

On their part, expert witnesses such as police officers, doctors, document examiners and ballistic experts were subjected to the routine WH- questions plus imperatives at the start of their testimony or, more frequently, to just an imperative 'introduce yourself'. In some cases, it was observed that such witnesses took the stand and went through the process of swearing themselves and introducing themselves with no direction from the prosecutor or court clerk. This could stem from the fact that such witnesses are familiar with court procedures

having participated many times in trials because of the nature of their work. Consider example 24.4 that follows.

Example 24.4: DS1Case12DE
P: **Introduce yourself**.
W: I swear by the almighty God that the evidence I shall give before this court is truth, the whole truth so help me God. My name is A__ I am a document forensic examiner attached to CID headquarters. I have done this work for ten years and I have a master's degree in___ form L___ University in the UK your Honour.

The imperative at the start of example 24.4 replaces the routine WH- questions and the witness responds to it by swearing himself, stating his name, profession, qualifications, experience and current work station.

Non-Sentence Questions are grouped under WH- Questions in the study; a decision based on the fact that quite a number of the Non-Sentence Questions consist of a single WH- word (where? who?) or are framed in a way that implies a WH- word has been ellipted but is understood. For instance, 'Then?' in a given context can be interpreted to mean 'Then what did you do?'; 'He went?' to mean 'Where did he go?' Admittedly, there could be Non-Sentence Questions that may not be so readily paired with a WH- interrogative word meaning. The Non-Sentence Questions seem to give the witness leeway to make an interpretation of what the questioner expects based on the preceding exchange. The following examples, 25.4(a)-(d), from the data illustrate this.

Example 25.4: DS2Case02DE
(a) P: **Na msichana wa kazi?**
And the lady employee?
W: Hata yeye anaishi mbali.
Even her she stays far.

(b) P: **Alafu?**

Then?

W: Mimi nilimwambia asiguze kitu. Nikajitayarisha haraka nikaenda huko.
I told her not to touch anything. I prepared myself quickly and I went there.

(c) P: [**Majina yao?**]
Their names?

W: Kuna _____na _____.
There is ___ and ____.

(d) P: **Ukaenda?**
You went?

W: Nikaenda polisi hapo W_____ nikapiga ripoti.
I went to the police station at W_____ and made a report.

The example above shows that witnesses are able to correctly infer the information a given Non-Sentence Question requires from them given its context of use. In the example 25.4(a), the witness responds with where the lady employee lives and in the second what she did. The question in example 25.4(c) is interpreted by the witness to be about names of given parties and the Non-Sentence Question in 25.4(d) is interpreted to be asking where the witness went. Such interpretations stem from the fact that even though the Non-Sentence Questions are not complete sentences in the structural sense, they still 'carry pragmatic presuppositions which allow the discourse participants to make relevant assumptions' that allow them to provide relevant responses (Moeketsi, 1992, p. 87).

Witness interpretation of the intended referent of a Non-Sentence Question was also found to be at times aided by the question being paired with a discourse marker as shown in 26.4 below.

Example 26.4: DS2Case01DE

P: Haya ukawasalimia. Halafu?
Okay, you greeted them. ***Then?***

W1: Halafu nikakaa hapo nikaanza kubonga na huyo dame. Halafu ndio O____ akakuja analeta fujo eti kwani ni maneno gani tunaongea hiyo muda yote.
Then I sat there and started talking to that lady. Then that's when O_____ came and brought fracas, that what were we talking about for all that time?

In example 26.4 above, the statement preceding the non-sentence question is a discourse marker that indicated the prosecutor wants to move from the already established fact that greetings were exchanged to something else and the witness obliges by providing the next bit of the crime narrative.

Turning to the Open WH- Questions, it is important to note that, as Tables 10 to 12 show, Open WH- Questions constitute more than half of the questions asked in examination-in-chief in both data sets. The Open WH- Questions are taken to be the least coercive because they give the witness 'reasonable latitude to formulate his response'; the latitude of course being 'within the parameters of the question' (Moeketsi, 1999, p. 49). Open WH- Questions were observed being used in direct examination to elicit new information from witnesses and the responses by the witnesses largely aid in the reconstruction of the crime narrative for the court record. Example 27.4(a)-(l) below captures this fact by showing all the Open WH-Questions that feature in the direct examination of a single trial.

Example 27.4: DS1Case06DE

(a) P: Can you tell the court **what** happened in relation to the matter before this court?

(b) P: [**Who** is] Mr. ___ to you?

(c) P: Yes, then **what** happened?

(d) P: **How** did you know P__ and W__? Were they your friends?

(e) P: Yes, then **what** happened when you joined them?

(f) P: **What** does that mean?

(g) P: Okay. **What** did you do?

(h) M: [**Who**] hit you?
(i) P: **What** did you do next?

(j) P: Yes.

(k) P: **What** happened later?

(l) P: Now, **what** do you want to tell the court about this blouse?

The first contribution by the prosecutor in 27.4(a) is a Requisition with an Embedded WH- Trigger, and it acts as an invitation for the witness to give testimony in her own words. This invitation is also extended by the 'yes' in 27.4(j) which achieves the discourse function of encouraging the witness to go on. All the other contributions by the prosecutor are Open WH- Questions which elicit narrative responses from the witness, responses which later questions do not seek to contradict. All these are markers of the friendly nature of examination-in-chief and the leeway given to witnesses to present their testimony in their own words.

4.2.8 WH- Questions in Cross Examination

Though in terms of number the WH- Questions in cross examination are almost at par with those in direct examination (cf. Tables 11 and 12), the analysis of some examples of their use reveals that WH- Questions, specifically Open WH- Questions, were used in a different way in cross examination than they were in direct examination as example 28.4 shows. To best capture the contrast, example

28.4(a)-(h) is drawn from the cross examination of the same trial from which example 27.4(a)-(l) presented earlier is drawn.

Example 28.4: DS1Case06CE

(a) C: **For how long have you known them?**

(b) C: **How many?**
W: Many, maybe ten years.
C: Ten years. Good. So you know a lot about them?
Do you know whether they are married?
W: No, they are not.
C: They are not.
W: I would be surprised if they are. ((Laughter))
C: **Why do you say that?**
W: Because they are chaotic.
C: Chaotic. **How do you know they are chaotic?**

(c) C: Interesting. So you know all their chaotic behaviour because you have been following P___ and W___ around, right?
W: I have not been following them. I said I have seen them fighting.
C: Yes, you were at their every fight.
W: I was not at the fight, I observed maybe by coincidence.
C: Coincidence. You are able to document all their fights by coincidence and you know they are not married. Now do you have a family?

(d) C: Now your last fight with P___ and W__ you said was at G__. **What kind of place is G_____?**
W: What kind?
C: It is a bar, isn't it?
W: It has everything. They sell food, meat and even beer. There is a restaurant.
C: There are also rooms, a lodging upstairs, isn't it?

(e) C: Er you have told us you fought with them at G__ some time back. **What was it about?**
W: It was not a fight. I did not fight them. We quarreled because I refused to join their merry-go-round.
C: **Why did you refuse?**
W: As I said they are chaotic. Every group they join breaks up because they bring disagreement. So I refused to join their group.
C: Let me come back to the bar. You said that P__ and W___ are chaotic.You have seen them fight, you have been in a fight with them before, so you knew they are dangerous women, right?
W: Yes, more than dangerous in fact. ((Laughter))
C: Yet, you had no problem joining two chaotic and dangerous women at a bar?

(f) C: [You had] taken two glasses of wine you said and you were not drunk. **How many do you take to get drunk?** ((Laughter))
W: Your Honour do I have to answer that?
C: Yes you have to. I have the right to question you on anything because you have accused my clients. **How many, do you take to get drunk?**

W: I was not drunk. I had taken one glass of wine with dinner. I was just taking the second when P__ attacked me.
C: Were P___ and W__ drunk?
W: I don't know.
C: **How did they look to you when you joined them? Did they look drunk?**
W: I don't know how they look when they are drunk. ((Laughter))

(g) C: Good. Now, the fight. **How long did it take?**
W: I don't know. I was not timing it. First of all it was not a fight I was attacked and beaten by two hefty women as you can see. I didn't have time to look at my watch, I was- it was chaos.
C: Chaos? Yes because you fought back. They didn't beat you when you were just sitting there, right? You fought them too, isn't it?

(h) C: **How come you didn't go to hospital that night if you were badly hurt?**
W: At 11 am on my own. It was very late and bleeding stopped after I was given first aid.
C: It was late. But you had gone to a bar alone at night and you finally went home alone right?
W: The clinic I went to does not operate at night.
C: KNH operates 24 hours
W: I couldn't go to Kenyatta at night. At 11 all alone.

Example 28.4(a)-(h) above demonstrates, the open WH- questions can be used to achieve the antagonistic ends that are characteristic of the cross examination phase of trial. The counsel begins with two Open WH- Questions seeking to establish the exact period of time the witness has known the two accused persons in 28.4(a)-(b). The response, by the witness, saying 'about ten years' leads to the conclusion by counsel that the witness must know the accused persons so well and leads to the question on their marital status. The witness's comment that the two accused persons are chaotic leads to an Open WH- Question asking the witness to elaborate on this assertion which she does. This characterization becomes the topic for antagonism. The witness is later hard pressed to explain why she was joining women she knew were dangerous. The Open WH- Question on the kind of place the premises where fighting took place also leads to

antagonism with counsel trying to depict the witness as having been drunk herself. Even the Open WH- Question on how long the 'fighting' took is used by counsel to show that the witness, who is also the complainant was equally violent. This proves that in cross examination, Open WH- Questions can be used to obtain information which is later made the subject of controversy by the examiner. For instance the characterization by the witness of her assailants as 'chaotic' and 'dangerous' in response to Open WH- Questions in 28.4(a)-(b) becomes an issue the counsel relentlessly comes back to throughout his cross examination as shown in example 29.4(a)-(d) below.

Example 29.4: DS1Case06CE

(a)	C:	Let me come back to the bar. You said that P__ and W___ are chaotic.You have seen them fight, you have been in a fight with them before, so you knew they are dangerous women, right?
	W:	Yes, more than dangerous in fact. ((Laughter))
	C:	Yet, you had no problem joining two chaotic and dangerous women at a bar?
(b)	C:	Yes, where you found women whom you have told us you knew to be chaotic and dangerous, isn't it?
	W:	Yes=
	C:	=Did you leave?
(c)	C:	You don't. Yet you have told us you have known them for ten years and joined them in several fights in bars
(d)	C:	But the two dangerous women were not shouting or fighting, right?
	W:	They were talking.
	C:	Yes, they were talking quietly until you joined them. You said when you came upstairs fighting started, right?

The questions in bold in example 28.4(a)-(b) seem innocent enough. In fact, at the onset one wonders what the lawyer hopes to gain by asking the series Open WH-Questions especially the follow up question 'How do you know they are chaotic?' after the witness has characterized the defendants as such. But it emerges, later, all this was calculated as having been allowed to freely give her opinions of the

defendants, the witness has given the defence lawyer information with which to put into question her actions on the night of the assault. She knew her assailants were ‘chaotic and dangerous’, yet she went where they were in the bar; she knew of their violent fights, yet she chose to sit at their table and not leave; she asserted they like getting into fights, yet when she joined them they were not fighting or screaming: fighting started when she joined them. Therefore, the initial Open WH- Questions in example 28.4(a)-(h) could have been a tactic by the lawyer to lead the adverse witness into taking a moral high ground with regard to her assailants. However, the questions and the responses given set stage for the counsel’s coup de grâce later in cross examination because by using the person targeted pragmatic strategy of contrast (cf. 5.4.1) he shows the actions of the witness during the incident as illogical, or as having been intended to provoke the defendants.

In addition, Open WH- Questions can also be used to probe the witness to give specific answers regarding time, place and people which then leads the examiner to question the truth of such assertions so precisely stated as illustrated in example 30.4(a) below.

Example 30.4: DS1Case06CE

(a)	C:	Very brave of you. Now **what time** was it?
	W:	Around 6 p.m.
	C:	You told us earlier it was 6.30 p.m.?
	W:	It was around that time.
	C:	Around **what time**? 6 or 6.30 p.m.?
	W:	Between six and six thirty.
	C:	So now you want to change your testimony or you are not sure? Do you want your testimony to be read to you? Was it 6 or 6.30?
	W:	Around 6.30, not exactly.

C: 6.30 p.m. So it was dark?
W: It was not dark.
C: Really? **How long** did the whole chase take, from the time the men got into the forest until you arrested them?
W: Not long.
C: **How long**? Ten minutes, three hours?
W: No, about ten minutes.
C: About ten minutes. Good. You said one of the men got away because it was too dark, didn't you?
W: It was starting to get dark, but it was not yet dark.
C: And you were in a forest, right?
W: It is not a forest. There some bushes.
C We started with 6.30 that changed to 6 now a forest has become some bushes. Are sure of your testimony?

(b) C: **How far** would you say he was from you as he threw what you call a gun?
W: About ten meters
C: Ten meters. Ten meters and you saw that he is holding a gun and throwing it away?
W: Yes.
C: After he threw away the gun, **how long** did it take to reach the wall they couldn't jump?
W: Not long.
C: Be specific. Another ten minutes or 4 minutes?
W: About two minutes.
C: Good. **You said why did you not recover the gun immediately? Because it was dark, right?**

Part of the synoptic details of case 06 in data set 1, from which example 30.4(a)-(b) above is obtained, are that the witness, a police officer who arrested the defendants, has produced a toy gun before court which he has linked to the first accused person. The witness has asserted that during a chase, he saw the accused throw away the gun immediately before being arrested, but the firearm was not recovered immediately as it was too dark to see. It is this sequence of events and the reasons given for the lack of immediate recovery of the fire arm that the counsel is focusing on. The lawyer begins with a question on time 'what time was it?' and insists on a precise answer, which after some equivocation the witness gives as 6:30pm. This lead the lawyer to conclude it must have been dark. Next is

a question on how long the chase took and the witness estimates it to have been about 10 minutes and the next question on time makes the witness establish that from the point the accused threw away the gun, it took the witness about two minutes to reach him. And a question on distance also establishes that when the accused allegedly threw away the gun, the witness was ten meters away from him. All these Open WH- Questions demand for precision, with reference to time and distance, from the witness. These questions lay the ground work for the last question in the example which seeks to question the whole logic of this witness's testimony. How is it that though it is at 6: 30 pm and dark the witness was able to clearly see the accused 10 meters ahead throw a gun away, but even though he got to the accused two minutes thereafter, he could now not see where the gun was thrown as it was too dark? This weakens the witness's testimony and credibility.

4.3.0 Discussions on the Use of Various Question Types in Direct and Cross Examination Phases of the Sampled Trials

The literature reviewed indicates that direct examination is a fairly friendly phase with the prosecution working together with witnesses to build a crime narrative that attributes blame to the accused person. Inversely, cross examination is a hostile procedure as attorneys or pro se litigants seek to discredit witnesses and their testimony (Berk-Seligson, 1990; Moeketsi, 1999; Gibbons, 2003).

This observation holds true in our data on two levels. In the first place, it is in cross examination that we find a higher occurrence of the highly conducive

questions, namely Negative Declarative Questions, Projected Statement (witness), Agreement Statements, Memory/Knowledge Statement, Positive Confirmatory Tag Questions, Negative Checking Tag Question, Positive Checking Tag Question and Confirmatory Negative Tag Questions. Within the framework of CDA, the discussion in sections 4.31 to 4.37 that follow focuses on the use of questions in each of the four broad categories, highlighting the social practices reproduced, perpetuated or challenged in the use of the various question types (Jørgensen & Philips, 2002). The discussion begins with the Tag Questions, which are deemed most coercive, and moves down to WH- Questions which are taken to be the least coercive.

4.3.1 Discussion on the Use of Tag Questions in Direct Examination

It is of significance that out of the 138 Tag Questions in the data, 132 of such questions occurred in cross examination while only 6 occurred in direct examination. Table 1 that follows shows the frequency of Tag Questions used by police prosecutors in direct examination in trials with unrepresented defendants.

Table 1: Frequencies of Tag Questions by Prosecutors in Direct Examination in Trials with Pro Se Litigants

Question Types	**Prosecutor**	
	No.	**%**
Confirmatory negative Tag Question	2	100
Total	**2**	**100**

Table 1 shows that the only Tag Question type used by prosecutors was the confirmatory negative Tag Question, and this occurred only twice in the data.

Table 2 below shows the types of Tag Questions and their frequencies in direct examination for data set one that had some trials with police prosecutors as the direct examiners and others with counsel as direct examiners. Thus, Table 2 presents a comparison of the use of Tag Questions between these two groups of examiners.

Table 2: Comparison of Frequencies of Tag Questions by Prosecutors and Counsel in Direct Examination in Trials with a Defence Counsel

Tag Question Types	Prosecutor		Counsel		Totals	
	No.	%	No.	%	No.	%
Positive confirmatory Tag Question	-	-	2	50.00	2	50.00
Confirmatory negative Tag Question	-	-	2	50.00	2	50.00
Total	**0**	**0**	**4**	**100**	**4**	**100**

As in Table 1, Table 2 confirms that Tag Questions were rare in the direct examination phase of trial being used only two times by counsel and not appearing at all in trials where a police prosecutor was conducting examination-in-chief.

4.3.2 Discussion on the Use of Tag Questions in Cross Examination

We turn to cross examination phase, the trial phase described as hostile by several scholars given that the most controlling questions occur in this phase of trial (Danet, 1980; Lane, 1990; Luchjenbroers, 1993; Eades, 2000). In addition, the pragmatic goal of the cross examiner is usually to discredit the testimony given or the credibility of the witness by making the set of facts they have

presented less believable. In what could be taken as a confirmation of this control, one notes the increase not just in the numbers of the Tag Questions used but also in the varieties of the subtypes of Tag Questions encountered. Table 3 that follows shows the subtypes of Tag Questions in the cross-examination phase and their frequencies of occurrence. The table further compares counsel and lay litigants in their use of Tag Questions during cross examination.

Table 3: Comparison of Tag Questions by Counsel and Pro Se Litigants in Cross Examination

Tag Question Types	Counsel		Accused		Totals	
	No.	**%**	**No.**	**%**	**No.**	**%**
Positive confirmatory Tag Question	52	42.98	1	9.09	53	40.15
Negative confirmatory Tag Question	8	6.61	-	-	8	6.06
Negative tag checking Tag Question	5	4.13	-	-	5	3.79
Positive tag checking Tag Question	2	1.65	-	-	2	1.52
Confirmatory negative Tag Question	54	44.63	10	90.91	64	48.49
Total	**121**	**100**	**11**	**100**	**132**	**100**

The hierarchy of question coerciveness adopted in this study (cf. 2.3.1) has Tag Questions being the most coercive question types. Thus, as Table 3 above shows, their large numbers in cross examination, 121 for counsel and 11 for the lay litigants, is in itself remarkable as it confirms the general view in reviewed literature about cross examination being more coercive than direct examination (compare with the statistics in Table 1 and 2). Equally remarkable were the differences that emerge between the two groups of cross examiners: counsel vs.

pro se litigants. Unrepresented accused persons had few of such questions with distributions being 11 (3.49%) Tag Questions of the 315 questions asked by this group in cross examination. This was a contrast with counsel's use of the same question types as this group of examiners had 121 (16.14%) Tag Questions out of the 750 questions they asked.

4.3.3 Discussion on the Use of Declarative Questions in Direct Examination

With Tag Questions (cf. 4.3.2) being the most coercive, this section discusses the use of Declarative Questions which Tkačuková (2010) ranks second in coerciveness (cf.2.3.1). A discussion of Declarative Questions needs to start by highlighting the controversy that surrounds their identification; a controversy that stems from their definition as statements serving the function of questions (Farinde, 2009). This definition seems to suggest that syntactic properties may not be helpful in identifying them. Several scholars have asserted that Declarative Questions are identified on the basis of a final rise in intonation that signals incompleteness or uncertainty in the utterance which in turn demands for response (Brown, 1980; Bollinger, 1982; Guy, Horrath, Vonwiller, Daisley & Rogers, 1986).

However, similar to Farinde's (2009) findings, the majority of Declarative Questions encountered in our sample cannot be accounted for on the basis of rising final intonation as they were actually uttered with a falling final intonation.

The use of falling intonation for Declarative Questions could act as a further signal to the inequalities between the discourse participants. The questioner adopts a superior role in making propositions using the tone normally associated with statements that achieve the speech act function of asserting facts. It is very hard for the person being questioned to reject such propositions (Farinde, 2009). The coding of Declarative Questions in this study was based on the criteria adopted by Farinde (2009) from Geluykens (1987). It is suggested that Declarative Questions can be identified on the basis of three factors. The first one is that a competent speaker of a language should be able to deduce when a statement is being used as a question. The second factor to consider is the turn that follows the given statement.

A: They all left together?
B: Yes

In the exchange above, the contribution by A, even if uttered with falling final intonation, can be classified as a question on the basis that the response from B is an answer. The third factor is if one repeats one's utterance which is taken to mean one is seeking for a response.

Declarative Questions numbered at 378 in the data, with 168 occurring in direct examination and 210 in cross examination. In Table 4 below, the subtypes and frequencies of Declarative Questions used by prosecutors in trials without a defence counsel are presented.

Table 4: Frequencies of Declarative Questions by Prosecutors in Direct Examination in Trials with Pro Se Litigants

Declarative Question Types	Prosecutor	
	No.	**%**
Negative Declarative Question	3	4.76
Positive Declarative Question	54	85.71
Projected Statement	5	7.94
Memory/Knowledge Statement	1	1.59
Sub-total	**63**	**100**

As Table 4 shows, the least conducive questions among the Declarative Questions were the memory/knowledge statements and they had the lowest incidence of use by prosecutors in examination-in-chief for trials with no defence counsel a frequency of 1 (1.95%). The most conducive Declarative Questions are the negatively formulated Declarative Questions and they were the second least used question types with a frequency of 3 (4.76%). The subtype of Declarative Questions with the highest use by prosecutors in trials with no defence counsel were the positive Declarative Question. These occurred 54 times in the data with a percentage frequency of 85.71%.

In Table 5, the statistics on the frequencies of the various subtypes of Declarative Questions are shown. The table is for data set one and it makes a comparison of prosecutors and counsel in their use of Declarative Questions in direct examination.

Table 5: Comparison of Frequencies of Declarative Questions by Prosecutors and Counsel in Direct Examination in Trials with a Defence Counsel

Declarative Question Types	Prosecutor		Counsel		Totals	
	No.	%	No.	%	No.	%
Negative Declarative Question	1	2.50	1	1.54	2	1.91
Positive Declarative Question	26	65.00	56	86.15	82	78.10
Projected Statement	12	30.00	8	12.31	20	19.05
Agreement Statement	1	2.50	-	-	1	0.95
Total	**40**	**100**	**65**	**100**	**105**	**100**

A look at Table 5 shows that police prosecutors used less of the Declarative Questions, with a frequency of 40 out of 311 questions posed by police prosecutors, than counsel who had a total of 65 out of 271 questions they asked in direct examination; however, the patterns of distribution are more or less the same. For both groups of examiners, Positive Declarative Questions had the highest frequency of use with a count of 26 (65.00%) for prosecutors and 56 (86.15%) for counsel. Projected Statements were next in frequency with their count being 12 (30.00%) for prosecutors and 8 (12.31%) for counsel. The highly controlling Negative Declarative Questions occurred once for each of the two groups of examiners.

4.3.4 Discussion on the Use of Declarative Questions in Cross Examination

In the cross examination phase, the frequencies of the Declarative Question subtypes by both counsel and lay litigants as examiners are presented in Table 6.

Table 6: Comparison of Frequencies of Declarative Questions by Counsel and Pro Se Litigants in Cross Examination

Declarative Question Types	Counsel		Accused		Totals	
	No.	%	No.	%	No.	%
Negative Declarative Question	15	9.55	13	24.53	28	13.33
Positive Declarative Question	90	57.33	26	49.06	116	55.24
Projected Statement	44	28.03	11	20.76	55	26.19
Agreement Statement	2	1.27	2	3.77	4	1.91
Memory/Knowledge Statement	6	3.82	1	1.89	7	3.33
Sub-total	**157**	**100**	**53**	**100**	**210**	**100**

Table 6 shows that for both counsel and pro se litigants, positive Declarative Questions were the most frequently used and they had frequency counts of 90 (57.33%) for counsel and 26 (49.06%) for lay litigants. Table 6 further shows that for counsel 44 (28.03%) of the Declarative Questions were Projected Statements making them second after positive Declarative Questions. On their part, pro se litigants had Negative Declarative Questions as the second most frequently used subtype of Declarative Questions with a frequency of 13 (24.53%). The Negative Declarative Questions were third in frequency for counsel with a frequency count of 15 (9.55%) while the third in frequency of use for lay litigants were Projected Statement with a frequency of 11 (20.76%). The subtypes of Agreement Statements and Memory/Knowledge Statement had frequencies of less than ten for both groups of examiners.

A comparison of our findings with those from elsewhere with regard to the use of Declarative Questions confirms that this question type finds more use in cross

examination as compared to direct examination. Farinde's (2009) study in Nigerian courtrooms found 39.4% of questions in cross examination to be Declarative Questions while in examination-in-chief their use was only 8.4% of the total. A similar scenario emerged in the Australian data by Luchjenbroers (1993) where Declarative Questions were 49.8% of the total in cross examination and only 27.2% of the total questions in direct examination. In our data, if we combine the total of Declarative Question by counsel and police prosecutors in direct examination, they come to 105 as compared to the 210 found in cross examination.

4.3.5 Discussion on the Use of Polar and Alternative Questions in Direct Examination

Polar and Alternative Questions are grouped together in the analysis of questions in the study sample. The reason for this is that both question types are framed in a way that explicitly or otherwise provides the recipient with a choice between alternatives which are usually two. In the subsequent discussion the Alternative and Polar Questions are presented separately. Their use by prosecutors in direct examination for trials without a defence counsel is shown in Table 7 that follows.

Table 7: Frequencies of Polar and Alternative Questions by Prosecutors in Direct Examination in Trials with Pro Se Litigants

Polar and Alternative Question Types	Prosecutor	
	No.	**%**
Negative Yes/No question	8	5.56
Positive Yes/No question	116	80.56
Either/Or question	14	9.72
Either/Or question with a vacant slot	6	4.17
Sub-total	**144**	**100**

The table shows that Positive Yes/No Questions were the most favoured with a frequency count of 116 (80.56%) followed by Either/Or Question with a frequency of 14 (9.72%). The Negative Yes/No Question and the Either/Or Questions with a vacant slot had almost similar frequencies of occurrence with the former having a frequency count of 8 (5.56%) and the latter 6 (4.17%).

In direct examination for the first data set which has both counsel and prosecutors as the questioners in direct examination, the distribution of Polar and Alternative Questions is as shown in Table 8 that follows.

Table 8: Comparison of Frequencies of Polar and Alternative Questions by Prosecutors and Counsel in Direct Examination

Polar and Alternative Question Types	Prosecutor		Counsel		Totals	
	No.	%	No.	%	No.	%
Negative Yes/No Question	1	1.19	1	1.61	2	1.37
Positive Yes/No Question	75	89.29	50	80.65	125	85.62
Either/Or Question	6	7.14	7	11.29	13	8.90
Either/Or with a Vacant Slot	2	2.38	4	6.45	6	4.11
Sub-total	**84**	**100**	**62**	**100**	**146**	**100**

Table 8 shows Positive Yes/No Questions having the highest incidence of use by both counsel and prosecutors in direct examination. For the prosecutors, Positive Yes/No Questions had a frequency of 75 (89.29%) while they had a frequency count of 50 (80.65%) for counsel. The other subtypes of the Polar and Alternative Questions have a largely similar pattern of distribution between the two groups of examiners. Either/Or Questions had frequency counts of 6 (7.14%) for prosecutors and 7 (11.29%) for counsel. These were followed by Either/Or Questions which had frequencies of 2 (2.38%) for prosecutors and 4 (6.45%) for counsel. Negative Yes/No Questions occurred only once for each of these two groups of examiners.

4.3.6 Discussion on the Use of Polar and Alternative Questions in Cross Examination

Whereas examples 15.4 and 16.4 show prosecutors in examination-in-chief use Polar and Alternative Questions to build up a coherent narrative together with the

witness, these question forms were also found in the cross examination phase of the sampled trials. Table 9 below presents the distribution frequencies of the subtypes of Polar and Alternative Questions in cross examination by counsel and by lay litigants.

Table 9: Comparison of Frequencies of Polar and Alternative Questions by Counsel and Pro Se Litigants in Cross Examination

Polar and Alternative Question Types	Counsel		Accused		Totals	
	No.	%	No.	%	No.	%
Negative Yes/No Question	19	7.88	29	23.20	48	13.12
Positive Yes/No Question	184	76.35	83	66.40	267	72.95
Either/Or question	32	13.28	11	8.80	43	11.75
Either/Or with a vacant slot	6	2.49	2	1.60	8	2.19
Sub-total	**241**	**100**	**125**	**100**	**366**	**100**

Table 9 shows that in the cross examination phase, counsel had more of the Polar and Alternative Questions (241) as compared to the unrepresented accused persons who had 125 of such questions. The table further shows that in terms of frequency of use, Positive Yes/No Questions had the highest frequencies. Their frequency for counsel was 184 (76.35%) and for accused persons it was 83 (66.40%). For the counsel as cross examiners, the second subtype of Polar and Alternative Questions was Either/Or Question and the third was Negative Yes/No Question. For the lay litigants, this order was inverted so that Negative Yes/No Questions were second with a frequency count of 29 (23.20%) and third were Either/Or Questions with a frequency of 11(8.80%). For both counsel and pro se litigants, Either/Or Questions with a vacant slot had the lowest frequencies of

occurrence. For counsel, they were 6 (2.49%) while for lay litigants the Either/Or Questions with a vacant slot were 2 (1.60%).

The distribution of Positive Yes/No Questions in the two phases was 125 (21.5%) in direct examination and 267 (25.1%) in cross examination bringing their total in the two data sets to 392. In both direct and cross examination, Positive Yes/No Questions are used to obtain affirmation (positive or negative) with what the questioner is asking though in a trial this affirmation may be sought for a number of reasons.

Negatively formulated questions are more controlling and combative (Farinde, 2009) and they registered nil percentage in Farinde's (2009) and Luchjenbroers' (1993) data during direct examination. In our data, the Negative Yes/No Questions had a frequency of 2 (0.3%). In the more combative cross examination phase Negative Yes/No Questions had a frequency of 3 (0.5%) in Farinde's study and 15 (0.9%) in Luchjenbroers' study. In the present study, the Negative Yes/No Questions had a frequency of 48 (4.5%) in cross examination (cf. Table 2). The frequencies in the three studies attest to the combativeness of cross examination given the relatively higher occurrence of the Negative Yes/No Questions in this phase. The higher number of these questions in our data can be explained on the basis of the present study having a larger sample. The data were 30 hours of audio-recorded court proceedings while the data for Farinde (2009) were 20 hours

of audio-recorded proceedings. It is difficult to make a comparison in terms of hours between our study and the one by Luchjenbroers (1993) as she worked with court transcripts of a single murder trial

With regard to the Positive Yes/No Questions, the present study found a high incidence of such in both the direct examination and cross examination phases with the frequencies being 125 (21.5%) and 267 (25.1%) respectively (cf. Tables 1and 2). The same high frequencies are reflected in the study by Farinde (2009) with the frequencies being 24 (12.6%) and 62 (11.6%) for direct and cross examination phases respectively. In the study by Luchjenbroers (1993) the Positive Yes/No Questions had frequencies of 690 (33.6%) and 422 (25.6%) in direct examination and cross examination respectively. Of interest is the fact that in the present study, Positive Yes/No Questions had more frequency in cross examination than in direct examination when compared to the other studies. This could indicate that cross examiners in the sampled Kenyan courts preferred to use Positive Yes/No Questions more than did their counterparts in Nigeria and Australia. However, this is an observation that would need further comparative studies, which would take into account several sociolinguistic variables, to identify the possible reasons for such a variation.

In her study, Tkačuková (2010) found ‘no striking difference between the counsel and pro se litigants in the occurrence of Yes/No questions’ (p. 58), but noted that

Negative Yes/No Questions were fewer compared to Positive Yes/No Questions. The findings of the present study also confirm that Positive Yes/No Questions dominate in cross examination as compared to the Negative Yes/No Questions.

4.3.7 Discussion on the Use of WH- Questions in Direct Examination

WH- Questions are the least conducive questions and it was expected that the subtypes of this category of questions would find more use among direct examiners as compared to cross examiners. Table 10 shows the distribution patterns of WH- Questions used by prosecutors in trials without a defence counsel.

Table 10: Frequencies of WH- Questions by Prosecutors in Direct Examination in Trials with Pro Se Litigants

WH- Question Types	Prosecutor	
	No.	**%**
Requestion without Embedded WH- Trigger	2	0.53
Requestion with Embedded WH- Trigger	2	0.53
Non-Sentence Question	61	16.05
Routine WH- Question	54	14.21
Open WH- Question	261	68.68
Sub-total	**380**	**100**

Open WH- Questions constituted more than half of the WH- Questions posed by prosecutors in this data set with a frequency of 261 (68.68%). They were followed by Non-Sentence Questions with a frequency of 61 (16.05) while Routine WH-

Questions were third with a frequency count of 54 (14.21%). Requestions with an Embedded WH- Trigger and those without such a trigger tied with a frequency count of 2 (0.53%) each.

The frequencies of the subtypes of WH- Questions used in examination-in-chief of data set one by prosecutors and counsel are presented in Table 11 below.

Table 11: Comparison of Frequencies of WH- Questions by Prosecutors and Counsel in Direct Examination in Trials with a Defence Counsel

WH- Question Types	Prosecutors		Counsel		Totals	
	No.	%	No.	%	No.	%
Requestion without Embedded WH-Trigger	7	3.74	3	2.14	10	3.06
Requestion with Embedded WH-Trigger	1	0.54	-	-	1	0.31
Non-Sentence Question	19	10.16	19	13.57	38	11.62
Routine WH-Question	22	11.77	12	8.57	34	10.40
Open WH- Question	138	73.80	106	75.71	244	74.62
Sub-total	**187**	**100**	**140**	**100**	**327**	**100**

Like was the case in Table 10, even in direct examination of data set two featuring police prosecutors and counsel had Open WH- Questions leading in frequency. For prosecutors, Open WH- Questions had a frequency of 138 (73.80%) and for counsel they had a frequency of 106 (75.71%). For police prosecutors, the second subtype of WH- Questions were Routine WH- Questions which numbered 22 (11.77%) and were followed by Non-Sentence Questions numbering 19 (10.16%). Turning to counsel as cross examiners, Non-Sentence Questions, numbering 19

(13.57%), were second and third were Routine WH- Questions numbering 12 (8.57%). The general conclusion in the literature on questions is that WH-Questions are the least controlling (Berk-Seligson, 1990; Eades, 2000; Wang, 2006). This is because WH- Questions exercise fewer restrictions on the addressee, as they allow, indeed expect, him or her 'to introduce new factual material' (Wang, 2006, p. 17) compared to other question types. This is why they are also known as information-seeking questions, and they have been found to occur more in the direct examination phase in litigation.

4.3.8 Discussion on the Use of WH- Questions in Cross Examination

The cross examination phase of the trials in the study sample provides interesting results with regard to WH- Questions. This is because, as Table 12 shows, of the high number of WH- Questions used by both counsel and lay litigants in their cross examination.

Table 12: Comparison of Frequencies of WH- Questions by Counsel and Pro Se Litigants in Cross Examination

WH- Question Types	Counsel		Accused		Totals	
	No.	%	No.	%	No.	%
Requestion without Embedded WH- Trigger	7	3.03	-	-	7	1.96
Requestion with Embedded WH-Trigger	3	1.30	3	2.38	6	1.68
Non-Sentence Question	30	12.99	3	2.38	33	9.24
Open WH- Question	191	82.68	120	95.24	311	87.12
Sub-total	**231**	**100**	**126**	**100**	**357**	**100**

As in the direct examination phases (cf. 10 and 11), Open WH- Questions were the most frequently used among the WH- Questions by both counsel and pro se litigants. The numbers were 191 (82.68%) for counsel and 120 (95.24%) for the unrepresented defendants. In fact, for the latter group the only other subtypes of WH- Questions they used were Non-Sentence Questions and Requestions with Embedded WH- Trigger each having a frequency count of 3 (2.38%). For counsel, Non-Sentence Questions with a frequency of 30 (12.99%) were second in use followed by Requestions without an Embedded WH- Trigger numbering 7 (3.03%) and the least occurring subtype of WH-Questions were Requestions without an Embedded WH- Trigger with a frequency count of 3 (1.30%).

4.4 Discussion on Significant Use of Questions in the Sampled Trials

The present study established that questions occupied a central place in the discourse of the sampled trials as they were the primary mode of eliciting testimony from witnesses in examination-in-chief, and the means through which testimony was challenged in cross examination. However, focusing on the cross examination phase shows a big difference between counsel and lay litigants in their use of questions. Adding up the totals of question types used in cross examination shows that while counsel used a total of 750 questions in cross examining defence witnesses, the unrepresented accused persons only used a total of 315 questions.

This difference could be indicative of the challenge that lay litigants face while defending themselves in court (cf. 4.2.2). As a result, their cross examinations mainly consisted of declarative statements despite the fact that the rules of courtroom procedure restrict examiners to using questions to pursue their goals. Such statements could not be coded as questions. Though it has been established that questions are powerful tools of manipulation and control because they place the examiner in charge of topic choice and change and avail means by which the examiner can constrain witness responses, it is important to remember that the ability to exploit the power in questions depends on great skill and experience on the part of the examiner. The assertion that 'for CDA, language is not powerful on its own - it gains power by the use powerful people make of it' (Wodak, 2001, p. 10) is important as it could help us explain the challenge that most lay litigants face even when availed the resource of questions when they take on the role of cross examiners. The lay litigants may not have the benefit of formal training in law or language, and lack experience due to infrequent appearance in court. This could impact negatively on their skill in the use of questioning as a mode of challenging the testimony of adverse witnesses. But this is the skill that lawyers possess from formal training and practice through frequent appearance in court. Thus, unequal access to training means that power asymmetries in the courtroom remain in favour of the officers of the court because unrepresented accused persons cannot exploit the language resources that would give them power.

Another possible explanation for the difference between counsel and lay litigants in their use of questions during cross examination could be that the use of questions as the primary mode of communication is a creation of the conventions of courtroom procedure that is divorced from the conventions of everyday conversation (Conley & O'Barr, 1990). These authors also identify rules regarding hearsay, relevance and the expression of personal opinion as the other impediments that lay litigants have to contend with in the courtroom context. In example 21.4, the pro se litigant is reminded by the magistrate to ask questions that are helpful to his case. A judgment on the question types that best serve the interest of the defendant may require knowledge of the logic of the law which many lay litigants may not be versed with. In addition, it was observed that many litigants resorted to giving their version of facts when invited to cross examine the prosecution's witnesses. This led to constant interruptions from magistrates and court clerks urging litigants to stop narrating their version of facts and instead ask questions (cf. chapter five). Those unable to comply are forced to end their cross examination.

Thus, as Anesa (2011) notes, within the CDA framework, the identification of powerful versus powerless participants calls for a critical analysis of the context and the participants. Our analysis of the examples presented in this chapter on question use leads us to conclude that assuming the role of an examiner does not automatically render accused persons powerful. One of the tenets of CDA is that

discourse is history and can therefore only be understood by appealing to extra linguistic factors like the different facets of culture (Fairclough & Wodak, 1997). Thus, the access to formal education or the presence or absence of legal education for the general citizenry could be factors to consider in explaining the challenges lay litigants face in the use of questions and ways of assisting them.

This study approached the analysis of questions by adopting a classification system based on the coerciveness of questions from Tkačuková (2010). The typology has the least coercive question types being WH- Questions and these are followed by Polar and Alternative Questions. More coercive than these are Declarative Questions and the most coercive question types are Tag Questions. WH- Questions are considered least conducive, and it would be expected that they would find more use in the friendly phase of direct examination where the examiner and the witness collaborate to build a given set of facts.

However, this expectation is not fulfilled by our findings which, instead, show the distribution of WH- Questions being almost equal in direct examination and cross examination phases. The frequencies for WH- Questions in direct examination were 327 and in cross examination they were 357. This finding is in contrast to those by Farinde (2009) and Luchjenbroers (1993). In the data by Luchjenbroers, WH- Questions of 342 (16.7%) in direct examination and 133 (8.1%) in cross examination while Farinde (2009) reports frequencies of 119 (62.6%) in direct

examination and 98 (18.3%) in cross examination. The comparison of lay litigants and the counsel by Tkačuková (2010) established that the lay litigants used WH-Questions more than the lawyer did, but in our data the distribution of WH-Questions between these two groups presents a different scenario with the frequencies being 126 (40.0%) for pro se litigants and 231 (30.8%) for counsel as cross examiners. It needs to be noted that the differences between the present study and others cited here is mainly at the level of numbers. Our analysis within the framework of CDA involves looking at how different forms identified find use at the local level. As examples 28.4 to 30.4 show, WH- Questions can be used to achieve antagonistic ends. Thus, it would be hasty to assume that the high incidence of WH- Questions in cross examination phases of the trials in the study sample makes this trial phase any less combative.

Indeed, the view that question form need not always correlate with a certain degree of coerciveness has always been acknowledged (Berk-Seligson, 1999; Danet, 1980). However, it is Eades (2000) who puts it somewhat more forcefully stating ‘I question the assumption that an isomorphic relationship exists between language form and function’ (p. 169). In her study of the treatment of Aborigine witnesses in Australian courts, Eades (2000) concluded that witness control is achieved through a range of discourse devices and asserted that ‘looking at broader chunks of discourse, reveals the isomorphic form-function assumption problematic’ and thus warns against overreliance on ‘question form to discover

how witness are controlled' (p. 189). She identified the use of other strategies like interruption, metalinguistic comments and silencing of witnesses' explanations on culture and lifestyle as other strategies of dominating witnesses.

The present study shares these assertions, and, therefore, our analysis of questions goes beyond mere counting of interrogative forms. The micro-analysis of the examples presented in this chapter is meant to show the use and effect of questions in broad chunks of discourse. In addition, the remaining analysis chapters, (cf. chapters five, six and seven) shift focus to a discussion on how pragmatic and other language resources can point out to the unequal relationship among discourse participant in the courtroom.

4.5 Summary of Chapter

This chapter has presented an analysis of question types in the study sample of the present study. The analysis involved presenting bar graphs and tables that showed the frequencies of various subtypes of the major question types. These presentations were followed by a detailed discussion of examples to show the discourse ends that the said question types were used to achieve by various participants in courtroom discourse. To achieve their desired ends, discourse participants in the courtroom setting do not just rely on questions alone but use them in conjunction with other strategies that are pragmatic in nature. These pragmatic strategies are the focus of chapter five that follows.

CHAPTER FIVE

USE OF PRAGMATIC STRATEGIES IN DIRECT AND CROSS EXAMINATION PHASES OF THE SAMPLED TRIALS

5.0 Introduction

Language use in both direct and cross examination phases of a trial is goal oriented. Thus, the choice of both questions types and responses is strategically done by the discourse participants. Bearing this in mind, an analysis of the syntactic form of questions used in these two phases of trial, while important, would give an incomplete picture of the discourse if it is not linked to the fact that pragmatic factors influence linguistic choices. Pursuant to the second objective of the study, this chapter looks at the use of pragmatic strategies by examiners in the study sample. The chapter begins with a summary of the typology of pragmatic strategies adopted for this study, and this is followed by presentation of data to show the use of these strategies in the sampled trials. The chapter ends with a discussion the significance of the use of these strategies by different participants in courtroom discourse.

5.1 Overview of Pragmatic Strategies in Direct and Cross Examination Phases of the Sampled Trials

Wilson (2006 p. 8442) defines pragmatics as the branch of linguistics ‘concerned with meaning in the context of language use’ and notes that pragmatics tries to fill the gap between what sentences mean and what speakers mean. Pragmatic

theories try to account for this gap by viewing the process of communication as one that draws not only from linguistic resources but also from, inter alia, specific interactional contexts. The physical context of this study was the courtroom setting, and one objective that guided the study was to investigate the distribution of power among the discourse participants in the sampled courtrooms. In a setting such as the courtroom, 'there is an interactional asymmetry in relation to responsibility for talk organization' which is manifest through 'the operationalization of power within, or through, the use of language', and the vehicles for this power are the pragmatic strategies (Wilson, 2006, p. 8443).

The present study adopted the classification of pragmatic strategies proposed by Gibbons (2003) and also adopted by Tkačuková (2010) (cf. 2.4.2. and 2.4.3). The typology divides pragmatic strategies into two broad categories: person targeted pragmatic strategies and idea targeted pragmatic strategies. The person targeted pragmatic strategies are so called because in using them, the examiner tries to enhance or diminish the credibility of a particular witness (Gibbons, 2003). They include **status manipulation** where the examiner attacks the witness's credibility directly (status reduction) or uses words that present the witness in good light (status support). **Distorting modality** is another person targeted pragmatic strategy where the examiner insists on exactitude from a witness even when the witness would rather give a modulated response. Then there is the strategy of **contrast** where the witnesses are made to say things or make admissions that

show their actions at the time of the events in dispute were contrary to what a reasonable person would do. Another person targeted pragmatic strategy is **accommodation**, and it involves the examiners making his or her language more like or unlike that of the witness. Then there is **violation of turn** as a pragmatic strategy. In its use, the examiner violates the witness right as a discourse participant to speak. Finally **exploitation of bias** is a strategy used to cast aspersions on the character or morals of the witness by referring or alluding to social stereotypes.

Turning to the idea targeted pragmatic strategies, the focus of the examiner is on what the witness has to say and the goal is to make it less believable or even incomplete while the examiners version of reality is packaged as the only or the most believable (Gibbons, 2003). The idea targeted pragmatic strategies include **vocabulary choice** or **vocabulary landscaping** whereby the examiner strategically chooses lexical items in describing events or actions with the aim of creating a particular impact with regard to the set of facts he or she or the witness is presenting. Related to this is **repetition** where the examiner repeats certain questions or topics in a way that is harmful to the adverse party. The use of **unnatural narrative order** is yet another idea targeted pragmatic strategy whereby instead of sticking to one question – response format, the examiner can preface the item the witness finally responds to with other questions or statements that contain propositions which the witness does not get a chance to address.

Examiners can also use **presuppositions** and **negative suggestions** as idea targeted pragmatic strategies. Presuppositions involve presenting as fact information whose fact value is under dispute or has not been established. In using negative suggestions, the examiner asks the opposite of what he or she seeks to establish as a way of making the witness state what the examiner wanted all along. Still among the pragmatic strategies is the use of **evaluative third parts** in which the examiner uses the third turn in the discourse exchange to comment positively or negatively on the response given by a witness to a question.

Examiners can also use **nailing down** and the **false friend strategy**. The former involves the examiner incessantly recycling a topic or repeating questions on a given issue until the witness has no option but give the response the examiner is seeking while the latter involves the cross examiner making statements that show support or even sympathy for the witness. Optionally, the examiner could ask a question and then supply the response he or she believes is the right one. This strategy is called the strategy of **answering own questions**. **Interruption** of a witness so that he or she does not get to complete a given response that the examiner deems detrimental to the version of events the examiner is trying to create is yet another idea targeted pragmatic strategy. Finally are the strategies of **using 'so' summarisers** and the closely related strategy of **reformulation**. In the first strategy, the examiner prefaces questions with the particle 'so' to make the proposition in the question sound like the only logical one in the circumstances.

Reformulation is done in the same way but signaled by other expressions like ‘in other words.’

Following are bar graphs that show the percentage frequencies of the various pragmatic strategies identified above as they were used by participants in the two phases of the sampled trials. The bar graph in Figure 6 shows the percentages of distribution of idea targeted pragmatic strategies by police prosecutors in the direct examination phase of the sampled trials.

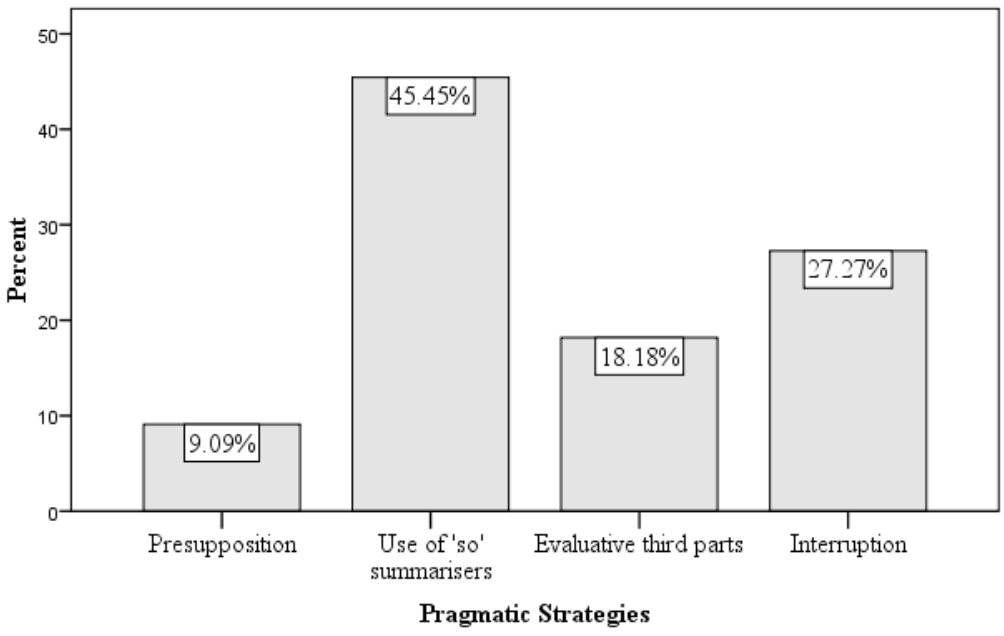

Figure 6: Frequencies of Idea Targeted Pragmatic Strategies by Prosecutors in Direct Examination

As Figure 6 shows, leading by a big margin were the ‘so’ summarisers with a percentage of 45.45% followed by interruption which had a percentage frequency

of 27.27%. Evaluative third parts were the third most frequently used idea targeted pragmatic strategy by the prosecutors. It had a percentage frequency of 18.18% while the strategy of using presuppositions had a percentage frequency of 9.09%.

Turning to counsel as direct examiners Figure 7 shows the frequencies of the idea targeted pragmatic strategies they used.

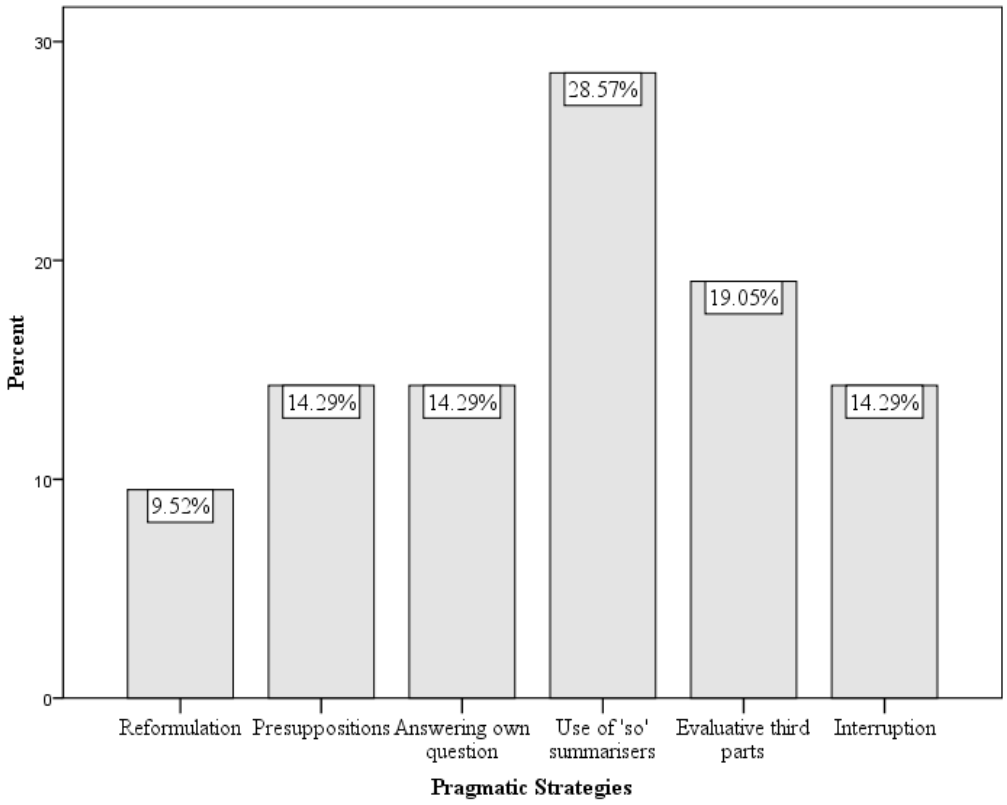

Figure 7: Frequencies of Idea Targeted Pragmatic Strategies by Counsel in Direct Examination

Compared to Figure 6, Figure 7 shows that the counsel in the study sample used more of the different types of idea targeted pragmatic strategies. However, just as

with the prosecutors, the use of ‘so’ summarisers was the leading strategy for counsel with a percentage of 28.57% and it was followed by the use of evaluative third parts which had a frequency percentage of 19.05%. The strategies of using presuppositions, answering own question and interruption tied each with a frequency of 14.29%. Reformulation was the least used idea targeted pragmatic strategy with a frequency of 9.52%.

Figure 8 that follows shows the percentage frequencies of the person targeted pragmatic strategies used by counsel in their cross examination of prosecution witnesses.

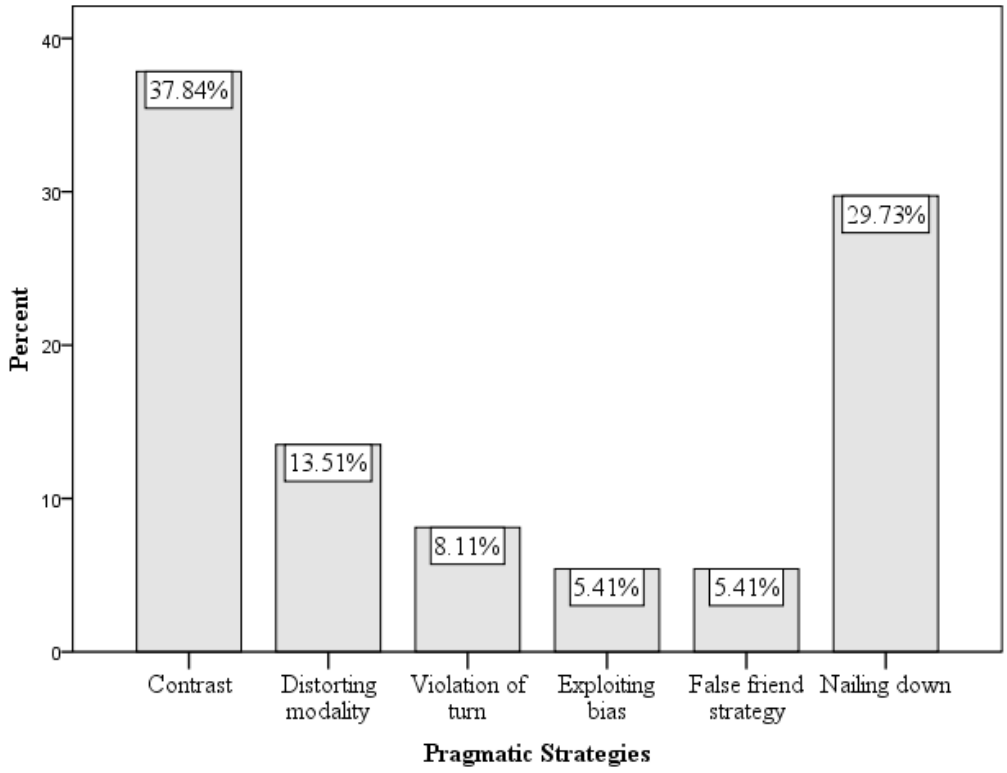

Figure 8: Frequencies of Person Targeted Pragmatic Strategies by Counsel in Cross Examination

The strategy with the highest percentage frequency was contrast at 37.84% and it was followed by the tactic of nailing down witnesses with a frequency of 29.73%. Third in use among the person targeted pragmatic strategies by counsel was distortion of modality with a frequency of 13.51% while the fourth strategy was violation of turn with 8.11%. The false friend strategy and exploitation of bias tied, each with a frequency of 5.41%.

In Figure 9 are the person targeted pragmatic strategies and their frequencies as used by lay litigants in cross examination.

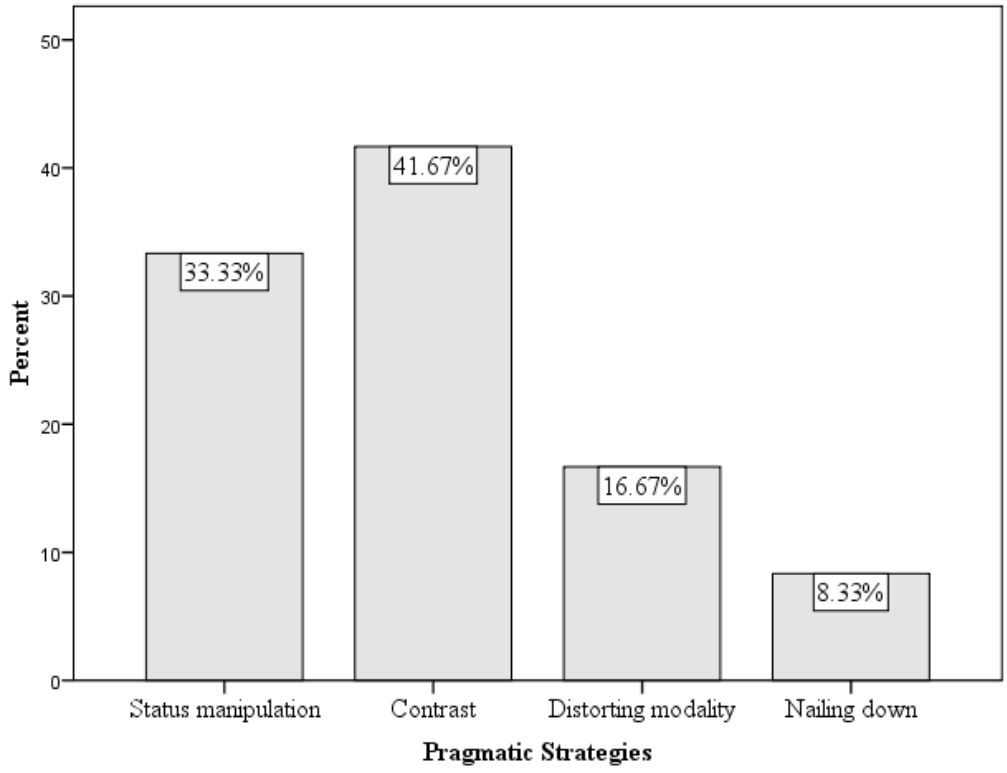

Figure 9: Frequencies of Person Targeted Pragmatic Strategies by Pro Se Litigants in Cross Examination

Figure 9 shows that lay litigants in the study sample used fewer types of the person targeted pragmatic strategies compared to counsel (cf. Figure 8). Just like for counsel, contrast was the strategy with the highest frequency at 41.67 followed by status manipulation whose frequency was 33.33%. Distorting modality and nailing down, with frequencies of 16.67% and 8.33% respectively were third and fourth in terms of use.

Figure 10 shows the percentage frequencies of the various idea targeted pragmatic strategies used by counsel in cross examination.

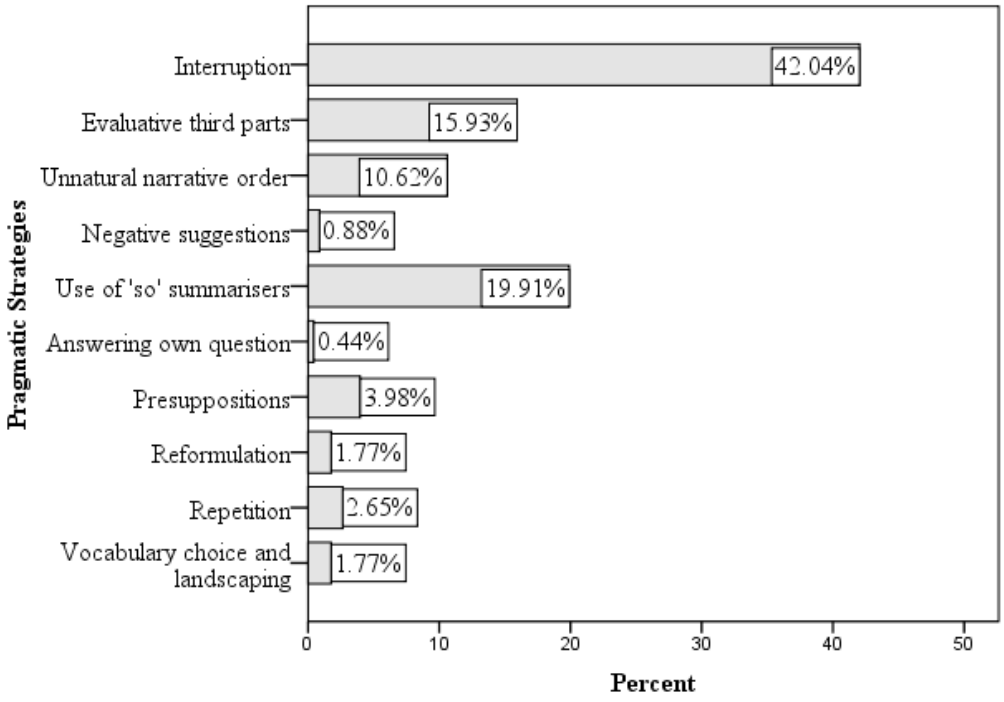

Figure 10: Frequencies of Idea Targeted Pragmatic Strategies by Counsel in Cross Examination

Figure 10 shows that of the ten idea targeted pragmatic strategies used by counsel in cross examination, interruption accounted for almost half with a frequency of 42.04%. In second place were ‘so’ summarisers with a frequency of 19.91% and fourth were evaluative third parts with a frequency of 15.93%. The only other idea targeted pragmatic strategy with a frequency of more than ten was unnatural narrative order at 10.62%. The remaining strategies had occurrence frequencies of below 5% each. In Figure 11 that follows, the frequencies of idea targeted pragmatic strategies used by the lay litigants in the study sample as they cross examined the prosecution witnesses are presented.

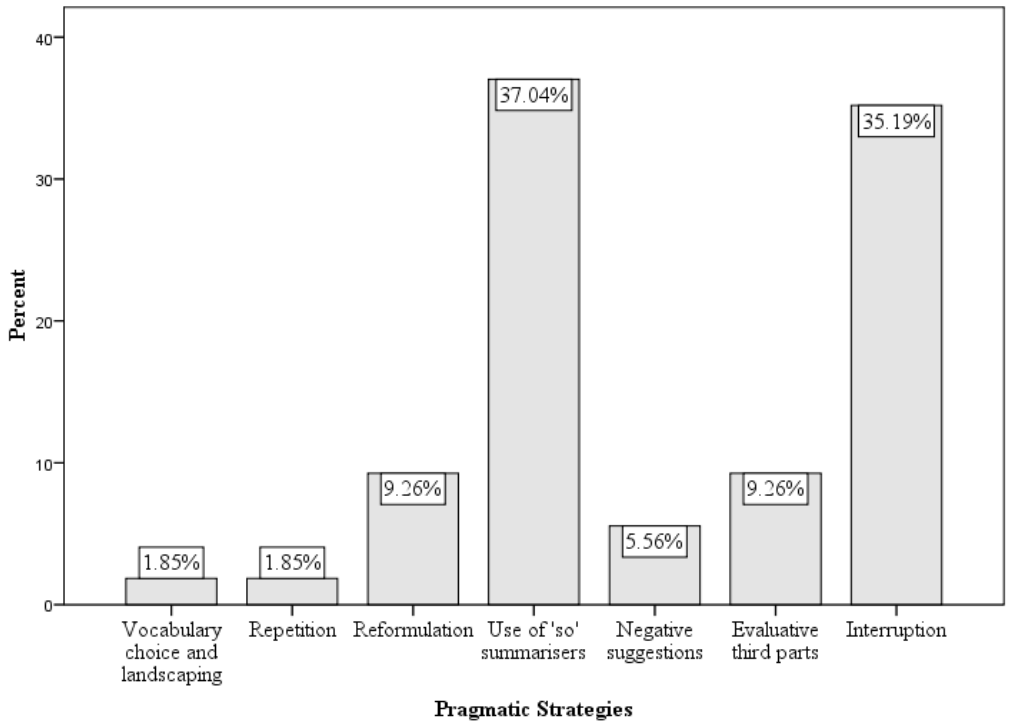

Figure 11: Frequencies of Idea Targeted Pragmatic Strategies Used Pro Se Litigants in Cross Examination

Seven idea targeted pragmatic strategies were used by the lay litigants as shown in Figure 11. The use of ‘so’ summarisers with a percentage of 37.04% and interruption with a frequency of 35.19% represents the most frequently used strategies and they were the only ones with percentages above ten. They were followed by a tie between reformulation and the use of evaluative third parts. Each of these strategies had a frequency of 9.26% and they were followed by negative suggestions with a frequency of 5.56%. There was also a tie between the strategies of vocabulary choice and landscaping and repetition as each of these idea targeted pragmatic strategies had a frequency of 1.85%.

The next sections (5.2 to 5.5) present examples of how different key participants in the trials in the study sample used these pragmatic strategies to their advantage, and at times to the detriment of the adverse party. This presentation will inform the discussion in section 5.6.

5.2 Person Targeted Pragmatic Strategies by Prosecutors and Counsel in Direct Examination

Among the person targeted pragmatic strategies identified above (cf. 5.1) violation of turn was the only person targeted strategy observed in use by both prosecutors and counsel in direct examination. This strategy was found to be used to marshal witnesses so that they only give details relevant to the case. This may be motivated by, among other things, the need to make witness testimony meet

the requirements of legal relevance. For instance, witnesses frequently identified other participants using general expressions like ‘another man’, ‘some people’ ‘that time’ ‘a car’ which is the normal practice in casual conversation. But given that courtroom discourse deals with matters in dispute, identification of participants in the dispute has to be done clearly. Consider example 1.5 that follows.

Example 1.5: DS2Case07DE

W: Yes. I was on patrol duty with Corporal _____when we received **[information-]**

P: **[At what time]** and where were you on patrol?

W: We were on patrol around ____ area and it was about 6:30 pm your Honour.

P: You received information. Was it through radio call or what?

W: Yes it was a radio call from the officer in charge at the station. He informed us that it had been reported that some five suspicious looking men had been seen at the T__ petrol station in B_____. They were in a car and **[they-]**

P: **[What]** kind of a car?

In this example the violation of the witness’s turn occurs twice. In the first instance, the witness is required to provide details of time and place where he was on patrol and in the second instance, having mentioned a car, the witness is required to give details identifying the specific car.

In example 2.5 that follows, violation of turn is most likely necessitated by the need for the witness to present information systematically. She has stated that the accused persons were armed with an assortment of weapons and the prosecutor wants her to specify which weapon each of the three accused persons had.

Example 2.5: DS2Case08DE

W1: Walikuwa wamebeba mapanga na marungu [na-]
They were carrying machetes and clubs and-

P: [Hebu] twende pole pole. Mshatakiwa wa kwanza alikuwa na nini?
Let us proceed slowly. The first accused had what?

As the examples 1.5 and 2.5 show, the violation of witness turn in direct examination need not be seen as a hostile tactic on the part of the direct examiner but rather a supportive one. The testimony of a witness is meant for the court record which forms the basis of decisions to be made; therefore, vague or general identifications of people who were involved in the events under dispute would be of no use to the fact finders. The same applies for dates and time when events took place as well as institutions such as police stations and hospitals where initial reports were made or treatment sought. From the data of the present study, it seems more plausible to argue that the examiners in the direct examination phase of trials mainly interrupt the turns of the witnesses to ensure they give information in a manner that is acceptable in this setting.

5.3.0 Idea Targeted Pragmatic Strategies by Prosecutors and Counsel in Direct Examination

Unlike the person targeted pragmatic strategies (cf. 5.2), several idea targeted pragmatic strategies were observed in use by both counsel and police prosecutors in examination-in-chief. The various types of these strategies and their use is exemplified in the sub-sections that follow.

5.3.1 'So' Summarisers

The frequent use of the 'so' summarisers by both prosecutors and counsel during examination in chief was very noticeable in the data. The use of 'so' summarisers

in the sample for this study seemed to suggest that even in direct examination, the examiner seeks to ensure that witness testimony conforms to a particular version of facts. 'So' summarisers, as noted by Johnson (2002), recapitulate a witness's testimony in a way that the witness is expected to agree with the questioner's summary. It was also observed in the data that the 'so' summarisers, in making reference to a witness's immediate response to a question, could be used to introduce not just another new question but also the examiner's evaluations and conclusions about what the witness has said. By confirming such evaluations and conclusions, the witness is reduced to the level of just filling in details that fit the version of reality the examiner wishes to portray as example 3.5 below shows.

Example 3.5: DS2Case01DE

W1: Halafu nikakaa hapo nikaanza kubonga na huyo dame. Halafu ndio O____ akakuja analeta fujo eti kwani ni maneno gani tunaongea hiyo muda yote.
Then I sat there and started talking to that lady. Then that's when O_____ came and brought fracas, that what were we talking about for all that time?

P: Unasema alikuja. Kwani alikuwa ametoka akawaacha?
You are saying he came. Is it that he had gone out and left the two of you?

W1: Hapana hakuwa ametoka. Ni vile yaani mimi nilikaa hii side hivi {((demonstrating))} huyo dame hapa na O____ alikuwa upande ile. Sasa dame ndiye alikuwa katikati yetu. Sasa O ____ alisimama kutoka ile side yake akacome sasa hii side mahali niko. Mimi nikasimama akanishika shati
No he had not left. It is that I sat on this side and that girl here and O____ was that side. Now the girl is the one who was between us. Now O____ stood up from his side and came to this side where I was. I stood up and he grabbed me by my shirt.

P: Kwa hivyo ugomvi ulikuwa alisema unataka kumnyang'anya msichana yake?
So the quarrel was he said you wanted to snatch his girl from him?

W1: Hivyo ndivyo yeye alifikiria.
That is what he thought.

In the foregoing exchange, the prosecutor uses the 'so' prefaced declarative question to arrive at the motive behind the assault that is the subject of the trial. In the 'so' prefaced declarative question the prosecutor concludes that the fight erupted because the accused said the witness, who is also the complainant, wanted

to steal his girl in a bar. In response, the witness agrees with the prosecutor's conclusion, and thus, the blame for the fight is wholly laid on the accused person.

Examiners can also use 'so' summarisers to link different parts of a witness's testimony as example 4.5 illustrates.

Example 4.5: DS2Case11DE
P: [Slowly.] That call was from which number?
W: It was now from this number 0720___.
P: So the same number that sent you the money?

The last question seeks to make what could be a crucial link between the call the witness has just said he received from a given mobile telephone number to earlier testimony that the witness had received money sent through the same number. Apart from making links within testimony, 'so' summarisers were also observed being used to achieve emphasis of facts or events as shown in example 5.5.

Example 5.5: DS1Case07DE
C2: What were you dealing with? What were your duties as the Safety Supervisor?
W2: To ensure that all safety procedures are followed by all the workers and that there is a process where each and every worker who is injured goes through to get the necessary help.
C2: So if somebody was injured they would report to you? You were responsible.

In example 5.5, the counsel's aim appears to be achieving emphasis of the fact that the company for which the witness works has someone in charge of the safety of workers and who is informed anytime an accident occurs. This could be important for the defence in this civil suit as the plaintiff seeks to compel the company to compensate a worker who claims he was injured while on duty and

one of the arguments by the defence is that no such accident occurred as they do not have it in their records.

5.3.2 Reformulation

Apart from the use of 'so' summarisers, witness compliance to a summarized view of the examiner was also achieved through reformulation as illustrated below in examples 6.5 and 7.5.

Example 6.5: DS2Case02DE
C1: In other words you are not employed?
W1: Yes your Honour.

Example 7.5: DS2Case09DE
P: **Umesema mlienda polisi kuandika statement?**
You have said you went to the police to record statement?
W: Polisi tulienda- kwanza saa hio walipigiwa simu wakakuja. Then tulienda kuandika statement, tukaenda kuchukua [watchman-]
To the police we went- first at that time they were called and they came. Then we went to record statement, we went to take the watchman-

In both examples 6.5 and 7.5 reformulation of what the witness has stated is signaled by the words 'in other words' and 'you have said'. They show that the examiner is just restating the testimony of the witness. But as example 7.5 shows, a reformulation can be interpreted as an invitation to supply more information.

5.3.3 Answering Own Question

The counsel as direct examiners were also observed making use the pragmatic tactic of answering own questions and then, at times, seeks a witness's confirmation of the answer as example 8.5 shows.

Example 8.5: DS1Case02DE
C1: Angalia {((handing the witness papers))} hii makaratasi. Hii karatasi ni ya wapi?

Look at these papers. Where does this paper come from?
W: Ni ya N____
It is from N___
C1: Ni ya N____ Provincial General Hospital.
It is from N____ Provincial General Hospital.
Hiyo ni nini? Inaitwa discharge summary.
What is that? It is called discharge summary.
Your Honour, to be marked as exhibit number one.

In example 8.5, the counsel is taking his client through the process of producing documents to the court. Though the counsel hands the witness some documents with the instruction to 'look at them', the lawyer is the one who answers his question on the identity of a given document by providing the name for it. This could have been motivated by the lawyer's knowledge of his client's proficiency in the English language or his literacy given that official documents are mainly written in English which could be an obstacle to the witness in identifying documents. In addition, the lawyer could have been trying to save the presiding magistrate and the counsel for the defence time in locating copies of the same document in their respective files, as well as the court clerk who also keeps a record of the exhibits produced before the court and their official marking. It is certainly to the advantage of his client if the documents he wishes to produce are marked correctly.

5.3.4 Interruption

Another idea targeted pragmatic strategy observed in direct examination was interruption. Interruption occurs where the examiner violates the witness's speaking turn, and from the data, it emerged that such violation was mostly

motivated by different factors as explained with reference to examples 9.5 – 11.5 that follow.

Example 9.5: DS2Case02DE
W1: We tried to escort him out your **[Honour-]**
P: **[No, no.]** Can you tell us exactly what you now heard.

Example 10.5: DS2Case07DE
W1: Kwa hiyo siku nillikuwa nafanya kazi kwa machine harafu kukawa na **[explosion-]**
On that day I was working at the machine then there was an explosion-
C1: **[Unajua kuna]** kesi mbili kuna kesi moja hiyo ambayo uliumia uso .Sasa hii kesi tunazungumzia ni ile ambayo uliumia mguu.
You know there are two cases one that one where you were hurt on the face. Now this case we are talking about is the one your leg was hurt.

Example 11.5: DS2Case11DE
P: [Kwa] hivyo hiyo panga ndio ilimzuia kukundunga.=
So that machete is what prevented him from stabbing you?
W: =Ee na hiyo siku si mara ya kwanza. **[Ali-]**
Ee and that is not the first time. He-
P: **[Your Honour]** I am through with examination.

In example 9.5, the prosecutor interrupts and rejects the witness's response explicitly and then specifies the information he is seeking. Thus the interruption of turn could have been to show the witness that the information he is giving is not what is needed. This also might have been the reason for the interruption in example 10.5 as the witness's response relates to another matter rather than the one before the court. This emerges as through the counsel's clarification after the interruption. Lastly in example 11.5, the prosecutor interrupts the witness and ends the direct examination cutting short the witness' attempt to launch into an explanation of his assertion that it was not the first time the accused had threatened him. But the prosecutor probably decides that whatever the witness has to say about previous actions by the accused is not pertinent to the case at hand

and thus ends the examination. In any case, the prosecutor has signaled she was interested with a minimal response given her use of a ‘so’ prefaced declarative question.

5.3.5 Evaluative Third Turns

The use of evaluative third turns was still another idea targeted pragmatic strategy observed in the data. The evaluative third turn is identified by Sinclair and Coulthard (1975) in their data on classroom discourse where they identify a three turn structure of the elicitation exchange. The teacher, the powerful discourse participant in the classroom, has the first turn which is usually a question and this is followed by the response from the pupil to make the second turn. But given the pedagogical goals of classroom discourse, a third turn by the teacher is used to give feedback to the pupil on whether their response is correct. Courtroom discourse proceeds in much the same manner with regard to the elicitation and response acts by the examiner or magistrate and the witness respectively.

In direct examination, words like. ‘right’, ‘yes’ and ‘good’ uttered with a falling intonation were found to be used to give positive acknowledgement to contributions by witnesses as example 12.5(a)-(b) shows. The same words, as will be discussed in chapter eight, uttered with a rising intonation achieve the discourse function of encouraging a witness to go on with their testimony.

Example 12.5: DS1Case01DE
(a) C1: So it’s like three hundred members and their families?

W: Ee.
C1: **Right.** Ee::: na area hiyo kuna stima ya power?
Ee::: and in that area there is electricity?

(b) C1: Na ripoti ndiyo {((giving the witness papers))} hii, medical examination report. Iliandikwa tarehe gani?
And the report is this one, medical examination report. When was it written?
W: Tarehe kumi na nne October 2008.
14th October, 2008.
C1: **Okay.** This will be marked number seven for identification. The doctor will come on another day to produce it your Honour.
Na daktari pia alikupatia resiti ya kutengeneza hiyo ripoti?
And the doctor also gave you a receipt for preparing the report?

In example 12.5(a), the counsel uses a question prefaced by a 'so' summariser to get the witness to agree with his estimation of the number of families benefiting from the given irrigation project. The witness concurs and this is positively acknowledged by the counsel with the word 'right.' In example 12.5(b) 'okay' is used to show the witness has given the correct or expected date and counsel turns to address the court about the marking of the exhibit before coming back to the witness on a different matter.

However, it was observed that not all third evaluative parts in direct examination were used to give positive acknowledgement to the witness as example 13.5 shows.

Example 13.5: DS1Case01DE
P: What did you do when you found him?
W1: We tried to escort him out your [Honour-]
P: **[No, no.]** Can you tell us exactly what you now heard him saying in the office?

In the example (13.5) the prosecutor rejects the response of his witness though it seems that the witness was responding to the question posed about what he did when he found the accused. The prosecutor, it seems, wanted a response on what the witness heard the accused say, much as this in not what he had initially asked the witness.

Another instance of negative evaluation in direct examination is seen in example 14.5(a)-(b) below.

Example 14.5: DS1Case08DE

(a) W3: Nilikuwa nimenunua vitu yangu naenda nyumbani. Nikapitia kwa mzee mwingine anaitwa baba F___, njiani [nikakuta-]
I had made my purchase and going home. I passed at the home of another man the father to F___, on the way I found-

P: [**Sasa Baba**] **F___ ni nani? Tuambie mambo yenye imetuleta hapa kortini**. Nini ulishuhudia siku hiyo kuhusiana nahii kesi?
***Now who is the father to F___? Tell us about the issues that have brought us to court**. What did you witness on that day that is connected to this case?*

(b) P: Walikuwa na nini?
What were they having?

W3: Sasa kulikuwa na makelele [mengi hapo-]
Now there was a lot of noise there-

P: [**Jibu vile**] **nakuuliza**. Hawa watatu umesemawalikuwa na vita walikuwa na silaha gani?
***Answer what I am asking you**. These three you said were having fracas had which weapons?*

In the exchange, example in 14.5(a), the prosecutor seems to be irritated by the responses the witness is giving leading to the negative evaluation in form of a command for the witness to restrict herself to the things that have brought the parties to court. This is preceded by the question, 'Now who is the father to F___?' in reaction to what the witness has just said, but the question in this

context is clearly rhetorical and is meant to show the witness's preceding contribution is deemed irrelevant. In 14.5(b), the prosecutor interrupts the same witness with a directive to answer what she is being asked which, again, is a negative evaluation of the witness's response. The evaluation is followed by a repeat of the question earlier posed.

5.4.0 Person Targeted Pragmatic Strategies by Counsel and Lay Litigants in Cross Examination

Cross examination is a highly antagonistic phase of trial and the range of pragmatic strategies in the study sample as well as their use attests to this. The sub-sections that follow show the use of person targeted pragmatic strategies in cross examination.

5.4.1 Contrast

It was observed in the data that the most favoured person targeted strategy by both counsel and the lay litigants was the use of contrast. As a pragmatic strategy, contrast could be used to achieve many ends. To start with, through contrast, the examiner in example 15.5 seeks to either show that the portrayal of events and claims by a witness go against what is logically expected in such a situation.

Example 15.5: DS2Case12CE

Ac1: **Kama mlalamishi unasema wale, mbwa waliweza kukuuma wewe na since morning kuna watu wengi kwa hiyo barabara kwa nini haukuonekana na wengine?**
If you the complainant you are saying the dogs bit you and since there are many people in the morning on that road why weren't you seen by others?

W: I said mimi nilikuwa naenda kazini. Nilikuwa peke yangu, sikuwa na watu wengine.

I said I was going to work. I was alone I was not with other people.

Ac1: **Si ungeonekana na watu wale wako kwa maduka hapo?**
Would you not have been seen by people who have shops there?

W: Hakuna duka ilikuwa imefunguliwa wakati huo.
There was no shop that was open at that time.

Ac1: **Duka huwa zinafunguliwa 6:00 am tena 6 ndio watu wanaenda kazini ambao wanatembea na magari wengine na mguu. Kulikosa aje hata mtu mmoja ambaye ange kuona na umesema hapa vile ulipiga nduru?**
Shops open at 6:00 am and six is when people go to work whereby they travel in cars and others on foot. How could there have lacked even one person to see you and you have said the way you screamed?

W: Mimi sijui wakati ule watu wengine wanaenda kazi na kufungua nduka. Mimi najua wakati huo ndio nilikuwa napita kwa barabara.
I don't know the time other people go to work and open shops. I know that was the time I was passing on the road.

The accused person, as lay cross examiner in example 15.5 above, takes issue with the witness's claim that the defendant's dogs attacked him at six in the morning as he went to work, and despite his screams for help, no one came to his aid. To the accused, this presentation of affairs is not credible because to him, as he shows in the first question, there are many people who use the road early in the morning who would have witnessed what had transpired. The second question still emphasizes that owners of nearby shops would have witnessed the incident and the third recapitulates the first two; drawing a contrast between the witness's claims that he shouted for help on a busy road at a time when many people are headed to work, and yet there was no one else who saw what happened.

In example 16.5 below, which is drawn from the same case as example 15.5, the same examiner uses contrast to impute malicious intent on the witness for bringing his complaint to court rather than using other dispute resolution mechanisms.

Example 16.5: DS2Case12CE

Ac1: **Wakati uliporudi nyumbani- katika eneo tuko kuna wazee wa eneo ambao unawajua, na kuna Chief, na Headman. Tena kuna majirani wanatoka hapo kwako kama huyo jirani yako umesema alikupigia simu. Na katika manyumba yale yote hapo kuna wazee. Kama hakuna hila yoyote ulikuwa nayo kwa nini haukutuma hata mzee yeyote kwangu nyumbani anielezee?**
When you went back home- in that area there are village elders that you know, and there is the Chief, and Headman, also there are neighbours who come from near your home like that neighbour of yours you have said called you. And in all those homes there are elders. If you had no ill motive why didn't you send me even an elder to inform me?

W: Wakati niliporudi nyumbani nilikuwa na uchungu na mkono ulikuwa umefura. Nikakuta M___ kwangu na ndio nimeelezea, ndiye aliniona immediately after, akapanga vile nitaenda [hospitali-]
When I went back home I was in pain and the arm was swollen. I found ___ at my home that's what I have explained and he is the one who saw mw immediately after, he arranged how I would be taken to hospital-

Ac1: **[Kijana yako] alikupeleka hospitali. Huyu naye, kwa nini hukumtuma aje kwangu?**
Your son took you to hospital. Why didn't you send this one to come to my home?

W: Sasa kwanza nilishughulikia kwenda hospitali kwa vile- sikuwa nashughulikia wewe kwanza.
I first concerned myself with going to hospital because- I did not bother myself with you first.

Ac1: **Na kwa nini wakati unasema kitendo hiki kilitendeka mimi ni jirani yako hapo kuna majirani wengi wako, kwa nini hukunitumania?**
And why when you say this incident happened and I am your neighbour there and there are other neighbours, why did you not send for me?

W: Sasa mimi ndio niliumia sikuwa na haja nikutumanie. Niliona kwanza nijishughulikie kwa vile nillikuwa na uchungu.
Now I am the one who got injured I did not have the need to send for you. I saw I should first look after myself as I was in pain.

Ac1: **Ndio uchungu ulikuwa nayo, lakini wakati ulirudi kwa nini hujatuma hata yeyote kusema hata kama ni Chief?**
Yes you were in pain, but when you came back why have you not sent anyone to report even if it is the Chief?

W: Mimi nilienda kwa polisi kwa maana hapo ndio sheria iko. Na hao mbwa wako watu wote wanalalamika, so nikajua nikikuja kwako, hakuna kitu ya maana tutaongea, mimi nilienda kushtaki mahali nashtahili kushtaki.
I went to the police because that is where the government is. And there are many people complaining about your dogs, so I knew if I came to you there was nothing meaningful we would talk about, I went to file accusations where I am supposed to.

Ac1: **Nani ako karibu na wewe: polisi, chifu ama wazee wa kijiji?**
Who is closer to you: police, chief or village elders?

The exchange in example 16.5 above could be of interest to legal practitioners. The witness is no longer disputing the incident involving the dogs happened but is taking issue with the way the victim handled the incident. To him there are village

elders, neighbours, the headman and the chief whom the witness could have used to inform him of what had transpired. According to the lay examiner, ill motive on the side of the witness is proved by the fact that he chose to by-pass all these alternatives and take the matter to court. The arguments by the accused many not have any validity in law but as Conley and O'Barr (2005) point out, strengthening of informal dispute resolution systems, such as small claims courts, or in the local case the establishment of elder courts, could supplement the formal dispute resolution mechanisms and strengthen the social bonds in society.

The next two examples, 17.5 and 18.5, show counsel using the person targeted pragmatic strategy of contrast and the strategy of nailing down (cf. 5.4.2) to shift blame for the eruption of a fight in a bar from the two accused persons to the witness, who happens to be the one that was beaten up.

Example 17.5: DS1Case04CE

C: **Now, when you joined P__ and W__ at their table were they shouting screaming or anything like that?**
W: No.
C: So when you went upstairs, they were seated quietly enjoying their drinks, isn't it?
W: They were talking.
C: But the two dangerous women were not shouting or fighting, right?
W: They were talking.
C: Yes, they were talking quietly until you joined them. You said when you came upstairs fighting started, right?
W: They attacked me
C: They attacked you? **Did they attack other people? Were there other people in the pub?**
W: They [are-]
C: [Answer] my question. Were there other people in the club on the second floor?
W: Yes [there-]
C: [Did they] attack them too?
W: They attacked me [because-]
C: [Yes or no.] Did P__ and W__ attack the other patrons in the club? Yes or no?
W: No.
C: Good.

The witness's claim, in example 17.5, that she was attacked by the two accused persons is challenged through the tactics of nailing down and contrast. The lawyer recycles the issue of what the two accused persons were doing when the witness (the complainant) joined them on the second floor of the given establishment with an aim to establishing that prior to the witness joining them the accused persons were not showing any violent behaviour. Contrast is established at multiple levels starting with the behaviour of the accused persons when the witness joined them. The counsel insists the accused persons were 'talking', 'talking quietly' and 'enjoying their drinks'. He then shows how this is a contrast to the way the witness had earlier characterized the accused persons as 'dangerous'. The use of 'But the two dangerous women were not shouting or fighting, right?' is not just ironic but contrastive. Then he draws contrast in the fact that though there were other patrons in the facility, the accused persons did not attack them and in fact there was not fighting until the witness came upstairs to where the accused persons were. The overall picture painted through these contrasts is that the witness is not as innocent as she would want the court to believe, and, in fact, she instigated the violence that night.

Example 18.5, drawn from an exchange earlier in the cross examination in the case from which example 17.5 is drawn, shows the counsel's attempt through contrast to portray the witness as the one who was aggressor during the fight rather than just a passive victim.

Example 18.5: DS1Case04CE

C: Let me come back to the bar. You said that P__ and W___ are chaotic. You have seen them fight, you have been in a fight with them before, so you knew they are dangerous women, right?
W: Yes, more than dangerous in fact. ((Laughter))
C: **Yet, you had no problem joining two chaotic and dangerous women at a bar?**
W: I was not joining them, [I-]
C: **[It is] your testimony that you went to second floor and joined them where they were?**
W: I said I was invited by E__. I was joining E___ and Mr. _____. They are my friends.
C: **Did P__ and W__ come to where you were seated?**
W: E___ asked [me-]
C: **[Answer my] question. Did they come to your table?**
W: No. [I said-]
C: **[In fact] you have testified that you left your table on the first floor of the bar and went all the way upstairs to where they were seated, to their table, isn't that your testimony?**
W: I was invited by E___. I joined E___ and Mr. ____
C: **Yes, where you found women whom you have told us you knew to be dangerous, isn't it?**
W: Yes=
C: =**Did you leave?**
W: Why should I leave? I was not bothered by them.

The counsel shows that it is the witness who went 'all the way upstairs' to join 'two chaotic and dangerous women' rather than they coming to her table. And even when she found them there, she chose not to leave. The overall effect achieved is to portray the witness as a troublemaker who went looking for a fight and when she found it, and got the worse of it, she sued.

5.4.2 Nailing Down

Another person targeted pragmatic strategy observed in the data was nailing down which, as already illustrated in example 17.5, is where the examiner extracts a desired response from the witness through a variety of ways which mainly include recycling an issue through repetition or reformulation. These combined tactics put pressure on the witness to give the particular response that the examiner is

seeking. The use of this strategy was found once in cross examination by the pro se litigants and is illustrated in example 19.5.

Example 19.5: DS2Case02CE

Ac2: **Ni hatia mtu kuwa na kufuli na funguo?**
Is it a crime for somebody to have padlocks and keys?
W: Ulishikwa na kufuli tano.
You were arrested with five padlocks.
Ac2: **Nyumba yangu na workshop unajua ziko na milango mingapi?**
Do you know the number of doors in my house and in my workshop?
W: Sijui.
I don't know.
Ac2: Nimesikia ukitaja mambo ya master key. **Hebu eleza hiyo ni nini?**
I have heard you talk of a master key. ***Can you explain what that is?***
W: Sihizo ndio mnatumia kufungua kufuli za wenyewe.
Aren't those the ones you use to open other peoples padlocks.
Ac2: **Kwa hivyo inaweza kufungua kufuli aina zote?**
So it opens all types of padlocks?
W: Eeh.
Ac2: **Sasa hizo hapa unajua ni master key na mna gani? Umejaribu kufungua padlock nazo?**
Now those ones there how do you know they are master keys? Have you tried opening a padlock with them.
W: Polisi walijaribu kufungua hizi kufuli lakini hazifungui. Basi wakauliza unafanya nini nazo zote.
The police tried to open with them there padlocks and they don't open. Then they wondered what you were doing with all of them.
Ac2: **Na kama ni master key kwa nini zikashidwa kufungua?**
And if they are master keys, why didn't they open?
W: ….
Ac2: **Eeh? Kwa nini zikashindwa kufungua?**
Eeh? Why were they unable to open?

The accused person is cross examining the witness on the exhibits she has identified during direct examination and his questions narrow down on keys and padlocks. Through repetition and contrast, the accused is able to show there is no link between the keys and padlocks he was arrested with and the break-in that occurred at the witness's premises. To start with, the witness does not know the number of doors at the premises of the accused, and so the fact that he had five padlocks cannot be proof of wrongdoing. The witness is then asked to define her use of the expression 'master key' a definition that gets her in trouble when she

admits the master keys could not open any of the padlocks the police tried them on. This form of questioning could diminish the credibility of the witness.

The same strategy of nailing down of a witness is seen in example 20.5, but in this case it is being used by a lawyer in cross examining a prosecution witness. The effect is still the same: the witness is forced to make concessions which may take away some weight from his testimony in examination-in-chief.

Example 20.5: DS1Case05CE

C: Now in that forest where you went to collect a gun- and you said a footpath passes there, **would you find say a paper bag thrown there?**
W: Yes.
C: **So you can even find a toy car, the ones children play with, right?**
W: Children don't play there. That forest is dangerous and not many people pass there.
C: Why is it dangerous? Are there wild animals?
W: No. It is used by criminals and those who sell drugs.
C: **Now do these criminals go there at night or during the day?**
W: At all time.
C: At all times. **So that night that you left what you want to call evidence there, did these criminals and drug peddlers go there?**
W: I don't know.
C: **Is it possible that they went there?**
W: ….
C: **You have to answer my question officer.**
Is it possible?
W: I don't know, I can't tell.
C: **Yes. You can't tell because you were not there guarding evidence.** …

As with example 19.5, this cross examination by the counsel is about the link between a piece of evidence, a toy-gun, and the accused persons. The context being that the witness, the arresting police officer, had talked of a chase in a bush during which one of the accused persons had thrown 'a gun' into the bushes. As it was dark, the officers had escorted the two accused persons and it was not until the morning of the following day that they had gone to recover the alleged gun. Through repeated questioning on the issue, the counsel shows that other people

could have gone to the said bush and left anything. The witness is forced to admit that he cannot be certain no one went to the said bush that night as no officer remained there to guard evidence. The nailing down is achieved through repetition and use of 'so' summarisers.

5.4.3 Status Manipulation

The lay litigants as cross examiners were also found to favour the use of status manipulation as a person targeted pragmatic strategy. The use of this strategy was observed to include labeling the prosecution witness as liars, thus reducing their status as in example 21.5.

Example 21.5: DS2Case01CE
Ac: [Si] unaona uongo yako? Haukuwaoana na ulikuwa hapo?
Do you not see your lies? *You didn't see them and you were there?*

The statement highlighted acts as a label showing the witness to be a liar and hence his testimony unbelievable.

The other attempt to manipulate status is the use of the third person 'the suspect who is before the court' while referring to the self. Accused persons as examiners feel the need to distance themselves from the alleged unlawful acts by labeling themselves as 'suspects' as a way of trying not to be seen as accepting the charges or to emphasize the fact of their innocence until proven guilty. But as the example 22.5 shows, the use of the third person to refer to self can lead to confusion or demands for clarification from the witness.

Example 22.5: DS2Case01CE

Ac1: Kwa hivyo mshukiwa aliye mbele ya korti haukumwona akishikwa na polisi?
*So you never saw **the suspect before court** being arrested by the police?*

W: Nani huyo?
Who is that?

Ac1: Mshukiwa aliye mbele ya korti?
The suspect before the court?

W: Wewe ama nani?
You or who?

Ac1: Mimi uliniona nikiwa na polisi?
Did you see me being arrested by the police?

The accused seems not to want to impact on the witness's memory by placing himself at the scene where several people were arrested but the third person reference confuses the witness who seeks to know whether the referent in the question is the accused person. This forces the accused to reformulate the question as 'Did you see me being arrested by the police?' which probably places him where he was all along avoiding to place himself.

An interesting attempt at status manipulation is seen example 23.5 below where an accused person tries to distance himself from a woman the investigating officer has labeled as his wife by referring to her using distancing expression like 'that woman'. This strategy seems not to work and the message the accused is attempting to convey is not heard because of the quality of interpretation.

Example 23.5: DS2Case10CE

W: Tulikuwa tumepata habari na tulipofika huko tulipata **bibi yako**.
*We had information and when we got there we found **your wife**.*

Ac: Ũcio ũrauga mwakorire niĩ ndimũĩ.
That woman you are saying you found, I don't know her.

Pupil: Huyo mama **si bibi yake.**
*That woman is **not his wife**.*

W: **Ni bibi yako**. **Alisema ni bibi yako** na hata alikuwa na mtoto wako. Huwezi kataa bibi yako.
*It is **your wife**. She **said she is your wife** and she even had your child. You cannot deny your wife.*

Ac: **Nĩ mũtumia wakwa atĩa? Amwĩrire etagwo atĩa?**

How is she my wife? What did she tell you her name is?

Pupil: Anaitwa nani?
What's her name?

W: Anaitwa A___.
She is called A__.

Ac: A___ waũ?
A___ of who?

Pupil: Nahiyo jina ingine?
And that other name?

W: Sijui hiyo ingine. Lakini ni bibi yako na hapo ni kwenu.
I don't know the other name. However she is your wife and that is your home.

Ac: Niĩ ndĩroiga ti mũtumia wakwa. Rĩtwa rĩũ rĩngĩ rĩroiga nĩ waũ?
Am not saying she is not my wife. As per her third name what is her marital status?

Pupil: Yeye si bibi yangu.
She is not my wife.

M: Uliza swali ingine.
Ask another question.

Ac: **Korwo nĩ mũtumia wakwa rĩ, marĩtwa make nĩmangĩhanaine na makwa.**
If she is my wife, her name would be like mine.

Pupil: …

M: What's the question?

Pupil: Anasema huyo sio bibi yake.
He is saying that is not his wife.

M: Move on. Uliza swali ingine kama uko nayo.
Ask another question if you have one.

Ac: **Mũtumia ũcio** nĩ mũthitangwo cirainĩ ũyũ?
*Is **that woman** an accused in this case?*

Pupil: **Huyo bibi yake** ni mshtakiwa?
*Is **wife of his** an accused?*

W: Hatukumshika. Yeye alisema hizi vitu zote ni zako.
We did not arrest her. She said all these things are yours.

Ac: Mwagire gũthitanga **mũtumia ũcio** nĩkĩ na nĩwe mwakorire na indo ici?
*Why didn't you charge **that woman** and she is the one you found with these things?*

Pupil: Kwa nini haukushtaki bibi yake nayeye ndiye alikuwa na hizi vitu?
*Why didn't you charge **his wife** and she is the one you found with these things?*

In his cross examination, the accused consistently refers to the woman in question as 'that woman' but a pupil (a student lawyer under internship) who has been asked by the presiding magistrate to interpret for the accused substitutes the expression for 'my wife'. The effect of this is that the court gets 'to hear' the accused refer to the woman as 'my wife' and this could partly explain why the magistrate does not seem to appreciate the point the accused person is raising. The point being a woman was arrested with stolen goods at a homestead where the

accused alleges is not his home. The accused was arrested later at a different place with nothing incriminating on him. The police allege the stolen goods can be traced to the accused because the 'wife' said so, but the wife is neither a co-accused nor is she a witness in the case. In addition, she does not have, as a surname, the name of the accused.

5.4.4 False Friend Strategy

Lawyers also used the false friend strategy in cross examination, but this strategy was not found in use by the pro se litigants. The false friend strategy involves coming to the aid of the witness, say in recollecting something, only to use it against the witness. It can also take the form of suggesting the right answer, where a witness is struggling to find the correct word(s) to use, as example 24.5 shows, which is then used to discredit the witness.

Example 24.5: DS1Case04CE

C: [Good.] Now could you please explain that discrepancy to the court?
W2: You see Mr. _____ if you are summoned to KACA and you are being interrogated, then you have to record a statement you are not very comfortable. **You are- you are er:::**
C: Under duress?
W2: Yes, under duress and you can make mistakes.
C: Thank you for that. For admitting that you made this statement under duress. [Now-]
W2: [No no] not really under duress. You are uncomfortable.
C: Yes call it what you want. The thing is you end up recording things that are not true.

The cross examining counsel comes to the 'rescue' of the witness by suggesting that the right expression he is struggling to get to describe his state as he recorded a statement is 'under duress', and the witness unwittingly takes up the expression. The lawyer then picks on the expression showing it to be an admission that the

witness never made the statement of his free will. Attempts by the witness to retract the expression are too late as counsel has already made his conclusions and is moving on.

5.4.5 Exploitation of Bias

Exploitation of bias is another person targeted pragmatic strategy that was observed in use by counsel but not the lay examiner. Its use is seen in the example 25.5 where the lawyer's insistence that the premises where the assault of the trial took place is 'a bar' and it even has 'lodgings' upstairs are attempts to characterize the witness as a person of questionable morals. Such a degradation can have the effect of making victims of a crime seem worthy of their plight which is seen as some form of poetic justice for being who they have chosen to be. This particular exchange is also in light of the lawyer's questions on how old the witness is and whether she has a family. The bias in the question invites a rare objection from the prosecutor which the magistrate sustains.

Example 25.5: DS1Case10CE

C: Now your last fight with P___ and W__ you said was at G__. **What kind of place is G_____?**
W: What kind?
C: It is a bar, isn't it?
W: It has everything. They sell food, meat and even beer. There is a restaurant.
C: There are also rooms, a lodging upstairs, isn't it?
W: I don't know.
P: Your Honour, the prosecutor wants to embarrass the witness.
C: I am within my rights.
M: Move on Mr.___. This court will however not entertain intimidation of any kind.

5.4.6 Distorting Modality

Both counsel and lay litigants were also observed to use the person targeted pragmatic strategy of distorting the modality with which witnesses make their utterance. This was mostly done by demanding exactitude in terms of time or other aspects of a witness's testimony where the witness may not be in a position to give it. The goal usually is to bring out inconsistencies in a witness's testimony or mismatch between the testimonies of a one witness and another. Examples 26.5 and 27.5 illustrate this.

Example 26.5: DS1Case06CE
C: Very brave of you. Now what time was it?
W: Around 6 p.m.
C: You told us earlier it was **6.30 p.m.**?
W: It was around that time.
C: Around what time? **6 or 6.30 p.m.**?
W: Between six and six thirty.
C: So now **you want to change your testimony or you are not sure**? Do you want your testimony to be read to you? **Was it 6 or 6.30**?
W: Around 6.30, not exactly.
C: 6.30 p.m. So it was dark?

Example 27.5: DS1Case06CE
C: The first time you heard noise or commotion in the OCS T__ office what time was it?
W1: I can't remember exactly your Honour
C: But you can recall whether it was after **12 or before 12**?
W1: After 12 your Honour.
C: After 12?
W1: Yes your Honour
C: **After 12 can be around 1, 2, 3, 4, 5 or 6**.
W1: Around 2.00 pm.
C: **Now around 2 can be after 2 pm or before 2 pm**.
W1: After 2 your Honour.
C: After 2 pm.
W1: Yes.

In example 26.5, counsel takes the fact that the witness wants to modulate his response concerning the time of the incident as evidence that he is not sure of his testimony or he wants to change his testimony. This could be damaging to the

witness's credibility. In example 27.5, the counsel insist on the witness giving the precise time when a given incident happened even though it is obvious from his replies that the witness would rather give an estimated period of time rather than specific time.

5.5.0 Idea Targeted Pragmatic Strategies by Counsel and Lay Litigants in Cross Examination

The general observation was that lawyers used more of the idea targeted strategies as compared to lay litigants. Examples that show the use of these strategies by both groups of examiners are presented in the following sub-sections.

5.5.1 Interruption

The idea targeted pragmatic strategy most commonly observed being used by counsel was interruption. As explained (cf. 5.1) this is a strategy that is used when the examiner does not want a witness to finish saying something that goes against what the counsel is trying to portray as illustrated by example 28.5.

Example 28.5: DS1Case02CE

C2: Na Bw. __the first time ulieleza kwamba kutoka 1998 ulianza kazi yako ya kampuni. Na hiyo ni ukweli. Sasa nataka utwambie nikweli ama si kweli kwamba kabla ya tarehe ya ajali, ulikuwa umefanya kile tunaita resignation? Na hapa nakuonyesha barua {((giving witness a paper))} useme kama ni yako.
And Mr. __ the first time you explained that from 1998 you started your work with the company. And that is true. Now I want you to tell us is it true or not true that before date of the accident, you had done what we call resignation? And here I want to show you a letter you say whether it is yours.

W1: Hii barua {((scrutinizing paper))} nimeitambua. **[Wacha nieleze-]**
I recognize this letter. Let me explain-

C2: **[Ngoja.]** Unakubali barua ni yako. Dated?

Wait. You accept the letter is yours. Dated?
W1: 18th ___2008.
C2: Uliandika hii barua kusema nini?
You wrote this letter to say what?
W1: Kusema nimeresign. Hii barua **[niliandika-]**
To say I have resigned. I wrote-
C2: **[Kwa sababu]** gani?
Because of what reason?
W1: Hii **[barua-]**
This letter-
C2: **[Jibu vile]** na kuuliza. Si hii barua ni yako umesema uliandika kuresign?
Answer what I am asking you. Is this not your letter you have said you wrote to resign?
W1: Ndio.
Yes.
C1: Sababu gani ulikuwa unaresign?
For what reason were you resigning?
W1: Kwa sababu ile imeandikwa hapa ndani.
Because of the reason written in here.
C2: Na nisababu gani umeandika hapo?
And which reason have you written there?
W1: Weak health status
C2: Na wewe ndiye uliandika na ukasign? Ulikuwa unasema nini kuhusu weak health status?
And you are the one who has written and signed. What were you saying about weak health status?
W1: Hapa- hii barua wacha **[nikwambie-]**
Here- this letter let me tell you-
C2: **[Webu tusomee]** vile uliandika. Soma {((pointing at something on the paper the witness is holding))} hapa.
Read for us what you wrote. Read here.

In this example (28.5), the defence lawyer in the civil suit in question has just introduced a resignation letter addressed to the defendant (the company for which the plaintiff worked) that was allegedly written by the plaintiff. The witness tries no less than four times to explain the circumstances of the letter but the lawyer will have none of it. First, he wants the witness to join him in producing the letter to the court by having him read sections of it that are obviously damaging to his (the plaintiff) case. Attempts at elaborate explanations by the witness are cut short by commands to 'answer what I am asking you' and 'you read for us what you wrote.' The lawyer is interested in his story: what he has to say and not the explanations the witness has to offer.

A unique type of interruption by counsel was found at the end of most cross examinations where the counsel would ask a question that put into question the witness's character or his or her whole witness and then would interrupt the witness's attempt to respond to such a question by addressing the presiding magistrate to declare the cross examination was over. This, perhaps more than all the other strategies, captures the asymmetry of power in courtroom discourse and how powerful participants use their power to lord over the weaker ones. As examples 29.5 to 33.5 below show, the use of this form of interruption was observed so many times that it seemed almost like a formulaic way of ending a cross examination.

Example 29.5: DS1Case01CE

C2: Hiyo shamba unasema iko kwa scheme, wewe uko na title deed yake?
That farm you are saying is in a scheme do you have a title deed for it?

W: Hakuna mtu hapo ako natitle deed. [Tume kaa-]
There is no one there with a title deed. We have stayed there-

C2: [Wachana na wengine]. Huna title deed sababu hamtakikani kuwa nashamba hapo na kulima chini ya high voltage wires. That's all your Honour.
Leave the others. You do not have a title deed because you should not be having farms there and farming under high voltage wires.

Example 30.5: DS1Case05CE

W2: ((Reads.)) 'The money when deposited would boost the cash reserves for the company'- Now let me [explain-]

C: [Now there] is your benefit and you actually put it down in you statement.

W2: [That is-]

C: [Then you] went ahead and got into a funny deal with KACA, and that is why you are standing there and not in the dock as a suspect, isn't it?

W2: I did not get into any [deal with-]

C: [And yet you] the beneficiary of this deal, you even admit ten million was paid into your account, is not facing any charges. How do you explain that? Nothing further your Honour.

Example 31.5: DS1Case06CE

C: So just how do you link this to the accused?

W: I saw him [throwing-]

C: [And remember] you told us, you are not even sure what you saw because it was dark. Nothing further your Honour.

Example 32.5: DS1Case10CE

W2: Nivingumu sana kusikia OCS anacomplain. Lazima kuwe na [sababu-]
It is very hard to hear the OCS complaining. There must be a reason-
C: [Is that] why were are here? You are saying you decided to charge him {((pointing at the accused))} even if statements of the complainants and the eye witnesses are contradicting, you decided to charge the accused just because it is the OCS who had complained.
W: No [I -=
C: =[That's all your Honour.

Example 33.5: DS1Case11CE

W: What I know is that the bearer of the phone [was-]
C: [I am] asking you a simple question. Don't add anything. Yes or no whether M__ was arrested. Yes or no?
W: No [but-]
C: [That's] all your Honour

In example 29.5 the counsel asks whether the witness has a title deed for the piece of land he lives on but the witness answers evasively. The counsel interrupts his explanation and declares the witness an illegal occupant of the land, an accusation directed at the witness. Then she addresses the court to declare she is through with the witness. The witness has no chance to respond to this characterization. In the second example (30.5), the witness's request 'let me explain' is met with an interruption with the lawyer charging that it is the witness who should be on the dock as he is the beneficiary of the deal were it not for getting into a 'funny' deal with the investigating authorities. And with the accusations in the air, the counsel declares he has nothing further. In all the other examples (31.5-33.5), the witnesses' inability to initiate discourse or recycle topics, due to procedural constraints, is evident. The declaration by the cross examining lawyer that that phase of discourse is over, usually followed by counsel taking his or her seat, is final and the witness has no appeal against it. As such, the counsel is able to leave a damaging image of the witness and the witness can do little to redress it.

Even for the lay litigants as cross examiners, interruption was a frequently used idea targeted strategy as example 34.5 shows.

Example 34.5: DS1Case01CE

Ac: Wewe sema ukweli.
You tell the truth.
W2: Hakukugonga. [Ulisimama-]
He didn't hit you. You stood up-
Ac: [Wacha] kundanganya.
Stop lying.
W2: Usio uongo.
It is not lies.
Ac: Yeye sindiye alinigonga kwanza?
Isn't he the one who hit me first?
W2: Hapana. Niliona kila kitu. [Ulisimama-]
No. I saw everything. You stood up-
Ac: [Wacha kusema] [uongo-]
Stop lying-
M: [Let him] answer you. Ngoja amalize kujibu swali lako.
Wait for him finish answering your question.

In example 34.5 above the accused wants , to the point of imploring, the eye witness to agree with his assertion that the complainant in the case is the one who hit him (the accused) first. He thus constantly interrupts the witness's testimony and couples the interruption with implorations and commands to tell the truth and to stop lying. So intent is the accused in his interruption of testimony that is against him that he makes it impossible for the witness to make a complete statement. The presiding magistrate has to intervene and require that he gives the witness time to respond fully to the question.

5.5.2 'So' Summarisers

The use of the 'so' summarisers was another idea targeted strategies used by both pro se litigants and counsel in cross examination. It was observed in the data that

examiners usually use these constructions to make the witness agree with the version of facts and conclusions that the examiner wishes to present to the court. Example 35.5 captures this.

Example 35.5: DS1Case13CE

Ac3: Isipokuwa pesa ya kampuni kuna kitu ingine yako iliibiwa?
Apart from the money belonging to the company is there anything of yours that was stolen?

W: Hakuna.
There isn't.

Ac3: Hakuna. Kwa hivyo nataka tukubaliane Bwana B__ hii ni npango ya undangayifu mlipanga na mwenzako na driver.
There isn't. ***So I want us to agree Mr. B___ this was an arrangement to defraud that you arranged with your colleague and the driver.***

In the exchange in example 35.5 , taken from a case in which several people are charged with robbery, the witness has agreed that during the robbery he only lost money belonging to the company and not his own money or personal effects. The current accused person, in the cross examining role, wants the witness to agree with his 'so' prefaced conclusion that this shows the whole robbery was stage-managed, and to make such an admission would mean the witness was an accomplice in the crime rather than the victim of it.

Example 35.5 above, as well as examples 36.5 to 38.5 that follow, show that in cross examination 'so' summarisers could be said to be achieving antagonistic ends as compared to what they achieve in direct examination (cf. 5.4). In example 36.5, the 'so' summarisers allow the counsel nail down the witness about the state of the exhibits that have been produced before the court.

Example 36.5: DS1Case07CE

C: **So you are confirming that the packages there are not in the form that you first saw them, correct?**
W1: Pardon
C: You confirm that whatever you saw was wrapped in cello tape, right?
W1: There was a cello tape.
C: And yet what you have produced before this court is not wrapped in cello tape?
W1: No.
C: **So you are confirming that the package that you saw on that day have been interfered with, isn't it?**
W1: I don't [know-]
C: [It is a simple] question. The packages in court today are not as they were when you saw them, right?
W1: Yes.
C: **So they were interfered with?**
W1: Yes they were interfered because it [was opened-]
C: [We are done with] that. So what did you do with the handkerchief and the cello tape?

In this example (36.5), the lawyer corners the witness into an admission that the exhibits before the court had been 'interfered with'. It is interesting to note that the term 'interfered' is the counsel's suggestion and the witness is coerced into accepting it as all she has said is that on the day of the arrest, the package recovered from the accused person was wrapped in cello tape and the same is not before court. Whether its absence indicates tampering with evidence is beyond the expertise or duty of the current witness, who is just a security guard who apprehended the accused and handed her and what she had to the police.

In both examples 37.5 and 38.5, the defence lawyers use 'so' summarisers to preface questions that have propositions that seem to suggest the witness is guilty of some wrong doing.

Example 37.5: DS1Case08CE

C: Did you put in your statement that 'I went to inform the OCS of what he had been told'?
W1: No.
C: So you are telling us things now that you decided not to record in your statement? When did you record your statement?
W1: On the same day.

Example 38.5: DS1Case09CE
W1: It is not relevant to me
C: So there are some things you chose to offer to the court and others that you don't? Something you wanted to hide, right?
W1: I am not hiding anything.

In these examples (37.5 and 38.5) the lawyers use the 'so' summarisers to imply ill motive on the part of the witnesses. In both instances, the defence lawyers come to the conclusion that the witnesses, who in both cases are police officers, deliberately withheld information at the time of recording initial statements.

5.5.3 Evaluative Third Parts

In the data for this study it was observed that in cross examination, an evaluative third part was almost always used to give a negative evaluation or rejection of the witnesses or their responses. This was the case even when words that could be said to be positive (such as 'good', 'okay') were used. This could be accounted for by the fact that the goal of the cross examiner is mainly to discredit the witness of the adverse party. Examples 39.5 and 40.4 show counsel using evaluative third parts,

Example 39.5: DS1Case5CE
W2: Look.
C: **No.** Answer my question. Your statement about learning from Mr. ___ the identity of the person who deposited ten million to your account is in contradiction to the testimony you have given before this court that you first obtained this information from your bank, do you agree with that?
W2: There is discrepancy [that-]
C: [**Good.**] Now could you please explain that discrepancy to the court?

In example 39.5, the counsel rejects the witness's attempt at an explanation as marked by the word 'look'. The negative evaluation 'no' is followed by the

imperative ‘Answer my question.’ A pointer to the fact that the lawyer considers what the witness was planning to say to be the wrong answer. The witness’s admission that there was a ‘discrepancy’ is met with a positively worded evaluation ‘good’. But this leads to counsel to nail down the witness, demanding that he explains the discrepancy in his testimony to the court. Thus the word ‘good’ was only used to acknowledge that the witness had made the admission that counsel wanted to hear; one that is damaging to the witness’s testimony.

The next two examples, 40.5(a)-(b) are from the same case and the defence counsel uses the third part to reject the responses given by the witness.

Example 40.5: DS1Case8CE

(a) C: Did he say words like this ‘you the OCS’ or ‘you Mr. N__ you are useless’. Did he say such words?
W1: He was addressing [him-]
C: [**No, no.**] I am asking you, did he say ‘you the OCS’ or ‘you Mr. N__ you are useless’. Did he say such words?

(b) C: Look at your statement, where you recorded that. Is there the word OCS there? Can you see the word OCS or Officer Commanding Station?
W1: In our place of [work-]
C: [**No no,**] can you see that word OCS anywhere?

In example 40.5(a), the negative evaluative third part ‘no no’ is followed by the illocutionary force indicating device ‘I am asking you…’ to emphasize that counsel considers the witness response to the question to be wrong. In example 40.5(b), the negative evaluation is followed by a repeat of the question earlier posed.

Though with lesser frequency, lay litigants were also observed to use evaluative third parts as examples 41.5(a)-(b) show.

Example 41.5: DS2Case13CE

(a) Ac1: Na umesema ulishtuka na ukaangushwa chini umeshikwa shingo lakini bado uliona nikishikwa?
And you have said you were shocked and you were wrestled to the ground and you are being held by the neck and still you saw me being apprehended?

W: Wajua baada ya kushtuka ndio niliona kwamba [umati-]
You know after being startled is when I saw members of the public-

Ac1: [**Aaha aaha.**] Jibu swali langu. Mtu akishtuka ako katiaka hali gani?
Aaha aaha. Answer my question. When one is startled one is in which state?

(b) Ac1: Na kwa statement yako uliandika hivyo, kwamba ulitoka nje bank ukampigia simu?
And in your statement did you write that, that you got outside the bank and called him?

W: Eer, nilikuwa nime communicate nayeye before niingie hapo kwa bank. Ikawa yeye kuna kitu anaenda kulipa harafu aje tupatane [hapo C___-]
Eer, I had communicated with him before I got into the bank. It was that there was something he was going to pay then he comes there at C__-

Ac1: [**Aaha aaha.**] Jibu swali langu. Nauliza mlicommunicate nayeye ukiwa ndani ya bank au nje?
Aaha aaha. Answer my question. I am asking you communicated with him when you were inside the bank or outside?

In both examples 41.7(a)-(b), the accused person, acting as cross examiner, interrupts the witness's response with a rejection signaled by the sounds 'aaha aaha'. This negative evaluation of the response is then followed by a command by the accused to the witness to answer his question.

5.5.4 Unnatural Narrative Order

The other idea targeted pragmatic strategy is the use of unnatural narrative order. This strategy, which was only found in use by counsel in the data for this study, involves the use of questions that are prefaced by other questions or statements that a witness is not allowed to respond or react to. By going against the natural order of one question at a time, lawyers are able to throw witnesses off balance

and sneak in information and make unchallenged accusations that diminish the prosecution's story. Consider example 42.5 that follows.

Example 42.5: DS1Case2CE

C1: [So I am] putting it to you Mr. K__ that **you are concocting lies simply because the matter has progressed this far**. Nowhere in your defence is the issue of resignation and formal discharge raised but you **come here and raise it for the first time as an afterthought**. My client has stated that he requested for a loan and he was advised that the loan you are asking for is beyond the limit you can be given. You can only get ten thousand maximum, so you just have to resign then the company can give you what you want and then you continue in the employment informally. What explanation do you have for that now that you were sent here to explain? What do you have to say to that?

W2: Your Honour there is no such agreement in the company.

C1: Now, you have come here armed with **employment records and letters that my client has never seen**. **The most important record you would have brought is the check in check out log for the period of the accident**. You do have a system of checking in and checking out, right?

W2: Yes we have a record.

C1: Do you have it with you among the many documents you carried?

W2: I didn't carry it.

C1: **Now why didn't you bring it so that we can see the checking in and checking out record and confirm that Mr.__ was checking in and out during the period you claim to have discharged him? It is the best evidence, isn't it? You get records of the injuries of employees and you don't release them, so the employee has nothing to prove the injury occurred.** You had another employee named E___, my client, she got injured and she sued. You forced her to withdraw that case from court without my knowledge if she was to continue working. That's what you do at ___ Limited, isn't it?

W2: I am not aware of that your Honour.

Looking at example 42.5, the counsel accuses the witness of 'concocting lies' and raising issue as 'an afterthought', accusations which the witness does not get a chance to respond to. Later the examiner declares that the 'best' record the witness should have brought to court is a check in register. This is value judgment on the part on the lawyer which the witness is not obligated to agree with but there is no chance to react to this characterization. Finally, in the exchange in example 42.5, the counsel demands to know why the 'best' kind of evidence was not brought before court, and using a tag questions that is predisposed to a

positive reply counsel declares this would have been the best kind of evidence that the witness should have brought to court but gives the witness no chance to respond to the questions. The counsel proceeds to tell of another of his clients from the same company who suffered the same fate and alleges that she was forced to drop the law suit she had filed in order not to lose her job. The accusation is leveled using the indeterminate second person pronoun 'you' and so it is not clear whether the witness or the company is being blamed. This is followed by the tag question 'That's what you do at ___ Limited, isn't it?' Whether the witness responds in the positive or in the negative, there is a lot more in the contribution of the lawyer that he does not get to respond to but the same has been said for the court to hear.

Through unnatural narrative order, the examiner can introduce issues that other witnesses have raised as shown in example 43.5.

Example 43.5: DS1Case08CE

C: And at 2.30 pm on the 16th __ 2008, was the report office of T___ Police Station manned? Were there personnel there?

W2: There is usually personnel.

C: And who was designated to man that office at that time?

W2: I don't know, unless we ask for the record your Honour.

C: **This office is adjacent to the OCS office where there was commotion and banging of tables. In fact another witness, one K__ claims to have heard the commotion from the crime office which is further away**. **Now, you have confirmed that at 2.30 of the said date there were police officers manning the report office**. Did any of them record statements about the commotion in the office of the OCS?

W2: They were not requested to write.

In example 43.5, counsel introduces testimony made by another witness, but the current witness is not asked to corroborate it, though it is presented as factual. In

addition, counsel asserts that the witness has confirmed that on the date in question there were personnel manning a given office, though the witness's response to the question on there being personnel was modulated rather than an unequivocal confirmation. Interestingly, these background contributions (also discussed in chapter seven) are followed by a question on whether the officers manning the said office were asked to record statements. The preceding information is put out there for the court to hear but given that the witness is not asked to confirm it can as well be taken that the witness tacitly agrees it is factual information.

Unnatural narrative order can also allow the examiner make value judgements on what is right or wrong in a given circumstance as happens in example 44.5.

Example 44.5: DS1Case12CE

C: It would be possible. And in a case where the accused is not denying opening an account or filling out a withdrawal form, but denies signing the withdrawal form **it would surely make sense** to examine the signatures and not handwriting, isn't it?

W: I had no such request.

C: You had no such request **even though it is the sensible thing to do** and in fact, the investigating officer Mr. S___ never even supplied you with specimen signatures of Mr. ___, correct?

W: Correct.

In example 44.5, the witness clarifies that he was never asked to examine a specimen signature of the accused person. One notes that the question asking the witness to agree with the counsel's judgement that examining the signature is the sensible thing to do. The witness, an expert witness, evades endorsing the evaluation by responding indirectly that he had no such a request. The second question is a compound question joining the idea of examining the signature being

sensible and the assertion that the investigating officer did not supply the witness with any specimen signature from the accused. In response, the witness says 'correct' which could as well be taken to be an agreement with the two ideas that the lawyer enjoins in one question.

5.5.5 Vocabulary Choice / Vocabulary Landscaping

Finally there is the idea targeted pragmatic strategy of vocabulary choice or vocabulary landscaping. Through this the examiner has a chance to introduce and then repeat a particular notion so that it becomes the dominant way in which events are seen or interpreted as shown in example 45.5(a)-(c) below.

Example 45.5: DS1Case01CE

(a) C2: Sasa nataka kukuambia,
Now I want to tell you,

W: Mm=

C2: =huyo mtoto wako **alikuwa anacheza** na ile pipe, akaiguzisha kwa zile wire nahio ndio ilileta hiyo accident. Si hiyo ndio ukweli?
*Your **child was playing** with that pipe and brought it into contact with those wires and that is what caused the accident. Is that not the truth?*

W: Hiyo si ukweli. [Hakuwa-]
That is not true. He was not-

C2: [Si umesema] ewe haukuwepo hapo wakati hii accident ilifanyika?
Were you there when this accident occurred?

W: Mimi sikuweko.
I was not there.

(b) C2: Kwa hivyo mtoto akichomeka alikuwa wa miaka kumi na mmoja sio tisa yenye unasema, si ni ukweli?
So the child got burnt at the age of eleven years not nine as you are saying, is that not true?

W: Mm.

C2: Mtoto wa miaka kumi na moja hajui hatari ya **kucheza na stima**?
*A child of eleven years doesn't know the dangers of **playing with electricity**?*

W: Sikuwa ni memwabia.
I had not told him.

C2: Wewe kama mzazi haukuwa umefundisha mtoto wako **kucheza na stima ni vibaya**?
*You as a parent had not taught your child that **playing with electricity is bad**?*

W: Wakati huo sikuwa ni meingiza stima nyumbani. Lakini kuanzia siku hiyo nilimwambia mambo ya kucheza na stima staki.
At that time I had not installed electricity in the house. But starting on that day I told him I don't want to hear of him playing with electricity.

C2: Kwa hivyo baada ya ajali ndio **ulimuonya asicheze na stima tena**? Hizo wire mahali ziko hata kama zimebend vile unasema, mtu anweza kufikia na mkono?
*So after the accident is when **you warned him not to play with electricyt again**? When those wires even when they bend as you say, can somebody reach them by hand?*

(c) C2: Lakini mtoto alizifikia kwa kuinua pipe, si ndio umesema?
But the child reached them by lifting the pipe, is that no what you have said?

W: Ndio.
Yes.

C2: Kwa hivyo nataka ujue **mtoto alishabisha ajali kwa sababu yakucheza na wire za stima**, kuziguza na pipe ya aluminium. Na pia wewe ni responsible sababu umesema haukuwa unamsupervise kwa shamba na hukuwahi **kumuonya juu ya hatari za kucheza na wire za stima**. Hiyo si ni ukweli?
*So I want you to know **the child caused the accident because of playing with electricity wires**, touching them with an aluminum pipe. And even you are responsible because you have said you were not supervising him and you have never **warned him of the dangers of playing with electricity wires**. Is that not true?*

W: Hapana hakuwa ana [cheza ni-]
No he was not playing-

The example is from a civil suit in which the plaintiff, a minor, is seeking compensation from a power utility company after sustaining serious injuries through electrocution from high voltage transmission lines. The witness, the father to the plaintiff, has, in examination-in-chief explained that the plaintiff got electrocuted when the aluminum irrigation pipes he was handling came into contact with the high voltage wires. This, according to the witness, happened because the said wires were bending toward the ground more than they should, a fact he blames on the company. In cross examination the lawyer for the power utility company attempts to remove blame from the company and places it on the victim and the parents. Using the highly controlling IFID 'Now I want to tell you…' she introduces her version of what caused the accident which is that the

plaintiff was ‘playing with electricity wires’ and repeatedly uses the expression ‘playing with electricity’ to describe the behaviour of the plaintiff or to make the parents look negligent. By repeatedly using the expression ‘playing with electricity’ in her cross examination, the lawyer seeks to achieve an impact on the fact finder’s view of what had transpired, a view that would involve blaming the victim for what happened.

5.6.0 Discussion of the Statistical Results and Use of Pragmatic Strategies in the Sampled Trials

Drawing from the tenets of CDA as well as findings by other scholars, the sub-sections that follow present a discussion of the statistical results for the use of pragmatic strategies in the study sample. The discussion first focuses on the use of pragmatic strategies in the direct examination phase before turning to the cross examination phase.

5.6.1 Use of Pragmatic Strategies in the Direct Examination Phases of Sampled Trials

In direct examination, pragmatic strategies were analysed on the basis of their use by police prosecutors (for data set one and data set two) and counsel for some cases in data set two. As already noted (cf. 5.2), violation of turn was the only person targeted strategy used by both prosecutors and counsel in examination-in-chief. The frequency of use for prosecutors was 80 (100%) while for counsel it

was 18 (100%). The illustrating examples for the use of this strategy (cf. 5.2) can lead us to conclude that in direct examination, violation of turn is a supportive tactic whereby the examiners intrude into the witnesses turn to speak in order to provide feedback on whether the response is responsive and relevant. But even this support is evidence of the control that examiners have over what witnesses have to say. As Moeketsi (1999) observes, examiners have the power to construct question in ways that restricts the response given, power to self-select themselves and power to intrude into the witnesses' turns. The witnesses only respond to questions and when interrupted they give way to the powerful discourse participant. The powerlessness of witnesses is thus seen in the fact that they do not ask questions and for them violating the turn of the examiner would only be done as 'a last resort bid for attention' (Conley, O'Barr & Lind, 1978 p.1390).

Turning to idea targeted pragmatic strategies, both prosecutors and counsel used a variety of them in examination-in-chief. Table 13 below shows the statistical figures for idea targeted pragmatic strategies in direct examination.

Table 13: Comparison of Idea Targeted Pragmatic Strategies by Prosecutors and Counsel in Direct Examination

Idea Targeted Pragmatic Strategies	**Prosecutor**		**Counsel**		**Totals**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Reformulation	-	-	2	9.52	2	4.65
Presuppositions	2	9.09	3	14.29	5	11.63
Answering own question	-	-	3	14.29	3	6.98
Use of 'so' summarisers	10	45.45	6	28.57	16	37.21
Evaluative third parts	4	18.18	4	19.05	8	18.60
Interruption	6	27.27	3	14.29	9	20.93
Total	**22**	**100**	**21**	**100**	**43**	**100**

Looking at Table 13 we see the patterns of prosecutors' use of idea targeted strategies where the use of 'so' summarisers, with a frequency of 10 (45.45%), comprised almost half of the total frequency of idea targeted strategies used by this group. These were followed by interruption and the use of evaluative third parts with counts of 6 (27.27%) and 4 (18.18%) respectively and the least used idea targeted strategy was the use of presuppositions which occurred twice in the data.

On their part, lawyers use more variety of such strategies as Table 13 attests. The total frequency of use for idea targeted pragmatic strategies by this group of examiners was 21, and of these 'so' summarisers, 6 (28.57%), were the most frequent. The other strategies had an almost equal distribution frequency. Evaluative third parts had a frequency of 4 (19.05%) while interruption, presuppositions and the strategy of answering own questions tied with a count of 3 (14.29%) each. Reformulation was the least occurring of these strategies with a frequency of 2 (9.52%).

On a comparative note, Table 13 above shows a tie between the use of 'so' summarisers and interruption as the most favoured idea targeted pragmatic strategies by prosecutors and counsel in direct examination with frequencies of 10 (45.45%) for prosecutors and 6 (28.57%) for counsel. Reformulation and answering own questions were the only strategies that found use with counsel as

direct examiners but not with prosecutors. Moreover, the statistics in Table 13 also shows, there was a greater variety of idea targeted strategies used by counsel. This group had six different idea targeted pragmatic strategies against the four used by police prosecutors.

5.6.2 Use of Pragmatic Strategies in the Cross Examination Phases of Sampled Trials

Table 14 captures a comparison of the use of person targeted strategies by lay litigants and counsel in cross examination.

Table 14: Comparison of Use of Person Targeted Pragmatic Strategies by Counsel and Pro Se Litigants in Cross Examination

Pragmatic Strategies	Counsel		Lay Litigants		Totals	
	Frequency	%	Frequency	%	Frequency	%
Contrast	14	37.84	5	41.67	19	38.78
Status manipulation	-	-	4	33.33	4	8.16
Distorting modality	5	13.51	2	16.67	7	14.29
Violation of turn	3	8.11	-	-	3	6.12
Exploiting bias	2	5.41	-	-	2	4.08
False friend strategy	2	5.41	-	-	2	4.08
Nailing down	11	29.73	1	8.33	12	24.49
Total	**37**	**100**	**12**	**100**	**49**	**100**

Table 14 shows that pro se litigants as cross examiners only used four types of the person targeted pragmatic strategies as compared to the six types used by counsel.

The strategies of contrast with a frequency of 5 (41.67%) and that of status manipulation with a frequency of 4 (33.33%) had a virtual tie at the top while at the lower end were the strategies of distorting modality 2 (16.67%) and nailing down 1 (8.33%). The most used strategy by counsel was contrast 14 (37.84%) followed by nailing down11 (29.73%). Contrast was also the most favoured strategy by lay litigants with a frequency of 5 (41.67%) but nailing down, which was second for counsel, was the least occurring strategy for the lay examiners. It occurred only once in the data.

The violation of turn taking was fourth for counsel with a frequency count of 3 (8.33%) followed by exploiting bias and false friend strategy which had a tie of a frequency of 2 (5.41%) each. These three strategies were not used by pro se litigants who, instead used status manipulation. This strategy was second in use for this group with a frequency count of 4 (33.33%) but it was not used by counsel.

What is immediately noticeable, when the statistics for the two groups of examiners in Table 14 are looked at side by side, is the disparity between the counsel and the lay litigants in their use of person targeted strategies. The lawyers as cross examiners used person targeted pragmatic strategies 37 times; which was over three times the total found in use by unrepresented litigants. Moreover, whereas lawyers used a spectrum of seven such strategies, the lay examiners only

used four. Thus, the data of the present study reveals that counsel showed more variation and flexibility in the use of the person targeted pragmatic strategies.

This variation and flexibility could be accounted for the training that lawyers undergo in law and language as well as their experience in the use of these pragmatic strategies. A central concern of CDA is to account for the power within language and the asymmetry in the distribution of this power. The differential distribution of pragmatic resources, especially in formal contexts is one way of accounting for this inequality (Drew & Heritage, 1992; Wilson, 2006).

However, there is need to further ground this explanation because on the surface, it would seem that power inequality during cross examination is between the divide of the examiner versus the witness. In this case power asymmetry unfolds on the basis of who can speak, about what, when and what he or she can say about a given topic (Wilson, 2006). In the courtroom, examiners ask questions on the topics of their choice while witnesses can only speak about topics by responding to questions that are usually structured in ways that restrict responses (see chapter four). Thus, in the courtroom setting, the examiner is the powerful party.

While this holds even in the data for the present study, inequality is seen at yet another level: between counsel as cross examiners and lay litigants as cross examiners. This is what the statistics in Table 14 reveal. To account for this

symmetry we adopt the distinction by Wilson (2006) between influential power and instrumental power. Influential power deals with abilities to influence actions and behaviour by specific use of language mainly in the media and politics. Instrumental power has to do with 'the control over access to certain forms of knowledge' such that 'the control over turns or specific speech actions' is deemed as an exercise of instrumental power (Wilson, 2006, p. 8443). Lay litigants as examiners have potential to be powerful discourse participants, but this potential is dependent on their having instrumental power. Most lay litigants have no training in language or law and are thus unable to make use of the resources of language to their advantage leading to the asymmetry seen in Table 14 with regard to distribution of person targeted pragmatic strategies.

This asymmetry between counsel and lay litigants in their use of person targeted strategies also holds for idea targeted strategies as Table 15 shows.

Table 15: Comparison of Use of Idea Targeted Pragmatic Strategies by Counsel and Pro Se Litigants in Cross Examination

Pragmatic Strategies	Counsel		Lay Litigants		Totals	
	Frequency	%	Frequency	%	Frequency	%
Vocabulary choice and landscaping	4	1.77	1	1.85	5	1.79
Repetition	6	2.65	1	1.85	7	2.50
Reformulation	4	1.77	5	9.26	9	3.21
Presupposition	9	3.98	-	-	9	3.21
Answering own question	1	0.44	-	-	1	0.36
Use of 'so' summarisers	45	19.91	20	37.04	65	23.21
Negative suggestions	2	0.88	3	5.56	5	1.79
Unnatural narrative order	24	10.62	-	-	24	8.57
Evaluative third parts	36	15.93	5	9.26	41	14.64
Interruption	95	42.04	19	35.19	114	40.71
Total	**226**	**100**	**54**	**100**	**280**	**100**

To begin with Table 15 shows that pro se litigants did not make use of three strategies that the counsel used. These include presuppositions, answering own questions and use of unnatural narrative order. These strategies made up about 12% of all the strategies that the counsel used. In addition, Table 15 shows that cross examination conducted by counsel had more idea targeted pragmatic strategies with their total frequency of use coming to 226 which is more than four times the total frequency of use of such strategies by pro se litigants. On the basis of this we could conclude that in terms of variety the pro se litigants may be said to be at a disadvantage when it came to utilizing pragmatic language resources to their favor.

The most used idea targeted pragmatic strategy by lawyers was interruption with a frequency of 95 (42.04%) while for the lay examiners interruption was the second favoured with a frequency count of 19 (35.19%). For the lay litigants 'so' summarisers had the highest frequency of use at 20 (37.04%) and among the counsel the same strategy had a frequency of 45 (19.91%) making it second after interruption.

Elsewhere, the comparative analysis of the use of pragmatic strategies used by lay litigants and a lawyer in the study by Tkačuková (2010) also echoes the statistical findings given in Table 14 and Table 15 in this chapter. In the present study, lay litigants fare poorly in their use of pragmatic strategies as compared to lawyers. A similar observation is made by Tkačuková (2010) who, from her data, concluded that 'pro se litigants are not very successful with their strategies' (p. 111) and noted that the lawyer they are pitted against was able to use 'a variety of pragmatic cross-examination strategies which enable him to give testimony…instead of letting witnesses give testimony through their replies' (p. 111).

Tkačuková (2010) also noted that 'so' summarisers were the most appropriately used pragmatic strategy by the pro se litigant. It is of interest that this strategy also had the highest frequency of occurrence in our data which was 20 (37.0%).

Whereas the use of questions in direct examination and cross examination phases of trial is mandated by the rules of evidence, the use of pragmatic strategies (some of which are paired with questions) is not. One could therefore conclude that these strategies, even more than questions, are indicators of the combative nature of courtroom discourse as well as indicators of the very divergent discourse goals pursued by participants. The pursuit of these goals is not always compatible with the overall goal of court proceedings which, ideally, should be the pursuit of truth. Our analysis of the use of particular pragmatic strategies has shown that they are used to press for a particular version of facts.

For instance, through interruption (Example 28.5: DS1Case02CE) the lawyer is able to silence what the witness wishes to explain to the court about a letter he authored, and at the same time, the lawyer is able to just highlight facts about the letter that are detrimental to the witness. Thus, through pragmatic strategies, parties can engage in a narrow pursuit of proof for one set of events, and in the process distort the pursuit of truth. As Gibbons (2003) notes, this raises serious ethical issues about the use of language in the courtroom, more so because such strategies are explicitly taught to students of law. However, this fact, while worth noting, is outside the scope of the present study.

More pertinent to the present study is the fact that the presence of questions and pragmatic strategies make courtroom discourse ‘decontextualized, formal,

specialist and power laden' which is the very opposite of everyday language which is 'contextualized, informal, non-specialist and low in power differences' (Gibbons, 2003, p. 128). This, to a large extent, could explain the disadvantage that lay litigants have as they conduct cross examination. Borrowing from the sociolinguistic concept of diglossia (Ferguson, 1964; Fishman, 1967), Gibbons (2003) coins the term high register to capture the fact that courtroom discourse is removed from ordinary discourse. This high register is partly marked by the high density of questions and pragmatic strategies in the discourse. Asymmetry results because access to this high register is unequal, and, in most cases, the strategies of the high register 'are not within the register range of most ordinary people' because their acquisition is pegged on 'high levels of education, and experience in institutional contexts' which ordinary people lack (Gibbons, 2003, p. 128). In light of this, and within the framework of CDA, we conclude that witnesses and lay litigants as cross examiners are disadvantaged by the system which empowers counsel and other officers of the court.

More often than not, it was observed that lay litigants embark on narrating their version of facts when called upon to cross examine the prosecutors' witnesses. This always leads them to being ruled out of order with constant interruptions by presiding magistrates reminding them it is not time to present a defence.

5.7 Summary of Chapter

This chapter has presented the findings on the use of pragmatic strategies in both examination-in-chief and cross examination in the sampled trials. The discussion of these findings has revealed that whereas pragmatic strategies are language based resources available to the examiner, there is inequality in their use between lawyers and lay litigants mainly because the latter group of examiners may be lacking in knowledge, experience and skill in exploiting these tactics to their advantage.

In the following chapter, focus is turned on witnesses as courtroom discourse participants with regard to how they respond to the questions posed to them. The measure of witness participation in a trial is based on witness answer length and answer type. Then, the chapter concludes by highlighting ways in which witnesses resist attempts at control by the examiner.

CHAPTER SIX

MEASURING WITNESS PARTICIPATION IN DIRECT AND CROSS EXAMINATION PHASES OF THE SAMPLED TRIALS

6.0 Introduction

As discussed in the review of literature (cf. 2.3.1.0), questions are the prevalent mode of communication in courtroom discourse. Conversational Analysis (C.A.) views a question as being one member in an adjacency pair in which the other member of the pair is an answer. The adjacency pair in C.A. is an organizational unit of conversation where two types of utterances are usually paired in occurrence and are in a relationship in which the occurrence of the first pair discriminately selects the occurrence of the second pair (Sacks, 1972; Schegloff & Sacks, 1973; Sacks, Schegloff & Jefferson, 1974).

The analysis in chapter five focused on the first member of the question-answer adjacency pair: the question. The current chapter focuses on the second member of the pair: the answer given by a witness. This is in line with the third objective of the present study which sought to determine how the contributions by witnesses reflect the power asymmetry and competing goals among the discourse participants in the courtroom setting. It needs to be remembered that in the courtroom setting the rules of evidence tie the use of each member in the question-answer adjacency pair to specific participants. The use of questions is restricted to participants who can assume the role of examiner: presiding

magistrates, police prosecutors, counsel and, in cross examination, litigants appearing pro se. The witness is the recipient of the questions in both direct and cross examination phases in a trial, and is, in turn, resticted to giving answers.

However, as the discussions in the preceding chapters have shown, examiners use questions and pragmatic strategies to control the contributions of witnesses in a variety of ways. This means that though the witness is summoned before court because he or she has information pertinent to the issues in dispute, his or her presentation of such information is largely controlled by others. The present chapter presents an analysis of witness participation in courtroom discourse. It begins by presenting analyses of witness answer length and answer type and concludes by a discussion on forms of witness resistance to examiner control.

6.1.0 Overview of Witness Answer Length in Direct and Cross Examination Phases of the Sampled Trials

A possible means of determining the extent to which an individual participates in discourse is by measuring the length of the individual's contribution to the discourse space. To measure witness answer length, this study adopted the approach by Eades (2000) of classifying witness responses on the basis of the number of words and lines constituting the response. Thus, answer length is categorised as one among the following: one word, between one word and one line, between one line and three lines and more than three lines. It needs to be

emphasized that in the adversarial legal system an account of what happened is mainly reconstructed through oral testimony by witnesses (Mikkelson, 2000). This implies witnesses have a story to tell, and a measure of answer length could be an important indicator of the extent to which witnesses get an opportunity to tell their account in their own words. We proceed on the assumption that the greater the length of witnesses' answers, the greater the leeway witnesses get to tell their story in their own words.

In the present study, the coding of witness answer length was done on the data transcribed in English, so that where a speaker used a different language the coding was done on the English gloss. This was motivated by the fact that the predominantly agglutinating morphological typology of Kiswahili and Gĩkũyũ (the other two languages encountered in the sample) would yield a different word count per utterance compared to English which is predominantly isolating.

The length answers by witnesses observed in the direct examination and cross examination phases of the study sample are presented in the following figures which show their percentage frequencies of occurrence. In Figure 12 that follows, the percentage frequencies of witness answer length in examination-in-chief for trials without a defence counsel are shown.

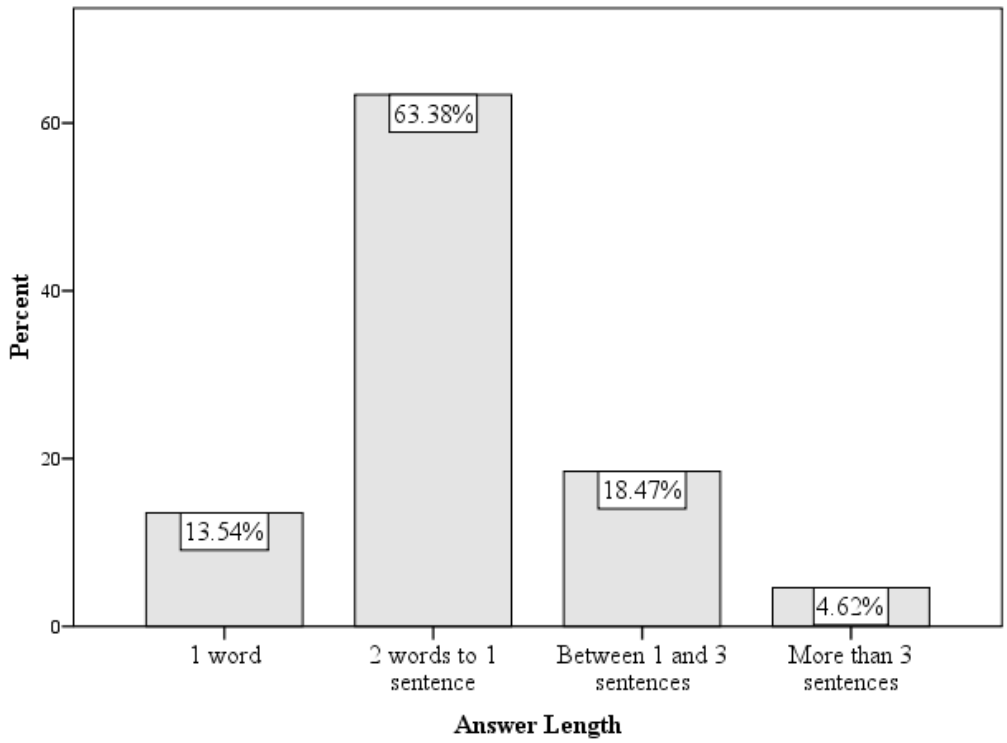

Figure 12: Frequencies of Witness Answer Length in Direct Examination by Prosecutors in Trials with Pro Se Litigants

Answers between two words and one sentence formed a big majority at 63.38% which was almost two thirds of the total. Second were answers between one and three sentences at 18.47% followed by one word answers with a frequency of 13.54%. Least occurring were answers that are more than three sentences in length with a frequency of 4.62%. A similar pattern emerged in direct examination by prosecutors in trials with a defence counsel as shown in Figure 13.

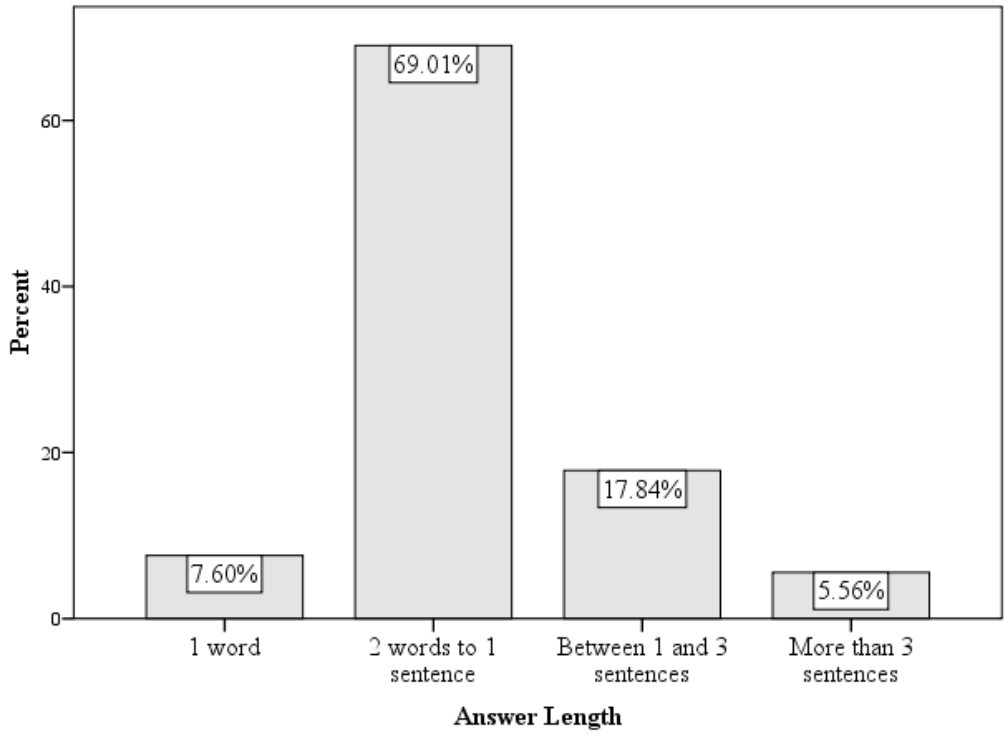

Figure 13: Frequencies of Witness Answer Length in Direct Examination by Prosecutors in Trials with a Defence Counsel

As in Figure 12, Figure 13 shows that answers between two words and one sentence accounted for over two thirds of the total with a frequency of 69.01%. Second were answers between one and three sentences at 17.84%, then one word answers at 7.60% and last were answers with more than three sentences which had a frequency of 5.56%.

In Figure 14 the witness answer length in examination-in-chief conducted by counsel are shown.

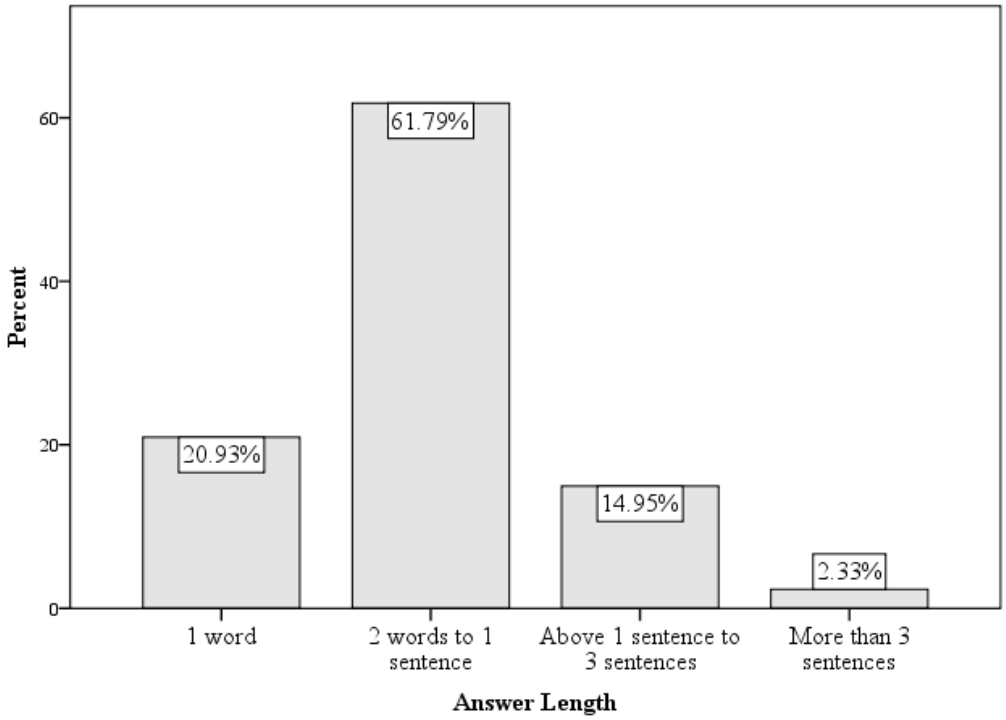

Figure 14: Frequencies of Witness Answer Length in Direct Examination by Counsel

Figure 14 presents a slight variation to the pattern of witness answer length in direct examination seen in Figures 12 and 13. In direct examination by counsel, answers between 2 words and one sentence were still the majority at 61.79%. But in contrast to direct examination by prosecutors, one word answers were second at 20.93% for direct examination by counsel. Third were answers between one sentence and three sentences at 14.95% followed by answers above three sentences with a frequency of 2.33%.

Figure 15 shows the frequencies of witness answer length during cross examination by counsel.

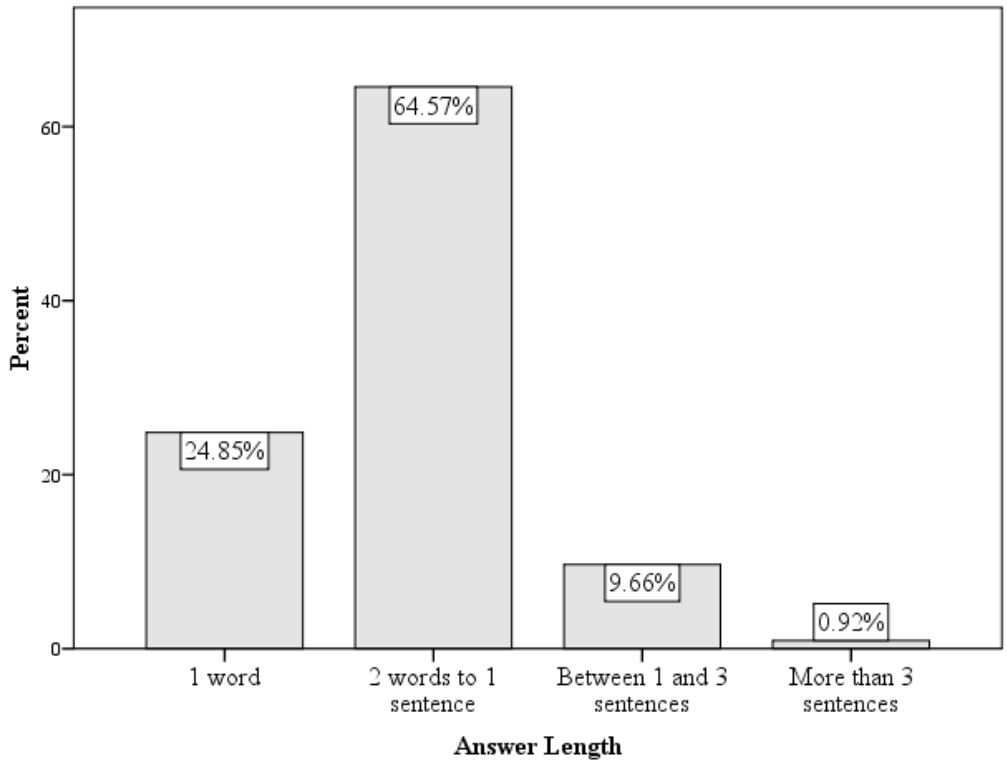

Figure 15: Frequencies of Witness Answer Length in Cross Examination by Counsel

The highest in frequency were responses between two words and one sentence at 64.85% followed by one word responses at 24.85%. The frequency of responses between one and three sentences was 9.66% while responses of more than three sentences were a distant fourth with a frequency of 0.92%.

Figure 16 shows the frequencies of witness answer length in cross examination done by lay litigants.

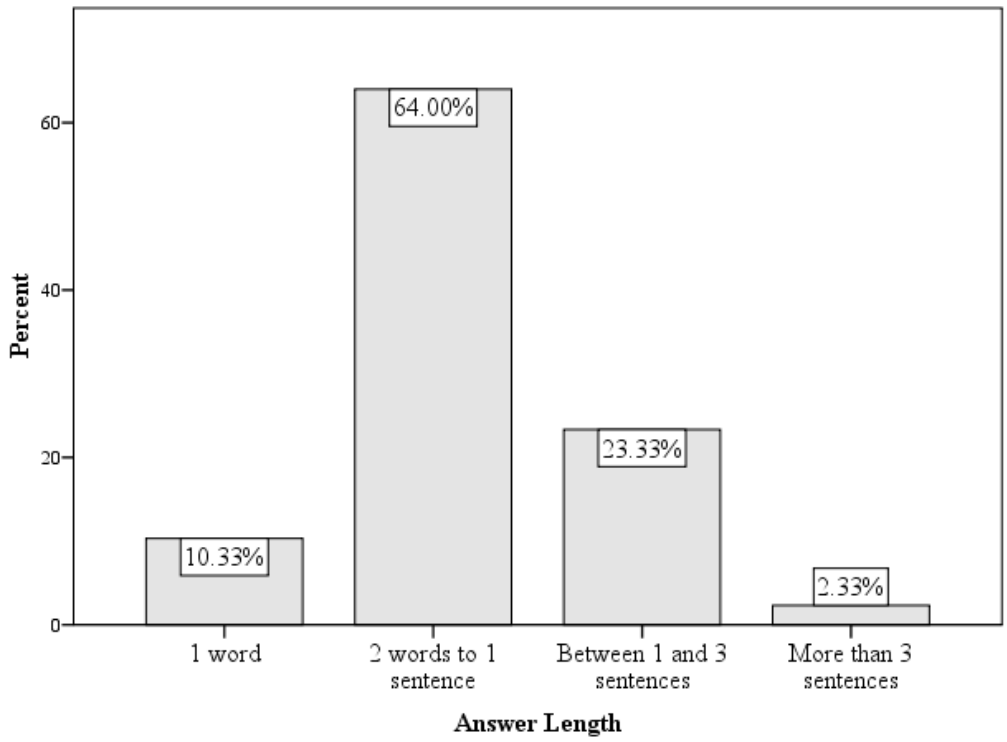

Figure 16: Frequencies of Witness Answer Length in Cross Examination by Pro Se Litigants

The pattern of the responses in Figure 16 is different from that in Figure 15. 64.00% of the responses elicited by lay litigants were between two words and one sentence while 23.33% of the responses were between one sentence and three sentences in length. One word responses had a frequency of 10.33% and responses of more than three sentences in length had a frequency of 2.33%.

The various witness answer length as captured in Figures 12 to 16 are presented and discussed in sections 6.1.1 to 6.2.2 that follow.

6.1.1 Presentation of Witness Answer Length in the Direct Examination Phases of the Sampled Trials

One word answers, as the examples below show are either 'yes' or 'no' responses or a one word response that provides an item requested for by a WH- or alternative question. Equally, sounds that are interpreted as affirmation or negation were coded as one word responses. Such responses are shown in examples 1.6 and 2.6(a)-(b).

Example 1.6: DS2Case01DE
P: Eleza korti- wewe ndio mlalamishi kwa hii kesi?
Tell the court- are you the complainant in this case?
W1: Ndio.
Yes.

Example 2.6: DS2Case02DE
(a) P: Hao ndio uliacha hapo?
Those are the ones that you left there?
W: **Ee**.
(b) P: Nini ingine mlipata?
What else did you find?
W: Hakuna.
Nothing.

All the examples above feature a one word response from the witness during direct examination by a prosecutor. All the one word responses, a part from supplying the item already introduced and requested for by the question, introduce no new topic or information to the discourse space. In example 1.6, the question introduces the issue of whether the witness is the complainant and the witness confirms it. Example 2.6(b) has a question on whether the persons mentioned are the one the witness left at the scene and she affirms it, and in example 2.6 (b) the witness's response only confirms that nothing else was found, an issue that is introduced by the question.

Similarly, some responses, that are between a word and one sentence in length, are also similar to one word responses in respect of the fact that they do not introduce new information to the discourse space. Consider examples 3.6 and 4.6 that follow.

Example 3.6: DS1Case01DE
C1: Mm::: wakati alichomeka alipelekwa hospitali?
Mm::: when he got burnt was he taken to hospital?
W: Ee. Alipelekwa hospitali.
Ee. He was taken to the hospital.

Example 4.6: DS1Case01DE
P: But you managed to arrest two?
W: **We arrested two your Honour.**

In both examples 3.6 and 4.6, the responses by the witness, though over one word in length, just echo the words used to formulate the question. In terms of length, the response in 3.6 would fall under the category of between one and three sentences while the response in 4.6 would fall under the category on between two words and one sentence.

However, it was observed in the data that in direct examination, most responses that were above two words were those that also contributed new information to the discourse space and can therefore be taken as indicators of witness's full participation in the discourse as example 5.6(a)-(b) shows.

Example 5.6: DS1Case08DE
(a) P: When you entered the office what did you find?
W1: **I found someone- the accused person, he was the one causing a commotion and abusing the OCS.**

(b) P: Then from there?
W1: **As I was coming from the court, I got him near the gate of the municipal council.**

In responding to the examiner's questions, the witness introduces new aspects of the case that had not been talked of before. In example 5.6(a), the witness has previously testified hearing commotion coming from the office and he had gone to find out what was happening. In response to the question on what he had found, he introduces the accused person and what he was doing. In example 5.6(b), the same witness identifies the accused person at a different scene. Thus the witness is not just supplying bits of missing information in the story but shaping the story itself with accounts of what transpired and identifying who the actors were.

By and large, the responses between one and three sentences and those above three sentences in length were the ones in which witnesses got the greatest opportunity to present their testimony in their own words with the questions by the examiner just acting as prompts. It is thus significant that these last two types were the least occurring in the data on witness answer length in direct examination.

In addition, it was also observed that responses of between one and three sentences and those of above three sentences were mainly used by expert witnesses as opposed to lay witnesses in direct examination. In some instances, expert witnesses were allowed to present their testimony in direct examination with minimal participation of the examiner as illustrated by example 6.6.

Example 6.6: DS1Case12DE
P: Yes.

W: Your Honour, on 6th February____, I received a request
M: Yes.
W: From PC S___ based at C __ Police Station here in Nairobi,
M: Yes.
W: To subject to examination some three questioned documents
M: Yes.
W: These were two bank account opening forms from___ Bank,
M: Yes.
W: They had handwritten markings on them your Honour.
M: Yes.
W: The third one was a withdrawal form from the same bank also with handwritten markings.
M: Yes.
W: Your Honor I also received at the same time a set of documents with specimen handwriting of one Mr ___.
M: Yes.
W: We marked the three bank document as__ and __for the documents with specimen handwriting but the court has not yet marked them your Honour.
P: **Your Honour, we wish to mark the same, the account opening forms as __and the withdrawal forms as___. The specimen document as ___**.
M: Yes.
W: Your Honour I examined the set of documents marked ____and now marked __to___ for the court of 9th February 2010. I examined by the accompanying letter from PC___.
M: Yes.
W: Based on my examination of the handwriting style and impression made on the paper. I concluded that the set of documents could have been authored by the same person. I prepared my report and dated it the same date 9th February 2010 and I wish to produce it as evidence before this honorable court. And that's all from me.

In example 6.6, the prosecutor signals the witness to begin his testimony with the encouragement 'yes' and then leaves the presiding magistrate to signal to the witness when she is done recording (through writing) the testimony. The only contribution by the prosecutor (in bold typeface) is not even addressed to the witness but to the court as it deals with the formalities of marking the documents the witness has just produced. The witness also seems to pace his testimony and keeps most of his contributions to one sentence utterances to allow for the taking down of the court record by the presiding magistrate.

Eades (2000) makes an equally interesting observation in her study in Australian courts. She established that while most aboriginal witnesses restricted themselves to one word responses, the presence, among some of them, of lengthy answers was an indicator of the extent of the bicultural competence of the witness. Given this, the observation in example 6.6 above from our data would thus suggest a different kind of competence is required for examiners to allow witnesses to give lengthy answers. In this case, it would seem that professional competence coupled with competence on how testimony should be structured to fit the dictates of the courtroom could be a criteria examiners use to determine just how lengthy and unconstrained witness responses are to be.

6.1.2 Presentation of Witness Answer Length in the Cross Examination Phases of the Sampled Trials

During cross examination, the examiner seeks to diminish the impact of the testimony of a given witness. One way of doing this is ensuring that the witness only gives short responses with little room for elaboration. Without elaboration, witnesses cannot give explanations or introduce new topics; consequently, their responses are more of a collaboration of the version of events the examiner wishes to pursue (Woodbury, 1984).

In the data for the present study, it was observed that cross examiners managed to restrict witnesses to giving short answers in three ways. The first way was through

the syntactic form of the questions. The analysis on question types (see chapter four) has revealed the dominance of Polar and Alternative Questions as well as Tag Questions in the cross examination phases of the sampled trials as compared to the direct examination phases. Polar Questions demand for a 'yes' or 'no' response while Alternative Questions supply a choice of responses for the witness to choose from. Tag Questions also require a 'yes' or 'no' affirmation of the proposition presented in the preceding statement and the same also applies for many 'so' prefaced Declarative Questions (Berk-Seligson, 1999). The use of such questions in high numbers in cross examination could be expected to result in more answers in the range of one word or between two words and one sentence. Example 6.6 shows this.

Example 6.6: DS1Case10CE

C: Kwa hivyo unasema ulipata mshukiwa ndani ya gari yako?
So you are saying you found the accused inside your car?
W: **Ndio**.
Yes.
C: Unasema ulimuinua juu, si ndio?
You are saying you lifted him up, isn't that so?
W: **Ndio**.
Yes.

The cross examining counsel uses a 'so' prefaced Declarative Question to reformulate the witnesses testimony and thus elicits a one word response that just affirms what the question has said. This is followed by another reformulation that is now in form of a Tag Question which again elicits a one word confirmation from the witness. From this, we could conclude that a high incidence of questions whose syntactic form is meant to elicit a minimal response could result in a higher incidence of short witness answers.

Apart from the syntactic form of the question, the second way in which witness are forced to give short responses in cross examination was found to be through explicit commands as example 8.6 shows.

Example 8.6: DS1Case01CE

C2: Kwa hivyo baada ya ajali ndio ulimuonya asicheze na stima tena? Hizo wire mahali ziko hata kama zimebend vile unasema, mtu anweza kufikia na mkono?
So after the accident is when you warned him not to play with electricity again? When those wires are where they are even when they bend as you say, can somebody reach them by hand?

W: Unajua [mtoto-]
You know a child-

C2: [**Jibu ndio**] **au hapana**. Hata kama ni mtu mzima, anaweza kufikia wire za stima namkono zikiwa juu?
***Answer yes or no**. Even if it is an adult, can he/she reach the electricity wires by hand when they are up?*

W: Hapana.
No.

C2: Lakini mtoto alizifikia kwa kuinua pipe, si ndio umesema?
But the child reached them by lifting the pipe, is that no what you have said?

W: Ndio.
Yes.

In example 8.6, the witness is forced to give a one word response because the examiner commands him to. With the signal 'answer yes or no' a witness is constricted to giving a short response without attempts to elaborate.

The third strategy of obtaining short responses from witnesses in cross examination was through interrupting any attempts by witness to give elaborate responses. Interruption was also observed to be coupled with a command to the witness to give a particular kind of response as in example 9.6 below.

Example 9.6: DS1Case11CE

W: The told me they had arrested the [person who-]

C: [**Listen**.] Did you ever get to know whether M__, the one you said sent you money and you sent it back to her, was she ever arrested?

W: What I know is that the bearer of the phone [was-]

C: [I am] asking you a simple question. **Don't add anything**. **Yes or no** whether M__ was arrested. **Yes or no**?

W: No [but-]
C: [That's] all your Honour.

The cross examining counsel in example 9.6 not only interrupts attempts by the witness to elaborate in response but also commands him to listen to the question and to respond either 'yes' or 'no'. When the witness gives a 'no' response but attempts to elaborate it, the counsel interrupts him and declares the cross examination to be over.

6.2.0 Discussion of Statistics on the Frequencies of Witness Answer Length

In this section, attempt is made to account for the patterns that have emerged in Figures 12-16 with regard to the length of witnesses' responses. We start with examination-in-chief then move on to discuss witness answer length in the cross examination phases of the sampled trials.

6.2.1 Discussion of Statistics on the Frequencies of Witness Answer Length in the Direct Examination Phases of the Sampled Trials

Having honoured summonses and appeared before the court, the witness should, ideally, be allowed to present his or her testimony in narrative form. However, in reality, the witness has to contend with presenting testimony in an environment governed by many evidentiary rules (Conley & O'Barr, 1990). Moreover, witness testimony is presented through a question – response format so that an entirely narrative account is not possible. Still, one could assume that since the witness was called because it was felt he or she has information pertinent to the issue

under litigation, most of the verbal output during examination-in-chief would come from the witness. It was this assumption that the analysis of witness responses in terms of length set out to test. To this end, Table 16 presents the statistics on frequencies and percentages of witness answer length in direct examination by police prosecutors in trials with pro se litigants.

Table 16: Witness Answer Length in Direct Examination by Prosecutors in Trials with Pro Se Litigants

Answer Length	**Frequency**	**Percent**
1 word	85	13.54
2 words to 1 sentence	398	64.38
Above 1 sentence to 3 sentences	116	18.46
More than 3 sentences	29	4.62
Total	**628**	**100**

Table 16 above shows that answers between two words and one sentence were the most commonly elicited. Their total stood at 398, that is, 64.38% of the 628 total responses. Answers between one and three sentences in length had a total of 116 (18.46%) followed by one word answers 85 (13.54%) with responses beyond three sentences in length coming a distant last with a frequency of 29 (4.62%).

Turning to the first data set, that is the one with trials with a defence counsel, the length of witness responses in direct examination is presented in Table 17 that follows. The table shows a comparison of prosecutors and counsel in terms of the length of witness answers elicited.

Table 17: Comparison of Witness Answer Length in Direct Examination by Prosecutors and Counsel

Answer Length	Prosecutor		Counsel		Totals	
	Frequency	**%**	**Frequency**	**%**	**Frequency**	**%**
1 word	26	6.60	63	20.93	89	13.84
2 words to 1 sentence	236	69.01	186	61.69	422	65.63
Above 1 sentence to 3 sentences	61	16.84	45	14.95	106	16.49
More than 3 sentences	19	5.56	6	2.33	26	4.04
Total	**342**	**100**	**301**	**100**	**643**	**100**

Table 17 captures the observation that 236 (69.01%) of the 342 responses in direct examination by police prosecutors were between two words and one sentence. The responses between one and three sentences were 61 (16.84%) and one word responses totaled 26 (6.60%). Witness responses above three sentences in length were 19 (5.56%). A similar scenario was found in direct examination by counsel where 186 (61.69%) of the answers were between two words and one sentence, while 63 (20.93%) were one word in length. Answers between one and three sentences in length and those more than three sentences occurred 45 (14.95%) and 6 (2.33%) times respectively.

As the statistics in Table 17 indicate, witness responses between two words and one sentence in length are the most frequent for both groups of examiners. However, while prosecutors elicited 61 responses that were between one sentence to three sentences, counsel only elicited 45 of such. Equally, counsel elicited only

6 responses above three sentences while the police prosecutors elicited 19 of such responses. The variation in one word responses between the two responses also deserves comment. The police prosecutors elicited 26 such responses against counsel's 63. If we take the length of answers as a measure of witness participation in the discourse, and by extension a measure of the power asymmetries among the discourse participants, then we can conclude that the lengthier the responses, the more the witness is participating and vice versa. Thus, from observations in the data, the high frequency of one word responses in examination by counsel and the low frequency of responses above one sentence could be indicative that lawyers, as compared to the police prosecutors, exert more control over witness verbal output in direct examination.

6.2.2 Discussion of Statistics on the Frequencies of Witness Answer Length in the Cross Examination Phases of the Sampled Trials

In contrast to the direct examination phase, the cross examination phase of a trial normally 'proceeds in a very hostile atmosphere' and the whole exercise ends up being 'an intimidating experience' for the witness (Tkačuková, 2010). The analysis of pragmatic strategies observed in the data for the present study (cf. Table 15) has shown interruption of witnesses to have been the most commonly used idea targeted pragmatic strategy by counsel in cross examination and for lay litigants it was the second. The statistics in Table 18 that follows could show

whether interruption, among other strategies adopted by examiners in cross examination, may have had an impact on answer length.

Table 18: Comparison of Witness Answer Length in Cross Examination

Answer Length	Counsel		Lay Litigants		Totals	
	Frequency	**%**	**Frequency**	**%**	**Frequency**	**%**
1 word	162	24.85	31	10.33	193	20.26
2 words to 1 sentence	421	64.56	192	64.00	613	64.39
Above 1 sentence to 3 sentences	63	9.66	60	23.33	133	13.96
More than 3 sentences	6	0.92	6	2.33	13	1.36
Total	**652**	**100**	**300**	**100**	**952**	**100**

In cross examination by counsel the total number of witness responses elicited was 652, and of these 162 (24.85%) were one word answers while 421 (64.56%) were between two words and one sentence. The two accounted for almost 90% of the witness responses elicited by counsel. Responses above one sentence to three sentences and those over three sentences in length were a minority occurring 63 (9.66%) and 6 (0.92%) times respectively as shown in Table 18.

Further, the statistics in Table 18 show that cross examination by pro se litigants had 192 (64.00%) of the 300 total witness responses elicited by lay examiners being between two words and one sentence. These were followed by 60 (23.33%) of answers between one sentence and three sentences. One word answers were 31 (10.33%) and responses above three sentences occurred 6 (2.33%) times.

The statistics in Table 18 could lead to the conclusion that counsel, as cross examiners, are highly successful in restricting the length of witness responses. This is because of the 652 responses they elicited in the data, 583, or 89% of the total, were between one word and one sentence in length. Even pro se litigants as cross examiners registered a high control of witness answer length with responses between one word and one sentence being 223 or 64.3% of the 300 witness responses they elicited. Given this, one can hardly expect that witnesses have ample opportunity to explain their answers and this could partly account for the intimidation witnesses may feel during this phase of trial.

The findings on answer length in both direct and cross examinations are evidence that a witness has little reign in the construction of the crime narrative in court. In direct examination, about 80% of the 643 responses elicited by the prosecutors and the counsel were between one word and one sentence in length. Even though there is no limit to how long a sentence can be, this finding does little to enhance the picture of a witness as the primary contributor to the discourse. Moreover, the counsel still managed to elicit markedly more one word responses from witness at 63 (20.93%) than police prosecutors who elicited 26 (6.60%) of such responses. This is further confirmation of the observation made earlier (cf. 6.2.1) would mean that counsel maintain a higher control of information flow even as they examine witnesses friendly to their version of facts.

The control of information flow from witnesses is even greater in cross examination where 806 (around 85%) of responses elicited by counsel and accused persons are between one word and one sentence in length. This leaves a paltry 146 (about 15%) answers being between one and over three sentences in length. A closer look at the cross examination by counsel reveals a higher frequency of one word responses at 162 (24.85%) as compared to those elicited by unrepresented accused persons which stand at 31 (10.33%). Again this confirms that counsel use interrogative forms to exert control over witnesses both in examination-in-chief and in cross examination. A likely consequence of this is that in both phases of trial 'witnesses, who are denied the opportunity to give long answers, are disadvantaged in terms of opportunity to display their sincerity to the court' (Eades, 2000, p. 181).

6.3.0 Overview of Witness Answer Type in Direct and Cross Examination Phases of the Sampled Trials

Whereas answer length (cf. 6.1.0 to 6.2.2) as a measure of witness participation in a trial can yield useful insights, it may not be entirely sufficient on its own. We present three hypothetical examples to prove this point.

Question:	Were the accused persons at the scene when you arrived or they had left?
Answer:	No they were not. The accused persons were not at the scene. They had left by the time I arrived.

On the basis of answer length, this answer would by placed under the category of between one sentence and three sentences. But a close analysis reveals that the

witness has not contributed anything new to the discourse space. This is because, despite its length, the answer just repeats the words of the question and it could be misleading to argue that it is evidence of the witness getting opportunity to tell the story in his or her own words. In terms of content, the three lines can be replaced by a one word response, say ‘no’.

It was because of such observations that the present study also adopted the witness answer type classification by Luchjenbroers (1993). In her system, witness answer types are arrived at with reference to the question type they respond to and on the basis as to whether they are Minimal Responses or Elaborate Responses. In the Minimal Responses, the witness adds nothing new to the discourse space and instead just orients his or her answer to content already contained in the question as illustrated below.

Question:	Did you see him there?
Answer:	Yes. / Yes I did. / Yes. I saw him there. / Correct. / That is correct.

All the answers above could be valid responses to the preceding Positive Yes/No Question and they are all Minimal Responses though their length varies.

On the other hand, in Elaborate Responses, the witness, in responding to a question, adds something to the discourse space. The content of the answer has more information than was in the question that elicited it as the following example shows.

Question: Did you see them beating her?
Answer: By the time I arrived the police had already come. / No. Some men had already separated them. / Yes, I saw the first accused hit her on the head with a stick.

The answers above are Elaborate Responses to the preceding Yes/No question. The first response is evasive as it does not positively or negatively commit to the question. The other two are elaborations to the initial 'no' and 'yes' responses to the question posed.

Patterned on the typology for answer types by Luchjenbroers (1993) and on the typology of questions adopted for this study (see chapter four), the following are the witness answer types observed in the study sample. Among the Minimal Responses were positive responses to Yes/No Questions coded as Minimal Response (YES) and negative responses to Yes/No Questions coded as Minimal Response (NO). Others were minimal responses to WH- Questions with the code Minimal Response (WH-), minimal responses to Polar and Alternative Questions; Minimal Response (ATQ) and minimal responses by witnesses to commands or statements by the examiner which were coded Minimal Response (Command) and Minimal Response (Statement) respectively. The same coding is used for Elaborate Responses yielding the codes Elaborate Response (YES), Elaborate Response (NO), Elaborate Response (Evasive), Elaborate Response (WH-), Elaborate Response (ATQ), Elaborate Response (Command) and Elaborate Response (Statement). The occurrence of these answer types is shown in Figures 17 to 21 that follow.

Figure 17 shows the distribution of various witness answer types in direct examination conducted by police prosecutors in trials without a defence counsel.

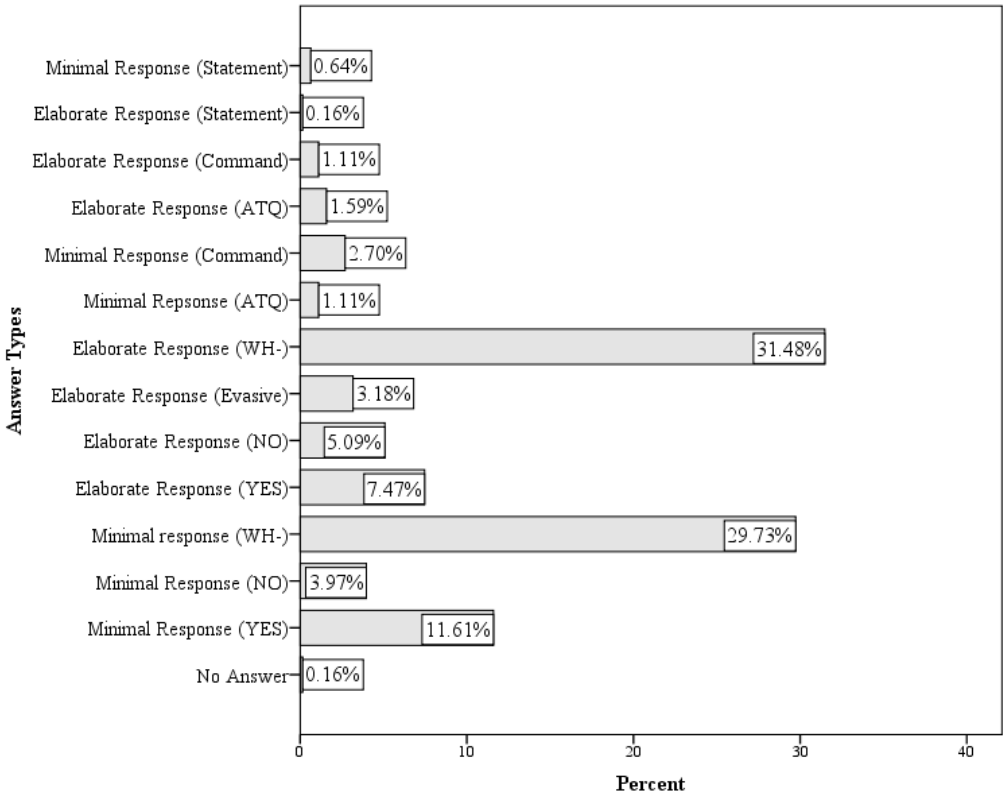

Figure 17: Frequncies of Witness Answer Types in Direct Examination by Prosecutors in Trials with Pro Se Litigants

Figure 17 shows that the leading two witness response types elicited by prosecutors constituted two thirds of all the responses. These were Elaborate Response (WH-) with a frequency of 31.48% and Minimal Response (WH-) which stood at 29.73%. The third in occurrence was Minimal Response (YES) with a frequency of 11.61% and it was the only other response type with a percentage frequency of more than 10. The least occurring witness response types were No Answer and Elaborate Response (Statement) each with a percentage of 0.16% followed by Minimal Response (Statement) with a frequency of 0.64%.

The distribution of witness answer types in direct examination by police prosecutors in trials with a defence counsel is shown in Figure 18 that follows.

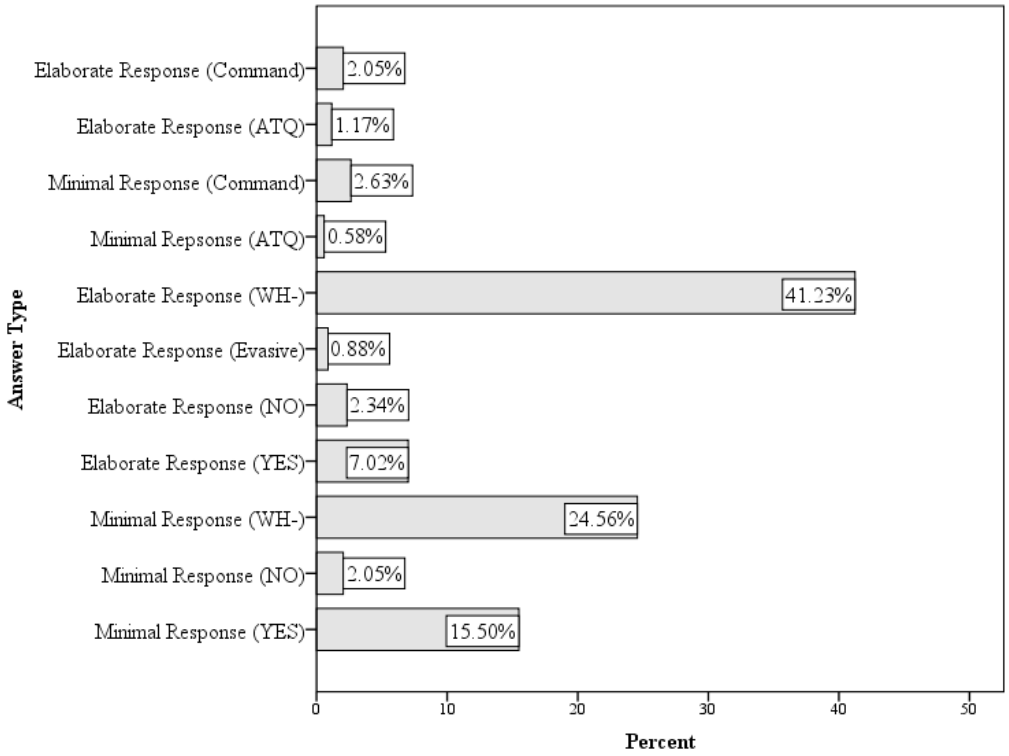

Figure 18: Frequencies of Witness Answer Types in Direct Examination by Prosecutors in Trials with a Defence Counsel

Figure 18 shows that the leading three witness answer types were Elaborate Response (WH-) with a frequency of 41.23% followed by Minimal Response (WH-) with a frequency of 24.56% and the two constituted about two thirds of the total responses elicited. The third response type was Minimal Response (YES) with an occurrence of 15.50%. The least occurring response type was Minimal Response (ATQ) with a frequency of 0.58% while second and third least were Elaborate Response (Evasive) and Elaborate Response (ATQ) with frequencies of 0.88% and 1.16% respectively. There were also trials in the first data set that had

counsel as direct examiners and Figure 19 that follows shows the percentage frequencies of witness response type in such trials.

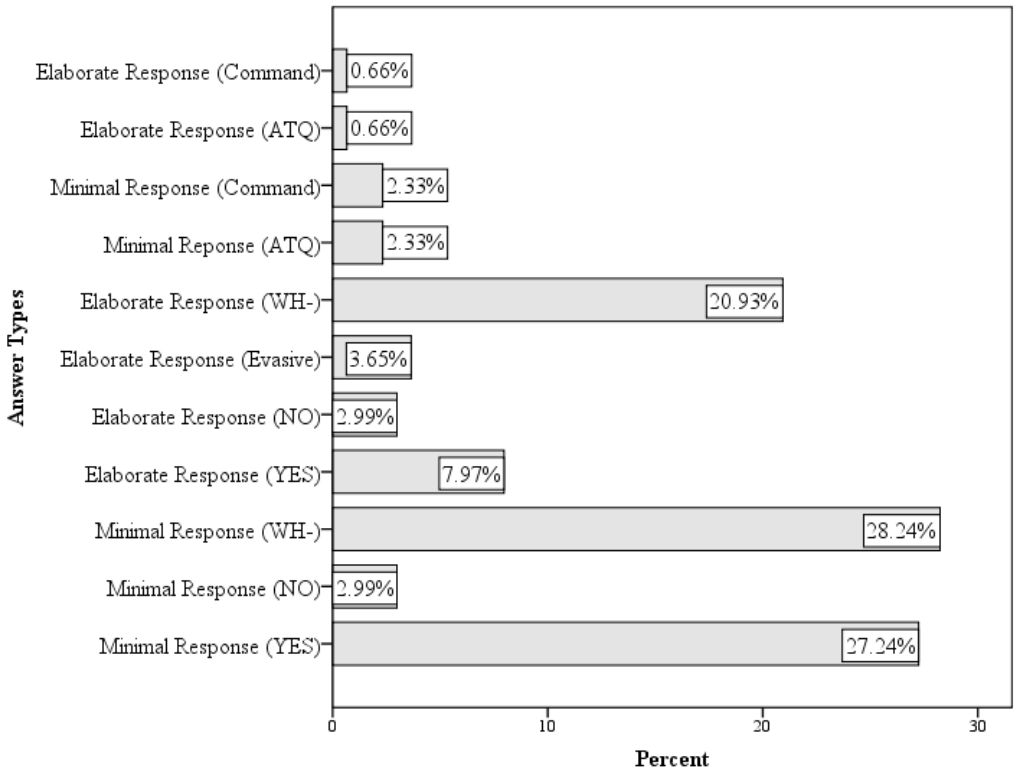

Figure 19: Frequencies of Witness Answer Types in Direct Examination by Counsel

For counsel, as captured in Figure 19, the leading witness response type was Minimal Response (WH-) with a count of 28.24% followed closely by Minimal Response (YES) with a frequency of 26.24% while third was Elaborate Response (WH-) with a frequency of 20.93%. Among the least occurring witness response types was a tie between Elaborate Response (Command) and Elaborate Response (ATQ) each with a frequency of 0.66%. These were followed by another tie between Minimal Response (Command) and Minimal Response (ATQ) with each of these witness response types having a frequency of 2.33%.

Figure 20 that follows shows how witness response types were distributed in cross examination conducted by counsel.

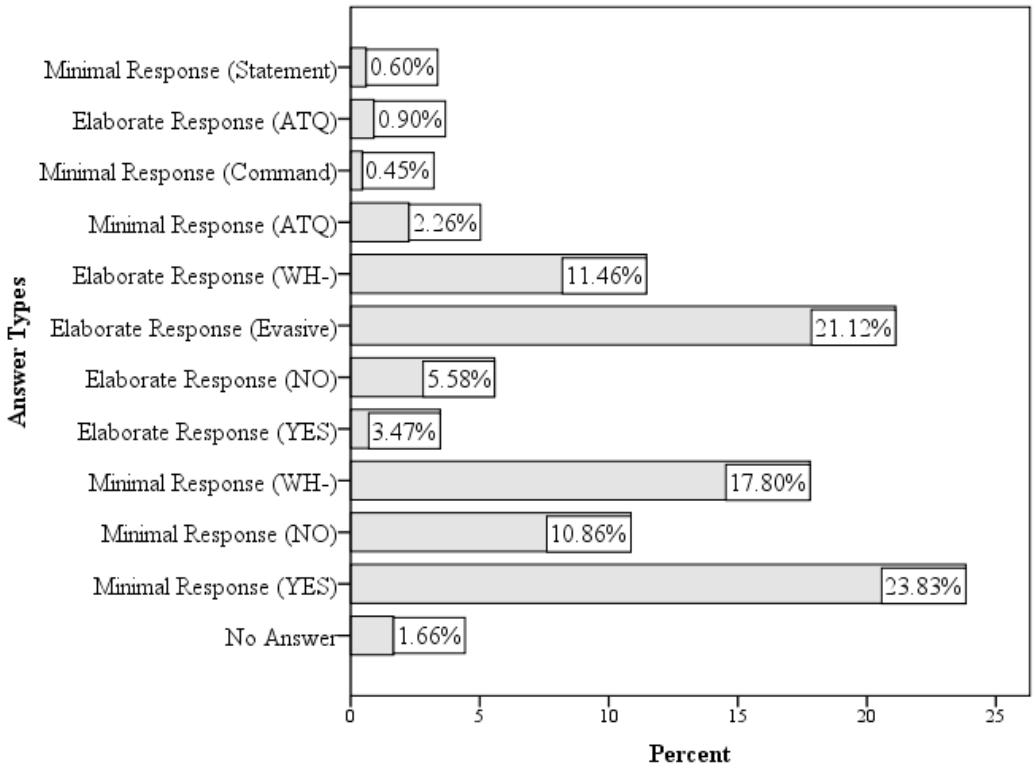

Figure 20: Frequencies of Witness Answer Types in Cross Examination by Counsel

For counsel in the role of cross examiners the witness response type most frequently elicited was Minimal Response (YES) with a frequency of 23.83% followed by Elaborate Response (Evasive) with a frequency of 21.12% and then Minimal Response (WH-) with a frequency of 16.80%. The least occurring witness response type was Minimal Response (Command) with a frequency of 0.45% followed by Minimal Response (Statement) with an occurrence of 0.60% and third was Elaborate Response (ATQ) with a frequency of 0.90%.

In Figure 21 are the distributions of witness response types in cross examination in trials where the cross examiner was an unrepresented accused person.

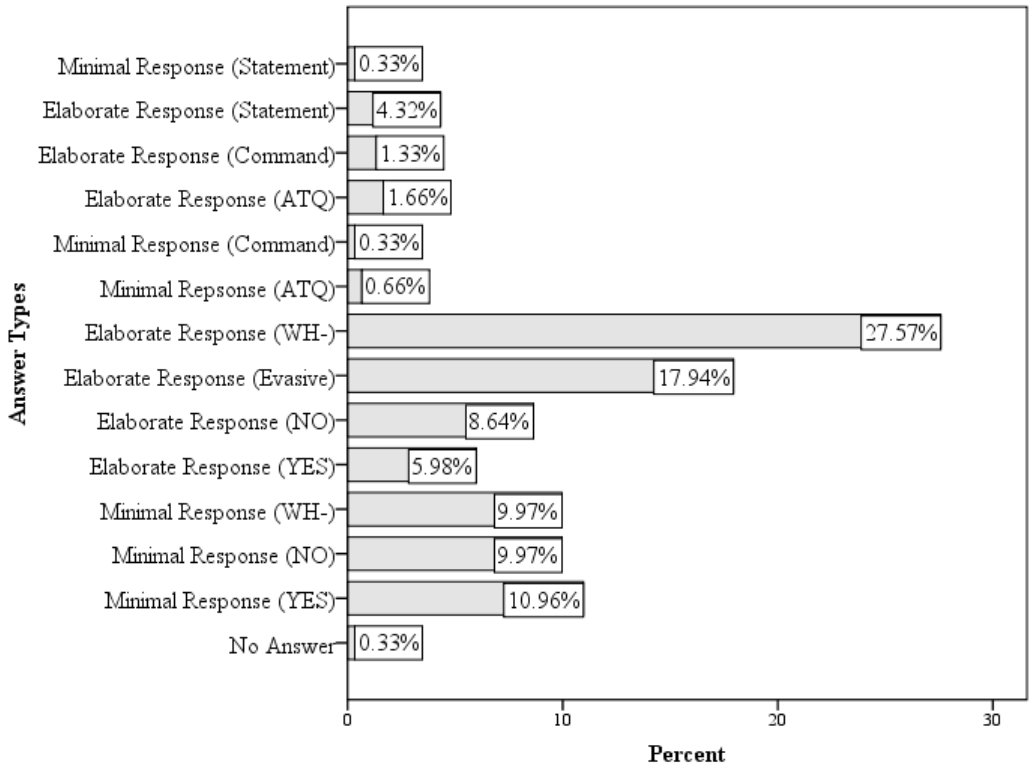

Figure 21: Frequencies of Witness Answer Types in Cross Examination by Pro Se Litigants

For lay litigants, the leading witness answer type elicited was Elaborate Response (WH-) with a frequency of 27.57% while second was Elaborate Response (Evasive) at 17.94%. The third response type was Minimal Response (YES) with a frequency of 10.96%. There was a tie among three of the least elicited witness answer types. These were No Answer, Minimal Response (Statement) and Minimal Response (Command) and each had a frequency of 0.33%.

6.3.1.0 Presentation of Witness Answer Types in the Direct Examination Phases of the Sampled Trials

The next sections (cf. 6.3.1.1 and 6.3.1.2) present illustrations from the data on different answer types and an interpretation of their use which captures the dynamics and asymmetrical power relations in this type of discourse. The presentations form the basis for discussions which could lead to conclusions about the degree to which witnesses are allowed to play a key role in the discovery of events leading to the matters in dispute.

6.3.1.1 Minimal Responses in Direct Examination

Minimal Responses are those in which a witness just gives the bit of information required by the question without adding any new information to the discourse space. By giving such minimal replies, it becomes unlikely that the witness could play a significant role in shaping the content and direction of the discourse by either determining choice of topic or change of topic. As a result, it could be argued that by being restricted to giving Minimal Reponses the witness plays the reduced role as a provider of details the examiner wishes for the development of a given topic at a particular point. This could serve as further proof of power asymmetry among the discourse participants. The lengthy exchange in example 10.6 illustrates this fact.

Example 10.6: DS1Case01DE

C1: Uko na shamba, unaishi na unalima W__ irrigation scheme, si ndio?
You own land, live and farm at W__ irrigation scheme, isn't that so?

W: **Ndio**.
Yes.

C1: Hiyo irrigation scheme inacomprise members wangapi?
That irrigation scheme comprises of how many members?
W: **Ee::: kama watu mia tatu.**
Ee::: about three hundred people.
C1: Three hundred members or families- heads of families?
W: **Mm.**
C1: Three hundred heads of families. Kwa hivyo inasaidia watu wengi hata kuliko three hundred?
Three hundred families. So it helps more people than three hundred?
W: **Mm.**
C1: So it's like three hundred members and their families?
W: **Ee.**
C1: Right.
Ee::: na area hiyo kuna stima ya power?
Ee::: and in that area there is electricity?
W: **Ee iko stima imepitia kwa mashamba hiyo.**
Yes, there is electricity passing through those pieces of land.
C1: Unajua, lines ya power iko aina mingi.
You know, power lines are of many types.
Kuna zile zinabeba nguvu nyingi, high voltage, na hizi zinabeba voltage kidogo.
There are those that carry a lot of power, high voltage, and those that carryless voltage.
Zile zina supply kwa nyumba.
Those that supply power to houses.
Gani ziko?
Which ones are there?
W: **Ya nguvu mingi.**
For high power.
C1: Ile ya nguvu mingi.
That for high power.
W: **Mm.**
C1: High voltage. Na kuna laini ya high voltage yenye inapitia kwa shamba yako?
And there is a high voltage line that passes through your shamba?
W: Ndiyo.
Yes.
C1: Ni laini ngapi?
How many lines are they?
W: **Ni laini tatu.**
They are three lines.
C1: Three.
Unasema inatoka wapi na inaenda wapi?
You are saying they come from where and go where?
W: **Inatoka S__ inaenda K___ na N___.**
They come from S___ and go to K___ and N___.
C1: Na inapita wapi kwa shamba yako?
And where does it pass through your piece of land?
W: **Inapitia katikati ya shamba.**
It passes in the middle of the the piece of land.
C1: Katikati ya shamba.
In the middle of the piece of land.
W: **Ee.**
C1: Ee::: kwa kawaida hizi wire ziko na vikingi.
Ee::: usually these wires have posts.
W: **Ee.**

C1: Hii wire iko kama futi gapi kutoka chini?
About how many feet high are the power lines from the ground?
W: **Ni kama futi thelathini kutoka chini.**
It is about thirty feet from the ground.
C1: Na hii ajali ya kijana yako- aa::: uko na mototo?
And this accident of your child- aa::: you have a child?
W: **Ee.**
C1: Anaitwa nani?
What is his name?
W: **Anaitwa B___.**
He is called B___.
C1: Na niyeye huyo ameshtaki?
And he is the plaintiff?
W: **Ee.**
C1: Ako na miaka ngapi?
How old is he?
W: **Saa hii ako na mika sixteen**.
He is now sixteen years.
C1: Lakini akichomeka alikuwa na miaka ngapi?
But when he got burnt how many years did he have?
W: **Akichomeka alikuwa na miaka tisa.**
When he got burnt he had nine years.
C1: Miaka?
Years?
W: **Miaka tisa**.
Nine years.
C1: Ee::: kwa hivyo wakati alichomeka alikuwa anasoma?
So when he got burnt he was going to school?
W: **Ee alikua anaenda shule**.
Ee he was going to school.
C1: Shule gani?
Which school?
W: **W____ Primary School.**

A physical count of the contributions of each of the participants in example 10.6 shows that both the witness and the counsel take a turn at speaking 23 times each. At face value, this could signal equality between the participants with regard to contributing to develop the discourse. However, a closer analysis reveals a different picture. To start with, only the counsel asks question while the witness supplies the answers. This division of roles, is predictable in the courtroom setting as it is a product of rules of procedure that govern interaction in this setup. Secondly, of the twenty three times the witness speaks, ten of them consist of

expressing agreement with counsel through a single word ‘yes’ or agreement sounds like ‘ee’. The third point to note is that the exchange between the counsel and the witness starts with the fact that the witness owns a piece of land at an irrigation scheme that is also home to many families, and then proceeds to there being high voltage electricity wires passing through the farms. The issues of the wires being supported by posts and how high up from the ground they are is also talked of. The fact of the witness having a son is also introduced with details given of his age and the school he attends. What is noteworthy is that the three topics of the witness owning land, there being high voltage electricity wires and the witness having a son are all introduced by the counsel conducting the direct examination. Moreover, what is discussed under each of the topics is decided by the questions the lawyer asks on each topic. The witness thus expresses agreement or supplies missing details to the story.

The synopsis of the case from which example 10.6 is drawn is that a young boy sustained serious injuries after being electrocuted by high voltage power lines. He is seeking compensation from a power utility company given that some of his limbs had to be amputated and the accident left him crippled for life. If we read exchange in example 10.6 minus the contributions of the witness, we could see an outline of the issue under focus in the exchange; but if we did the same minus the contributions of the counsel, we would be more in the dark in trying to understand what this particular exchange is about. This shows that reconstruction of the

events that are the subject of litigation is more from the examiner rather than the witness even though the latter was a firsthand participant or witness in the events that led to the dispute before court.

It could be argued that the reconstruction of the crime narrative or events leading to a civil dispute is not mainly done by the witnesses. The questions by the examiner shape the kind and the length of responses a witness can give and this places the examiner in control. As Moeketsi (1999) observes, questions play a different role in courtroom discourse than in ordinary conversation. To start with, a witness does not just feel obliged to respond to the questions posed but is compelled by law to respond, failure to which he or she could be found in contempt of court and, consequently, punished.

Secondly, and perhaps more important, is the fact that it is not enough for a witness to just respond to questions, his or her answers have to be deemed responsive. When faced with a question in everyday conversations we provide information which we think is relevant based on our interpretation of the question posed; thus, what we provide are our responses. But in the courtroom set up, there are rules that dictate what counts as evidence and what does not. Fact finders are concerned with facts rather than opinions; they favour brevity and abhor winded elaborations. The answers given to questions in the courtroom ‘may not assume shared background’, they must be explicit, clear and unambiguous so that fact

finders are not left to infer what was meant or what was left unsaid (Moeketsi, 1999, p. 63). It is only when answers to questions in courtroom discourse reach this threshold that they are deemed responsive and can constitute evidence. In ordinary conversation, participants usually have shared common background knowledge and this enables them to arrive at meanings through inference and knowledge of the issue at hand even when answering questions.

Lay and even professional witnesses may not be conversant with the stringent requirements that answers must satisfy and thus end up giving what are deemed by the powerful parties as unresponsive answers. This could partly explain the constant interruption of witnesses even during the friendly direct examination phase of trial and the use of question types that constrain witness responses. In turn, this could account for the prevalence of Minimal Responses in the data. Example 11.6 that follows illustrates Minimal Responses from a witness as a result of examiner interruption and follow up questions.

Example 11.6: DS2Case03DE

P: Elezea korti ulikuwa wapi na nini ilifanyika kuhusiana na kesi hii.
Tell the court where you were and what happened with regard to this case.

W: Nilikuwa hapo kazini nikiwa on duty na mwenzangu [wakati-]
*I was at the work place on duty with **my colleague** when-*

P: [Jina yake?]
His name?

W: Anaitwa PC _____ you Honour.
He is called PC _____you Honour.

P: Haya endelea. Ilikuwa saa ngapi?
Okay continue. What time was it?

W: Ilikuwa saa kumi hivi jioni wakati kikundi cha watu walifika hapo kwa patrol base wakiwa wanaleta mshukiwa wa uhalifu.
*It was about 4 o'clock when **a group of people** came arrived at the patrol base to bring **a suspect of a crime**.*

P: Hao watu ulikuwa ni watu unajua?
Those people, were they people you knew?

W: Hapana.
No
P: Na huyo unasema ni mshukiwa- alikuwa mshukiwa ulikuwa unamfahamu?
And the person you are saying is a suspect- was a suspect, did you know him?
W: Hapana.
No.
P: Hao watu walikuwa wangapi?
How many were those people?
W: **Walikuwa wengi**- =
They were many-
P: =**Wengi ni wangapi**? Si uliwaona?
Many is how many? Did you not see them?
W: Sio wote waliingia. Walikuja kikundi cha watu lakini wane ndio waliingia kwa office.
Not all of them got in. They came in a group but only four are the ones who got into the office.
P: Haya. Watu wane wamefika wakiwa na mtu wanasema ni mshukiwa. **Ulifanya nini**?
Okay. Four people have arrived with a person they say is a suspect to a crime. ***What did you do****?*
W: **Tuliwauliza watueleze** nini kilikuwa kinafanyika [ndio-]
We asked them to tell us *what had happened so that-*
P: [Wewe] sema yako. Uliwauliza?
Speak for yourself. You asked them?
W: Ndiyo niliwauliza wanieleze nini kilifanyika.
Yes. I asked them to tell them what had happened.

In example 11.6, the witness, who is a police officer, gives unresponsive answers making the prosecutor to constantly interrupt him and ask question follow up that could be meant to elicit more specific responses. The first question in the exchange is an open invitation to the witness to tell his story with regard to the matters before the court. But the response by the witness is unresponsive because saying he was at work with 'my colleague' is vague and assumes that the court has other ways of arriving at the identity of the colleague. The identity of the colleague is critical because the said person, it follows, is yet another witness to what happened. The prosecutor interrupts with a demand that the colleague be identified by name. Equally problematic is the witness's use of the general reference expressions 'a group of people' and 'a suspect of a crime' in response to a subsequent question. These are vague identities that could refer to virtually

anyone and while they would suffice in ordinary conversation, they serve little purpose in courtroom discourse where concern is with specific people doing things so that decisions about who is to bear responsibility can be made.

Then prosecutor asks a series of questions that try to clarify the identity of the persons who took the accused person to the police station and as the witness can only physically identify four, the prosecutor reformulates this evidence in the statement 'Four people have arrived with a person they say is a suspect to a crime' followed by an open WH- question 'What did you do?'. This is another invitation for the witness to provide an extended response but his answer is again deemed unresponsive because he responds by saying what he and his colleague did. The requirement is for a witness to give testimony on their direct participation rather than enjoining other participants to an action and these participants may not be witnesses before court.

This shows that the asymmetry among participants in courtroom discourse is a creation of the rules that govern verbal interaction in this set up, and are a consequence of participants trying to make contributions fit what is considered appropriate in the courtroom. This could help account for the almost equal number of Minimal Responses in examination-in-chief done by prosecutors (155) when compared to the total of Elaborate Responses (186) in the same phase. For direct examination by lawyers, the Minimal Responses totals to 190 while the

total of the Elaborate Responses is 111. This could indicate that lawyers tend to control the witness output more than do prosecutors in direct examination.

This last observation is also supported by the findings of Luchjenbroers (1993) in her Australian data. She found that even though the minimal responses were higher in direct examination with the sub types of such responses adding up to a total of 805 (59.5%) as compared to the total of 549 (40.5%) in cross examination, a closer look at direct examination reveals more insights. In her data Luchjenbroers (1993) established that character witness the defence counsel had a very high incidence of minimal responses in direct examination with the frequencies being 66.4% as compared to 15.2% for elaborate responses. This led her to the conclusion that 'witnesses whose testimony is compatible with barrister perspectives contribute less and barristers relate more of the trial narrative' (Luchjenbroers, 1993, p. 195). This fact is evident in our data where lawyers tended to elicit more of the Minimal Responses as compared to police prosecutors who elicited slightly more of the Elaborate Responses in direct examination (186) than they do the Minimal Responses (155).

6.3.1.2 Elaborate Responses in Direct Examination

Elaborate Responses are those in which the witness contributes new information to the discourse space rather than just affirming negatively or positively an item in

the question. Such responses can vary in length as example 12.6 that follows shows.

Example 12.6: DS1Case02DE

C2: Do you know the plaintiff in this matter Mr. ___?
W2: Yes I know him well.
C2: **How** do you know him?
W2: **We used to work together- we used to work in the same department in the company**.
C2: The department is called?
W2: ( )
C2: **When** did he join?
W2: **According to the records, he joined in 1998 and left in the year 2008**.
C2: So after his employment **how long** did he work in the company?
W2: **He worked up to 28th ___ 2008, which means he worked for ten and a half years**.
C2: **What** happened next?
W2: **He wrote a letter to the management requesting to resign on 18th __ 2008**.
C2: Here is {((giving the witness a paper))} the letter, tell us **what it says**.
W2: **He is requesting resignation of duties and in the letter he was saying he was contemplating resigning due to weak health, he says due to weak health status he had come to a conclusion that ( ) 'I have worked as from ___ 1998 up to ___ 2008. I would appreciate it very much if you take my resignation with consideration.'**
C2: Now **what happened** when you receive this letter?
W2: **The Company accepted the letter and gave it to the Personnel Manager and the due process started. The discharge documents were prepared and he signed them.**
C2: **What date** did he sign?
W2: **On 28th __ 2008, he signed the full and final statement of discharge from the company which showed the amount he was supposed to be paid and returned copies to the Personnel Manager**.
C2: So he signed all the discharge documents himself?
W2: Yes he signed.
C2: So, by signing those documents **what does it show**?
W2: **The discharge letter showed the amount he was to be paid, so by signing it showed that he accepted what was there**.
C2: It was stated there? The money he was to receive was stated in the letter?
W2: It was stated.
C2: Now that discharge letter shows he left the company [formally?]
W2: [Yes your Honour.]
C2: Now after this process of discharge, did the employee ask for anything else?
W2: **He requested to be given the letter of service**.
C2: Was he given that letter of service?
W2: **He was given and signed it on the 14th __ 2008**.
C2: Do you have that original letter?
W2: Yes- he has the original.
C2: Now, after that did the employee continue to work for the company?
W2: No he did not continue.

In example 12.6, all the witness answers in bold typeface can be said to be Elaborate Responses. An analysis of a few of them demonstrates why. In response

to how he knows the plaintiff, the witness responds by saying he and the plaintiff worked in the same department in the same company; information that cannot be garnered from the question. On being asked for how long the plaintiff worked for the company, the witness gives the period in terms of years and gives the exact date when the employee left to show up to what time he is counting the years. Having testified on the date the plaintiff wrote a resignation letter to the company, the witness is asked what the letter says. In response, the witness summarises the pertinent issues on the letter such as the reasons the plaintiff gave for resigning and the work period he cited in the letter. These and the other responses from the witness make him to be in charge of introducing new details that develop the case.

6.3.2.0 Presentation of Witness Answer Types in the Cross Examination Phases of the Sampled Trials

In cross examination, witness's responses are elicited either by counsel for the defence or by the accused person in cases where he or she is unrepresented. The following sections present examples of witness answer types elicited by counsel and lay litigants as they cross examine adverse parties.

6.3.2.1 Minimal Responses in Cross Examination

Cross examination challenges the person of the witness and the testimony he or she has presented. Therefore, the cross examiner is likely to pose questions in a way that elicits responses that do not serve the interests of the witness. With this

in mind, one can appreciate the high numbers of Minimal Responses in cross examination by lawyers, as they can be shown to be a product of the use of highly controlling linguistic resources by the cross examiner as the example 13.6 shows.

Example 13.6: DS1Case11CE

C: **I have a few direct questions to ask you** concerning your testimony. Now, you were in court when this matter was called, yes?
W: When? Today?
C: Yes, today you were in court when this matter was called?
W: Yeah
C: When the accused went to the dock?
W: Yeah
C: You heard the magistrate ask him which language we can use?
W: Yeah
C: You heard.
W: Yeah I heard
C: You heard his voice.
W: Yeah
C: Is that the voice that was calling you? Did he speak like a woman?
W: **No**
C: He did not. And did his voice sound like the one of the person you have said called you on ____ saying she sent you money by mistake?
W: You know at that [time he-]
C: **It is a simple yes or no question**. Did the voice you heard from the accused today sound like that of the woman you spoke to on ___?
W: **No, [but-]**
C: [No.] Now, Mr.__ do you have evidence, any documentary evidence pertaining to what you said that on this day you loaded your phone with ten thousand shillings?
W: That is something we can get from [S____-]
C: [Mr. __]
W: **Yes**
C: Listen to me. Do you have any documentary evidence to show that you sent any money, the six thousand six hundred to anybody?
W: **As for now I don't have**
C: You don't have. Do you have any evidence, documentary, at this ( ) that you ever received the six thousand from anybody?
W: I have the SMS [report-]
C: [No.] Mr ___ **I want us to go very fast and not waste time**. Do you have any documentary evidence to show you ever received six thousand seven hundred and thirty? Any document?
W: I received it. I mean I have the [message-]
C: [Do you] have any documentary evidence to indicate that you received an SMS indicating that somebody had forwarded to you six thousand seven hundred and thirty?
W: **No, I don't have [it in-]**
C: [Very well,] you don't have. When did you realize something was not right?
W: Immediately.
C: Immediately?

W: When I wired the six thousand six hundred and thirty, the message I got from Mpesa in my phone showed I had a balance less than what I had. That is when I discovered it was fraud and then when I called S____ they confirmed.
C: When you came back did you report?
W: Yeah, I reported to the [police-]
C: [Did you] report to S___?
W: S____- I reported the first thing- Immediately the same day, the same hour Monday 29th and they confirmed [to me that-]
C: **[Can you listen] to my questions Mr.___ and stop adding unnecessary things**. When you came back from M__ did you make a formal report to S_____?
W: They had told [me to-]
C: [Did you] make a formal report? Yes or No.
W: **No.**

As the example 13.6 shows, by restricting the witness's contributions to Minimal Responses, the counsel ensures that he is in control of the topic and what is said about it. The witness just affirms in the positive or in the negative, the version of fact counsel wants to project. The exchange starts with a series of Yes/No Questions as to whether the witness was in court when the matter was called, which, of course, he was, and so he responds with a minimal affirmation to each question. It is significant that the lawyer begins the exchange by making clear to the witness that he wants to ask him 'direct questions' which, in itself, is a controlling signal to the witness that Minimal Responses are expected. The goal of these questions becomes clear with the question 'Did he speak like a woman?' The accused, a man, is facing a charge of obtaining money fraudulently from the witness through a bogus money transfer exchange via a mobile phone. The witness has testified (during direct examination) on how he had received a call from a woman claiming that she had inadvertently sent him money and requesting that he wires it back to her.

The counsel is possibly trying to show that there is no link between the accused (a man) and the fraud because the witness has testified he was called by and sent money to a woman. This intention seems clear to the witness who attempts an explanation ‘You know at that [time he-]’ but the lawyer will have none of it interrupting with a question that gets the witness to confirm that the accused is not the person he had spoken to. The counsel then changes topic to whether or not the witness has ‘documentary evidence’ of the money transfer transactions to and from his phone. Through interruptions, rejection of witness’s attempts to offer explanations and directives ‘not to waste time’, the lawyer limits the witness’s responses to a minimal confirmation that he has no documentary evidence.

The lawyer then shifts focus to when the witness made the initial report. Interestingly, the witness’s Minimal Response ‘immediately’ is now deemed by the lawyer as inadequate as seen by his echoing of the response which signals that he now wants an Elaborate Response which the witness provides. Then comes the question as to whether the witness made a formal report to the mobile phone service provider and the witness’s attempt to explain how he reported by making a call to the service provider is dismissed by the lawyer as ‘adding unnecessary things’. The lawyer’s insistence is on getting the witness to confirm that he never made a ‘formal report’ of the fraud to the phone company.

Example 13.6 provides a good example of what could be termed as witness control by examiners. The answers of the witness are rejected not because they do not meet the requirements of brevity and specificity of courtroom discourse discussed in the previous section (cf. 6.3.1.1). The rejection is based on whether the answer helps the counsel to construct his version of events that is contrary to that of the witness. As seen above, the lawyer cuts the witness short and gives a demand for a 'yes or no' response when he wants a Minimal Response and when he wants an Elaborate Response, he asks for it especially if the witness has just given a Minimal Response. This is seen when the counsel asks 'When did you realize that something was not right?' and the witness gives a minimal response 'Immediately'. The counsel responds to this by echoing 'Immediately?' which is a signal that the witness should elaborate on what he means by 'Immediately'.

Question types and pragmatic strategies are language resources that, in a trial, are available to the examiner but denied to the witness. The examiner is thus the dominant party who uses these language resources to ensure that the witness agrees with the examiner's depiction of events, even when, as in this case, the witness was the victim of the fraud in question and has firsthand knowledge.

6.3.2.2 Elaborate Responses in Cross Examination

In contrast to the examples in section 6.3.2.1 that have shown counsel using language resource to limit witness answers to Minimal Responses, most lay

litigants were found unable to exercise such levels of control over the contributions of witnesses. This meant that in cross examinations by lay litigants, Elaborate Responses were frequently observed as example 14.6 shows.

Example 14.6: DS2Case08CE

Ac3: Wakati nilikuja pale nilifanya nini?
*When I came there **what did I do**?*
W3: Ulishika huyu ukamgonganisha na ukuta.
You took hold of this one and hit him agaist the wall.
Ac3: Na wakati baba yake alikuja na panga ulikuwa pale?
And when his father came with a machete were you there?
W3: Mimi sikuona panga.
I never saw a machete.
Ac3: Alikuja na panga akanigonga nayo.
He came with a panga and hit me with it.
W3: Hapana.
No.
Ac3: Ni kitu gani ilitokea baadaye?
***What transpired later**?*
W3: Hiyo vita iliisha na hamkuchota mchanga.
That fracas ended and you never scooped the sand.

The exchange in example 14.6 constitutes the entire cross examination by one of the accused persons in an assault case. Apart from being short, one notes that the examiner uses question types that invite the witness to present her testimony in an unconstrained way which could potentially harm the case of the defence. The first question by the unrepresented accused person is an Open WH- Question asking the witness to say what she saw him do when he arrived at the scene of the assault. The witness gives an Elaborate Response in which she recounts the witness gives a graphic account of how the defendant had assaulted the complainant, an account which the accused does not interrupt nor seek to refute in the subsequent questions. The accused instead asks whether the witness was there when the complainant's father came with a machete to which the witness responds in the negative. This is followed by a declarative statement that the

complainant's father had hit the accused with a machete. This declarative statement could serve the discourse function of making an accusation but it is robbed of relevance because the person it makes reference to is an accused person. The fact that the accused was hit by a third party is unlikely to serve as defence to prove that the accused did not assault the complainant, and there is no attempt to show the alleged hitting by the complainant's father as cause for the assault charge that is before court. The accused ends the cross examination by asking the witness to recount what transpired later. There is little in the questions that can be counted as constituting a defence.

The problem the lay litigant as a cross examiner in example 14.6 seems to be experiencing has partly to do with improper use of WH- questions. The same problem is identified by Tkačuková (2010) in her data where she observes that 'pro se litigants' WH- questions lack a clear purpose since they do not always manage to control witness replies with further restricting questions' (p. 52). She adds that the use of too many WH- questions by lay examiners without a clear purpose has a harmful effect on their case because they are left without any control over responses by witnesses.

Elaborate Responses by witnesses were also observed in cross examination conducted by lawyers. On interest is the fact that the leading subtype of Elaborate Responses by witnesses when being cross examined by counsel was Elaborate

Response (Evasive); meaning in responding the witness avoids giving a direct answer to the question posed but instead offers other information which could be meant to clarify the issue addressed in the question. This could be an indication that witnesses perceive cross examination as a hostile phase, and that the examiner is out to challenge both their testimony and personal credibility. As such, witnesses try to offer responses that characterize reality in a way that is different from the characterization aimed at by the examiner. Consider example 15.6 that follows.

Example 15.6: DS1Case05CE

C1: And all those discharged formally have to surrender it, isn't it?

W2: **Your Honour what I am trying to say is that employees can leave through several ways, one of** [**them is-**]

C1: [Mr. __ we] are not talking about employees here. Mr.___ here has the company ID, and you have stated he was formally discharged, you even, allegedly, gave him a certificate of service. Yet he has his work ID. For me it explains a very simple thing that you never really discharged him from the employment. Isn't that right?

W2: **Your Honour two things can happen. An employee can say they have lost their ID and once they say that the ID is lost, we have no otherwise and Mr. __ said his was lost, so there was no way we could get it from him when he was discharged.**

In the example, the witness avoids responding to the counsel's question with the minimal 'yes' or 'no' response demanded by the tag question opting to give an elaborate response that the counsel interrupts. The second question, again a tag question, asks the witness to confirm that if a worker has a company ID it is then proof he or she has not been formally discharged. However, the witness again avoids giving a simple affirming or negating response instead launching into an explanation as to why the complainant still has his work ID.

Such Elaborate Response (Evasive) were also found in cross examination conducted by the unrepresented accused persons as shown in example 16.6.

Example 16.6: DS2Case02CE

Ac2: Nimesikia ukiambia mahakama kwamba uliibiwa crate saba za pombe na radio, nikweli?
I have heard you tell the court you were robbed of 6 crates of beer and a radio is that true?

W: Ndio.
Yes.

Ac2: Kwa hizo vitu, hebu eleza mahakama nini ilipatikana kwangu?
Among those things, can you tell the court what was found in my house?

W: Wewe ulipatikana na chuma ya kuvunja na kufuli.
You were found with a metal rod for breaking in and padlocks.

Ac2: Ni crate ngapi nilipatikana nazo?
How many crates was I found with?

W: Pombe mlikuwa mmeweka kwa huyu.
You had stored the beer in this one's house.

Ac2: Nimeekuliza, ni crate ngapi zilikuwa kwangu?
I have asked you how many crates were in my house?

W: Mimi hata kwako sijui. Polisi ndio walikuja kwako.
I do not even know your house. It is the police who came to your house.

Ac1: Kwa hivyo hujui kama walipata crate?
So you don't know whether they found crates?

W: Nyinyi ndio mlivunja [na-]
You are the one who broke and-

The accused person, in the role of the cross examiner, starts with a question asking the witness to confirm her earlier testimony on the items that had been stolen from her premises which she does. However, the witness gives evasive answers when now the examiner wants to know which, among the said items, were recovered from his house. The witness has already testified that the items in question were recovered from the house of the first accused person. She most likely knows that in responding that none of the items before the court were recovered from the house of the second accused (the one cross examining her), she will have removed blame from the second accused person as she is without other means to link the accused and the theft. She thus resists giving direct

responses to the questions instead giving explanations that seek to link the accused person to the theft.

Also noticeable in cross examination by pro se litigants were the Elaborate Responses of the subtypes Elaborate Response (Statement) and Elaborate Response (Command) responses. Their significance is partly because such response types were not found in cross examination by counsel. What is meant by Elaborate Response (Statement) type of responses is that the witness gives an elaborate answer to a statement, rather than a question, made by the examiner. In Elaborate Response (Command) responses, the witness responds to a command from the examiner.

In example 16.6 that follows, the unrepresented accused person, rather than ask questions, proceeds by making statements to which the witness responds elaborately.

Example 16.6: DS2Case11CE

Ac: Wewe unataka- mamangu alikufa 1998 na ukaoa bibi mwingine na ndio unataka kunifukuza.
You want- my mother died in 1998 and you married another wife and that is why you want to chase me away.

W: Hiyo sasa nini unasema. Nafukuza wewe nipeleke wewe wapi? Si nilikuzaa na nikakulea. Nafukuza wewe na ni mtu unaishi N__, umekaa huko tangu ukiwa na miaka ishirin na tano sababu ulienda huko [1999-]
Now what is that you are saying. I want to chase you to where? Did I not give birth to you and raise you. I want to chase you and you live in N__, you have stayed there since you were 25 years because you went there in 1999-

M: [Ngoja.] Wewe endelea na swali ingine.
Wait. You go on with another question.

Ac: Sisi tulizaliwa tukiwa vijana wawili na huyo wa kwanza umemptatia haki yake. Mimi ndiye hutaki kuona huko. Hata nikija hapo nyumbani mnaanza kunipiga na huyo [brotherangu-]

We were born two brothers and the first one you have given him his right. I am the one you don't want to see there. Even when I come there at you home you and my brother start beating me.

W: [Hiyo una]ndangaya ukisema kwamba yeye ndiye nilimpatia kwanza. Wewe ndiye nilipatia kwanza 2006. Nikaita mzee wa kijiji na nikakuonyesha shamba. Hukujuenga.
That is telling a lie when you say he is the one I gave first. You are the one I gave first in 2006. I called a village elder and I showed you the land. You did not put up a house.

Ac: Hii mambo yote inatokea wewe kuoa bibi ya pili. Ndio hukuwa unataka mimi kukaa pale sababu wewe na huyo bibi mlikuwa mnaendelea kuuza shamba. Nanilipo kuuliza haki yangu, wewe babangu mzazi uliamua kunikata na panga. Hata ulinikata mara mbili na ukanifukuza.
And all these things are coming from you marrying a second. That is why you never wanted me there because you and that wife are selling off the land. And when I asked for my right, you my father decided to cut me with a machete. You even cut me twice and chased me.

W: Makosa yote ni yako wewe. Hebu kumbuka 2006 ulikuja ukafukuza dada yako kwa fimbo. Na nikakupatia shamba. Hio bibi nilioa kwasababu hapo unajua kuna mtoto mgonjwa, dada yako mdogo na singeweza kukaa nayeye peke yangu na huyo mwigine ulifukuza. Yule ndugu yako yeye alikuja [pole pole-]
All the mistakes are yours. Remember 2006 you came and chased away your sister by beating her. I gave you land. That second wife I married her because there is a sick child, your younger sister and I could not manage to care for her alone and you chased away the other one. Your other brother came respectfully-

Much as the rules require the examiners ask questions and the witness responds to the questions, the witness in example 16.6 recognizes the statements by the accused person as a representation of facts that are in competition with his own and thus responds to them. In examples 18.6(a)-(b) that follow the lay examiner uses both statements and commands eliciting Elaborate Response (Statement) and Elaborate Response (Command) responses.

Example 18.6: DS2Case01CE

(a) Ac: Kwa nini unandanganya korti? Mimi nilikuwa hapo nje mahali watu hukaa kwa sababu game ilikuwa haijaanza.
Why are you lying to the court? I was outside where people sit because even the game had not started.

W1: Mimi niliwapata ndani ya club.
I found you inside the club.

Ac: Hata ukiuliza hao jamaa hufanya hapo watasema nilikuwa nje ndipo tulipigana.
Even if you ask the people who were there they will say I was outside and that where we fought.

W1: Hata wao waliona kile kilitendeka. Nilitolewa nje kama nimefaint wakati ulinigonga
Even they saw what happened. I was taken outside having fainted after you hit me.

(b) Ac: [Sema] ukweli. Najua ni rafiki yako lakini ambia korti ukweli.
Tell the truth. I know he is you friend but tell the court the truth.
W2: Nyinyi wote ni marafiki zangu na mimi nasema ukweli. Wewe ulichukuwa chupa ukamgonga.
Both of you are my friends and I am telling the truth. You picked up a bottle and hit him.

In 18.6(a), the lay examiner resorts to making assertions that he was seated outside rather than inside the club when the fight happened, and in the next contribution he gives names of other people whom he says were at the club and saw that he was outside. It is these assertions that the witness's answers are responding to. In example 18.6(b) the same lay litigant commands the second witness to tell the court the truth, and the witness responds with an elaborate explanation of what transpired on the night of the fight. Examples 16.6 and 18.6(a)-(b) seem to indicate that for lay litigants presenting of testimony and the challenging of the same need not be tied to the question-answer adjacency pair.

The presence of the Elaborate Response (Command) and Elaborate Response (Statement) response types, and the examiner contributions that elicit them, points out to the differing levels of knowledge and training of lay litigants and counsel. The lay litigants as examiners resort to reacting to the testimony of adverse witnesses through explanatory statement and the lay litigants as witnesses have no problem responding to such statements or commands as the examples above show. Indeed, there would be numerous such exchanges in cross examination by unrepresented accused persons were it not for the fact that they are disallowed by the presiding magistrates.

The insistence that accused persons proceed with cross examination by asking questions is at times so much that no cross examination takes place as example 19.6(a)-(e) shows.

Example 19.6: DS2Case05CE

(a) Ac: Unajua haowatu walinifanyia ujanja. Waliniita kwangu wakaniambia vitu vimeibiwa na wanataka twende polisi kupiga ripoti. Ndipo tlikuja hapo kwa station na ukaniweka ndani. [Mimi-]
You know those people tricked me. They called me from my home and told me things have been stolen and they want us to go and make a report to the police. That's when we came there to the station and you locked me up. I-

M: [Wacha] kuelezea maneno. Muulize maswali kulingana na ushahidi wake.
Stop narrating things. Ask him questiona as per his testimony.

Ac: Mimi nilienda vizuri kwa station kupiga ripotii ya wizi.
I went willingly to the station to make a report on theft.

M: Uliza swali. Uko na swali ingine?
Ask a question. Do you have another question?

(b) Ac: [Siwe we ndiye] alikuwa unaniambia nikubali hii maeno nirudishe vitu ili tumalize? Wakati ulinifungia Saturday, Sunday hao watu walikuja ukaniita kwa cell, ukaanza [kuniambia-]
Aren't you the one who was telling me I accept the allegations, I return the goods and we finish the case? When you locked me up on Saturday, on Sunday those people came and you called me from the cell, you started telling me-

M: [Sasa hayo] yote hayatakusaidia. Uliza swali. Muulize swali uache kuelezea.
Now all that will not help you. Ask a question. Ask him a question and stop explaining

(c) Ac: Ukiniambia [nikubali-]
You told me to accept-

M: [Swali] ingine?
Another question?

(d) Ac: Wacha nikueleze. Mimi natoka kazi saa kumi na mbili za asubuhi. Naingia saa kumi na mbili natoka saa kumi na mbili. Na nikitoka gari [ilikuwa sawa-]
Let me tell you. I leave work at 6 o'clock in the morning. I get in at 6 pm and leave at 6 am. And when I left the vehicle was okay-

M: [Uliza swali] ingine.
Ask another question.

(e) Ac: Wakati alikuja kwangu [aliniambia-]
When he came to my house he told me-

M: [We have] been through that. Mlalamishi atakuja hapa kama shahidi na utamuuliza maswali yake.
The complainant will come here as a witness and you will ask him his questions.
Uko na maswali ingine kwa huyu shahidi?
Do you have other questions for this witness?

Ac: Sina maswali ingine.

I don't have other questions.

The lay examiner is interrupted by the presiding magistrate no less than four times with instructions to ask questions and not present a defence, and even with advice that whatever he is saying will not be of help to his defence. The presiding magistrate is insisting that the accused make his cross examination conform to the requirement that questions be the linguistic forms used to challenge witness testimony.

6.4.0 Discussion of the Statistical Results on Answer Types in the Sampled Trials

The examples and figures in the sub-sections under section 6.3.1.0 and 6.3.2.0 have hinted at differences in answer types as a factor of the two phases of trial and the person playing the role of an examiner. To expound on this, the sections below present tables that present frequencies and percentages of various question types in both direct and cross examination phases of the trials in the study sample. The statistics in these tables inform the discussion on how different examiners elicit different answer types from witnesses.

6.4.1 Answer Types in Direct Examination

Table 19 that follows shows frequencies and percentages of Minimal Responses for the direct examination phase of trials in data set two. This is the data set in which the examination-in-chief in all the trials sampled was by police prosecutors.

Table 19: Frequencies Minimal Responses in Direct Examination by Prosecutors in Trials with Pro Se Litigants

Answer Type	Prosecutor	
	Frequency	**Percent**
No Answer	1	0.16
Minimal Response (YES)	63	11.61
Minimal Response (NO)	25	3.96
Minimal Response (WH-)	186	29.63
Minimal Response (ATQ)	6	1.11
Minimal Response (Command)	16	2.60
Minimal Response (Statement)	4	0.64
Total	**314**	**49.92**

In direct examination conducted by police prosecutors, the most frequently occurring minimal response type was Minimal Response (WH-) with a frequency of 186 (29.63%) followed by Minimal Response (YES) and Minimal Response (NO) responses with frequencies of 63 (11.61%) and 25 (3.96%) respectively. But despite being in the top three in terms of rank, the disparities among these response types in terms of frequencies was large. Minimal Response (Command) was fourth with a frequency of 16 (2.60%) while Minimal Response (Statement) was fifth with a frequency count of 4 (0.64%). Only once during direct examination by police prosecutors did a witness respond with silence. The total of all the Minimal Responses was 314 which was about 50% of all the witness responses elicited.

Turning to Elaborate Responses, their frequencies and percentage distributions are presented in Table 20 that follows.

Table 20: Frequencies of Elaborate Responses in Direct Examination by Prosecutors in Trials with Pro Se Litigants

Answer Type	Prosecutor	
	Frequency	Percent
Elaborate Response (YES)	46	6.46
Elaborate Response (NO)	32	5.09
Elaborate Response (Evasive)	20	3.18
Elaborate Response (WH-)	198	31.48
Elaborate Response (ATQ)	10	1.59
Elaborate Response (Command)	6	1.11
Elaborate Response (Statement)	1	0.16
Total	**315**	**50.08**

Table 20 shows that among the elaborate responses by witnesses in direct examination, Elaborate Response (WH-) was leading with a frequency of 198 (31.48%) followed by Elaborate Response (YES) whose count was 46 (6.46%) and third was Elaborate Response (No) with a frequency count of 32 (5.09%). Elaborate Response (Evasive), which did not feature among the Minimal Responses was fourth with a frequency of 20 (3.18%) followed by Elaborate Response (Command) and Elaborate Response (Statement) with frequency counts of 6 (1.11%) and 1 (0.16%) respectively. Turning to the first data set, comparison of Minimal Responses of witnesses in direct examination is on the basis of whether the examiner is a police prosecutor or counsel. This comparison is presented in Table 21 that follows.

Table 21: Comparison of Frequencies of Minimal Responses in Direct Examination by Counsel and Prosecutors in Trials with a Defence Counsel

Answer Types	Prosecutor		Counsel		Totals	
	Frequency	**%**	**Frequency**	**%**	**Frequency**	**%**
Minimal Response (YES)	53	15.50	82	26.24	135	21.00
Minimal Response (NO)	7	2.05	9	2.99	16	2.49
Minimal Response (WH-)	84	24.56	85	28.24	169	26.28
Minimal Response (ATQ)	2	0.58	7	2.33	9	1.40
Minimal Response (Command)	9	2.63	7	2.33	16	2.49
Total	**155**	**45.32**	**190**	**63.13**	**345**	**53.66**

Police prosecutors elicited 155 Minimal Responses compared to the 190 elicited by counsel in examination-in-chief. The pattern of distribution of the sub types of Minimal Responses between the two groups of examiners is largely the same but the frequencies of occurrence of these subtypes are different. For both groups of examiners Minimal Response (WH-) was the leading. For prosecutors, such responses had a frequency of 84 (24.56%) and 85 (28.24%) for counsel. Minimal Response (YES) had a distribution of 53 (15.50%) among the police prosecutors and 82 (26.24%) among counsel while Minimal Response (NO) had a frequency count of 6 (2.05%) among prosecutors and 9 (2.99%) among counsel.

The statistics for Elaborate Responses during examination-in-chief done by counsel and that by police prosecutors are compared in Table 22 that follows.

Table 22: Comparison of Frequencies of Elaborate Responses in Direct Examination by Counsel and Prosecutors in Trials with a Defence Counsel

Answer Types	Prosecutor		Counsel		Totals	
	Frequency	%	Frequency	%	Frequency	%
Elaborate Response (YES)	24	6.02	24	6.96	48	7.46
Elaborate Response (NO)	8	2.34	9	2.99	16	2.64
Elaborate Response (Evasive)	3	0.88	11	3.65	14	2.18
Elaborate Response (WH-)	141	41.23	63	20.93	204	31.73
Elaborate Response (ATQ)	4	1.16	2	0.66	6	0.93
Elaborate Response (Command)	7	2.05	2	0.66	9	1.40
Total	**186**	**54.69**	**111**	**36.86**	**297**	**46.35**

Again, as in Table 21, Table 22 shows the top two Elaborate Response answer types in the study sample were Elaborate Response (WH-) and Elaborate Response (YES). For prosecutors as examiners Elaborate Response (WH-) responses elicited were 141 (41.23%) and for counsel they were 63 (20.93%). The Elaborate Response (YES) answer types had a frequency of 24 (6.02%) among the police prosecutors and a count of 24 (6.96%) among counsel. Among prosecutors, the third witness answer type was Elaborate Response (NO) with a

frequency count of 8 (2.34%) but among counsel the third response type was Elaborate Response (Evasive) with a frequency count of 11 (3.65%).

A comparison of the statistics in Tables 19 to 22 shows that police prosecutors elicited witness responses that were almost equally distributed along the dichotomies of Minimal Response and Elaborate Response. In data set two, where there is no defence counsel, of the 629 witness responses elicited 314 (49.92%) were Minimal Reponses while 315 (50.08%) were Elaborate Responses. In data set one, which had both police prosecutors and counsel as direct examiners, police prosecutors elicited 342 witness responses. Of these, 155 (45.32%) were Minimal Responses and 186 (54.69%) were Elaborate Responses.

However, this pattern does not hold for examination-in-chief conducted by counsel. A comparison of the columns for counsel in Tables 21 and 22 shows that of the 301 witness responses elicited by counsel, 190 (63.13%) were Minimal Responses and only 111 (36.86%) were Elaborate Responses. A possible conclusion from this is that counsel retained a tighter control over the verbal output of witnesses as compared to police prosecutors in direct examination; a conclusion that echoes and strengthens the one arrived at on the basis of the analysis of witness answer length (cf. 6.2.1) which showed that in direct examination, counsel tend to elicit more of the short answers as compared to police prosecutors.

Table 22 also shows a high occurrence of Elaborate Response (Evasive) answer types among those elicited by counsel. Such responses stand at 11 (3.65%) for counsel and 3 (0.88%) for prosecutors. Examination-in-chief has been charaterised as the friendly phase of trial in which the witness and the examiner collaborate to build a particular version of events. Against such a background, the presence of evasive responses could be said to be odd. A possible explanation for their occurrence could be that it is not always the case that all witnesses called by the prosecution are against the defendant. It is possible that there are prosecution's witnesses whose sympathies or loyalties are with the defendant. This is the fact that Luchjenbroers (1993) takes into account in classifying witnesses on the basis of their affiliation, a factor that was not adopted by the present study. An evasive response could indicate that a witness, in refusing to orient his or her response to the question, is intentionally flouting the Grice's Maxim of relevance which requires that participants in a conversation make their contributions relevant to the topic at hand (Grice, 1965). In turn, the flouting of the maxim could be an indicator of witness resistance to control by the examiner (cf. 6.5.0).

6.4.2 Answer Types in Cross Examination

In our data, the cross examination phase featured two groups of examiners namely counsel for the defence and accused persons representing themselves. Table 23

that follows shows a comparison of these two groups of examiners with regard to the Minimal Responses they elicited from witnesses.

Table 23: Comparison of Frequencies of Minimal Responses in Cross Examination by Counsel and Pro Se Litigants

Answer Type	Counsel		Lay Litigants		Totals	
	Frequency	%	Frequency	%	Frequency	%
No Answer	11	1.66	1	0.33	12	1.24
Minimal Response (YES)	158	23.83	33	10.96	191	19.81
Minimal Response (NO)	72	10.86	30	9.97	102	10.58
Minimal Response (WH-)	118	16.80	30	9.97	148	15.35
Minimal Response (ATQ)	15	2.26	2	0.66	17	1.76
Minimal Response (Command)	3	0.45	1	0.33	4	0.41
Minimal Response (Statement)	4	0.60	1	0.33	5	0.52
Total	**381**	**56.46**	**98**	**32.55**	**479**	**49.66**

For both counsel and lay litigants, the witness type with the highest frequency was Minimal Response (YES) with a frequency count of 158 (23.83%) for counsel and 33 (10.96%) for pro se litigants. For counsel, Minimal Response (WH-) and Minimal Response (NO) answer types were second and third in occurrence with frequencies of 118 (16.80%) and 62 (10.86%) respectively. For lay litigants, there was a tie between Minimal Response (WH-) and Minimal Response (NO) answer types with each having a frequency of 30 (9.97%). Notable also were the No Answer responses which numbered 11 (1.66%) for counsel and 1 (0.33%) for the lay litigants.

In Table 24 that follows is the comparison of frequencies of Elaborate Response witness answer types elicited by counsel and lay litigants during cross examination.

Table 24: Comparison of Frequencies of Elaborate Responses in Cross Examination by Counsel and Pro Se Litigants

Answer Type	Counsel		Lay Litigants		Totals	
	Frequency	%	Frequency	%	Frequency	%
Elaborate Response (YES)	23	3.47	18	5.98	41	4.25
Elaborate Response (NO)	37	5.58	26	8.64	63	6.54
Elaborate Response (Evasive)	140	21.12	54	17.94	194	20.12
Elaborate Response (WH-)	76	11.46	83	27.57	159	16.49
Elaborate Response (ATQ)	6	0.90	5	1.66	11	1.14
Elaborate Response (Command)	-	-	4	1.33	4	0.41
Elaborate Response (Statement)	-	-	13	4.32	13	1.35
Total	**282**	**42.53**	**203**	**67.44**	**485**	**50.30**

For trials in the study sample featuring counsel as the cross examiners, Elaborate Response (Evasive) had the highest frequency of 140 (21.12%) and were followed by Elaborate Response (WH-) with a frequency count of 66 (11.46%). The inverse holds in trials with lay examiners, where Elaborate Response (WH-) was the highest with a frequency count of 83 (27.57%) and second was Elaborate Response (Evasive) with a frequency of 54 (17.94%). For both groups of cross examiners, Elaborate Response (NO) and Elaborate Response (YES) answer types

were third and fourth in occurrence. For counsel, Elaborate Response (NO) had a frequency of 36 (5.58%) while for lay litigants the same response type had a frequency of 26 (8.64%). For counsel, Elaborate Response (YES) had a frequency count of 23 (3.47%) while for lay examiners the frequency was 18 (5.98%). In trials with pro se litigants, Elaborate Response (Statement) had a frequency count of 13 (4.32%) and the Elaborate Response (Command) answer type had a frequency count of 4 (1.33%). These two answer types did not feature in the trials where counsel were the cross examiners.

The statistics presented in Tables 23 and 24 bring out several issues that deserve comment. To start with, though the total responses in the cross examinations of all the sampled trials add up to 964, there is a disparity in their distribution between the two groups of examiners namely counsel and lay litigants. Of the 964 total responses, counsel elicited 663, which is more than two thirds of all the responses in cross examination, while lay litigants elicited 301 responses. This disparity is mainly to be accounted for by the fact that cross examinations by pro se litigants in the data were generally very short. The cause of this brevity could be the frequent interruption by presiding magistrates (or the court clerk) because of the tendency for the lay litigants to turn to the narrative mode when cross examining the prosecution's witnesses rather than stick to the procedurally sanctioned questioning mode (cf. example 16.6). The adoption of a narrative style by unrepresented accused persons in cross examination as a way of reacting to

witness testimony was seen to be almost always ruled out by presiding magistrates on the grounds that the accused person was presenting a defence than challenging the testimony of the adverse witnesses. This observation lends further credence to the conclusion made in the previous chapter (cf. 5.4.2) that lay litigants face challenges in utilizing the resources of language to their advantage in the courtroom. Among the possible challenges is the use of questions as the only sanctioned way to challenge witness testimony.

Courtroom discourse is shaped by the logic behind modern dispute processing mechanisms within the adversarial framework. The purpose of a trial is for fact finders to establish legal facts to be the basis of determining whether an injurious action occurred, whether the defendant was the agent of this action and the complainant the recipient of such an action and also establishing whether there is a causal link between the action of the defendant and the injury suffered by the complainant (Conley & O'Barr, 1990). The presentation of testimony in examination-in-chief and the challenge of this testimony in cross examination involves talk that is oriented to these issues, and only then do what participants have to say, be it as questions or responses, becomes relevant under the law. However, as Conley and O'Barr (1990) note, there is a mismatch between how lay people conceive the law and interpret legal rights and obligations and how legal professionals view the same issues. When appearing before court, be it as witnesses or examiners, the lay litigants reflect in their discourse their perceptions

and expectations of the law and the dispute resolution system. But as example 16.6 shows, when their discourse reflects expectations that are in conflict with the professional view of the law, then presiding magistrates interrupt the lay litigants. Comments like ‘that will not help you’ and ‘stop narrating and ask questions’ reflect the reasons why presiding magistrates interrupt lay cross examiners frequently.

The role of the presiding judge or magistrate is twofold. First, he or she is the fact finder and for whom the exchange between the witnesses, prosecutors and counsel is meant. Secondly, the magistrate has a presiding role that makes him or her in charge of the proceedings (Drew, 1985; Moeketsi, 1999). Observations in the data for the present study show that part of the presiding role had to do with determining issues of relevance or otherwise with regard to the questions posed by unrepresented litigants as cross examiners, and it could be interpreted that the magistrates role is to ensure proper linguistic dispute processing mechanisms are followed. This role needs to be interpreted within CDA as the framework within which the data for the present study is interpreted. All the variants of CDA agree on some basic principles one of which is that CDA focuses on social problems (Fairclough, 1992; Fairclough & Wodak, 1996). In focusing on social problems, CDA understands itself as ‘committed to social change’ with the goal of emancipation so that ‘critical discourse analytical approaches take the side of oppressed social groups’ (Jørgensen & Philips, 2002 p. 64). Unrepresented lay

litigants with no training in either language or law can be seen as a disadvantaged social group. Such litigants are expected to conform to discourse practices that are divorced from their everyday life and their attempts at using the folk approaches to narration of their legal problems are frustrated by court procedures (Conley & O'Barr, 1990).

Thus, while appreciating the magistrate's role of ensuring the right procedures are followed in presenting and cross examining testimony, and while acknowledging that these procedures serve a purpose in ensuring fair trial, one cannot help but wonder whose interests are served by following these procedures. The fact is there are many people who appear before court unrepresented by counsel and they are almost always lacking any training in law. It is from formal training in law that the officers of the court, be they judges, magistrates, lawyers or police prosecutors, are impacted with knowledge on the appropriate procedures of formal dispute processing in the adversarial system. To demand that lay litigants follow procedures that even those that enforce them only came to know of through formal instruction hardly seems fair. This challenge that pro se litigants seem to be facing presents an area of exploration through research into ways in which rules of procedure could be adapted to facilitate various ways of challenging testimony in cross examination other that just through questions.

The second issue emerging from Tables 23 and 24 has to do with levels of witness control by examiners. Cross examination avails opportunity to the examiner to show weaknesses in the version of facts created during examination-in-chief by the adverse party. To achieve this, cross examination involves showing weaknesses and or contradictions in the testimony presented by a witness or showing that the witness is not trustworthy and his or her testimony is not credible. The overall goal of the examiner in this phase, on the part of the defence, is to create reasonable doubt in the minds of the fact finders that will lead to an acquittal or any ruling by the court that is favourable to the cross examining party. One way of ensuring this is making sure that the examiner retains a tight control over witness responses by limiting elaborate details (Tkačuková, 2010).

Comparing the two groups of examiners, Tables 23 and 24 show that counsel elicited more of the minimal responses from the witness during cross examination. For counsel, the minimal responses were 382 which was 56.46% of the 663 responses elicited by this group of examiners while the elaborate responses were 282 which was 42.53% of the total. In contrast, lay litigants as examiner elicited more of the elaborate responses which were 203 or 66.44% of the 301 responses elicited by lay examiners. The minimal responses to questions posed by this group were 98 which was 32.55% of the total. This could lead us to conclude that lawyers are more successful of controlling witness participation during cross examination as compared to unrepresented defendants.

Finally, the statistics in Tables 19 to 24 reveal the witness's view of the two trial phases of examination-in-chief and cross examination. This can be read from the statistics on No Answer and those on evasive responses as both answer types reveal the willingness or otherwise of the witness to respond to the examiners question. The category of answer type No Answer does not feature at all in direct examination (cf. Tables 21 and 22) while in cross examination it occurs 11 times for trials with counsel as cross examiner and once for trials with lay litigants as cross examiners (cf. Table 23). The response type Elaborate Response (Evasive) occurs three times for trials with police prosecutors as direct examiners and three times for trials with counsel as direct examiners (cf. Table 22). In cross examination, counsel elicited 140 evasive responses and lay examiners elicited 54 such responses (cf. Table 24). These observations add credence to the view that cross examination is a hostile phase of trial and witnesses seem well aware that their goals are in conflict with the party examining them. We could conclude that witnesses are aware that the questions posed are a challenge to their testimony, and this could explain the high numbers of responses that are evasive. Evasive responses and refusal to answer also signal to the fact that witnesses offer some resistance to the control that examiners wish to impose on them (cf. 6.5.0).

6.5.0 Witness Resistance

The findings and discussions in this chapter have so far shown the witness to be an unequal participant in courtroom discourse: be it in the examination-in-chief or

cross examination phases of trial. The production and organizational properties of courtroom discourse are hedged by rules of procedure as well as the differing levels of access to knowledge, both procedural and legal, among the discourse participants. The rules and the levels of access to knowledge give some participants access to some language resources while denying other participants the same. The rules of procedure pre-allocate turns to different participants so that in the question-answer adjacency pairs that dominate the structure of talk in the courtroom, the roles of questioner and respondent are usually pre-allocated (Matoesian, 1993). The police prosecutors or the prosecuting counsel, by law, adopt the role of questioner in direct examination, while the witness is the one to respond.

In cross examination, the examiner role is taken by the defence counsel or the unrepresented accused person with the witness responding. In both phases of trial, the presiding magistrate can assume the role of examiner unhindered. It needs to be emphasized that these roles are fixed and not negotiated among the participants as the discourse progresses, as is the case in most casual conversations. Further, the witness is not just obliged to respond to questions but the rules compel that the witness answers the questions. In fact, refusal by a witness to answer a question in the courtroom setting is labeled as contempt of the court and is deemed an act that is punishable under the law (Conley & O'Barr, 1999).

In assuming the role of responding to questions, witnesses also adopt other labels such as expert witnesses, eye witnesses, the victims of a crime or the plaintiff alleging some civil infringement. In playing these roles, witnesses are also well aware of the reality of the context in which they are summoned: they are participants in a formal attempt to resolve a dispute. Given this, and given their role in the dispute, witnesses orient their responses to their context which includes; the issue at the heart of the trial, the prior testimony, their anticipation of succeeding questions, their anticipation of where the questions are leading, their leanings to either of the sides in the dispute, and their professional roles (Drew, 1985). Consequently, witnesses, at times, offer some resistance when faced with questions whose content or motives they feel is in competition with their own.

The forms of resistance to the control that has so far been shown witnesses are subjected to by examiners are of interest under the CDA framework. The CDA approach holds that the analysis of discourse is not sufficient in itself without an attempt of exploring 'the links between language use and social practice' (Jørgensen & Philips, 2002 p. 69). There is need to show how discursive practices are used to maintain or challenge the existing social order. A witness in a trial can be said to be taking part in a communicative event whose rules of engagement are pre-established and give more discursive power to examiners while denying the same to witnesses. In light of this, any responses by the witness that seek to address this imbalance in a power is actually a challenge to the existing social

order within which a trial takes place. The following subsections present examples and an assessment of the success of the various ways in which witnesses were found to offer resistance to examiner questions.

6.5.1 Refusing to Respond

The occurrence of this form of resistance has already been noted in the analysis of answer types under the category of No Answer responses. Such responses occur when a witness is asked a question, yet he or she does not respond to it when it is his or her turn to do so. However, this form of resistance, which was observed to occur more during cross examination, does not register much success (cf. 6.3.1.2). As already noted (cf. 6.2.1), the rules of procedure compel a witness to answer each question posed. Thus, the examiner finally extracts a response from the witness as exemplified in 20.6 and 21.6 (a)-(b) below.

Example 20.6: DS1Case06CE

C: Haukuwa umemshika mkono. Je, unajua vile sheria inasema kuhusu mtu mzima ma mtoto waktemea kwa barabara?
You were not holding his hand. Do you know what the law says about an adult and a child walking along the road?

W: **….**

C: Unajua? Ndio au la?
Do you know? Yes or No?

W: Mimi sijui.
I don't know.

Example 21.6: DS1Case06CE

(a) C: Why did you stop them?
W: **….**
C: Why did you stop the three people you met?

(b) C: Is it possible that they went there?
W: **….**
C: You have to answer my question officer. Is it possible?
W: I don't know, I can't tell.

All the examiner has to do when met with silence from a witness is repeat the question, as happens in examples 20.6 and 21.6(a), or repeat the question with an explicit reminder to the witness that he or she has no option but respond as happens in example 21.6(b). This is enough pressure to make the witness respond one way or the other even when he or she knows the response could be damaging to the version of facts he or she wishes to present to the court. For instance, the witness's silence in example 21.6(b) is likely to have been motivated by the fact that the witness could predict where the line of questioning was leading in light of what had gone on before. The counsel, in the preceding discourse, had made the witness testify that he left a piece of evidence in a thicket, unguarded overnight. Further, the witness had testified that this was a dangerous thicket as it is a hideout for people who sell drugs. The question under analysis is seeking the witness to confirm whether or not these drug dealers went to the thicket on the night the piece of evidence was left laying there.

Of course, the logical response is that the witness does not know, in fact, has no way of knowing, since he has already testified he never went back that night. The witness, being a police officer, knows that a response in the affirmative is likely to be damaging to the prosecution's case as it would amount to admitting that a piece of evidence, allegedly thrown down by one of the accused persons during a chase, was left unguarded overnight in a thicket that is frequented by criminals. Linking the piece of evidence to the accused thus becomes a matter of debate

rather than a straightforward matter. The witness knows he is trapped and seeks to resist the question by not giving a response. Counsel reminds the witness that he has to respond to questions and, thus, extracts a response.

6.5.2 Appeal to the Authority Figure

The presiding magistrate is the overall authority figure in the courtroom. This authority derives from the laws and the rules of procedure to which modern dispute resolution systems owe their existence. The overall authority of the presiding magistrate is a fact recognized and respected by the other discourse participants. One instance, in example 22.6, was observed in the data where a witness addressed herself to the magistrate asking whether she had to respond to a particular question from the defence counsel.

Example 22.6: DS1Case04CE

C: [You had] taken two glasses of wine you said and you were not drunk. How many do you take to get drunk? ((Laughter))

W: **Your Honour do I have to answer that?**

C: Yes you have to. I have the right to question you on anything because you have accused my clients. How many, do you take to get drunk?

W: I was not drunk. I had taken one glass of wine with dinner. I was just taking the second when P__ attacked me.

The statement preceding the question shows the lawyers incredulity at the witness's assertion that she was not drunk though she has testified having taken two glasses of wine. His likely aim is to show the witness was drunk and is the one who picked a fight with his clients. He thus poses 'How many do you take to get drunk?' The question is rather personal and it could be the reason the witness seeks clarification from the presiding magistrate on whether she is bound to

respond to it. The response she gets is from counsel who appeals to the felicity conditions governing interrogation in the courtroom. His assertion is the witness has made accusation and, thus, has to withstand any form of interrogation in a bid to test the credibility of her accusations against the accused persons. Since the authority figure addressed by the witness remains silent, the witness has no option but to respond.

6.5.3 Offering a Competing Description of Reality

As mentioned (cf. 6.5.0), witnesses are aware of the context of their contributions. In cross examination, witnesses are aware that the examiner seeks to discredit or challenge the case theory they have advanced in examination-in-chief. Gibbons (2003) observes that while the courtroom environment constitutes the primary reality of the discourse participants, the time of and the events under litigation constitute the secondary reality. It is this secondary reality that courtroom discourse tries to recreate. However, given the divergent goals of the discourse participants, this secondary reality could be characterized in various competing ways.

Such a divergent depiction of events, as Drew (1985) shows, can be achieved through the witness offering alternative descriptions of reality to those offered by the counsel. The exchanges from the cross examination phase of one trial in example 23.6(a)-(e) that follows show this.

Example 23.6: DS1Case04CE

(a) C: Coincidence. You are able to document all their fights by coincidence and you know they are not married. **Now do you have a family**?
W: By family you mean? **I have brothers, sisters, father and mother**. ((Laughter))
C: Are you married? **Do you have a husband**?
W: No.
C: Children? **Do you have children**?
W: No
C: **Your are not married and you don't have children. How old are you?**
W: Am 38.
C: Now your last fight with P___ and W__ you said was at G__. **What kind of place is G_____?**
W: What kind?
C: It is **a bar, isn't it?**
W: **It has everything. They sell food, meat and even beer. There is a restaurant**.
C: There are also **rooms, a lodging upstairs, isn't it?**
W: I don't know.
P: Your Honour, the counsel wants to embarrass the witness.
C: I am within my rights.

(b) C: Yet, **you had no problem joining** two chaotic and dangerous women at a bar?
W: I **was not joining them**, [I-]
C: [It is] your testimony that **you went to second floor and joined them** where they were?
W: I said **I was invited by E__. I was joining E___ and Mr. ___.** They are my friends.
C: Did P__ and W__ come to where you were seated?
W: E___ asked [me-]
C: [Answer my] question. Did they come to your table?
W: No. [I said-]
C: [In fact] you have testified that you **left your table on the first floor of the bar and went all the way upstairs to where they were seated**, to their table, isn't that your testimony?
W: **I was invited by E___**. I joined E___ and Mr. ____
C: Yes, **where you found women** whom you have told us **you knew to be dangerous**, isn't it?
W: Yes=
C: =**Did you leave?**
W: Why should I leave? **I was not bothered by them.**

(c) C: You have said you **were not bothered by them**?
W: Yes, **I was talking to E_____**. I was not talking to them.
C: **Yet you saw**, what did you say, that you saw P___ sneering at you. Meaning **you were staring at her**, right? ((Laughter))
W: I was not looking- a sneer is an expression that you see [not-]
C: [But you] were talking to Mr. ____ and E____, right?
W: My eyes were not closed. The eyes were open, you see things, not that you are [looking-]

(d) C: Yes your Honour. Now, when you joined P__ and W__ at their table **were they shouting screaming or anything like that?**
W: No.

	C:	So when you went upstairs, they were seated **quietly enjoying their drinks, isn't it?**
	W:	**They were talking.**
	C:	But the **two dangerous women were not shouting or fighting, right?**
	W:	**They were talking.**
	C:	Yes, **they were talking quietly until you joined them**. You said **when you came upstairs fighting started,** right?
	W:	They attacked me
	C:	They attacked you? Did they attack other people? Were there other people in the pub?
(e)	C:	Good. Now, the fight. How long did it take?
	W:	I don't know. I was not timing it. **First of all it was not a fight I was attacked and beaten** by two hefty women as you can see. I didn't have time to look at my watch, I was- it was chaos.
	C:	Chaos? Yes because **you fought back**. They didn't beat you when you were just sitting there, right? You **fought them too**, isn't it?
	W:	**I was struggling to free myself** from where P___ was holding me [and-]
	C:	[You said] who separated you?

In cross examining the witness, who is the victim of assault, the defence counsel does not seek to deny that a fight took place or even deny that his clients were involved in it, which is the version of reality the prosecution has constructed in direct examination. Rather, the lawyer seems to be seeking for a confirmation of his version of what had transpired specifically; who did what on the evening of the fight and, thus, who is to blame that the fight. The counsel characterizes the events of the occurrence in a particular way, and the witness, aware that her testimony is under challenge responds by characterizing the same events in a way that emphasizes her evidence in chief.

In 23.6(a), the counsel starts with questions on whether the witness has a family and the witness responds that she has parents and siblings. The next questions by the counsel are more pointed specifying he wants to know whether the witness

has a husband and children. The lawyer then changes the focus of his questions to the establishment where the fight took place with his question seeking to get the witness to confirm the fight was in a bar. With this, one could guess the motive of the questions on marital status, children and age of the witness. It is likely that the counsel wants to exploit a popular misconception that a lady of a certain age should be married with children and should not be frequenting establishments such as bars, and if she does, she is of questionable character. The witness seems aware of these implications of the questions and so instead of saying whether the establishment in question is a bar or not gives a description of the variety of services offered emphasizing on food. The following question by counsel on whether the facility also has lodgings upstairs also touches on the popular belief that bars have lodgings that are used for illicit sex. The likely implication is that a single woman who frequents such establishments is of loose morals. This could be the reason why the prosecutor raises an objection on the grounds that the counsel wants to embarrass the witness.

In 23.6(b) and 23.6(c) which are from the same trial, the lawyer, apparently, wants to show that it is the witness who picked a fight with his clients. He does this by asking questions that characterize the events of the night in a way that shows that the witness left her table and ‘went all the way’ upstairs to ‘join’ the accused persons at their table. The witness, in her responses, characterizes her action of going upstairs as one only motivated by an invitation to join her friends

E___ and Mr.___ because they had invited her to their table. She thus wants to show that in going upstairs she was not joining the accused persons but her friends. In the same way she insists she was not bothered by the presence of the accused persons because she was joining and talking to her friends and not them. Counsel's choice of describing the witness as having been 'staring' at the accused persons could also be meant to show the witness as having been provocative, but the witness chooses the neutral word 'looking' to describe what she did.

In 23.6(d) and 23.6(e), the examiner persists in characterizing the witness as the aggressor while the accused persons are shown to be the recipients of this aggression. According to counsel the accused were 'quietly enjoying their drinks' until the witness joined them and 'that's when the fighting started'. The witness has a different depiction saying the accused persons were 'talking' which minimizes the effect of the counsel's description of 'quietly enjoying drinks' and she insists it was not a fight because she was 'attacked and beaten.' The lawyer's assertion that the witness was not just beaten but she 'fought back' is countered by the witness's assertion that she was 'struggling to free herself'. These examples show the witness and cross examiner talking about the same events but each giving descriptions of specific acts and interpretations of particular actions in a way that orients itself to the version of facts they wish to convince the fact finder to adopt.

6.5.4 Giving Evasive Responses

Responding to questions evasively was the most prevalent witness resistance strategy (cf. 6.5.4). The likely reason behind evasive responses is a witness reading more into a question that just what the question ostensibly asks. Thus, the witness's response may address issues that are outside the question but still within the domain of the trial (Drew, 1985). Such responses, on the surface, seem a violation of the Grice's maxims of quantity and relevance.

The maxims, postulated by Paul Grice in 1975, seek to account for how participants in a conversation adhere to the Cooperative Principle which in turn allows for language users to interpret utterances. The maxim of quantity requires participants in a conversation to make their contributions brief and to avoid giving too much information. The maxim of relevance deals with information being on topic and it requires that participants make contributions that relate to the immediate topic (Grice, 1975).

However, the application of these maxims, it has been argued, would need an ideal dialogue which is power free, and, for some scholars, this an unattainable kind of dialogue even in casual conversation (Wang, 2006). We adopt this view and the argument that courtroom discourse is laden with power asymmetries and is characterized by the adoption of non cooperative stances by participants who are, at times, pursuing diametrically opposed goals (Wang, 2006). As examples

24.6 to 26.6 show, it is in light of the pursuit of opposed goals that the evasive responses by witnesses can be analysed.

Example 24.6: DS1Case05CE

C: Ms. ____ I want to ask you a few questions.
Were you able to establish from whom or from where the ten million was coming from?
W1: No.
C: You didn't establish that?
W1: **It was not within my mandate to establish that.**
C: But it would have been possible to establish the origin, right?
W1: Yes it would have been possible.
C: Did you trace the paper work that was involved in the inward transfer or any kind of record?
W1: **It was not within my mandate [to-]**
C: [Now] Ms. ____ we have heard enough about your mandate. I am asking you very specific questions. Just answer yes or no.
Did you trace the record that accompanied the transfer? Yes or no?
W1: I did not.

In example 24.6, the witness has been asked whether she traced the paper work connected to the transfer of some money to a given account. The witness, an employee of the bank to which the money was transferred, has testified that she was dealing with a formal request from an anti-corruption body. Given that the origin of the money is part of the issue before court, the witness chooses a response that is oriented to the fact that in dealing with a formal request from an investigative agency, one sticks to doing what has been requested formally and thus her reference to the mandate she had. This apparently evasive reply could have been motivated by the fact that the cross examining lawyer in the previous exchange has repeated the witness's 'no' response reformulating it as 'You didn't establish that?' makes it sound like an accusation that the witness omitted to do what she should have done. The witness is thus referring back to the mandate she has testified she had from the formal request rather than just give a 'yes' or 'no'

response. It is only by referring back to previous testimony that we can see the relevance of it.

In the following example, 25.6, the evasive responses seem to be motivated by a desire to resist the lawyer's attempt to show that the witness' testimony in court is mismatched with his written statement.

Example 25.6: DS1Case08CE

C: Look at your statement, where you recorded that. Is there the word OCS there? Can you see the word OCS or Officer Commanding Station?
W1: **In our place of [work-]**
C: [No no,] can you see that word OCS anywhere?
W1: Yes.
C: Where? Show us.
W1: **Here, 'mkubwa' ni [OCS-]**
boss is
C: [Is it?] Now, this OCS word, is it a Kiswahili word?
W1: It is an English word.
C: It is an English word meaning Officer Commanding Station. I want you to show us where you recorded the word OCS or Officer Commanding Station, exactly like that in your statement. 'Mkubwa' does not mean OCS. Hata wewe najua unaitwa mkubwa.
'boss' *Even you I know you are referred to as 'boss'.*
Is the word OCS in your statement?
W1: **When he was [talking-]**
M: [Just] answer his question directly. Is OCS written there?
W1: No your Honour.

In example 25.6, the witness is resisting the idea that his testimony in court that the accused person abused the OCS is a contradiction of the witness' written statement because the statement does not explicitly mentioned the acronym OCS or the title Officer Commanding Station, which is what the acronym stands for. Rather than give a 'yes' or 'no' response to the question on whether his statement has such a question, the witness attempts an explanation that counsel interrupts. The exchange ends with the presiding magistrate directing the witness to state

whether the said word is in the statement or not. Again the response about the place of work would seem irrelevant if we just looked at the question it is responding to. But knowing the issue of the case, we see the witness is actually responding to the question.

Evasive responses also characterized cross examination by pro se litigants as shown in example 26.6 that follows.

Example 26.6: DS2Case03CE

Ac: Na wewe ulifanya nini kama mchunguzi wa hii kesi?
And you what did you do as the investigating officer in this matter?
W: Wewe ndiye unajua kazi ya [polisi?]
Are you the one who knows the work of the police?
M: [You have] to answer his questions. Can you respond to him.
W: Niliandikisha statements zao.
I recorded their statements.
Ac: Ulienda, hata kama nisiku iliofuata ama siku ingine yeyote, mahali kitendo kilifanyika?
Did you go, even if it was the following day or any other day, to the place where the act took place?
W: Tulikuwa na kazi nyingi kwa ofisi.
We had a lot of work at the office
Ac: Kwa hivyo haukuenda?
So you didn't go?
W: Nimesema tulikuwa na kazi [nyingi-]
I have said that we had a lot of work-
M: [Now can] we stop wasting time. Did you or did you not go?
W: Sikuenda your Honour.
I didn't go your Honour.

In example 26.6, the witness, a police officer, evades responding to the issues raised by the unrepresented accused person who is cross examining him. The witness, in direct examination, told of how the suspect and an exhibit were brought to him at the police station. The witness is the investigating officer and this could be the point the accused wants to bring out: the investigating officer did

nothing but receive the suspect and record the statements of witnesses. The question is really on the professional competence of the witness and, by extension, the worth of his testimony because the witness did not do any investigation.

In this case, however, there seems to be a different power play between the lay examiner and the witness who is a police officer. This is because the witness seems not only to evade the question but also to intimidate the accused with a blunt reminder that he is a police officer and police business is for police officers. However, the presiding magistrate reminds the officer that in the position of a witness in the courtroom he is compelled by law to respond to the examiner. The accused person, still wishing to exploit the fact that the investigating officer did not carry out meaningful investigation, follows it up with the question 'Did you go, even if it was the following day or any other day, to the place where the act took place?' to which the witness evasively responds with the explanation that there was a lot of work at the office. The final question by the accused is a 'so' prefaced declarative question that clearly demands for a 'yes' response, but to which the witness irritably responds that he has already explained there was work at the office. This draws a reprimand from the presiding magistrate for the witness to stop wasting time. It is the magistrate who poses the question to the witness and elicits a response.

Thus, evasive responses as a tactic for witness resistance, does attract interruption from the examining party or the presiding magistrate rejecting the evasion and demanding for an appropriate response. But as discussed in the opening paragraphs of this section, a response is evasive only to the extent that it does not orient itself to the specific point of the question it is meant to respond to, and, thus evasiveness cannot be equated to irrelevance or verbosity. A look at the wider context of prior testimony, the role of the witness in the dispute, the affiliation of the witness to the parties in the dispute and the issues under dispute would show the relevance of all responses.

6.5.5 Questioning the Examiner

This strategy was only encountered in cross examination done by lay litigants. It involves a reversal of roles, where the witness refuses to be pinned down by a question by taking on the role of questioner, or the witness puts the examiner on the spot by questioning the logic of their actions or utterances. Consider examples 26.6 and 28.6 that follow.

Example 26.6: DS2Case01CE

Ac: Hao jama waliona vizuri, sana tukipigana wewe ndiyo ulianaza kunichokoza na hata wakija hapa watasema.
Those fellows saw very well as we fought and you are the one who started it all. If they come here they will say.

W1: Mimi sikukuchokoza. Niliongea tu na M___. Ni vibaya kuongea na M___ na ni mtu tunajuana? Eeh? Ni vibaya?
I didn't start the fight. I was just talking to M____. ***Is it bad to talk to M___ and we know each other? Eeh? Is it bad?***

M: Sio wewe unauliza maswali. Wewe jibu maswali yake.
You aren't the one asking question. You answer his questions.

The assertion by the accused that it is the witness (who is the complainant in this case) who started the fight is what makes the witness turn examiner. He asserts that all he did was talk to a lady by the name M____ as it was someone he was familiar with. He then poses three questions demanding to know whether talking to that particular lady is wrong. It takes the intervention of the magistrate to remind the witness of his discourse role.

A similar scenario plays out in example 28.6 where the witness resorts to questioning the lay examiner.

Example 28.6: DS2Case02CE

Ac1: Sasa makosa yangu ni gani? Si hata wewe unaweza kuwekea mtu kitu?
So what is my mistake? Even you can you not store something for somebody?

W: Masanduku ya pombe ni kitu cha kuwekeaa mtu nyumbani? Hao unasema unawajua kwani wako na baa ndio wawe na hio pombe yote na wanaleta kwako usiku?
Are beer crates something you store for somebody in the house? Those people you are saying you know, do they own a bar so that they can have all that beer that they bring to your house at night?

M: You just answer his questions

I: Wewe unajibu maswali yake sio kumuuliza. Hebu muulize swali tena.
You answer his questions not asking him. Can you ask her the question again?

Ac1: Mimi waliniambia wanapanga kuanza baa niwawekee hiyo ni stock. Niwawekee kwangu watachukua, ndio [nikakubali-]
They told me they were planning to start a bar I store that stock for them. I keep it for them at my house they would come for it, that's why I accepted.

W: [Na hukujiuliza] kwa nini wanaleta usiku? Kwani kuna depot inafanya [hadi usiku?]
And you didn't ask yourself why they were bringing at night? Is there a depot that operates at night?

The question by the accused person on whether the witness would also not have stored something for someone, seems to be an attempt at appealing to the witness' sense of social rules of conduct and good neighbourliness whereby if someone were to request one to store something for him or her, one is expected to do so. But the witness questions this attempt at explaining why the accused person

stored stolen property. Her disagreement is premised on the logic that there are things one should not just accept to store for another just because a request has been made. The two questions she poses are connected to this fact of whether it is sensible to store beer in a residential house and given the quantity of the beer the accused should have thought twice.

The presiding magistrate has to remind the witness of her discourse role. But when prompted by the court clerk to ask another question, the witness abandons the examiner role and instead gives an explanation of why he stored the beer. Despite the intervention by the magistrate preventing the witness from asking questions, the accused goes ahead to answer the question. And this prompts the witness to question the logic of the actions by the accused. She asks why the accused did not pause to think why the beer he was to store was being brought to him at night given that no beer depot operates at night. Thus, the witness is resisting the accused person's attempts at explaining or justifying his actions, and uses the questions to show the blame fully rests with the accused.

The various forms of witness resistance exemplified and discussed above are a confirmation of the observation by Jørgensen and Philips (2002) that 'communicative events not only reproduce orders of discourse, but can also change them through creative language use' (p. 61). The examples highlighted show that witnesses are actors in an arena that is governed by rules which may be

in conflict with what they want to achieve: which is to tell their story in their own way. Their attempts, with varying degrees of success, to give testimony in their own way is evidence conflict between discursive practices, and it is also evidence of the possibilities of change.

6.6 Summary of Chapter

This chapter has highlighted the fact that as a discourse participant, the witness in the courtroom setting is subject to control by the other participants who adopt the roles of examiners. Analysis of witness contribution has revealed that such control is achieved in two ways. In the first place, witness verbal output is limited to utterances that are between one word and one sentence. Secondly, witnesses are restricted to giving minimal responses. Such control is higher in cross examination as compared to direct examination. This chapter has also noted that though subjected to control tactics by examiners, witnesses also use several strategies to resist the said control.

Given that courtroom discourse is goal oriented, participants use their utterances to achieve their goals. As such, utterances in the courtroom can be said to achieve speech act functions other than just questioning or declaring. The next chapter looks at the various speech act functions achieved by utterances of various parties and how such speech act functions are integrated into questions or paired with them to create complex communicative structures that, in their distribution and

use, are also evidence of power asymmetry in the courtroom. In addition, the chapter shows how the witness's rendition of the crime narrative in court is impacted on by background contributions from the examiners.

CHAPTER SEVEN

SPEECH ACT FUNCTIONS AND BACKGROUND CONTRIBUTIONS BY EXAMINERS IN DIRECT AND CROSS EXAMINATION PHASES OF THE SAMPLED TRIALS

7.0 Introduction

The fourth objective of the present study was to determine how the use various speech act functions that characterize courtroom discourse and background contributions by examiners reflect power differentials in this setting. In line with this, the current chapter focuses on the discussion of these two closely related aspects starting with the speech act functions (cf. 7.1.0) before moving to background contributions (cf. 7.5.0).

7.1.0 Speech Act Functions

A major contribution of the Speech Act Theory was the identification and classification of speech acts, with certain speech acts being said to realize different discourse or speech act functions. To Austin's (1972) five classes of illocutionary acts namely expositives, exercitives, commissives, verdictives and behabitives, other scholars have added other classes (Searle 1979, 1975; Searle and Vanderveken, 1985, Thomas, 1985), and this has become a very dynamic area of the theory.

Despite this dynamism, the identification of speech acts is not a straight forward matter. With the exception of explicit performatives, other speech acts can only be identified by taking into account the felicity conditions that allow for their use as well as a consideration of prosodic aspects of tone, stress, word order and even voice quality. In addition, there is not always a direct relationship between formal grammatical structures and speech act function. For this reason, a distinction is made between direct speech acts and indirect speech acts. Direct speech acts are those in which there is a fit between grammatical form and discourse function. For instance the utterance 'Please lend me that novel' is imperative in form and it can used to achieve the discourse function of requesting. Therefore, it is a direct speech act because imperative sentences are used to issue commands or make requests. But the discourse function of requesting can be achieved through the utterance 'That novel looks interesting' which is declarative in form. This, therefore, is an indirect speech act because declarative sentences are usually used for stating and asserting rather than requesting.

Given that the major aim in a trial is to establish what happened at an earlier time in order to arrive at a decision on who is to bear responsibility for an occurrence or omission, it is to be expected that questioning and declaring/asserting are the dominant speech act functions in courtroom discourse. The speech act function of questioning can mainly be attributed to prosecutors and lawyers, while the speech act function of declaring or asserting can mainly be attributed to witnesses who

make declarations or assertions in their response to questions. However, the present study also sought to identify other speech act functions realized by utterances that are not interrogative or declarative in nature. It also identified speech act functions achieved through structures that could formally be categorised as questions and as declarative sentences, but can be analysed as achieving more than just the discourse functions of questioning and declaring/asserting respectively. Thus, our discussion of speech acts in this chapter to the exclusion of questioning and asserting is not meant to deny these are speech acts. Rather, it is meant for analytic convenience where questions and statements are acknowledged as the structures achieving the dominant speech acts in the courtroom, then other types of acts achieved through other structures or through questions, statements and are identified and are the focus of this chapter.

7.1.1 Overview of Speech Act Functions in the Direct and Cross Examination Phases of the Sampled Trials

According to Fletcher (2003) the law is the arena of speech acts par excellence because it is in law, probably more than anywhere else, that language can be seen so clearly as performing actions. The setting for the present study is the courtroom and one of the objectives was to identify the speech act functions achieved by utterances used by key participants in the direct examination and cross examination phases of the sampled trials.

The speech act function categories adopted for this study are from Allan (1986) and include summon, encouragement, command, clarification and information. In addition, there is need to take into account the fact that a trial and its various phases are speech events where the verbal interaction is directed toward achieving some desired outcome. Overall, the speech act functions in the courtroom setting are expected to be oriented to the overriding discourse functions of blame implicating and blame avoidance that dictate language use in this setting. With this in mind, the identification of other speech act functions in this study has been tied to analysis of the intended function of specific utterances. This classification is based on the goal-orientation and the observation of the maxims of interpersonal pragmatics specifically those by Thomas (1985, 1987). She identifies speech acts, which she terms as pragmatic acts, which are characteristic of discourse of unequal encounters. These include metapgramatic comments, Illocutionary Force Indicating Devices (IFIDs), reformulations, appeal to felicity conditions and discoursal indicators.

The frequencies of use of these speech act functions across direct examination and cross examination are presented in Figures 22 to 27 that follow. The bar graph in Figure 22 shows the occurrence of various speech act functions in direct examination by prosecutors for trials with no defence counsel. As explained in 7.1.0, we proceed to present and discuss speech act functions to the exclusion of questioning and asserting.

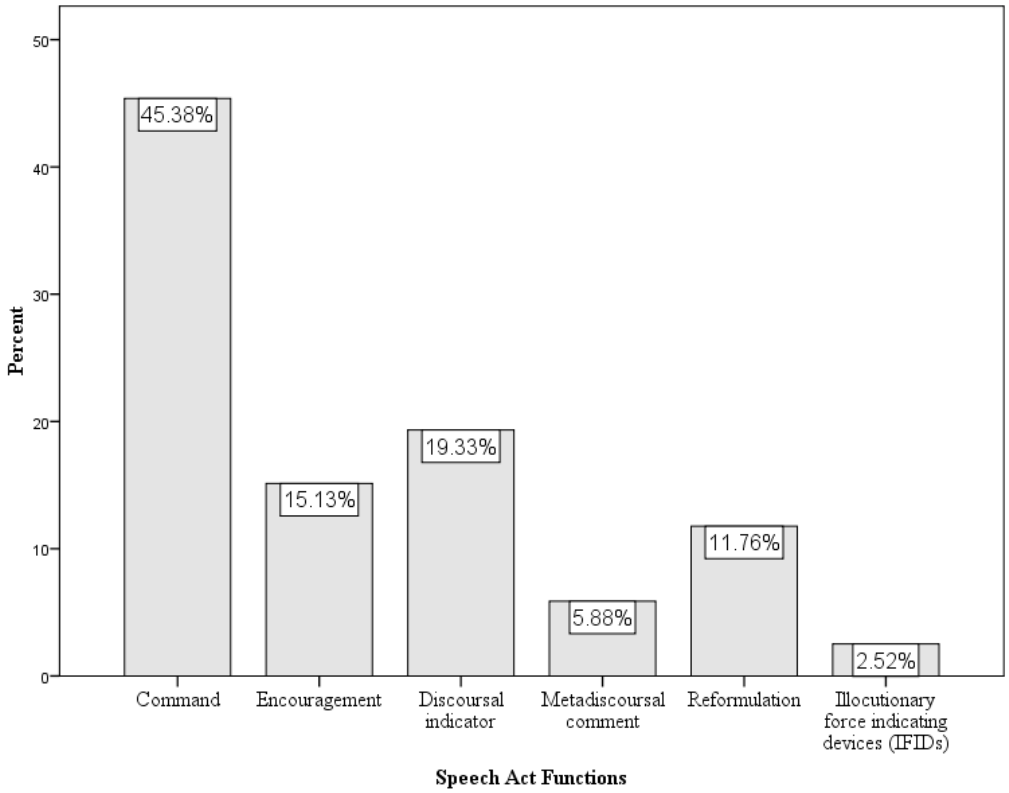

Figure 22: Frequencies of Speech Act Functions by Prosecutors in Direct Examination in Trials with Pro Se Litigants

Figure 22 shows commands were the most frequently observed speech act functions with an occurrence of 45.38% followed by discoursal indicators with a frequency of 19.33% and then encouragement at 15.13%. Reformulations had an 11.77% occurrence among all the speech act functions in trials in data set two; that is those without counsel for the defendant while IFIDs were the least occurring at 2.52%.

Still on examination-in-chief by police prosecutors, Figure 23 shows the percentage frequencies of the various speech act functions in trials with a defence counsel.

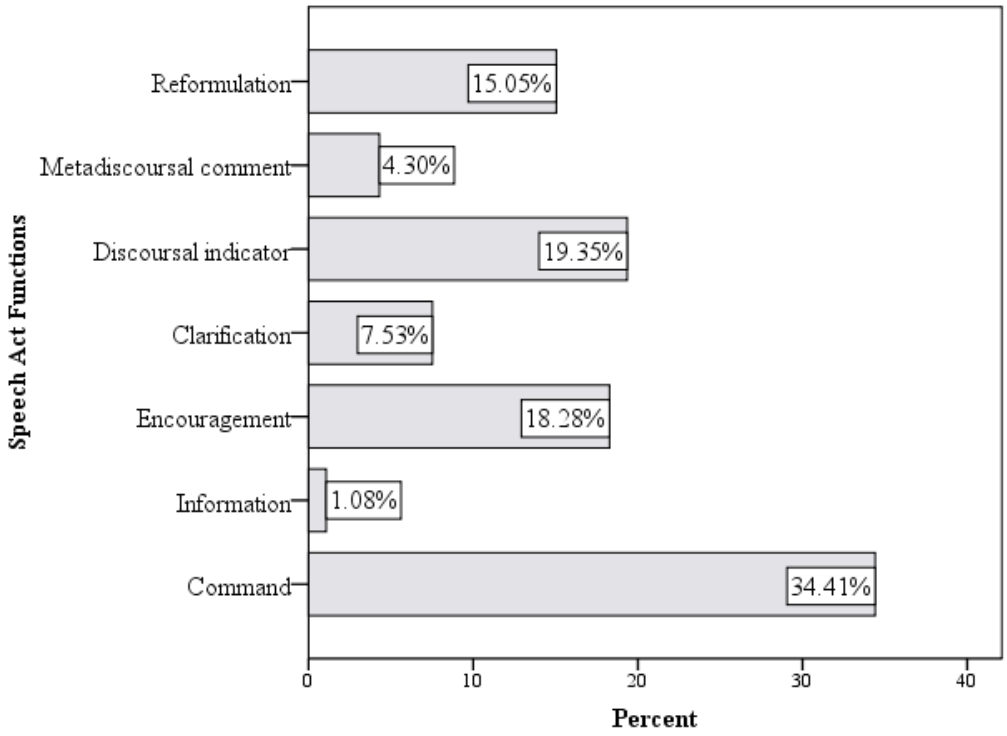

Figure 23: Frequencies of Speech Act Functions by Prosecutors in Direct Examination in Trials with a Defence Counsel

The pattern of distribution of the first four speech act functions, in terms of percentage frequency, in Figure 23 matches the pattern in Figure 22. That is, commands were the most frequent with a frequency of 34.41% followed by discoursal indicators with a distribution of 19.35%. Encouragement at 18.28% was third while the fourth speech act function in terms of frequency was reformulation at 15.05%, and these were followed by clarification whose frequency was 7.53%. The last two speech act functions were metadiscousal comments and information with frequencies of 4.30% and 1.08% respectively.

In data set one, which had trials with counsel for the defence, there were cases that had lawyers in the direct examination phase. Their use of speech act functions is shown in Figure 24.

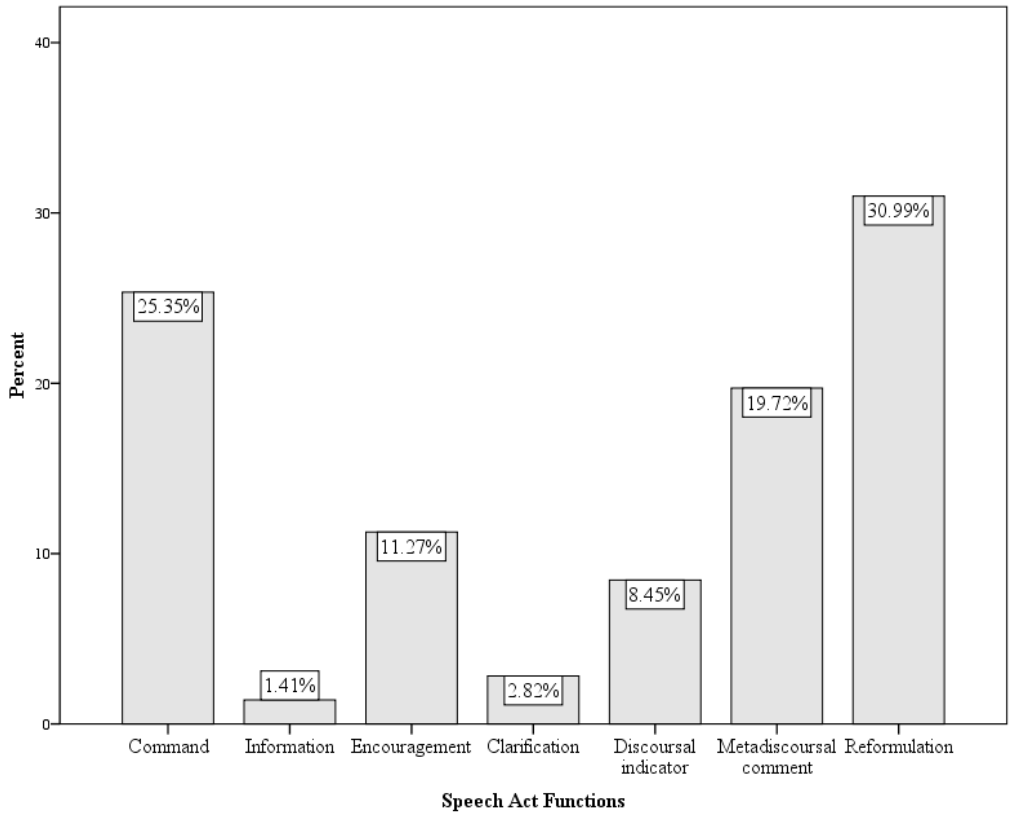

Figure 24: Frequencies of Speech Act Functions by Counsel in Direct Examination

Different from Figures 22 and 23, Figure 24 shows that for counsel, reformulation was the most frequent at 30.99%. It was followed by command whose frequency was 25.35% while metadiscoursal comments had a frequency of 19.72%. The speech act functions of encouragement, at 11.27%, and discoursal indicators, at 8.45%, are fourth and fifth respectively. Clarification is sixth with a percentage frequency of 2.82% followed closely by information at 1.41%.

Figure 25 shows the percentage frequencies of the speech act functions by counsel in the cross examination phases of the trials in the study sample.

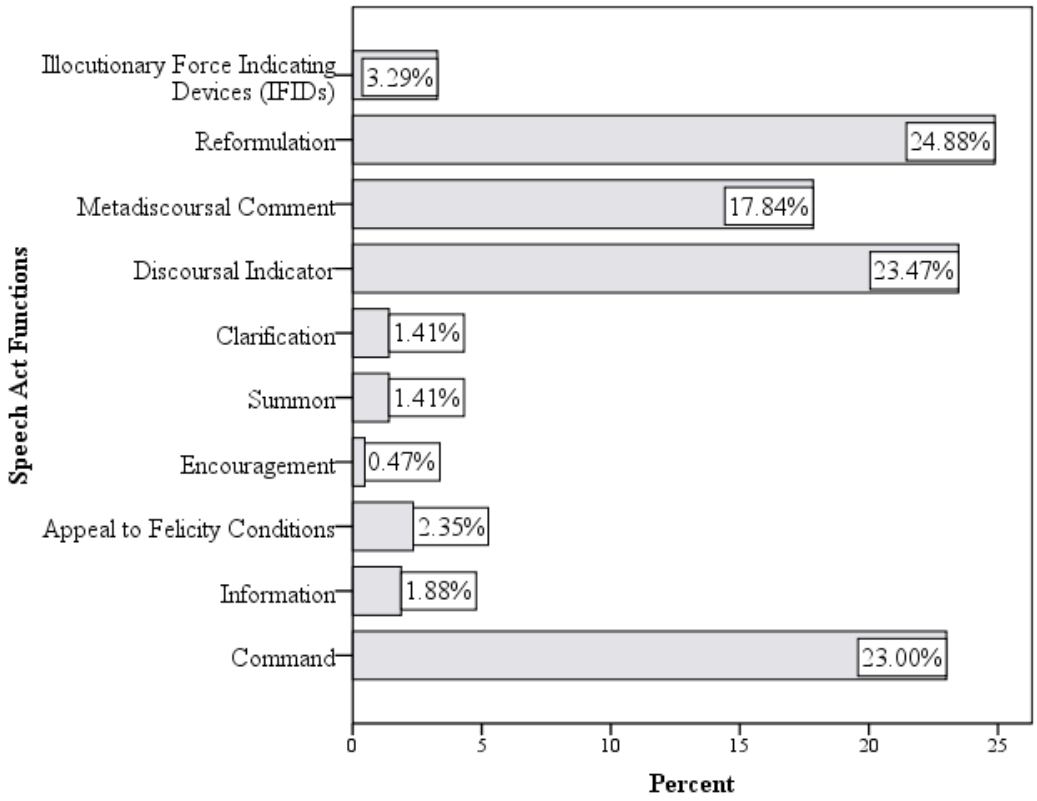

Figure 25: Frequencies of Speech Act Functions by Counsel in Cross Examination

As Figure 25 shows, a variety of ten speech act functions were observed in use by counsel in cross examination. The least frequently used of these was encouragement with a frequency of 0.47% followed by summon and clarification which tie at 1.41% each. The most frequently occurring speech act function was reformulation 24.88% followed by discoursal indicators at 23.47% and commands are third with a percentage frequency of 23.00%.

Lay litigants as cross examiners were also found to use utterances that achieved various speech act functions as Figure 26 that follows shows.

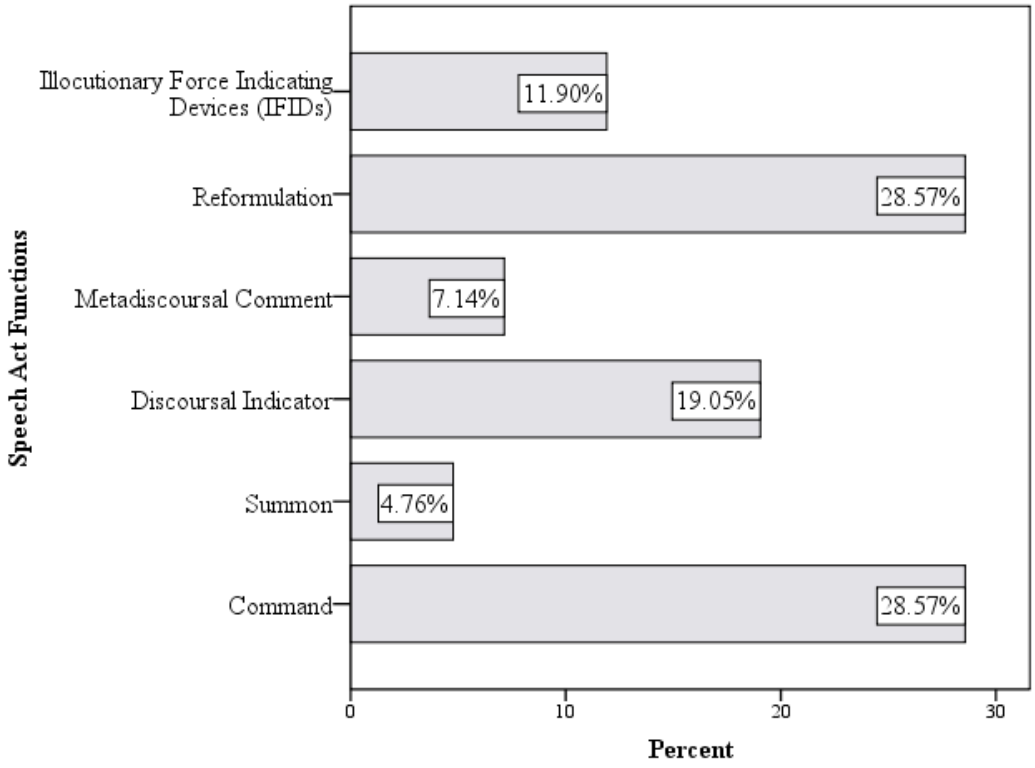

Figure 26: Frequencies of Speech Act Functions by Pro Se Litigants in Cross Examination

In comparison with Figure 25, Figure 26 shows that unrepresented defendants only achieved six speech act functions in their cross examination. The most frequent were command and reformulation at 28.57% each followed by discoursal indicators with a frequency of 19.05%. IFIDs had a frequency of 11.90% while metadiscoursal comments and summon had frequencies of 7.14% and 4.77% respectively.

Sections 7.2.0 and 7.3.0 present examples of the actual use of various pragmatic strategies by examiners in the study sample.

7.2.0 Use of the Speech Act functions in the Direct Examination Phase

This section presents the speech act functions identified in section 7.1 that occurred in the examination-in-chief of the sampled trials. The presentation includes examples showing the utterances achieving the various speech act functions in context and an account of the possible impacts these functions were meant to serve by the participants who used them.

7.2.1 Encouragement

The speech act of encouragement was observed to find greater use in direct examination as compared to cross examination. In examination-in-chief, the major function seemed to signal to the witness that he or she was on the right track and thus to carry on giving testimony. Examples 1.7 and 2.7 illustrate this.

Example 1.7: DS1Case05DE
W1: I obtained the information requested.
C1: Yes.
W1: I printed it out- the details requested for and then gave it to Mr. _____ from KACA and another gentleman. I don't remember his name.

Example 2.7: DS1Case10DE
C1: **Endelea**.
Go on.
W: Wale wa patrol wakaita Flying Squad kutoka hapo M__wakaweza kuwashika na kuwapeleka M___ Police Station.
Those officers on patrol called the Flying Squad from M___ who arrested them and took them to M__ Police Station.

The respective prosecutors in examples 1.7 and 2.7 are signaling for the witnesses to continue giving their testimony through the utterances ‘yes’ and ‘go on’. These encouragements are meant to communicate to the witness that he or she is on the right track and should supply the next bit of the story. The observation that encouraging acts found more use in examination-in-chief is not surprising given that such acts are supportive to the witness and in this phase of a trial the examiner and the witness work towards the same goal. The incompatibility of the ends being pursued by the examiner and the witness during cross examination makes the use of encouragement acts unlikely in this trial phase.

7.2.2 Command

Command is a speech act used by the examiner to let the witness know the linguistic or verbal action expected of him or her (Farinde, 2009). Commands have almost equal distribution in direct examination and cross examination, and they were observed to be always addressed to witnesses by the examining party. Commands can be supportive devices for the witness in examination-in-chief as examples 3.7(a)-(b) and 7.7 show.

Example 3.7: DS2Case10DE

(a) M: [Have you] established he is comfortable with English?
P: **Ongea na Kiswahili ndio asikie**.
Speak Kiswahili so that he can hear.

(b) P: To be marked ___your Honour. Endelea. **Toanisha hizi**. Si umezileta kama exhibit?
Continue. ***Unpack these.*** *Have you not brought them as exhibit?*

The commands in 3.7(a)-(b) are supportive to the witness and include instructions on the language to use and instructions on the witness to unpack exhibits in readiness for formal production in court. Such support is also seen in example 4.7 which still is from the direct examination phase.

Example 4.7: DS2Case12DE
W: [Natoka-]
I come from-
P: [**Angalia**] **korti pale mbele ukiongea**. Umh?
Face the front of the court as you speak. *Umh?*

Here the prosecutor gives instructions to the witness on where he should face as he gives testimony so that he can be audible. This example captures confusion that was observed when many a lay litigant took the stand. Most would face the prosecutor, the person addressing them, and, given the physical setting of the courtrooms, turn their back on the presiding magistrate. This is likely the result of ignorance by many of the fact that the discourse between witnesses, prosecutors and counsel is actually addressed to an over hearer, the presiding magistrate, who may remain silent throughout. Thus a command such as the one in 4.7 served to let witnesses know just who they were really addressing their responses to.

However, the discourse function of command in direct examination was also used to make the witness to stick to giving specific information and thus avoid winded explanations as example 5.7 illustrates.

Example 5.7: DS1Case05DE
C1: Okay. Now tell us why you are a witness in this case- how are you involved in this matter?
W2: Okay. It is a long story
M: Give us facts. Prosecutor can you direct your witness so that we save time

C1: Okay, what is your involvement in this matter? How are you related to the accused persons there?
W2: Well on ___ June 2009, Mr. C____ there {((Pointing))} called me, he is a very good friend of mine and also my [nephew-]
C1: [**Now**] **be specific**. [What-]
W2: [Yes yes] am being specific. This is very important.

In example 5.7 above, the first command is from the presiding magistrate who instructs the prosecutor to direct his witness so that the court can save time. So when the witness responds to the question by expounding on how he is related to the accused by saying they are friends and the accused is his nephew, the prosecutor interrupts with the command 'Now be specific'. But, in this instance, the witness insists that what he is saying is 'very important.'

In addition, commands were used to demand that witnesses pay attention to the questions being posed to them when some of their responses were deemed irrelevant. Such commands can thus also be seen as metadiscoursal comments (cf. 7.2.5) expressing rejection of the witness's contributions as in example 7.7.

Example 7.7: DS2Case04DE
P: Tangu aamke, mahali alikuwa amelalia mlalamishi na ukamfukuza, ulipoteza kumuona ama ulifuata yeye hadi mpaka akashikwa?
Since he got up from where he was lying on the complainant, and you chased him, did you lose sight of him or you followed him until he was caught?
Kuna mahali popote alipotea kwa macho yako?
Is there any where he disappeared from your sight?
I: No hĩndĩ ĩyo mwamũtengeragia harĩ handũ wagire kũmuona?
But at that time you were chasing him is there a time you couldn't see him?
W: Rĩrĩa anyitirwo rĩ, twamũnyitĩire mũciĩ.
When he was caught, we caught him at home.
P: **We mzee sikiza vile unaulizwa.**
You listen to what you are being asked.
I: Ũrorio [atĩrĩrĩ-]
You are being asked this-
P: [**Sikiza ile**] **swali nauliza na ujibu**. **Wacha kujibu vile unataka**. Nauliza wewe, sasa umemuona baada ya yeye kuamka, mkakimbizana [na=

Listen to the question I am asking and answer it. Stop answering the way you like. *I am asking you, now you have seen him after he has got up, you have chased after him and*

W: [Ĩĩ.
Yes.

P: =bwana ya mlalamishi anatokea, akitaka kumshika akaingia kwa [kahawa.
the husband of the complainant emerged, when he wanted to get hold of him he went in to the coffe farm.

W: [Ĩĩ
Yes.

P: =Iko pahali alipotea kwa macho yako kabla mmshike ama ulifuatana nayeye mpaka mkamshika?
Is there anywhere he disappeared from your sight before you caught him or you followed him until you caught him?

W: Twamũnyitĩire kũu mũciĩ.
We caught him in the homestead.

P: **Sasa hii nini?**
Now what is this?

M: What is happening Prosecutor? You are losing patience with your own witness.

P: It is the way he is responding to [questions, he-]

M: [Would you like] to stand him down? Does he understand your questions? We have a heavy day today.

The prosecutor in example 7.7 seems to be having difficulty in getting his witness respond to the question whether he at any time lost sight of the accused person during a chase. He uses three commands that require the witness to pay attention to what he is being asked. In this instance, the commands seem not to work as the prosecutors comment 'Now what is this? and the magistrates question as to whether the prosecutor is losing patience with his own witness indicate. Indeed, the rhetorical question by the prosecutor could be a sign of exasperation with the witness.

7.2.3 Clarification and Information

Clarification and information are related speech acts that are witness oriented. Examiners sometimes supply witnesses with information that is added to

questions to make them clearer, or explain concepts that may be difficult for the witness, or clarify what is expected of him or her as shown in example 7.7 below.

Example 7.7: DS1Case01DE

C1: Right.
Ee::: na area hiyo kuna stima ya power?
Ee::: and in that area there is electricity?

W: Ee iko stima imepitia kwa mashamba hiyo.
Yes, there is electricity passing through those pieces of land.

C1: **Unajua, lines ya power iko aina mingi.**
You know, power lines are of many types.
Kuna zilezinabeba nguvu nyingi, high voltage, na hizizinabeba voltage kidogo.
There are those that carry a lot of power, high voltage, and those that carry less voltage.
Zile zina supply kwa nyumba.
Those that supply power to houses.
Gani ziko?
Which ones are there?

In example 7.7, the counsel, having established that the given area has electricity wire passing through, wishes the witness to be more specific of the kind of electricity transmission lines there are. This, for many a lay person, could be a difficult distinction to make, and sensitive to this, the lawyer supplies information about the types of electricity transmission wires. This is information to enable the witness respond to the question at the end of the exchange. Clarification can also be used to remove confusion an enable all the parties to address themselves to the same issue as in example 8.7.

Example 8.7: DS1Case02DE

C1: Eleza korti ni nini ilitokea hiyo siku.
Tell the court what happened on that day.

W1: Kwa hiyo siku nillikuwa nafanya kazi kwa machine harafu kukawa na [explosion-]
On that day I was working at the machine then there was an explosion-

C1: [**Unajua kuna**] **kesi mbili kuna kesi moja hiyo ambayo uliumia uso. Sasa hii kesi tunazungumzia ni ile ambayo uliumia mguu.**
You know there are two cases one that one where you were hurt on the face. Now this case we are talking about is the one you hurt your leg.

In example 8.7, the lawyer for the plaintiff asks the witness to explain what had happened but interrupts him mid the first utterance. It seems the lawyer is representing the witness in two matters and the witness's response is on the matter that is not the subject of the current hearing. The lawyer thus clarifies to the witness that there are two cases and the one being tried at the moment is the one in which he sustained injury on the leg. With this clarification, the witness is able to give responses that are relevant to the matter at hand.

Prosecutors were also found to offer clarification of expressions used by witness. Such clarifications were addressed to the presiding magistrate, and they arose when witnesses used informal expressions to refer to things and institutions as seen in example 9.7(a)-(b).

Example 9.7: DS1Case03DE

(a)	P:	[Hiyo gari] ilikuwa ya aina gani? *What type/make of a car was it?*
	W:	Ilikuwa ni Nissan. *It was a Nissan.*
	P:	**It was a Toyota matatu your Honour.**
(b)	P:	Mlimpeleka hospitali gani? *Which hospital did you take him to?*
	W:	Tulimpeleka M____ *We took him to M____*
	P:	**That's M____ Sub-District Hospital your Honour.** Sasa nini kiliendelea huko hospitali? *Now what happened there at the hospital?*

The witness in 9.7(a) above uses the popular way of referring to any mini-van public service vehicle in Kenya as a Nissan to respond to the question on the model of the car. The prosecutor clarifies the actual make of the car for the court record. In the same way, in example 9.7(b), the prosecutor amplifies the witness's

one word reference to a hospital by giving the full official name. Whereas such references would serve in casual conversation, the prosecutor is keen that the magistrate gets information that is unambiguous for the court record.

7.2.4 Discoursal Indicators

Discoursal indicators allow the dominant discourse participant to make it clear their intended point or focus, and, by so doing, they are able to limit the discourse options of the other party (Farinde, 2009). Discoursal indicators show the other party what is expected, for example, by tying them to a given topic as shown in example 10.7.

Example 10.7: DS2Case14DE

W: Mimi nikamuacha ___ Police Station.
I left him at ___ Police Station.

P: **Na labda niende nyuma kidogo**. Ulisema hiyo shule ni ya huyu mzee. Unajua kama anaishi huko ndani?
***And maybe I go back a bit**. You said that school belongs to this man. Do you know whether he lives in there?*

This is towards the end of the direct examination, when the prosecutor signals by the statement 'And maybe I go back a bit' that he wishes to turn to matters that were introduced at the very beginning. The statement is an indicator of what the discourse is turning to and shows the prosecutor's control of topic choice and change.

7.2.5 Metadiscoursal Comments

These are statements though which one party verbally shows a reaction to the preceding contribution by another party. As example 11.7 below shows, such

comments can reveal the examiners feelings towards the witness and or his or hers response to a question.

Example 11.7: DS1Case05DE
W2: We were with them but yes I withdrew the money and gave it to them [and-]
C1: [You] gave who the money?
W2: I said earlier Mr. C_____ came accompanied by [Mr. O__-]
C1: [Yes but] who specifically did you give the money?
W2: Both were there as I withdrew the [money-]
C1: [**Why is**] **this a hard question?** Listen, you are in the bank you withdraw 5 million. Mr. C_____ is there and Mr. O_____. Whom between the two did you give the 5 million, Mr. C_____ or Mr. O____?

The prosecuting counsel in example 11.7 would wish for the witness to identify the specific person he gave money to after withdrawing it from the bank. The witness' responses remain equivocal prompting the rhetorical question 'why is this a hard question?' from the counsel. This question is a comment on the two responses the witness has given above showing that they are unresponsive and the witness is most likely unwilling to respond to the question. As already noted (cf. 6.4.1) there could be witnesses who, for one reason or another appear for the prosecution, but their sympathies or loyalties lie with the accused person. This could perhaps explain the reluctance of this witness to give a clear answer to what would qualify as a simple question as in example 11.7.

7.2.7 Reformulation

This discourse function involves the examiner repeating verbatim or rephrasing what a witness had said earlier. In reformulation, there is an aspect of telling the witness what he or she had or has just said. This way, examiners were seen to

highlight parts of witness testimony that were relevant to what the examiner want to achieve at a particular point. Consider example 12.7.

Example 12.7: DS1Case02

C1: **Na unasema ulienda R__ Health Centre?** Ungependa kutoa hii kama ushahidi pia?
And you say you went to R___ Health Centre? Would you like to produce this as evidence also?

W1: Ndiyo.
Yes.

M: What is that now Mr. ___?

C1: Your Honour it is the treatment summary from R___ Health Centre dated 7th ___2009.
Kwa kifupi unasema uliumia ukiwa kazini.
I short you are saying you were hurt while you were at work.

W1: Ndiyo.
Yes.

When producing a particular document pertaining to the treatment the witness received the counsel in example 12.7 makes reference to the witness' earlier testimony that he had sought treatment. This is likely meant to place the document being produced in a relevant context. Also, towards the end of the direct examination, the counsel recapitulates what has been the main assertion of the witness in bringing the suit to court: that he sustained injuries in his work place while on duty. This could be for emphatic effect.

In example 13.7(a)-(b) that follows, reformulation is used to enable the witness clarify what seems to be a discrepancy between current testimony and what he had said earlier.

Example13.7: DS1Case03DE

(a) P: Wewe uligongwa?
Were you hit?

W: Hapana niliweza kuruka mtaro.
No I was able to jump over the ditch.

P: Lakini gari iligonga mtoto?
But the vehicle hit the child?

W: Ndiyo.

Yes.

(c) P: Alafu?
Then?

W: Mimi nilitibiwa, alafu mama yangu na sistangu walikuja na baadaye tukaenda polisi kupiga ripoti.
I was treated then my mother and sister came and later we went to the police station to report the matter.

P: **Ulisema wewe haukugongwa na gari natena unatibiwa?**
You said you were not hit by the vehicle and then you are being treated?

W: Sikugongwa lakini wakati niliruka nilianguka na nikaumia hapa {((pointing))} na kwa mguu. Nilikuwa natokwa na damu na niliwekwa bandange.
I wasn't hit but when I jumped I fell and I got hurt here and at the leg. I was bleeding and I was bandaged.

In example 13(a) the witness asserts that he avoided being hit by the vehicle as he jumped over the ditch but the child he was with was hit. In 13.7(b), which is later on in direct examination, the witness testifies that at the hospital he was treated. The reformulation (in bold typeface) by the prosecutor could be seen as a remainder to the witness of what he had said earlier about not being hit by the vehicle so that he can clarify why he was being treated at the hospital. The witness responds with such a clarification.

7.3.0 Use of Speech Act Functions in Cross Examination

In challenging the testimony of the prosecution's witnesses, defence counsel and pro se litigants used a variety of speech actions. These are presented in this section with explanations of their possible impact on the discourse.

7.3.1 Summon

Summon is a speech act used to demand the presence of somebody (Farinde, 2009) but in this study it was only found to be used by counsel and lay litigants

calling out the name of the witness at the start of cross examination as in examples 14.7 and 15.7 that follow.

Example 14.7: DS2Case01CE
Ac: **N_____**
W2: Ndio.
Yes.
Ac: Kwa nini unatoa ushahidi wa uongo?
Why are you giving false testimony?

Example 15.7: DS2Case15CE
Ac1: **Bwana B___**
Mr. B___
W: Ndio.
Yes.
Ac1: Wakati ulikuwa pale kwa bank, uli communicate na mwenzako una muita:::
When you were there at the bank, did you communicate with your colleague you are calling him:::

In both examples (14.7 and 15.7) the examiner calls out the name of the witness and when the witness responds then the examiner begins his questioning. This was done much as the witness was physically present and it would seem that the calling out acts as a summons to the witness to acknowledge that the phase of cross examination has started. This calling out is thus a marker that the accused person is the one now addressing the witness. Such utterances, involving saying the name of the witness with a rising intonation, were thus classified as summons because the party addressed responded to them as such. Indeed, this is in line with the assertion by Allan (1994) that the hearer's evaluation is also criteria for classifying speech acts.

7.3.2 Encouragement

The discourse function of encouragement is used to urge witnesses to continue with what they are saying, and in the data of the present study, it was found in use only once in cross examination. And as example 17.7 that follows shows even then it was used in a way that ended placing the witness at a disadvantage.

Example 17.7: Case04CE

C: Chaotic. How do you know they are chaotic?
W: Through their behaviours. They fight with people always.
C: Can you tell the court one such as incident apart from when you fought with them?
W: Not one. Many.
C: Yes, but can you tell us of one?
W: Yes, they fought with another lady at ( )
C: What's her name?
W: Er::: she is G___ no J____
C: **Yes.** Another incident?
W: They also beat another lady at M____.
C: Her name?
W: I don't know her name.
C: Interesting. So know all their chaotic behaviour because you have been following P___ and W___ around, right?
W: I have not been following them. I said I have seen them fighting.
C: But you have somehow managed to be at their every fight.

The witness in example 17.7 has given her opinion that the accused persons are chaotic. The defence counsel asks her to substantiate and she responds that they are always in fights. Probed further she starts to enumerate the incidents she has witnessed the accused person in fights, and it is her the counsel utters the word 'yes' with a raising intonation to encourage her to give yet another incident. In a subsequent contribution in the exchange the counsel makes the metadiscoursal comment 'interesting' followed by the 'so' prefaced tag question that concludes that the witness must have been in the habit of following the accused persons

around if she is able to chronicle all their fights. The encouragement to go on ends up eliciting information that is used against the witness by the defence counsel.

7.3.3 Command

In cross examination, commands were mainly used to coerce the witness especially in instances where it is obvious the witness would rather do or say something else as captured in example 17.7(a)-(b).

Example 17.7: DS2Case15CE

(a) Ac1: Na kwa statement yako uliandika hivyo, kwamba ulitoka nje bank ukampigia simu?
And in your statement did you write that, that you got outside the bank and called him?

W: Eer, nilikuwa nime communicate nayeye before niingie hapo kwa bank. Ikawa yeye kuna kitu anaenda kulipa harafu aje tupatane [hapo C___-]
Eer, I had communicated with him before I got into the bank. It was that there was something he was going to pay then he comes there at C__-

Ac1: [Aaha aaha.] **Jibu swali langu**. Nauliza mlicommunicate nayeye ukiwa ndani ya bank au nje?
*Aaha aaha. **Answer my question**. I am asking you communicated with him when you were inside the bank or outside?*

(b) W: Wajua baada ya kushtuka ndio niliona kwamba [umati-]
You know after being startled is when I saw members of the public-

Ac1: [Aaha aaha.] **Jibu swali langu**. Mtu akishtuka ako katika hali gani?
*Aaha aaha. **Answer my question**. When one is startled one is in which state?*

The accused person in the role of cross examiner interrupts the witness on the two occasions in examples 17.7(a)-(b), explicitly rejects the response of the witness (Aaha aaha) and then commands the witness to respond to his question. The interruption, the meta-comment showing negative evaluation and the command to answer the question are all markers of combativeness and they are discourse

resources only available to the examiner. This is evidence of the hostile nature of cross examination.

7.3.4 Clarification and Information

In examination-in-chief, clarification and information (cf.7.2.3) have been shown to be witness supportive speech act functions. But in cross examination, there was an instance of clarification by the examining counsel that was actually used to the detriment of the witness. This is captured in example 18.7.

Example 18.7: DS1Case01CE

C2: [Zilikuwa] zimeanguka chini?
Had they fallen on the ground?

W: Sio kuanguka lakini **zilikuwa zimebend chini kuliko vile zinatakikana**. [Ndio-]
*Not falling on the ground but **they were bending down more that they should**. That's why-*

C2: [Wire] za stima huwa zinabend kwasababu ni wire na zinaexpand na kucontract. Na hiyo allowance huwa inapeanwa zikiwekwa. Nakuuliza, zilikuwa zimeanguka chini?
***Electricity wires usually bend because they are wires and they expand and contract. And that is an allowance that is given when they are put up.** I am asking you, had they fallen on the ground?*

The question by the cross examining counsel is on whether the wires in question had fallen on the ground. The witness affirms they had not but adds that they were bending more than they should. The lawyer gives what could be a scientifically sound explanation about contraction and expansion of electricity transmission lines and asserts that this is put into consideration when they are erected. This clarification seeks to explain the bending which the witness has repeatedly talked about as his explanation of how the electrocution of his son happened. If the bending is explained away by the counsel, then a strong point for the plaintiff's

demand for compensation is weakened. As such, the clarification by the counsel is neither supportive to the witness nor to the version of facts he wants to advance.

7.3.5 Discoursal Indicators

In cross examination, discoursal indicators were observed being used to indicate termination of a conversation in a way that the other party cannot continue with the discourse even if he or she wanted to. Because such indicators, as shown in examples 19.7 and 20.7 below, are a language resource only available to the examiner, they are evidence of the power asymmetry in courtroom discourse.

Example 19.7: DS2Case05CE
P: **Nothing further your Honour**.

Example 20.7: DS2Case11CE
W: =Ee na hiyo siku si mara ya kwanza. [ali-]
And that is not the first time. He-
P: **[Your Honour] I am through with examination**.

In both 19.7 and 20.7, examiners signal the end of direct or cross examination through a discoursal indicator statement directed at the presiding magistrate. Example 20.7 further illustrates the fact that the end of the phase of trial is determined by the examiner and the witness has no say about it. In this particular instance, the witness has to cut short an utterance because the prosecutor has signaled the end of direct examination. Such phase ending utterances are accompanied by the physical act of the examiner taking his or her seat and the witness has no choice but to await for the next party to ask him questions or to be released by the court. This is unlike in ordinary conversations where a

conversation is brought to an end by the parties through some mutual leave taking exchange.

7.3.7 Metadiscoursal Comments

Metadiscoursal comments are comments on the discourse that are always used by the dominant party. These are also called meta-talk which allow the dominant party 'to produce overt and covert blame-inferential comments' about the testimony given by a witness (Matoesian, 1993 p. 173). In this role, they serve the function of positively or negatively evaluating the contributions by witnesses and also keeping the witnesses from wandering off a particular discourse path which the dominant party wishes for them to follow as example 21.7(a)-(b).

Example 21.7: DS1Case09CE

(a)	C:	Anywhere in your statement did you write that the accused person was selling these works?
	W1:	He was [selling-]
	C:	[**No, no, no.**] I am asking where in particular did you record that was he offering these for sale? Did you record that?
(b)	W1:	It was not necessary to write that.
	C:	**According to you it was not necessary**. So did any of these people you found in the shop record a statement?
	W1:	They did not.
	C:	**Again you did not find it necessary**. How much did you find the accused person selling the items at?

In example 21.7(a), counsel rejects the preceding response by the witness even before it is complete. The triplet 'no' is a comment on the contribution by the witness, and it marks a rather forceful rejection of the witness's response. Conversely, it would not be possible for a witness to express rejection or acceptance of a particular question in such a forceful manner in the courtroom

setting. In example 21.7(b), the witness says it was not necessary to record that the accused was selling particular items in his statement. The cross examining counsel's comment 'according to you it was not necessary' has the effect of making the response the witness has just given make the witness's actions seem negligent. When the witness says the people found buying CDs in the accused person's shop were never required to record statements, the counsel adds the comment 'Again you did not find it necessary.' Cumulatively, the two comments could have the effect of reflecting badly on the way the witness, who was the arresting officer in this case, conducted his duties and show he was negligent. Moreover, these statements are background statements (cf. 7.5.0) and so the witness has no chance to react to them or the way they portray him.

7.3.7 Reformulation

Reformulations involve the dominant party repeating the statements of the weaker party. Whereas such reformulations can be supportive, they can also be coercive tools if the dominant party uses them to challenge witness's testimony, point out discrepancies or restate witness testimony in order to point out inconsistencies in the testimony of a witness as happens in example 22.7.

Example 22.7: DS1Case07CE

C: **You said the 2nd accused had a gun, you saw him throw a gun in the bush?**
W: Yes.
C: **In your testimony you have told us that two men are running in front of you in the forest so you cannot see clearly and it is past six thirty**. How did you confirm that it was a gun and **you have said you never recovered it immediately?**
W: I saw it.
C: How far would you say he was from you as he threw what you call a gun?
W: About ten meters
C: Ten meters. Ten meters and you saw that he is holding a gun and throwing it away?

W: Yes.
C: After he threw away the gun, how long did it take to reach the wall they couldn't jump?
W: Not long.
C: Be specific. Another ten minutes or 4 minutes?
W: About two minutes.
C: Good. **You said why did you not recover the gun immediately? Because it was dark, right?**
W: The gun- he threw it away and it fell in a long [grass-]
C: [There you] go again changing your testimony.
W: No, I said the gun fell in the bushes.
C: Let's not debate that. I wish the court to refresh your memory as to the reason you have given as to why you could not recover the gun immediately. Your Honour this witness is having problems recollecting the testimony he has just given.
M: You did say that you couldn't recover the gun because it was dark.
W: Yes.
C: Thank you your Honour.
Now are you listening to yourself? **You say you clearly saw a gun that the accused threw away but two minutes later, you can't see the gun as it is dark**. Can you be truthful. Did you see that what he threw was a gun?

In example 22.7, the lawyer reformulates the evidence that the witness gave during direct examination with the aim of showing logical gaps in the testimony. The witness had said the chase for the two accused persons happened in a forest and it was dark. But, he confidently identifies the second accused as the one who threw a gun into the bushes. The lawyer's reformulations could have the effect of showing this portrayal of events as being farfetched because the officer has also said they could not recover the gun that was thrown into the bush at that time as it was too dark to see. The question then is how, in the first place, the witness can unequivocally identify what he saw being thrown into the bush as a gun if two minutes later he cannot recover it as it is too dark to see.

Reformulation can also be done in a way that is possibly meant to show irony and thus create a sense of incredulity with regard to the way certain actions and events are portrayed. This is shown in example 23.7(a)-(c) that follows.

Example 23.7:DS1Case08CE

(a) C: Now, here is a person banging the OCS table, telling the OCS 'you police officer you are useless' uttering the other words you told us here and you Mr. O__, **you as an officer in the station did not arrest him**. Did you arrest him?
W1: **We did not arrest him**.
C: **Nobody arrested him** when he uttered those words to the OCS, when he banged the table?
W1: No.
C: And you have told us here that inside that office were three police officers. The OCS, Mr. M__ and you Mr. O___, correct?
W1: Yes.
C: This is happening at a police station. There are very many policemen at T__ Police Station, isn't it?

(b) C: Who were those police officers who were in that office at that particular day?
W1: They were __ and ___
C: These police officers who were in the report office, **did any of them attempt to arrest the accused person for insulting the OCS directly**?
W1: **We did not arrest him**.
C: Why not? Can you tell us **why he was not arrested for abusing the OCS** 'you police officer are very useless'?
W1: We were not given orders to arrest [him-]
C: [You don't] receive orders from above to arrest a person who is assaulting the other, insulting the other, in fact insulting-abusing your senior. Or do you usually wait to receive an order from above to arrest a person who is committing crime?
W1: No.
C: But in this case you just left the accused to go on and commit a crime?

(c) C: [You are] addressing yourself to the court. **Did you arrest the accused person then because you have just testified that he abused the OCS again**?
W1: No.
C: **He was not arrested.** You have said here that when you left K___, K___ and M___ at the gate of the municipal council, you went to the office of the OCS to inform him what you had been told, correct?

The reformulation in 23.7(c) is a result of a build-up from 23.7(a)-(c) on the issue of the arrest of the accused person. The witness answers with a simple 'no' to the counsels question in 23.7(c) whether the accused person was arrested for sending the witness with an abusive message to a senior police officer. This one word

response is reformulated to the sentence 'He was not arrested' by the counsel most likely for dramatic effect because it is the third time that the witness is admitting the accused person was not arrested despite allegedly having verbally abused a senior police officer in a police station and in the presence of other officers. The reformulation is likely meant to create a feeling of disbelief and show that the charges before the court are more likely to be fabrications or an afterthought given that the crime was committed against a senior police officer, in a police station and was witnessed by several police officers, the witness included.

7.3.8 Illocutionary Force Indicating Devices (IFIDs)

IFIDs are expressions with an explicit marker of the illocutionary force of the utterance. Farinde (2009 p. 274) asserts that the use of IFIDs with declarative statements or question is the most explicit marker of the power wielded by the examiner because such structures 'are very challenging, combating, controlling, powerful and coercive'. The explicit marker of the illocutionary force of the utterance could be a performative verb, word order or the tone of voice of the speaker. In the data for the present study, IFIDs were identified on the basis of the presence of an explicit performative verb as shown below.

Example 24.7: DS1Case02CE

(a) C1: [So **I am**] **putting it to you** Mr. K__ that you are concocting lies simply because the matter has progressed this far.

(b) C1: **I am putting it to you** that all these cases and the present one prove that you are engaged- that S___ Limited is engaged in unfair and unlawful trade practices, isn't that correct?

Example 25.7: DS1Case03CE

C: [**Nakwambia**,] haukuwa umemshika mkono, si ndio?

***I am telling you**, you were not holding his or her hand, isn't it?*

The expressions 'I am putting it to you…' and 'I am telling you…' are examples of IFIDs where the dominant discourse participant identifies himself/herself using the first person singular pronoun 'I' and follows this with a performative verb to make clear what he or she is doing through the utterance.

7.3.9 Appeal to Felicity Conditions

Appeal to felicity conditions refers to the fact that dominant discourse participants derive their power from institutional conventions. For instance, witnesses cannot ask questions and cannot refuse to answer them, and if they do, counsel appeal to the institutional conventions to make them respond. This is shown in example 27.7 that follows.

Example 27.7: DS1Case04CE

C: Yet you saw, what did you say, that you saw P___ sneering at you. Meaning you were staring at her, right? ((Laughter))
W: I was not looking- a sneer is an expression that you see [not-]
C: [But you] were talking to Mr. ____ and E____, right?
W: My eyes were not closed. The eyes were open, you see things, not that you are [looking-]
C: [You had] taken two glasses of wine you said and you were not drunk. How many do you take to get drunk? ((Laughter))
W: Your Honour do I have to answer that?
C: **Yes you have to**. **I have the right to question you on anything because you have accused my clients**. How many, do you take to get drunk?

The witness seems of the opinion that the question the counsel is posing is rather personal and she addresses herself to the presiding magistrate to ask whether she should answer it. But it is the counsel who answers her 'Yes you have to. You have accused my clients and I have a right to ask you anything'. The response by

the lawyer makes appeal to the institutional conventions operating in this setting that give counsel dominance over witnesses in cross examination. The response serves as a reminder to witnesses that in the courtroom her verbal behaviour is subject to rules to which she must show deference despite the discomfiture she may feel due to the personal nature of some questions.

7.4.0 Discussion of the Statistical Results of the Use of Speech Act Functions in the Sampled Trials

In the following sections, a comparison is made among various participants on their use of different speech act functions in both examination-in-chief and cross examination phases of the sampled trials. Under the tenets of CDA, these comparisons then inform the discussion on how the use of the speech act functions reveals the unequal distribution of power among the discourse participants in the courtroom setting. Also presented are findings from other studies on the use of these speech act functions in the courtroom.

7.4.1 Significance of Speech Act Functions in Direct Examination

A comparison of the use of speech act functions by the prosecutors and the counsel in the direct examination phases of data set one is presented in Table 25 that follows.

Table 25: Comparison of Use of Speech Act Functions by Prosecutors and Counsel in Direct Examination

Speech Act Functions	Prosecutors		Counsel		Total	
	Frequency	%	Frequency	%	Frequency	%
Command	32	34.41	18	25.35	50	30.49
Information	1	1.08	1	1.41	2	1.22
Encouragement	17	18.28	8	11.27	25	15.24
Clarification	7	7.53	2	2.82	9	5.49
Discoursal indicators	18	19.35	6	8.45	24	14.63
Metadiscoursal comments	4	4.30	14	19.72	18	10.98
Reformulation	14	15.05	22	30.99	36	21.95
Total	**93**	**100**	**71**	**100**	**164**	**100**

Starting with the statistics on speech act functions in direct examination by police prosecutors, we note that commands were the most frequently occurring speech acts 32 (34.41%) followed by discoursal indicators and encouragement at 18 (19.35%) and 17 (18.28%) respectively. Reformulation of witness testimony through restatements or summarizing the gist of what was said had an occurrence of 14 (15.05%). Turning to direct examination conducted by counsel, reformulation was the most frequently occurring speech act with a frequency count of 22 (30.99%). This was followed by command with 18 (25.35%) and metadiscoursal comments with 14 (19.72%). All the other speech act functions had a frequency of less than ten as Table 25 shows.

The interesting contrast in these statistics is that while police prosecutors favoured the use of commands in their direct examinations, counsel favoured reformulations most. We attempt to account for the considerations that may have

influenced these choices. To begin with, legal professionals take on as their duty the transformation of the accounts given by litigants so that they 'conform to the concepts and language of the law'. This is because, witnesses, more so lay witnesses, encounter multiple obstacles in their attempt to relate to the legal system (Conley & O'Barr, 1990, p.1). The obstacles range from the physical setting of the courtroom, the difference conventions governing discourse in the courtroom setting and the legal outlook on notions of right, wrong and allocation of responsibility. Thus, under 7.2.2 there are examples of direct examiners using commands to help witnesses address the court while facing the presiding magistrate, to give information that is specific and to listen to questions carefully so that they respond with relevant answers. In 7.2.7, there are also examples of reformulations that are meant to assist witnesses address contractions in their own testimony and thus possibly make the version of events being presented by the prosecution more coherent.

The second thing to note is that while a command gets a witness to say or do something, a reformulation is more about the examiner taking the words of the witness and restating or reformulating them in a way that achieves a certain effect. From our observations we conclude that whereas both speech acts involve the examiner controlling the witness, commands are more direct while reformulations are more subtle. The fact that commands are used more by police prosecutors while lawyers favour reformulations in our data could lead to the tentative

explanation that police prosecutors are police officers first, and given their training and line of work, commands come more easily to them. On their part, lawyers, who are students of language by virtue of their profession, have the choice of using the direct commands or the more subtle reformulations to control witness testimony. However, this, while valid for some of the examples, cannot be the only explanation because one notes that in the data for the present study, police prosecutors use more utterances that achieve the discourse function of encouraging than do counsel.

The third point to note is the distribution of discoursal indicators and metadiscoursal comment between prosecutors and counsel. Again, discoursal indicators can be said to be more direct as the examiner uses them to explicitly show the direction the discourse is taking or what is currently happening in the discourse (cf.7.3.5). On the other hand, metadiscoursal comments, as the examples in 7.3.7 show, can be put to more subtle use, and they enable the examiner to show his or her evaluation of the witnesses and/or their testimony. In the data, police prosecutors used more of the discoursal indicators while counsel used more of the metadiscoursal comments. These variations, as noted could be attributed to the training backgrounds of the two groups of examiners.

Finally, the police prosecutors had more of the utterances realizing various discourse functions, which numbered 93, compared to those by counsel, which

numbered 71. This variation can be explained by the fact that in data set one, which is the one with some trials having counsel as the direct examiner, the trials prosecuted by a police officer were more than those with a prosecuting counsel.

7.4.2 Significance of Speech Act Functions in Cross examination

The lawyers in the study sample had more variety of the speech act functions compared to the unrepresented accused persons. The latter did not make use of information, appeal to felicity conditions, encouragement and clarification, which were functions found in cross examination by the lawyers as Table 26 that follows shows.

Table 26: Comparison of Use of Speech Act Functions by Counsel and Pro Se Litigants in Cross Examination

Speech Act Functions	**Counsel**		**Lay Litigants**		**Totals**	
	Frequency	**%**	**Frequency**	**%**	**Frequency**	**%**
Command	49	23.00	12	28.57	61	23.92
Information	4	1.88	-	-	4	1.57
Appeal to felicity conditions	5	2.35	-	-	5	1.96
Encouragement	1	0.47	-	-	1	0.39
Summon	3	1.41	2	4.76	5	1.96
Clarification	3	1.41	-	-	3	1.18
Discoursal Indicators	50	23.47	8	19.05	58	22.75
Metadiscoursal Comments	38	17.84	3	7.14	41	16.08
Reformulation	53	24.88	12	28.57	65	25.49
IFIDs	7	3.29	5	11.90	12	4.71
Total	**213**	**100**	**42**	**100**	**255**	**100**

Most noticeable, in this trial phase was the increase in the variety of the speech act functions achieved by examiner utterances. As Table 26 shows, in data set two

the direct examination phases by prosecutors and counsel had a total of 164 speech act functions while cross examination phases of the same data set had a total of 255 speech act functions. Equally significant is the fact that out of these 255 speech act functions in the cross examination phases of data set two, 213 were to be found to be used by the counsel. For counsel, as cross examiners, reformulation of witness testimony had a frequency of 53 (24.88%) almost tying with discourse indicators whose frequency was 50 (23.47%). Closely following were commands 49 (23.00%) while metadiscoursal comments were 38 (17.84%). These were the only speech act functions with a frequency above ten.

Comparatively, pro se litigants registered the lower use of speech act functions with only 42 speech acts identified for this group. According to distribution, commands and reformulation, with occurrence of 12 (28.57%) each, were the most used. Discoursal indicator 8 (19.05%) was third followed by IFIDs with an occurrence of 5 (11.90%).

The variation in variety and numbers with regard to the speech act function achieved between counsel and lay litigants can be taken to be more evidence of the unequal distribution of instrumental power (cf. 5.7.2) so that though the lay litigants procedurally do assume the role of examiner, they may be lacking in capacity to exploit the language resources this role avails them (Wilson, 2007). Adopting CDAs approach of interpretive and deconstructive reading of discourse

allows for the conclusion that a lack of knowledge and training in the principles of language use in the adversarial legal system is a major obstacle for unrepresented accused persons. Without such knowledge their attempts to gain power over witness replies when they assume the role of cross examiners are likely to remain unsuccessful (Tkačuková, 2010).

The findings on speech act functions in courtroom discourse by Farinde (2009) deserve brief mention here though not necessarily in a comparative way given the differences in design between his study and the present one. In direct examination, commands were the most frequent speech act functions in the study by Farinde (2009) with a percentage of 72.7% followed by discoursal indicators (15%) and third were metadiscoursal comments with a percentage of 7.5%. In the present study (cf. Table 25), the combined statistics for prosecutors and counsel, for trials with defence counsel, showed that commands were the first with a percentage frequency of 30.5% and second was reformulation (22.0%) and third were discoursal indicators with a percentage of 14.7%. Turning to cross examination, the combined statistics for counsel and pro se litigants (cf. Table 26), show the first three of the speech act functions have almost similar frequencies of distribution. Reformulations were the first with a percentage of 25.5% and second were commands with a percentage of 23.9% while discoursal indicators were third with a percentage of 22.7%. The findings of Farinde (2009) had reformulation as the most frequent speech act function in cross examination

with a percentage of 27.5% and second were metadiscoursal comments whose percentage frequency was 25.8%. In third place was the speech act function achieved by commands with a frequency of 17.9%. We note that in both studies, the speech act functions of commands and reformulation were the most frequent in the direct and cross examination phases of trial respectively. However, few systematic insights would be gained from the comparison of the results of these two studies given the differences not only in sample size but also the stratification of the samples to achieve the objectives of each study.

7.5.0 Background Contributions

The presentation and discussion on the speech act functions has revealed that these functions are achieved by utterances that are paired with the questions that the witnesses respond to. This means that whereas examiners are meant to ask questions, their contributions are not just questions. There are many instances where examiner contributions are a combination of the question the witness is expected to respond to plus other utterances preceding or succeeding such a question. It is such utterances that are referred to as background contributions and whose significance has already been shown (cf. 5.3.5, 5.5.4, 7.2.0 and 7.3.0).

7.5.1 Overview of Background Contributions

The significance of background contributions is that they are a violation of the question-answer adjacency pair, and they could carry propositional or evaluative

content, yet the witness does not usually get a chance to respond to such embedded content but only to the interrogative element with which such contributions are paired. Moreover, since the succeeding response from the witness is only directed at one of the contributions in the combination, it means that any propositions contained in the other contributions are not responded to and they could very well have an impact on the opinions of the fact finders. It is for these reasons that Luchejenbroers (1993) coded the background contributions as part of the Minimal Responses by the witness. Her argument being that 'it would give a distorted picture if you only count those contributions to which the witness has an opportunity to respond' (Luchjenbroers, personal communication, 2012).

In the current study, background contributions have also been analysed with reference to the witness as a discourse participant. This is because, even though such contributions are made by the examiners, they are directed to the person of the witness or their testimony, and the fact that the witness does not get to respond to the background contributions is an indicator of the powerless position a witness occupies in courtroom discourse. Therefore, the analysis of background contributions is another factor to consider in measuring witness participation in courtroom discourse in addition to the analysis of answer length and answer types (cf. 6.1.0 and 6.3.0). The following section presents the different background contribution types encountered in the study sample.

7.5.2 Presentation of Background Contributions in the Direct Examination Phases of the Sampled Trials

The use of background contributions was observed in use among all the discourse participants who assumed the role of an examiner in both the direct examination and cross examination phases of the sampled trials. The figures that follow show the percentage frequencies of occurrence various combinations utterances that constituted background contributions in the present study. Figure 27 below show the percentages of the three combination types of background contributions observed in use by police prosecutors during direct examination.

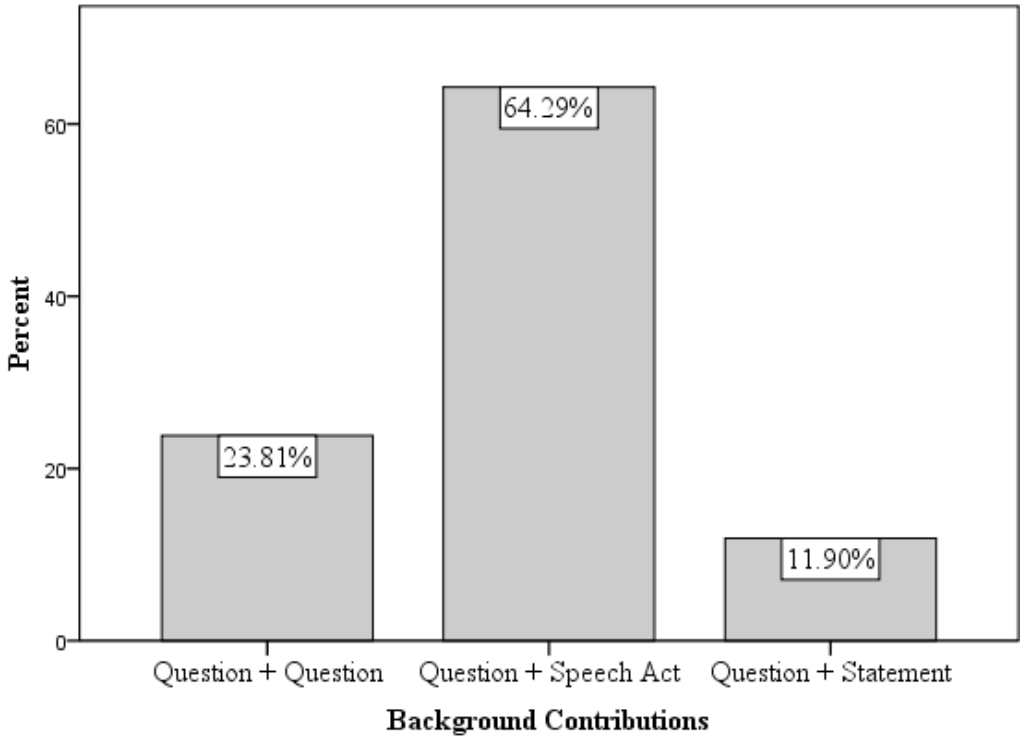

Figure 27: Frequencies of Background Contributions by Prosecutors in Direct Examination in Trials with a Defense Counsel

According to Figure 27, Question + Speech Act combinations had the highest frequency of 74.29% followed by Question + Question combinations at 23.81% and third was the Question + Statement combination with a frequency of 11.90%. In Figure 28 that follows are the frequencies of the background contributions by counsel during examination-in-chief.

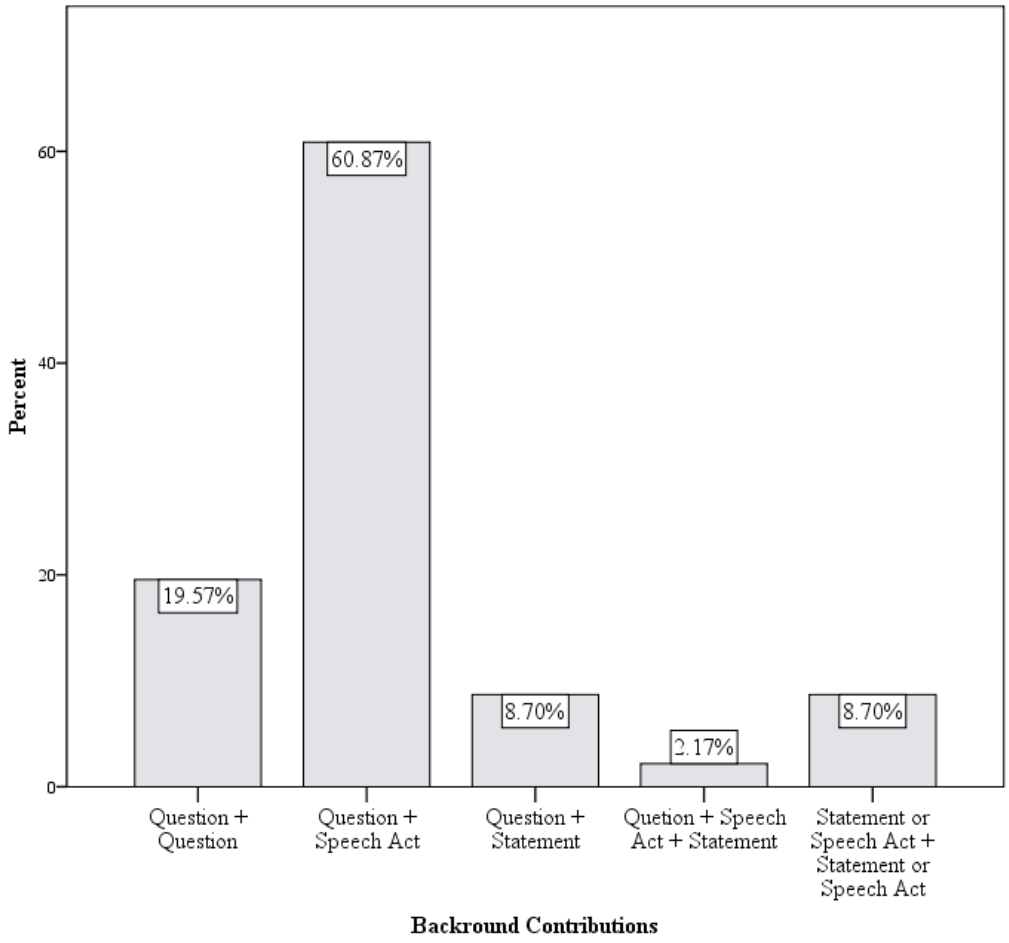

Figure 28: Frequncies of Backround Contributions by Counsel in Direct Examination

A total of five background contribution combination types are represented in Figure 28. The most frequently occurring was Question + Speech Act

combination with a frequency of 70.87%. These were followed by Question + Question combinations with a frequency of 19.57% while Question + Statement and Statement or Speech Act + Statement or Speech Act combinations tied with each having a frequency of 8.70%. The last was Question + Speech Act + Statement combination whose frequency was 2.17%.

The frequencies of the combinations of various back grounded contributions used by counsel in cross examination are represented in Figure 29 below.

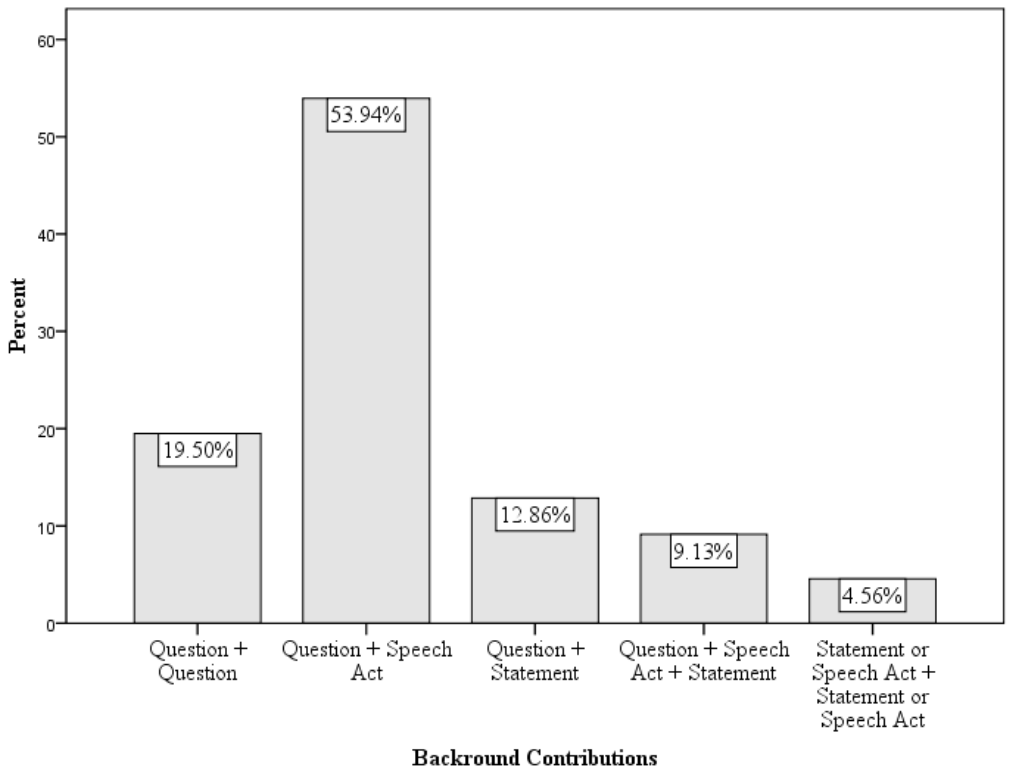

Figure 29: Frequencies of Background Contributions by Counsel in Cross Examination

Of the five combinations of background contributions in Figure 29, Question + Speech Act pairs led with a frequency of 53.94% and second were Question +

Question combinations at 19.50%. The combination of Question + Statement was third at 12.87% while the fourth combination was Question + Speech Act + Statement with a frequency of 9.13%. Least in occurrence at 4.57% was the Statement or Speech Act + Statement or Speech Act combination.

The use of different combinations of background contributions by lay examiners is shown in Figure 30 that follows.

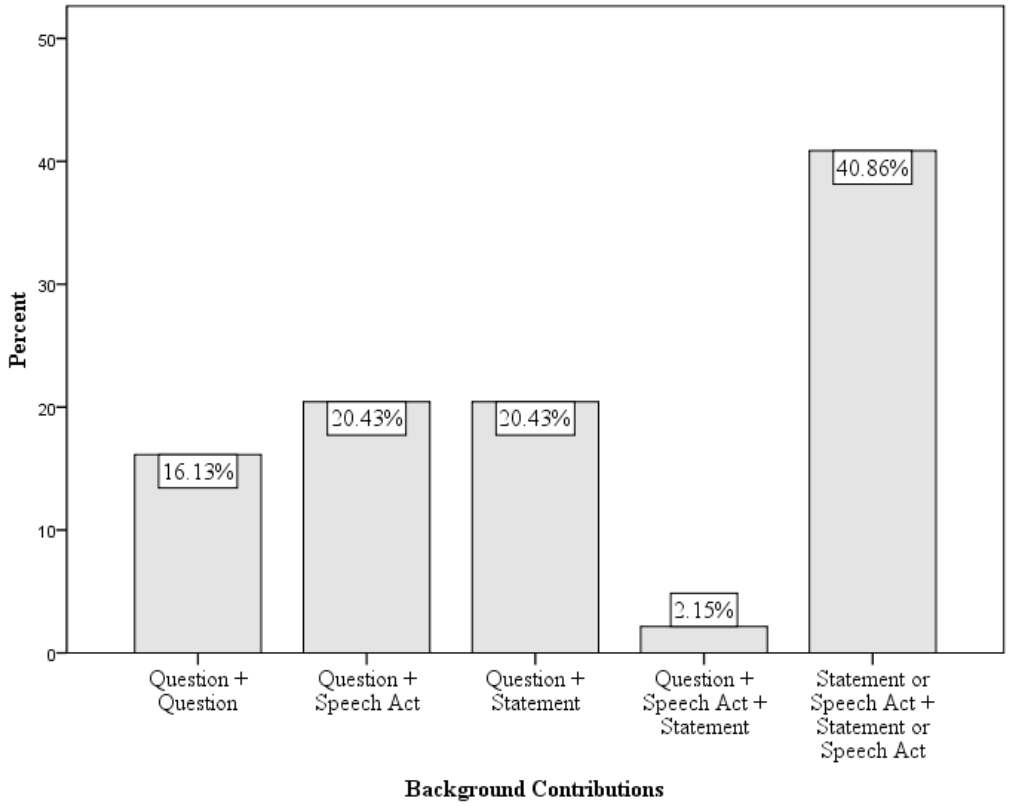

Figure 30: Frequencies of Background Contributions by Pro Se Litigants in Cross Examination

In contrast with Figure 29, Figure 30 shows that for pro se litigants, Statement or Speech Act + Statement or Speech Act combination was the highest in frequency at 40.87%. It was followed by a tie between Question + Speech Act and Question

+ Statement combination which had a frequency of 20.43% each. The Question + Question combination was third with a frequency of 17.13% and least in frequency was Question + Speech Act + Statement combination at 2.15%.

7.5.3 Use of Background Contributions in Direct Examination and Cross Examination Phases of the Sampled Trials

Given that the examples given under 7.2.0 and 7.3.0 have shown the use and significance of the background contributions in achieving a variety of speech act functions, this section will only give examples meant to show the combination of utterances as shown in the coding in Figures 27 to 30 and in Tables 27 and 28 that will follow.

In the analysis of the data for the present study background contributions were categorised on the basis of the utterances that constitute them. The dominant utterance types achieving the speech act functions of questioning/interrogating and declaring/ asserting respectively are categorised as Questions and Statements. Then, (as explained in 7.1.0) utterances achieving other speech act functions (apart from questioning and asserting) are categorised as Speech Acts.

Therefore, a combination of two questions is shown as Question + Question as shown in example 28.7

Example 28.7: DS2Case07DE

(a) P: **Ilikuwa ni kama mita ngapi kutoka mahali hapo huyo ambaye alikuwa amelala baada ya kupigwa na mahali huyu alikuwa anapigwa na wananchi? Unaweza jua ilikuwa ni kama mita ngapi?**
It was like how many meters from where the one who was laying after being beaten and the place this one was being beaten by members of the public? Can you know it is like how many meters?

Then there are combinations of questions and statements shown as Question + Statement as in example 29.7.

Example 29.7: DS1Case01DE

C1: Unakumbuka kama- wakiri wako wa kwanza kabla hujakuja kwangu alikuwa nani?
Do you remember whether- your first counsel before you came to me was who?

W: Alikuwa Mr.____.
*He was Mr.*____.

C1: **Sasa wakati alikuwa na kesi,** {((giving the witness a letter))} **aliandikia Kenya Power barua na kujibu wakaandikia bibi yako. Unakumbuka?**
Now when he was with this case, he wrote a letter to Kenya Power and in reply they wrote to your wife. Do you remember?

W: Ndiyo.
Yes.

Questions were also found to be paired with statements and with other utterances that could be tied to specific speech act functions (cf. 7.2.0 and 7.3.0) such as commanding, encouraging and reformulating. Such were coded as Question + Statement + Speech Act as in example 30.7.

Example 30.7: DS1Case11CE

C: **They investigated the matter. It is your testimony that you spoke to a lady on ___ and that the Mpesa confirmation message informed you the person you sent money to was a lady- M___. After investigations, did the CID ever tell you whether they arrested M__?**

W: The told me they had arrested the [person who-]

C: [**Listen.] Did you ever get to know whether M__, the one you said sent you money and you sent it back to her, was ever arrested?**

W: What I know is that the bearer of the phone [was-]

C: **[I am] asking you a simple question. Don't add anything. Yes or no whether M__ was arrested. Yes or no?**

There were also combinations that did not even have a question as much as they were used by examiners. Such were constituted by statements and utterances

achieving other speech act functions. They were coded as Statement or Speech Act + Speech Act or Question as shown by example 31.7.

Example 31.7: DS2Case02
Ac1: Mimi nilishikiwa nini?
Why was I arrested?
W: Wewe ndiwe ulikuwa umeweka vitu zenye mliiba.
You are the one who was storing the things that you stole.
Ac1: **Mimi nililetewa vitu niwawekee. Na sababu ni watu najua nikaweka.**
***I was brought things to store for them. And because they are people I know I stored for* [*them*-]**
M: [Can you] stop explaining and ask questions.

The following sections present comparative statistics on the occurrence of the background contributions captured in Figures 27 to 30.

7.6.0 Discussion on the Statistical Results on the Use of Background Contributions in the Sampled Trials

The general observation in the data for the present study was that the use of background contributions was high during cross examination where there were a total of 241 back grounded contribution combinations by counsel and 93 by pro se litigants. In comparison, in direct examination there were 47 background contributions by police prosecutors and 47 by counsel. The breakdown of the frequencies of occurrence of the various background contributions and a discussion of the significance of their use types is presented in the following sections.

7.6.1 Occurrence and Significance of Background Contributions in Direct Examination

The distribution of background contributions in direct examination was evenly spread in use between prosecutor and counsel for trials in data set one. This distribution is represented in Table 27 that follows.

Table 27: Comparison of Frequencies of Background Contributions by Prosecutors and Counsel in Direct Examination

Contribution Combination	Prosecutor		Counsel		Totals	
	Frequency	%	Frequency	%	Frequency	%
Question + Question	10	23.71	9	19.57	19	21.59
Question + Speech Act	27	74.29	28	70.77	55	62.50
Question + Statement	5	11.90	4	7.70	9	10.23
Question + Speech Act + Statement	-	-	1	2.17	1	1.14
Statement or Speech Act + Statement or Speech Act	-	-	4	7.70	4	4.55
Total	**42**	**100**	**46**	**100**	**88**	**100**

Table 27 shows that examination-in-chief by prosecutors in data set two had 42 background contributions, the leading being a combination of Question + Speech Act with a frequency count of 27 (74.29%), followed by Question + Question combination which occurred 10 times (23.71%) and last were Question + Statement combinations their count being 5 (11.90%). Table 27 also shows that background contribution in direct examination by counsel totaled 46. Of these 28 (70.77%) were Question-Speech Act combinations. These were followed by

Question + Question combination with a frequency of 9 (19.57%) while Question + Statement and Question + Statement + Speech Act combinations tied with a frequency of 4 (7.70%) each.

Though their frequencies are not high, the presence of the back-grounded contributions in the data from the direct examination phases of the sampled trials could be further evidence that powerful discourse participants, namely prosecutors and counsel, construct a particular version of events and only use witnesses to confirm the facts or fill in the missing gaps in the story. The background contributions can then be seen as a language resource to which the examiner has access but not the witness. Taken this way, background contributions can then be evidence that courtroom discourse is an encounter of unequals and is marked with asymmetry with regard to access and use of language resources that facilitate the pursuit of participant goals.

7.6.2 Occurrence and Significance of Background Contributions in Cross Examination

A look at back grounded contributions during cross examination also presents interesting findings. These contributions number 241 for counsel as cross examiners and 93 for lay examiners. Table 28 below shows the frequencies of various combinations of the background contributions and compares their use between counsel and pro se litigants.

Table 28: Comparison of Frequencies of Background Contributions by Counsel and Lay Litigants in Cross Examination

Contribution Combination	Counsel		Lay Litigants		Totals	
	Frequency	%	Frequency	%	Frequency	%
Question + Question	47	19.50	15	16.13	72	18.56
Question + Speech Act	130	53.94	19	20.43	149	44.61
Question + Statement	31	12.77	19	20.43	50	14.97
Question + Speech Act + Statement	22	9.13	2	2.15	24	7.19
Statement or Speech Act + Statement or Speech Act	11	4.57	38	40.86	49	14.67
Total	**241**	**100**	**93**	**100**	**334**	**100.0**

Table 28 shows that in cross examination, 130 (53.94%), of the background contributions consisted of Question + Speech Act contributions while 47 (19.50%) were Question + Question combinations. The contributions having triple combinations Question + Speech Act + Statement were fourth 22 (9.13%) and before them, in third place were Question + Statement combinations 31 (12.77%). Turning to the pro se litigants, it was observed in the data that 93 their contributions were back grounded. For the lay litigants, the combination of a Statement or a Speech Act + Statement or Speech Act was favoured with a frequency of 38 (40.86%). Question + Statement and Question + Speech Act combinations tied with each having a frequency of 19 (20.43%). The Question + Question combination has a frequency of 15 (16.13%).

With regard to the statistics presented in Table 28 on background contributions in cross examination, two issues that deserve comment stand out. To start with, the cross examination phase of the sampled trials featured almost four times (334) of the background contributions compared to the 88 in the direct examination phase. As the examples in 7.2.0 and 7.3.0 have shown, background contributions can be used to achieve many ends inter alia making evaluations of witness testimony; reformulating witness testimony and making commentaries mean to point out discrepancies in witness testimony. Thus the high frequencies of occurrence of the various types of background contributions can be evidence that cross examiners, more than direct examiners, strive to not only elicit responses from witnesses but react to these responses in different ways that do not give the witness opportunity for response or clarification.

In addition, the presence of background contributions in direct examination led to the conclusion that examiners take control of telling a particular version of facts to the courts and reduce witnesses to the role of collaborating these facts or adding clarifying details (cf. 7.71) and this was also taken to be evidence of the symmetry among participants in courtroom discourse. The large number of background contributions in cross examination could thus suggest that examiner control of both the witness and the version of facts being constructed is higher. This could be an indicator of the combativeness in cross examination.

The second issue that emerges from the statistics in Table 21 is the fact that the most frequent background contribution combination for counsel in cross examination was Question + Speech Act combination while for the lay litigants it was Statement or Speech Act + Statement or Speech Act combination. This combination, that is highest for lay litigants, was observed to be the lowest for counsel. This is an interesting observation as it could signal the challenges that lay litigants face while conducting cross examination as captures in examples 34.7 and 35.7 as well as examples 17.7 and 19.7 that occured earlier in the chapter. The constant interruption of cross examination by lay examiners by the presiding magistrates with admonitions to stick to asking questions has been noted to be evidence that lay examiners find the use of questions a challenge (cf.7.7.2).

This observation raises a fundamental concern about the reliance of questions in the courtroom setting as a means to obtain challenge evidence. Examples 34.7 and 35.7 point out the obvious difficulty that lay litigants have in adopting questioning as a primary mode of communication. This difficulty could as well be based on cultural differences. The constant interruption by the court officers is a clear indication of a collapse in evidentiary harmony because the story is not being constructed as it should (Barry, 1993). This state of affairs is precipitated by the court officers ‘obsession with answers to questions’; an obsession which stems from ‘the fundamental Anglo cultural assumption that information is most efficiently sought through the interview process’ coupled with ‘a lack of

understanding of the witnesses culture' (Eades, 2000, p. 171). This points to a need of anthropological research that could lead to a better understanding of the processing of disputes in the cultures of different communities, which would, in turn, inform decisions on the use of language in the modern dispute systems operating in specific communities.

7.7 Summary of Chapter

This chapter has identified various speech act functions achieved through utterances by prosecutors, counsel and unrepresented accused persons. The speech act functions have been presented and discussed as they occurred in the direct examination and cross examination phases of the sampled trial. The discussion has also attempted to account for the variations in variety and frequency of use of the identified speech act functions among the various discourse participants. In addition, the chapter has looked at the use of background contributions by examiners, and shown they are evidence of the power asymmetry among participants in courtroom discourse given that their use is mainly by examiners and, even among the examiners, pro se litigants fare badly in their use.

The next chapter gives the summary of the findings and makes recommendations on possible ways of addressing the power asymmetries the analysis has revealed. In addition, suggestions are made on areas for further research.

CHAPTER EIGHT

SUMMARY, CONCLUSION AND RECOMMENDATIONS

8.0 Introduction

The study undertook a critical analysis of discourse used in sampled courtrooms in Kenya. One of the assumptions behind the present study was that, courtroom discourse, as a kind of institutional discourse that is goal oriented, is characterized by inequalities among the discourse participants. It is the manifestation of such inequalities that the study set out to investigate; thus, Critical Discourse Analysis (CDA) was the main theory informing the study. However, the coding and analysis of the data was also informed by two other theories namely Conversational Anlysis (CA) and the Speech Act Theory.

The study was guided by four objectives. The first objective was to find out whether the patterns of questioning adopted by lawyers during direct examination and cross examination were similar or different from those adopted by police prosecutors during direct examination and by pro se litigants in the cross examination phase of trial. Secondly, the study set out to find out the pragmatic strategies used by the prosecution and the defence during courtroom interrogation to achieve the discourse functions of blame implicating and defence constructing. The third objective was to establish how the contributions by witnesses reflect the power asymmetry and competing goals among the discourse participants in direct examination and cross examination phases of trial. And the fourth objective set

out to establish how the power imbalance among participants is reflected in the use of various speech act functions that characterise courtroom discourse and background contributions by examiners

8.1.0 Summary of Findings

The linguistic forms and pragmatic strategies used by participants were identified, and they formed the basis of analysis. In line with the objectives of the study, the language features identified and anlaysed included question types, pragmatic strategies and speech act functions. Others were witness answer types and answer lengths, background contributions and forms of witness resistance to control by examiners. The following sections present a summary of the major findings with regard to these formal language and discourse features.

8.1.1 Question Types in Direct and Cross Examination

In this study, questions were grouped into four major categories: WH Questions, Polar and Alternative Questions, Declarative Questions and Tag Questions. Each one of these broad category had subtypes of questions in it. The broad categories of questions were arranged in the order of coerciveness where Tag Questions are the most coercive and WH- Questions are the least coercive.

With regard to questions used in direct examination the study established that the least coercive WH- Question were the most frequently occurring. Their frequency

of use by prosecutors in trial with pro se litigants was 261. Almost similar patterns were noted in trials that had a defence counsel. In such trials, police prosecutors used 137 of WH- questions while counsel as direct examiners used 106 of the WH- Questions.

Further, the study established that in terms of frequency of occurrence, the most coercive question type namely the Tag Questions were the least used. Such questions did not feature in examination-in-chief by police prosecutors in trial with a defence counsel, and for counsel as direct examiners Tag Questions occurred four times. Still, in the data set of trials with a defence counsel, Polar and Alternative questions had a frequency of 74 for police prosecutors and 62 for counsel. Declarative Questions had a frequency of 40 for police prosecutors and 65 for counsel.

The analysis of the use of these question types in direct examination further revealed a high level of collaboration between the examiner and the witness. An analysis of examples of various question types showed that the questions were mainly used to seek for detailed information from the witness or to make summative statements about events which the witness confirmed.

Turning to cross examination, the comparison made with regard to question types was between counsel and lay litigants as cross examiners. The statistical results

showed that for counsel, the most frequently occurring question types were Polar and Alternative Questions with a frequency count of 241. For the litigants WH-Questions, with a total of 126, were the most frequently occurring. For counsel, WH- Questions, numbering 231, were second in occurrence while for lay litigants; the second most frequently used question type was Polar and Alternative Questions which numbered 125. For both counsel and lay examiners Declarative Question were the third in occurrence. Their frequencies were 157 and 53 for counsel and lay litigants respectively. The question types with the lowest frequency in cross examination were Tag Questions. These occurred 121 times for counsel and 11 times for lay examiners.

These statistics on question types in the two phases of trial revealed several things. First, if we take the number of questions asked to be an indicator of length, then we can conclude that the cross examinations by lay litigants were generally very short. Lay examiners asked a total of 350 questions which was less than half of the 750 questions asked by counsel in cross examination. This observation led us to the conclusion that lay litigants might not be as adept as counsel in using question as a way of challenging the testimony of adverse witnesses.

Secondly, the high numbers of Tag Questions in cross examination, as compared to direct examination, was noticeable. Their occurrence in large numbers in cross examination confirms the prevalent view in literature that cross examination is a

hostile and combative phase of trial because the discourse goals of the examiner and the witness are at a variance.

Thirdly, it was also noted that WH- Questions, especially the Open WH-Questions had a very high frequency in cross examination. This would seem surprising given that these questions are the least coercive, and yet cross examination has been characterised as a hostile phase in litigation. However, a detailed analysis of the use of these questions revealed that they were to achieve witness control rather than give leeway to the witness to tell their version of facts. This led to the conclusion that question form is not the only indicator of coerciveness in questions.

8.1.2 Pragmatic Strategies in Direct and Cross Examination

Pragmatics strategies were divided into two groups: Person Targeted Pragmatic Strategies and Idea Targeted Pragmatic Strategies. Starting with the Person Targeted Pragmatic Strategies only one was found in use by both counsel and police prosecutors in direct examination. This was the strategy of violating the witness turn to speak. The examples analysed showed that in direct examination, violation of turn was used to support the witness to give more systematic evidence with the necessary details as required in the courtroom set up.

Turning to the Idea Targeted Pragmatic strategies in direct examination it was observed that their types were more diverse. A comparison between police prosecutors and counsel as direct examiners with regard to their use of Idea Targeted Pragmatic Strategies revealed that the use of 'So' Summaries was the leading strategy with frequencies of 10 and 6 respectively for police prosecutors and counsel respectively. The strategies of Reformation and Answering Own Question had a frequency of 3 for counsel but they did not feature in trials where direct examination was done by police prosecutors. Overall, whereas counsel used six different types of idea targeted pragmatic strategies, police prosecutors only used four types. This would suggest that counsel employed the language resource of pragmatic strategies more than police prosecutors.

In cross examination, 37 Person Targeted Pragmatic Strategies were used by counsel while the lay litigants had 12. This disparity could be taken to suggest that just as with questions, lay examiners had challenges in using pragmatic language resource to their advantage. This observation was further attested to by the fact that whereas counsel used 6 types of Person Targeted Pragmatic Strategies, the pro se litigants only used 4. In terms of distribution, Contrast was the most frequently occurring Person Targeted Pragmatic Strategy for both groups of examiners. It had a frequency count of 14 for counsel and 5 for pro se litigants. Interestingly, the second most used person targeted strategy for counsel was nailing down with a frequency of 11, but it was the least for the lay examiners

occurring only once. This further underscores the challenges that unrepresented defendants face in using pragmatic languages resources to construct their defence.

Turning to Ideal Targeted Pragmatic Strategies in cross examination, a similar pattern was observed with counsel demonstrating more adeptness in the use of these strategies compared to the lay examiners. Of the 270 Idea Targeted Pragmatic Strategies occurring during cross examination, counsel used 226 while lay examiners only used 54. In addition, whereas counsel used 10 types of these strategies, the pro se litigants only used 7. In terms of distribution, Interruption was the most frequency occurring strategy by counsel with a frequency of 75 while for lay examiners the use of 'So' Summarisers was leading with a frequency count of 20. The strategies of use of Presupposition, Answering Own Question and use of Unnatural Narrative Order were used by counsel but not by the lay examiners.

8.1.3 Measure of Witness Participation in Direct and Cross Examination

The witness, being the recipient of the questions posed by examiners, contributes to the discourse mainly by giving responses. Chapter six of this thesis was devoted to measuring the extent to which witness can be said to participate in courtroom disourse. This measure was partly through an analysis of witness responses in terms of length and type.

Starting with witness answer length, witness responses were analysed in terms of the number of words they consisted of. The shortest response was one word responses followed by responses between two words and one sentence. Next were responses between one sentence and three sentences and the highest were responses that were more than three sentences in length. The analysis of witness answer length in direct examination showed that answers between two words and one sentence were the most prominent with frequencies of 236 for police prosecutors and 176 for counsel. Answers above three sentences in length numbered 17 for police prosecutors and only 7 for counsel. These statistics led to the conclusion that even in direct examination, counsel control witness verbal output more. In addition, the statistics confirm the view in the literature that in the courtroom setting it is the examiners who tell more of the crime narrative than the witnesses who have the firsthand account of the events leading to litigation.

In cross examination the same pattern was observed. Responses between two words and one sentence dominated with frequencies of 421 for counsel and 172 for lay examiners. For counsel, one word responses were second with a frequency of 162, but for lay examiners responses between one sentence and three sentences were second with a frequency of 70.

The analysis of witness answer type looked at whether a response by a witness was minimal or elaborate. In direct examination, elaborate response had the

highest frequency of occurrence at 177 for police prosecutors while for counsel the minimal responses which were 170, were the leading in frequency. For police prosecutors the minimal responses numbered 155 and for counsel the elaborate responses were 11. This disparity seems to suggest that even in direct examination lawyers tend to limit the verbal output of witness more than police prosecution.

In cross examination, there was a mismatch in distribution of answer types when looked at as a factor of who was conducting the examination. For counsel as cross examiners, the minimal responses elicited were 371 and the elaborate witness responses were 272. The reverse was observed with lay examiners who elicited 203 elaborate responses from witnesses and 77 minimal responses. These statistics showed that, as with the pragmatic strategies, counsel seemed to be able to control witness verbal output of witnesses more than lay examiners did.

Witnesses have been shown to be recipients of controlling questions and pragmatic strategies from examiners, and on their part, the study established that witnesses used various techniques to resist such control. These ranged from refusing to respond; a strategy that is not very effective because in courtroom setting the witness is required to respond. Other strategies included creating a competing version of reality where a witness uses expressions that characterize events in a way that is markedly different from the characterization of the same events by the examiner. Witnesses were also observed to appeal to the presiding

magistrate when faced with questions they regarded as not deserving a response. The most prevalent strategy was giving evasive responses. Witnesses were observed to give answers that did not respond to the given question possed but that addressed other issues under litigation.

8.1.4 Speech Act Functions and Background Contributions in Direct and Cross Examination

Whereas the main speech act function achieved by utterances by examiners in the courtroom setting is question or interrogating, other speech act functions were found to be achieved by utterances by the examiners. Starting with direct examination, the most frequently occurring speech act function was Command for police prosecutors with a frequency of 32 and for counsel it was Reformation with a frequency count of 22. The analysis of various examples showed that the speech act functions in direct examination were supportive to the witness. Such witness support through various speech act functions ranged from enabling witness to clarifying ideas, showing witness the focus of the discourse and even encouraging them to proceed.

In cross examination, a total of 255 speech act functions were identified of which counsel used 213 and the lay litigants used 42. Counsel were observed to use 11 different kinds of speech act functions while lay examiners only used seven.

Background contributions are those utterances by the examiner that preface or succeed the item that the witness responds to. Their significance is that they could contain proportions or opinions of the examiner which the court gets to hear but to which the witness does not get a chance to respond. The analysis of background contributions involved showing the type of the utterance that is paired with the one witness responded to. Five combinations of utterances forming background contributions were identified. These included Question + Question, Question + Speech Act and Question + Statement. The others were Question + Statement + Speech Act and Statement or Speech Act + Statement or Speech Act.

In direct examination, the Question + Speech Act combination dominated with frequencies of 27 for prosecutors and 27 for counsel. Counsel were also observed to use the Question + Speech Act + Statement and Question or Speech Act + Statement or Speech Act combinations, while police prosecutors did not have such combinations.

In cross examination the Question + Speech Act combination was the most common background combination for counsel with a frequency of 130 while for lay litigants, the Statement or Speech Act + Statement or Speech Act combination was leading with a frequency of 37. This strengthens the conclusion that lay examiners have difficulty in sticking to the use of questions as the only way of

challenging witness testimony. Their use of this combination which does not even feature a question is evidence of this.

8.2 Conclusions

The study set out to identify aspects of power asymmetry observed among the discourse participants in the sample trials. It was established that power asymmetry among the participants can be attributed to two things. First, with regard to the first objective of the study which focused on the patterns of questioning in the direct and cross examination phases of trial, the discourse participant roles in the courtroom are pre-allocated, and, as a consequence, power is exercised more by those who take on the role of examiner. This forms a basis for inequality as examiners can make demands to which the witness has to respond. In addition, examiners have more power as they have the most right to speak, to choose the topic, to control the topic and to change the discourse topic.

Secondly, there is unequal access to language resources due to inequalities in knowledge and skill. Thus whereas unrepresented accused person can assume the powerful role of the examiner, their inability to access various language resources renders them incapable of exploiting the power an examiner has.

The second objective had to do with the use of pragmatic strategies in the two phases of trial. The study confirmed the views in the reviwed literature that direct

examination is friendly to the witness as the use of pragmatic strategies during this phase was shown to be achieving collaboration between the witness and the examiner to reconstruct the events that are the subject of litigation. On the other hand, cross examination is a hostile phase of trial, and is characterised use of pragmatic strategies that heighten the combativeness of the exchanges between the examiner and the witness each pursuing divergent goals. It was also established that this collaboration in direct examination and combativeness in cross examination was also reflected in the use to which specific interrogative forms were put.

With regard to the third objective on how contributions by witnesses reflect power asymmetry in courtroom discourse, the study confirmed that in both direct and cross examination phases of trial, withness are highly controlled by examiners. This control is achived through a combination of both question forms and pragmatic strategies. As a result, witnesses are powerless parties with their responses being limited interms of length as well as elaborateness.

The study also established, with respect to the third objective, that examiners used background contributions by pairing their queations with statements or other questions that witnesses did not get opportunity to react to. Such contributions are further evidence of the power imbalance in courtroom discourse.

8.3 Limitations

A challenge encountered during the data collection stage of the present study deserves comment. It had to do with audio-recording in the sampled courtrooms. In some of the courts, obtaining quality recording was very difficult due to echo from the acoustics of some of the court buildings as well as noise due to some courts being adjacent to holding cells for persons brought from remand prisons for their hearings.

8.4 Recommendations

Based on the findings of the present study, it would be helpful if a programme for sensitizing and building the capacity of non-professional participants in the justice system is instituted. Such a programme could aim at educating lay litigants on the various legal procedures and ways of language use that are unique to the court setting. This could be a way of mitigating the language based challenges that have been shown to face pro se litigants, and this could make the litigation process fairer.

Secondly, instituting a dispute resolution system that is not rigidly tied to the use of a given language form such as questions could be beneficial to lay participants in litigation. Such an informal dispute resolution system would allow for the use of language in ways that are more familiar and common to everyday language use

by lay litigants, so that the language of dispute resolution processes and does not seem to alienate some parties.

8.5 Suggestions for Further Research

The findings of this study are based on the analysis of spoken language used in the sampled courts. A study focusing on written language in the courtroom could shed more light on discourse in the Kenyan legal settings. The object of analysis of such a study could be witness statements or the written rulings and judgements delivered by presiding magistrates. This could add to the body of knowledge on courtroom discourse.

The present study used audi-recording to collect data. A similar study using video recording could allow for the study of non-verbal communication strategies used by the various participants in courtroom settings as they pursue their goals. This could reveal the interplay between verbal and non-verbal strategies used by discourse participants in the courtroom setting.

The current study has revealed the questioning patterns and pragmatic strategies used by various parties in courtroom discourse. The data also featured cases that involved interpretation to and from English. A study on the impact of court interpreters on the language and pragmatic choices made by participants could offer useful insights to courtroom discourse.

References

Aldridge, M. & Luchjenbroers, J. (2007). Linguistic manipulation in legal discourse: Framing questions and 'smuggling' information. *International Journal of Speech, Language and the Law*, 14(1), 85-107.

Allan, K. (2007). Meaning and speech acts. Monash University. Retrieved from www. arts.webmasters@arts.monash.edu

Allan, K. (1994). Indirect speech acts (and off-record utterances). In R. Asher (Ed.), *Encyclopedia of Language and Linguistics*, vol. 3 (pp. 1653-1656).

Allan, K. (1986). *Linguistic meaning (Vols 1 and 2)*. London: Routledge.

Anesa, P. (2011). *Courtroom discourses: An analysis of the Westerfield jury trial*. (Unpublished doctoral dissertation). Universita 'Degli Studi Di Verona, Verona.

Aronsson, K., Johnson, L., & Linell, P. (1987). The courtroom hearing as middle ground. *Journal of Language and Social Psychology*, 6, 99-115.

Atkinson, J. M. (1982). Understanding formality: Notes on the categorization and production of "formal" interaction. *British Journal of Sociology*, 33, 86-117.

Atkinson, J. M., & Heritage, J. (Eds.) (1984). *Structures of social action: Studies in Conversational Analysis*. Cambridge: Cambridge University Press.

Austin, J. L. (1962). *How to do things with words*. Oxford: Clarendon Press.

Baldwin, J. (1993). Police interview techniques: Establishing truth or proof. *British Journal of Criminology*, 33(3), 325-352.

Barry, A. (1993). Constructing a courtroom narrative: A lawyer-witness duel. In M. Eid & G. Iverson (Eds.), *Principles and prediction: The analysis of natural language* (pp. 203 – 213). Amsterdam: Benjamins.

Bavelas, J., Kenwood, C., & Philips, C. (2002). Discourse analysis. In Knapp, M. & Daly, J. (Eds.), *Handbook of Interpersonal Communication* (3rd ed.) (pp. 102-129). Newbury Park, CA: SAGE Publications.

Beach, W. A. (1985). Temporal density in courtroom interaction: Constraints on the recovery of past events in legal discourse. *Communication Monographs*, 52, 1-18.

Berk-Seligson, S. (1990). *The bilingual courtroom: Court interpreters in the judicial process*. Chicago: The University of Chicago Press.

Berk-Seligson, S. (1999). The impact of court interpreting on the coerciveness of leading questions. *Forensic Linguistics*, 6(1), 30-56.

Blommaert, J., & Bulcaen, C. (2000). Critical discourse analysis. *Annual Review of Anthropology*, 29, 447-466. Retrieved from: http://www.jstor.org/stable/223428

Bollinger, D. (1982). Intonation and gesture. *Papers from Parassession on Non-declaratives* (pp. 1-22). Chicago: Chicago Linguistics Society.

Brouwer, G. E. P. (1981). Inquisitorial and adversary procedure: A comparative analysis. *The Australian Law Journal*, 55, 207-223.

Brown, G. (1980). *Listening to spoken English*. Harlow: Longman Publishers.

Bülow-Møller, A. (1991). Trial evidence: Overt and covert communications in court. *International Journal of Applied Linguistics*, 1(1), 38-60.

Caldas-Coulthard, C. & Coulthard, M. (Eds.). (1996). *Texts and practices: Readings in critical discourse analysis*. London: Routledge.

Cameron, D. (2001). *Working with spoken discourse*. SAGE Publications.

Chang, Y. (2004). Courtroom questioning as a culturally situated persuasive genre of talk. *Discourse and Society*, 15 (6), 705-722. DOI 10.1177/0957926504046501

Cheshire, J. (1982). *Variation in an English dialect: A sociolinguistic study*. Cambridge: Cambridge University Press.

Cooper, D. & Schindler, P. (2003). *Business research methods*. New Delhi: Tata McGraw-Hill Publishing Company Limited.

Conley, J. M., & O'Barr, W. M. (1990). *Rules versus relationships: The ethnography of legal discourse*. Chicago: The University of Chicago Press.

Conley, J. M., & O'Barr, W. M. (2005). *Just words: Law, language and power* (2nd ed.). Chicago: The University of Chicago Press.

Conely, J. M., O'Barr, W. M., & Lind, E. A. (1978). The power of language: Presentational style in the courtroom. *Duke Law Journal*, 1375-1399.

The constitution of Kenya (2010). Nairobi: Government Press.

Cotteril, J. (2004). Collocation, connotation, and courtroom semantics: Lawyers' control of witness testimony through lexical negotiation. *Applied Linguistics*, 25(4), 513-537.

Crystal, D. (1985). *The Cambridge encyclopedia of language*. Cambridge: Cambridge University Press.

Crystal, D. (2011). *David Crystal's introduction to language – A complete course* [DVD]. Routledge.

Daly, J., McDonald, I., & Willis, E. (Eds.) (1992). *Researching health care: Designs, dilemmas and disciplines*. London: Travstock/Routledge.

Danet, B. (1980). Language in the legal process. *Law and Society Review*, 14 (3), 446-564. Retrieved from http://www.jstor.org/stable/3053192.

Denzin, N. & Lincoln, Y. (Eds.) (1994). *Handbook of qualitative research*. London: SAGE Publications.

Drew, P. (1985). Analyzing the use of language in courtroom interaction. In van Dijk, T. (Ed.) *Handbook of discourse analysis*, vol. 3, (pp. 133-148). London: Academic Press.

Drew, P., & Heritage, J. (1992). *Talk at work: Interaction in institutional settings*. Cambridge: Cambridge University Press.

Drew, P. (1990). Strategies in the contest between lawyers and witnesses in court examinations. In J. N. Levi and A. G. Walker (Eds.), *Language in the judicial process* (pp. 39-64). New York: Plenum.

Eades, D. (2000). I don't think it's an answer to the question: Silencing Aboriginal witness in court. *Language in Language*, 29,169-195. Cambridge: Cambridge University Press.

Edelman, M. (1977). *Political language: Words that succeed and policies that fail*. New York: Academic Press.

Fairclough, N. (1989). *Language and power*. London: Longman.

Fairclough, N. (1992). *Discourse and social change*. Cambridge: Polity Press.

Fairclough, N., & Wodak, R. (1997). Critical Discourse Analysis. In T. A. van Dijk (Ed.), *Discourse studies: A multidisciplinary introduction*: Vol. 2. Discourse as social interaction (pp.). London: SAGE Publications.

Farinde, R. O. (1998). *A linguistic study of police/accused discourse*. (Unpublished M.A. thesis). University of Ibadan, Ibadan.

Farinde, R. O. (2009). *Forensic linguistics: An introduction to the study of language and the law*. Muenchen: Lincom Europa.

Ferguson, C. A. (1964). Diglossia. In D. Hymes (Ed.), *Language in culture and society* (pp. 429-439). New York: Harper and Row.

Fillmore, C. (1973). A grammarian looks to sociolinguistics. In Roger W. Shuy (Ed.) *Sociolinguistics: Current trends and prospects*. Washington, DC: Georgetown University Press.

Fishman, J. A. (1967). Bilingualism with and without diglossia: Diglossia with and without bilingualism. *Journal of Social Issues*, 23(2), 29-38.

Fletcher, G. (2003) Law. In S. Barry (Ed.) *John Searle* (pp. 85-101). Cambridge: Cambridge University Press.

Garfinkel, H. (1967). *Studies in ethnomethodology*. Englewood Cliffs: Prentice Hall.

Gathumbi, A. (1995). *Verbal discourse events in a bilingual formal setting: Instructional procedures in ESL classrooms in Kenyan secondary schools*. (Unpublished doctoral thesis). The University of Reading, Reading.

Geluykens, R. (1987). Intonation and speech act. *Journal of Pragmatics*, 11, 483-494.

Gibbons, J. (2003). *Forensic linguistics: An introduction to language in the justice system*. Malden: Blackwell Publishing.

Giddens, A. (2009). *Sociology* (6th ed.). Cambridge: Polity Press.

Giles, H., & Powesland, P. (1975). *Speech style and social evaluation*. London: Academic Press.

Goffman, E. (1955). On the face work. *Psychiatry*, 18, 213-231.

González, R., Vásquez, V., & Mikkelson, H. (1991). *Fundamentals of court interpreting: Theory, policy and practice*. Durham: Carolina Academic Press.

Grice, H. P. (1975). Logic and conversation. In P. Cole and J. L. Morgan (Eds.), *Syntax and semantics: 3 Speech acts* (pp. 41-58). New York: Academic Press.

Gumperz, J., & Berenz, N. (1993). Transcribing conversational exchanges. In J. Edwards and M. Lampert (Eds.) *Talking data: Transcription and coding in discourse research* (pp. 91-122). London: Lawrence Erlbaum Associates.

Gumperz, J. & Hymes, D. (Eds.) (1972). *Directions in sociolinguistics: The ethnography of communication*. New York: Holt, Rinehart, and Winston.

Gusfield, J. (1980). *Illusions of authority*. Chicago: University of Chicago Press.

Guy, G., Horrath, B., Vonwiller, J., Daisely, E., & Rogers, L. (1986). An intonational change in progress in Australian English. *Language in Society*, 15(1), 23-52.

Hale, S. (1997). The interpreter on trial: Pragmatics in court interpreting. In Carr et al (Eds.) *The critical link: Interpreters in the community p. 201-211*. Philadelphia: John Benjamins.

Hale, S. (1997). The treatment of register variation in courtroom interpreting. In M. Baker (Ed.), *The translator: Studies in intercultural communication* (pp. 39-54). Manchester: St. Jerome Publishing.

Harris, S. (1984). Questions as a mode of control in magistrates' courts. *International Journal of Sociology of Language*, 49, 5-29.

Harris, S. (1995). Pragmatics and power. *Journal of Pragmatics*, 23, 117-135.

Hassan, A. (2000). *Communication in intercultural discourse: Tour guides and tourists in Mombasa*. (Unpublished M.A. thesis). Kenya University, Nairobi.

Heritage, J. (1997). Conversation analysis and institutional talk: Analysed data. In D. Silverman (Ed). *Qualitative analysis :Issues of theory and method.* London: SAGE Publications.

Heritage, J. (1998). Conversation analysis and institutional talk: Analysing distinctive turn-taking systems. In S. Cmejrkova, J. Hoffmannová, O. Müllerová & J. Svetiá (Eds.) *Proceedings of the 6th international congress of IADA* (pp. 3-17). Tubigen: Niemeyer.

Hewitt, H. (2006). *Front desk talk: A study of interaction between receptionists and patients in general practice surgeries*. (Unpublished PhD thesis). University of Edinburgh, Edinburgh.

Hirsch, S. (1998). *Pronouncing and persevering: Gender and the discourse of disputing in an African Islamic court*. Chicago: University of Chicago Press.

Hornby, A. (Ed.) (2000). *Oxford advanced learner's dictionary of current English* (6th ed.). Oxford: Oxford University Press.

Huddleston, R., & Pullum, G. K. (2002). *The Cambridge grammar of the English Language*. Cambridge: Cambridge University Press.

International Bar Association Human Rights Institute. (2010). *Restoring integrity: An assessment of the needs of the justice system in the Republic of Kenya.* Accessed from: http:/www.scribd.com.

Johnson, A. (2002). So…?: Pragmatic implications of so-prefaced questions in formal police interviews. In J. Cotteril (Ed.), *Language in the legal process* (pp. 91-110). Basinstoke: Palgrave Macmillan.

Jørgensen, M. & Philips, L. (2002). *Discourse analysis as theory and method*. London: SAGE Publications.

Keeton, R.E. (1973). *Trial tactics and methods*. Boston: Little, Brown.

Kiguru, E. G. (2008). *Strategies employed by court interpreters and categories of interpreter error in selected Kenyan courts.* (Unpublished M.A. Dissertation). Kenyatta University, Nairobi.

Kothari, E.R. (2004). *Research methodology: Methods and techniques* (2nd revised ed.). New Delhi: New Age International Publishers.

Lane, C. (1990). The sociolinguistics of questioning in district court trial. In Allan, B. & Holmes, J. (Eds.) *New Zealand ways of speaking English p. 221-251*. Cleredon: Multilingual Matters.

Laws of Kenya (2005). Nairobi: LawAfrica Publishing Ltd.

Legal Advice Centre. (2000). *Piloting community justice centres in Kenya.* Retrieved from: http://www.kituochasheria.or.ke

Leech, G., & Svartvik, (2003). *A communicative grammar of English* (3rd ed.). London: Longman.

Levinson, S. (1983). *Pragmatics*. Cambridge: Cambridge University Press.

Lerner, G. (Ed.) (2004). *Conversation analysis: Studies from the first generation*. Amsterdam: John Benjamins.

Loftus, E. (1979). *Eyewitness testimony*. Cambridge: Harvard University Press.

Loftus, E. (1975). Leading questions and the eyewitness report. *Cognitive Psychology*, 7, 550-572.

Loftus, E.F. (1980). Language and memories in the judicial system. In R. Shuy & A. Shnukal (Eds.), *Language use and the uses of language* (pp. 257-268). Washington, DC: Georgetown University Press.

Luchjenbroers, J. (1991). Discourse dynamics in the courtroom: Some methodological points of description. *La Trobe Working Papers in Linguistics 4: P. 85-109.*

Luchjenbroers, J. (1993). *Pragmatic inference in language processing*. (Unpublished doctoral dissertation). La Trobe University.

Luchjenbroers, J. (1997). "In your own words…": Questions and answers in a supreme court trial. *Journal of Pragmatics*, 27, 477-503.

Lyons, (1977). *Semantics*, vols. 1 and 2. Cambridge: Cambridge University Press.

Matoesian, G. (1993). *Reproducing rape: Domination through talk in the courtroom*. Chicago: University of Chicago Press.

Matoesian, G. (2005). Nailing down an answer: Participations of power in trial talk. *Discourse Studies*, 7 (6), 733-759.

Mead, R. (1985). *Courtroom discourse*. Birmingham: University of Birmingham Printing Section.

Mellinkoff, D. (1963). *The language of the law*. Boston: Little Brown.

Mestherie, R., Swann, J., Deumart A., & Leap, W. (2000). *Introducing sociolinguistics*. Edinburgh: Edinburgh University Press.

Mikkelson, H. (2000). *Introduction to court interpreting*. Manchester: St. Jerome Publishing.

Milroy, L. (1987). *Analysis and observing natural languages: A critical introduction to sociolinguistics*. Oxford: Blackwell.

Milroy, L. & Gordon, M. (2003). *Sociolinguistics: Theory and interpretation*. Oxford: Blackwell.

Moeketsi, R. (1992). *The role of context in the interpretation of Southern Sotho discourse*. (Unpublished masters' dissertation). University of South Africa, Pretoria.

Moeketsi, R. (1999). *Discourse in a multilingual and multicultural courtroom: A court interpreter's guide*. Pretoria: Van Schaik.

Mugenda, A. (2008). *Social science research: Theory and principles*. Nairobi: Applied Research and Training Services.

Mugenda, A. & Mugenda, O. (1999). *Research methods: Quantitative and qualitative approaches*. Nairobi: African Centre for Technology Studies.

Mwai, L. (2008). *Organizational structure and its effectiveness on panel discussion programmes on selected English radio stations in Kenya*. (Unpublished M.A. dissertation). Kenyatta University, Nairobi.

Ogone, J. O. (2008). The unequal encounter between the cross-examiner and the witness in a judicial cross-examination: The case of Goldenberge Comission of Enquiry in Kenya In J. O. Ogone & D. O. Orwenjo (Eds.), *Text, language and literature: Empirical and theoretical perspectives from Kenya* (pp. 109 – 119). Saarbrücken: VDM Verlag Dr. Müller.

O'Barr, W. M. (1982). *Linguistic evidence: Language power and strategy in the courtroom*. New York: Academic Press.

Přidalová, E. (1999). The language of the law: Characteristics of the courtroom discourse. Retrieved from: http://publib.upol.cz/~obd/fulltext/iuridic1/iuridic1-15.pdf

Quirk R., & Greenbaum S. (1973). *A university grammar of English*. London: Longman.

Quirk R., Greenbaum S., Leech, G., & Stravik, J. (1985). *A comprehensive grammar of the English language*. London: Longman.

Rubin, D.B. (1987). *Multiple imputation for non-response in surveys*. New York: J. Wiley & Sons.

Sacks, H. (1972). An initial investigation of the usability of conversational data for doing sociology. In D. Sudnow (Ed.), *Studies in social interaction* (pp. 31-74). New York: Free Press.

Sacks, H. (1987). On the preference for agreement and contiguity in conversation. In G. Button & J. Lee (Eds.) *Talk and social organisation* (pp. 54-69). Philadelphia: Multilingual Matters.

Sacks, H., Schegloff, E. & Jefferson, G. (1974). A simplest systematics for the organisation of turn-taking for conversation. *Language*, 50 (4), 696-753.

Santos, M. (2004). A pragmalinguistic analysis of courtroom questions in a multilingual context. Retrieved from: http://www.tesionline.it/consult/pdfpublicview.asp 8309/18309p.pdf

Schegloff, E. (1992). Repair after next turn: the last structurally provided for place for the defence of inter-subjectivity in conversation. *American Journal of Sociology*, 95(5), 1295-1345

Schegloff, E. & Sacks, H. (1973). Opening up closings. *Semiotica*, 1, 289.

Schiffrin, D. (1987). *Discourse markers*. Cambridge: Cambridge University Press.

Searle, J. (1969). *Speech acts: An essay in the philosophy of language*. New York: Oxford University Press.

Searle, J. (1975). Indirect Speech Acts. In: P. Cole & J. Morgan (Eds.), *Syntax and Semantics*, Vol. 3: Speech Acts. New York: Academic Press.

Searle, J. (1976). A classification of illocutionary acts. *Language and Society*, 5 (1), 1-23 Retrieved from: http://www.jstor.org/stable/4166848

Searle, J., & Vanderveken, D. (1985). *Foundations of illocutionary logic*. Cambridge: Cambridge University Press.

Sinclair, J. & Coulthard, R. (1975). *Towards and analysis of discourse: The English used by teachers and pupils*. Oxford: Oxford University Press.

Shuy, R. (1993). *Language crimes: The use and abuse of language evidence in the courtroom*. Oxford: Blackwell Publishers

Shuy, R. & Shnukal, A. (1980). *Language use and the uses of language: Papers from the fifth annual colloquium on new ways analyzing variation*. Washington DC: Georgetown University Press.

Stubbs, M. (1983). *Discourse analysis: The sociolinguistics of natural language*. Oxford: Basil Blackwell.

Stygall, G. (1994). *The trial language: Differential discourse processing and discursive formation*. Amsterdam: John Benjamins.

Tkačuková, T. (2010). *Lay people as cross-examiners: A linguistic analysis of the Liberal Case McDonald's Corporation v. Helen Steel and David Morris*. (Unpublished doctoral dissertation). Marsaryk University, Brno.

Thomas, J. (1985). Language of power: Towards a dynamic pragmatics. *Journal of Pragmatics*, 9, 765-785.

Thomas, J. (1986). Discourse control in confrontational interaction. In L. Hikey (Ed.) *Pragmatic of Style* (pp. 133-156). London: Routledge.

Trudgill, P. (1974). *The social differentiation of English in Norwich*. Cambridge: Cambridge University Press.

Trudgill, P (2003). Preface. In J. Gibbons *Forensic linguistics: An introduction to language in the justice system* (p. vi). Malden: Blackwell Publishing.

Tsui, A. B. M. (1994). *English conversation*. Oxford: Oxford Unversity Press.

van Dijk, T. A. (2001). Critical Discourse Analysis. In D. Tannen, D. Schiffrin & H. Hamilton, (Eds.) *Handbook of discourse analysis* (pp. 352-371). Oxford: Blackwell.

van Dijk, T.A. (1986). *Racism in the press.* London: Arnold.

van Dijk, T. A. (1995). Aims of Critical Discourse Analysis. *Japanese Discourse*, 1, 17-27.

van Dijk, T. A. (1993). Principles of Critical Discourse Analysis. *Discourse and Society*, 4(2), 249 – 283.

Wang, J. (2006). Questions and the exercise of power. *Discourse and Society*, 17 (4), 529 – 548.

Walya, E. (1996). *Kenya banking discourse structure, strategies and their effects on banking interaction*. (Unpublished M.A. thesis). Kenyatta University, Nairobi.

Webb, E., Campbell, D. & Sechrest, L. (1966). *Unobtrusive measures*. New York: Rand McNally.

Wilson, J. (2006). Power and pragmatics. In K. Brown (Ed.), Encyclopedia of language and linguistics (2nd ed.) (pp. 8442-8445). Retrieved from: http://www.elsevier.com/locate/isbn/9780080448541

Wodak, R. (1995). Critical linguistics and Critical Discourse Analysis. In J. Verschueren, J. Östman & Blommaert, J. (Eds.) *Handbook of pragmatics* (pp. 204-210). Amsterdam: Benjamins.

Wodak, R. (2001). What CDA is about - A summary of its history, important concepts and its developments. In R. Wodak & M. Meyer (Eds.), *Methods of Critical Discourse Analysis* (pp. 1-13). London: SAGE Publications.

Woodbury, H. (1984). The strategic use of questions in court. *Semiotica*, 48 (3/4), 197-228.

Appendix 1: Data Set 1 (DS1) - Trials with a Defence Counsel
DS1Case01

C1: Fahamisha korti majina yako.
Inform the court your name.
W: Mimi naitwa J___
My name is J___
C1: Nyumbani ni wapi?
Where is your home?
W: Nyumbani ni K___
C1: Wapi K__? K__ ni kubwa.
Where in K__? K__ is large.
W: Naishi W__ irrigation scheme.
I stay at W__ irrigation scheme.
C1: Uko na shamba, unaishi na unalima W__ irrigation scheme, si ndio?
You own land, live and farm at W__ irrigation scheme, isn't that so?
W: Ndio.
Yes.
C1: Hiyo irrigation scheme ina comprise members wangapi?
That irrigation scheme comprises of how many members?
W: Ee::: kama watu mia tatu.
Ee::: about three hundred people.
C1: Three hundred members or families- heads of families?
W: Mm.
C1: Three hundred heads of families. Kwa hivyo inasaidia watu wengi hata kuliko three hundred?
Three hundred families. So it helps more people than three hundred?
W: Mm.
C1: So it's like three hundred members and their families?
W: Ee.
C1: Right.
Ee::: na area hiyo kuna stima ya power?
Ee::: and in that area there is electricity?
W: Ee iko stima imepitia kwa mashamba hiyo.
Yes, there is electricity passing through those pieces of land.
C1: Unajua, lines ya power iko aina mingi.
You know, power lines are of many types.
Kuna zile zina beba nguvu nyingi, high voltage, na hizi zina beba voltage kidogo.
There are those that carry a lot of power, high voltage, and those that carry less voltage.
Zile zina supply kwa nyumba.
Those that supply power to houses.
Gani ziko?
Which ones are there?
W: Ya nguvu mingi.
For high power.
C1: Ile ya nguvu mingi.
That for high power.
W: Mm.
C1: High voltage. Na kuna laini ya high voltage yenye inapitia kwa shamba yako?
And there is a high voltage line that passes through your shamba?
W: Ndio.
Yes.
C1: Ni laini ngapi?
How many lines are they?
W: Ni laini tatu.
They are three lines.
C1: Three.
Unasema inatoka wapi na inaenda wapi?
You are saying they come from where and go where?
W: Inatoka S__ inaenda K___ na N___.
They come from S___ and go to K___ and N___.
C1: Na inapita wapi kwa shamba yako?
And where does it pass through your piece of land?
W: Inapitia katikati ya shamba.
It passes in the middle of the piece of land.

C1: Katikati ya shamba.
In the middle of the piece of land.
W: Ee.
Yes.
C1: Ee::: kwa kawaida hizi wire ziko na vikingi.
Ee::: usually these wires have posts.
W: Ee.
C1: Hii wire iko kama futi gapi kutoka chini?
About how many feet high are the power lines from the ground?
W: Ni kama futi thelathini kutoka chini.
It is about thirty feet from the ground.
C1: Na hii ajali ya kijana yako- aa::: uko na mtoto?
And this accident of your child- aa::: you have a child?
W: Ee.
C1: Anaitwa nani?
What is his name?
W: Anaitwa B___
C1: Na niyeye huyo ameshtaki?
And he is the plaintiff?
W: Ee.
C1: Ako na miaka ngapi?
How old is he?
W: Saa hii ako na mika sixteen.
He is now sixteen years.
C1: Lakini akichomeka alikuwa na miaka ngapi?
But when he got burnt how many years did he have?
W: Akichomeka alikuwa na miaka tisa.
When he got burnt he had nine years.
C1: Miaka?
Years?
W: Miaka tisa.
Nine years.
C1: Ee::: kwa hivyo wakati alichomeka alikuwa anasoma?
So when he got burnt he was going to school?
W: Ee. Alikua anaenda shule.
Ee. He was going to school.
C1: Shule gani?
Which school?
W: W____ Primary School.
M: What?
C1: W_____ Primary School, your Honour.
Mm::: na umesema alichomeka tarehe gani?
Mm::: and you have said he got burnt on which date?
W: Eeh alichomeka tarehe ishirini na mbili mwezi wa February.
He got burnt on 22nd of February.
M: Mm?
W: Mwezi wa pili.
February.
C1: Mwaka gani?
Which year?
W: 2004.
M: Which date in February?
C1: 2nd February 2004. [Na sasa-]
M: [I thought] I heard the witness say something else?
C1: Umesema tarehe gani?
Which date have you said?
W: Tarehe ishirini na mbili.
Date 22nd.
C1: Tarehe ishirini na mbili.
Date twenty second.
C1: Mwezi gani?
Which month?
W: February.
C1: Mwaka gani?
Which year?
W: 2004

C1: Mm::: wakati alichomeka alipelekwa hospitali?
Mm::: when he got burnt was he taken to hospital?
W: Ee. Alipelekwa hospitali.
Ee. He was taken to the hospital.
C1: Alipelekwa hospitali gani?
To which hospital was he taken?
W: Alipelekwa N___
He was taken to ____
C1: N___ Provincial General Hospital?
W: Ndio.
Yes.
C1: Angalia {((handing the witness papers))} hii makaratasi. Hii karatasi ni ya wapi?
Look at these papers. Where do thees papers come from?
W: Ni ya N____
They are from N___
C1: Ni ya N____ Provincial General Hospital.
It is from P____ General Hospital.
Hiyo ni nini? Inaitwa discharge summary.
What is that? It is called discharge summary.
Your Honour, to be marked as exhibit number one.
M: It is already marked. Is it being produced?
C1: Yeah yeah. We would wish to produce it as exhibit number [one.]
M: [Now Mr. N__]
C1: Yes. Unataka hii karatasi tupatie korti?
Do you want us to give this paper to the court?
W: Tupatie?
We give?
C1: Tupatie korti hii karatasi kama kielelezo kwa hii kesi?
Can we give this paper to the court as an exhibit in this case?
Kuonyesha huyu mtoto alipelekwa hospitali.
To show this child was taken to hospital.
W: Ndio.
Yes.
C1: Yes. Hata hii {((handing witness a paper))} ingine angalia. Na hii ni ya hospitali gani?
Yes. Even this one look at it. And this one is from which hospital?
W: N_____
C1: N_____ Provincial General Hospital also.
Na inaonyesha mtoto alipelekwa hospitali siku gani?
And it shows the child was taken to hospital on which date?
W: Inaonyesha alipelekwa::: tarehe kumi na mbili mwezi wa pili 2004.
It shows the child was taken to hospital on::: date 12th Februry, 2004.
M: Tarehe kumi na mbili?
Date 12th?
W: Tarehe kumi na mbili.
Date 12th.
M: Mwezi wa?
Month of?
W: February 2004.
C1: Na akatoka lini?
And when was he discharged?
W: Na akatoka tarehe ishirini na mbili, mwezi wa kumi na mbili.
And he came out on date 12 December.
C1: December mwaka gani?
December of which year?
W: Tarehe ishirini na mbili.
Date 22nd.
C1: Mwaka gani?
Which year?
W: 2004.
C1: Ungetaka hiyo karatasi itolewe kama exhibit?
Would you like that paper to be produced as an exhibit?
W: Ee
M: If no objection, exhibit two
C1: Pia hii ya kwanza?
Even this first one?
W: Mm.

C1: Exhibit one. Unaweza kusoma ile tarehe mtoto aliingia hospitali?
Exhibit one. Can you read the date the child got into hospital?
W: Tarehe _____, mwezi wa pili 2004.
Date ____ February 2004.
C1: Na akatoka tarehe ngapi?
And he came out on which date?
W: Tarehe kumi na mbili mwezi wa kumi na [mbili 2004.]
On 12th December, 2004.
M: [What is with] these dates?

C1: Sasa kwa nini hii date ya discharge iko tofauti kwa hii makaratasi?
Now why is this date of discharge different in these papers?
W: Hiyo sasa ni mambo ya madaktari. Pengine ndio walikosea. Wao ndio waliandika.
Those now are doctors' issues. Maybe they are the ones who made a mistake. They were the ones who wrote.
C1: Aliweza kuingia hospitali akatoka, akaingia tena akatoka, ama aliiingia safari moja?
Did he get into hospital, left, got in gain and left or he got in one time?
W: Aliingia safari moja na akamaliza siku hizo zote huko.
He got in once and stayed for all those days there.
C1: Okay. Sasa katika ushahidi yako- tuseme siku ile aliingia hospitali, ndio ile siku alipata hii ajali, si ndio?
Okay. Now in your evidence- let us say the day he got into the hospital is the same day he was involved in this accident, isn't that so?
W: Siku hio ndio alipata ajali.
That is the day he was involved in the accident.
C1: That is the date of the accident.
Na sasa hapo mbeleni ulisema ajali ilitokea tarehe ishirini na mbili mwezi wa pili mwaka wa 2004?
And now earlier on you said that the accident happened on date 2nd February, 2004?
M: Mm.
C1: Na record ya hospitali inaonyesha tarehe kumi na mbili mwezi wa pili 2004.
And the hospital records show date 12th February 2004.
Sasa gani iko correct
Now which one is correct?
W: Sasa your honour sikuwa nimeangalia sawa sawa. Siku hiyo ndio alipata ajali na [akaenda hospitali-]
Now your honour I had not checked properly. That is the day he got an accident and went to hospital-
M: [Siku gani sasa?] Which is the correct date?
Which date now?
C1: Ni ile umetoa ushahidi ama ni ile iko kwa karatasi ya daktari?
Is it the one you have testified or the one in the paper by the doctor?
W: Ile daktari aliandika, kwa maana sio mimi niliandika hiyo.
The one the doctor wrote because I am not the one who wrote that one.
C1: At this junction your Honour I would wish to mention I requested my learned friend that we amend the plaint clause number 4.
M: What is clause number 4?
C1: The date of the accident to read ee::: to be amended from 22nd February 2004 to read 12th February 2004 your [Honour.]
M: [Madam__?]
C2: That is true your Honour. I have no objection
C1: Ee:::, mama wa huyu mtoto anaitwa nani?
Ee:::, What is the name of this child's mother?
W: Anaitwa S____
C1: Ni bibi yako?
She is your wife?
W: Ee.
C1: Na yeye ndiye hapa ameandikwa kama next of kin ya huyu mtoto?
And she is the one written here as the next of kin to this child?
W: Ee.
C1: Unayo notification of birth ya huyu mtoto? Inasema tarehe ngapi?
Do you have notification of birth of that child? It says which date?
W: Tarehe 21st July 1993.
C1: The date of birth of who?
W: Ya B____
C1: Na mzazi ameandikwa hapa?
Is the parent written here?
W: Ee.
C1: Ameandikwa nani?
Who is written?
W: Ameandikwa S_____

C1: Jina yako imeandikwa hapo?
Is your name written there?
W: Hapana.
No.
C1: Kwa nini?
Why?
W: Siku hizi [zinaandikangwa-]
These days they are written-
C1: [Mulikuwa] mmeoana au mlikuwa bado oana?
You were married or you were not yet married?
W: Tulikuwa tumeoana.
We were married.
C1: Lakini jina yako haikuandikwa ikaandikwa ya mama?
But your name was not written the mother's name was written?
W: Ee, siku hizi zinanaandikwa hivyo.
Ee, these days they are written that way.
C1: Kwa nini inaandikwa hivi?
Why is it written this way, or they are more certain about the mother and not the father?
M: Are you sure that is the official reason? (Laughter)
C1: Now would you wish to produce this- tunaweza toa hii kama ushahidi?
can we produce this as evidence?
W: Ndio.
Yes.
M: Madam____?
C2: No objection your Honour.
C1: Exhibit number three.
Now, wakati huyu mtoto alipelekwa N_____ hospitali alikuwa ameumia wapi?
When this child was taken to N_____ hospital, where was he injured?
W: Alikuwa amechomeka tumbo, [mguu-]
He was hurt on the abdomen, leg-
C1: [Hey.] Pole pole.
Hey slowly.
Sema pole pole [inadikwe.]
Speak slowly so that is written.
M: [Leg and abdomen], I already have that. Let's proceed.
C1: Okay. Yes leg, mguu na tumbo. Yes.
Leg and stomach
W: Lakini mguu mmoja ndio alikuwa ameumia [sana na-]
But on one leg is where he was hurt the most.
C1: [Mguu gani?]
Which leg?
W: Ya kulia.
The right one.
C1: Right leg.
Na hiyo mguu ingine ya left?
And the other left leg?
W: Pia hiyo iliumia na ikatolewa vidole.
Even that one was hurt and some fingers were amputated.
C1: Mguu gani?
Which leg?
W: Left
C1: Vidole gani?
Which fingers?
W: Ya mguu
Of the legs.
C1: Which fingers- toes of the leg? Ile kubwa, [ndogo?]
The big one, the small one?
W: [Ile ndogo.]
The small toe.
C1: Okay. Small toe. Ikachomeka kabisa?
It got burnt completely?
W: Hiyo ilitolewa na daktari kwa sababu ilikuwa imechomeka kabisa.
That one was removed by the doctor because it was completely burnt.
C1: Na hiyo mambo yote imeandikwa kwa karatasi hizi?
And all those things are written in these papers?
W: Yote imeandikwa.

All of it is written.

C1: Kwa hii discharge summary?
In this discharge summary?

W: Ee iko yote.
Ee all of it is there.

C1: Aa::: unayo picha ya huyo mtoto baada ya hiyo ajali?
Aa::: do you have a picture of that child after that accident?

W: Ndio.
Yes.

C1: Unataka kutoa kwa korti?
Do you want to produce it to the court?

W: Ee, inaweza kutolewa kwa korti.
Ee, it can be produced to the court.

C1: This will be an exhibit number 4 your Honour
Wakati huu mtoto alitoka N_____ hospitali alipelekwa hospitali ingine?
When this child left N_____ hospital, was he taken to any other hospital?

W: Hapana. Lakini akiwa huko N_____ hospitali, kuna siku tuliambiwa machine moja ya huko ilikuwa haifanyi kazi. Sasa kwa sababu alihitaji operation, alipelekwa K_____
No. but when he was at K____ hospital, there was a time we were told one machine was not working. Now as a he needed an operation he was taken to K_____.

C1: Huko K_____ Hospital alilala?
Was he admitted at K_____ Hospital?

W: Ee, alilala.
Ee, he was admitted.

C1: Aliala siku ngapi?
For how many days was he admitted?

W: Alienda Tuesday akatoka Thursday.
He went on Tuesday and left on Thursday.

C1: Unaweza kumbuka tarehe?
Can you remember the date?

W: Hapana, hiyo siwezi kumbuka.
No, that one I can't remember.

C1: Uko na makaratasi na resiti za huko?
Do you have the papers and receipts of that hospital?

W: Niko nayo.
I have them.

C1: Hii resiti {((giving the witness a paper))} inaonyesha aliingia K_____ tarehe ngapi?
This receipt shows he got into K_____ on which date?

W: Aliingia tarehe kumi na sita mwezi wa nne 2004.
He got in on 16th April 2004.

C1: Unataka kutoa hii karatasi kama ushahidi?
Do you want to produce these papers as evidence?

W: Ndio.
Yes.

C1: Exhibit number 5.
Yes. Una pesa ulilipa N____ na K____?
Did you pay at N__ and K___?

W: Ndio.
Yes.

C1: Pesa ngapi?
How much money?

W: N_____nililipa 39 thousand.
N_____ I paid 39 thousand.

C1: Iko resiti?
Is there a receipt?

W: Nilikuwa nayo lakini ilichomeka. Hawa watoto ndio walichoma.
I had it but it got burnt. It is these kids who burnt it.

C1: Na ya K____ iko?
And for K_____ is it there?

W: Hiyo iko?
That one is there?

C1: Pesa ngapi hii resiti ya kwanza?
How much for this first receipt?

W: Tarehe ishirini na moja mwezi wanne 2004 nikalipa elfu kumi na tatu.
On 21st April 2005 I paid thirteen thousand.

C1: Yes.

W: Tarehe thelathini mwezi wa kumi na moja nikalipa elfu tatu na mia moja na fifty.
On 30th November I paid three thousand one hundred and fifty.
C1: Yes.
W: Na iko kumi na sita mwezi wa tano 2007 nikalipa elfu tano.
And there is 16th May 2007 I paid five thousand.
C1: Yes.
W: Kumi na sita mwezi wa- nikalipa elfu kumi ya mguu.
16th month of- I paid ten thousand for the leg.
C1: Yes. Temporary artificial leg.
Unataka kutoa hizi zote kama ushahidi?
You want to produce all these as evidence?
W: Ndio.
Yes.
C1: Medical receipts your Honour from 'a' to 'e' as exhibit number six.
Baadaye umempeleka mtoto kwa daktari akamuona na akakuandikia report?
Afterwards, you have taken the child to a doctor who has examined him and written you a report?
W: Ndio.
Yes.
C1: Na ripoti ndio {((giving the witness papers))} hii, medical examination report. Iliandikwa tarehe gani?
And the report is this one, medical examination report. When was it written?
W: Tarehe kumi na nne October 2008.
14th October, 2008.
C1: Okay. This will be marked number seven for identification. The doctor will come on another day to produce it your Honour.
Na daktari pia alikupatia resiti ya kutengeneza hiyo ripoti?
And the doctor also gave you a receipt for preparing the report?
W: Ndio.
Yes.
C1: Ya pesa ngapi?
Of how much?
W: Tarehe kumi na tano mwezi wa kwanza 2011 shillingi elfu kumi.
15th October,2008 ten thousand shillings.
C1: Exhibit number 8. Pia daktari wa K___ Power aliangalia mtoto na akaandika medical report?
Also the doctor from K___ Power examined the child and wrote a medical report?
W: Ndio.
Yes.
C1: Tarehe gani?
Which date?
W: Tarehe moja Oktoba 2009.
1st October, 2009.
C1: Your Honour, madam here has agreed that we can produce it. So it is exhibit number 9.
C1: Unakumbuka kama- wakiri wako wa kwanza kabla hujakuja kwangu alikuwa nani?
Do you remember whether- your first counsel before you came to me was who?
W: Alikuwa Mr.____.
He was Mr.____.
C1: Sasa wakati alikuwa na kesi, {((giving witness a letter))} aliandikia K___ Power barua na kujibu wakaandikia bibi yako. Unakumbuka?
Now when he was with this case, he wrote a letter to K___ Power and in reply they wrote to your wife. You remember?
W: Ndio.
Yes.
C1: Iliandikwa lini?
When was it written?
W: Hii iliandikwa tarehe nane April 2006.
It was written on 8th April 2006.
C1: Imeandikiwa nani?
It was addressed to?
W: Imeandikiwa S___
It is addressed to S____
C1: Huyo ndio bibi yako?
That is your wife?
W: Ndio.
Yes.
C1: We wish to produce it as plaintiff exhibit 10 your Honour.
Pia insurance ya K___ Power iliandikia bibi yako hii {((giving witness a paper))} barua. Soma tarehe.
Also the insurance for K___ Power wrote your wife this letter. Read the date.

W: Imeandikwa tarehe moja September 2005.
It is written on 1st September 2005.

C1: Also marked for identification as number eight.
Nitakurudisha wakati hii ajali ilitendeka. Unasema power lines ziko futi thelaathini juu?
I will take you back to the time when this accident occurred. You are saying the power lines are 30 feet high?

W: Ee.

C1: Na mtoto alichomeka namna gani?
And how did the child get burnt?

W: Mtoto alikuwa anabadilisha hizo pipes za aluminium.
The child was changing those aluminum pipes.

C1: Eeh.

W: Na hiyo aluminium pipe ni ya futi ishirini. Na kulikuwa kumenyesha. Sasa huyo mtoto wakati alikuwa anabadilisha pipe hakujua inaweza shika hiyo wire ya stima
Those aluminum pipes are twenty feet long. And it had rained. Now that child when he was changing the pipe he didn't know it could come into contact with that electricity wire.

C1: Mmh.

W: Sasa kugeuza hiyo pipe, nafikiria hapo ndio ajali ilitokea.
Now on turning the pipe, I think that is when the accident happened.

C1: Sawa sawa. Lakini pipe ya aluminum hata ikiwa good conductor, unasema kulikuwa kumenyesha, chini kuna maji alafu pipe ikaguza wire na kijana amekanyanga maji sasa akachomeka?
That's okay. But even though the aluminum pipe is a good conductor, you are saying it had rained, on the ground there is water, then the pipe touched the wire and the boy is stepping on water so he got burnt?

W: Ndio, ilifanyika hivyo.
Yes, it happened like that.

C1: Na sasa ikiwa pipe ni ya futi ishirini, na wire iko futi thelathini, inawezekana aje pipe inafikia wire kama kijana ameshika? Yeye sio wa futi kumi.
And now, if the pipe is twenty feet and the wire is at 30 feet, how is it possible that the pipe reaches the wire as the boy is holding it? He is not ten feet long.

W: Ee::: hiyo wire ilikuwa imebend kwa sababu futi ishirini haiwezi fikia thirty.
Ee::: that wire was bending because twenty feet can't reach thirty feet.

C1: Kwa hivyo iko futi thelathini juu wakati iko straight?
So it is thirty feet high when it is straight?

W: Ndio.
Yes.

C1: Lakini wakati huo haikuwa straight huko juu ilikuwa imebend?
At that time was it was not straight up there it was bending?

W: Haikuwa straight, ilikuwa imebend.
It was not straight it was bent.

C1: Hizi wire unasema zimeshikiliwa na vikingi. Kwa hivyo kama vikingi iko na shida- kama yenyewe imebend wire zinabend?
These wires you are saying are supported by posts. So if the posts have a problem- if they themselves are bending the wires bend?

W: Ndio.
Yes.

C1: Na hiyo ilifanyika lini? Kubend ya vikingi na wire?
And when did that happen? The bending of the posts and the wire?

W: Kabla mtoto achomeke.
Before the child got burnt.

C1: Kama muda gani?
Like how long?

W: Kama miaka tano.
Like five years.

C1: Na hiyo muda yote K___ Power walikuwa wanajulishwa kwamba wire ziko na shida, sivyo?
And all that time K___ power were being informed that the wires that the wires have a problem, isn't that so?

W: Walijulishwa. Wanakuja wanaangalia lakini hawarekebishi.
They were informed. They would come they look but they don't rectify.

C1: Sasa wamerekebisha?
Have they rectified now?

W: Hapana rekebisha mpaka wa leo.
They have not rectified upto now.

C1: Hawajarekebisha. Na wewe mwenyewe umekuwa kwa hiyo delegation imeenda kwa K__ Power kwenda kuripoti?
They have not rectified. And you yourself have you been in the delegation that has gone to K___ Power to make a report?

W: Ndio.
Yes.

C1: Na ilikuwa kama lini?
It was around when?

W: Siwezi kumbuka tarehe lakini ilikuwa January miaka tatu iliyopita.
I can't recall the date but it was in January three years ago.

C1: Ndio wewe ulienda?
That is when you went?

W: Tulikuwa watu wengi. Tukaandika baru na tukapeleka. Walikuja watu wa K__ Power na kusikiza shida zetu. Lakini hakuna kitu walifanya. Na hata tuliwaambia hizo waya zilikuwa zimechoma watu wawili hapo mbeleni na wakakufa.
We were many of us. We wrote a letter and took it. The people from K__ Power came and listened to our problems. But there was nothing they did. We even informed them that those wire had burnt two people in the past and they had died.

C1: Ulisema wakati mtoto alichomeka alikuwa wa miaka ngapi?
And you said when the child got burnt he was how old?

W: Alikuwa wa miaka tisa.
He was nine years.

C1: Miaka tisa. Na mlikuwa mmemuonya kuhusu ajali kama hiyo?
Nine years. And had you warned him about such an accident?

W1: Bado alikuwa mtoto. Hata akisikia ajali zinatokea, hawezi shika na nguvu. Kama ingekuwa mtu mzima kama mimi singeinua pipe namna hiyo.
He was still a child. Even when he hears that accident occur, he doesn't take seriously. If it was an adult like I wouldn't have lifted the pipe that way.

C1: Sasa nitakuonyesha barua. Inaitwa defence kuutoka kwa wakili wa Kenya Power.
Now I will show you a letter. It is called defence from the council of Kenya Power.
Iliandikwa tarehe gani?
When was it written?

W: Iliandikwa tarehe ishirini na moja March 2007.
It was written on 21st march 2007.

C1: Sasa nitauliza karani wa korti akwambie vile nitasoma, vile barua inasema.
I will ask the court clerk to tell you what I will read, what the letter says.

C1: Part ya paragraph ya pili inasema.
Part of the second paragraph says.
'Since the parents were absent, the plaintiff who is a minor was unsupervised in his duties. We acknowledge that the accident happened but deny any responsibility as claimed in the plaintiffs letter.'

I: Maroiga nĩma mwana nĩahĩire no nĩmararegana na maũndũ macio mangĩ mothe.
They are saying it is true the child was burnt but they are refusing everything else.

M: What is the gist of that letter? Make him understand that.

C1: They are saying 'the plaintiff brought the harm to himself as he knew the dangers of tampering with electricity wires.'

I: Marauga mwana nĩamenyaga ũgwati wa thitima no agĩthaka nacio. Ũkuga atĩa?
They are saying the child knew the dangers of electricity but he played with them. What do you say?

W: Hau ndatarĩria ndoiga mwana nĩ mwana. Rĩu ndoĩ ũgwati wa thitima. Na onawamwĩra, mwana nĩekaga ũndũ ona agiritio. Ningĩ nĩ baibũ achenjagia cia maĩ ti gũthaka athakaga.
I have explained and said a child is a child. Now he didn't know the dangers of electricity. Even if you tell him/her a child does things s/he have been forbidden. And then it is water pipes that he was changing he was not playing.

I: Sio ukweli. Mtoto alikuwa hajui hatari ya stima. Alikuwa tu anabadilisha pipes.
That is not true. The child didn't know the dangers of electricity. He was just changing pipes

C1: In paragraph 5C it says 'by climbing on top of a house near high voltage powerlines, the plaintiff exposed himself to needless danger.'

I: Maroiga mwana waku nĩwe wahaichĩte igũru rĩa nyũmba hakũhĩ na waya cia thitima na nĩkĩo achikinyĩire akĩhia. Nĩguo?
They are saying that your child is the one who had climbed on top of a house near the power lines and that's why he reached them and got burnt. Is that so?

W: Ũguo tima. Hĩndi iyo ndangĩahotire kũhamba nyũmba igurũ. Arĩ o mwana.
That is not true, that time he could not climb on top of a house. He was just a child

I: Sio ukweli. Alikuwa mtoto mdogo na hangeweza kupanda juu ya nyumba.
Not true. He was a small child and he could not climb on top of a house.

C1: Wanasema
They are saying
'Negligently handling water from an irrigation horse pipe and letting the same water come into contact with the said wire.'

I: Mwana waku oire baibũ ya maĩ na akĩmionereria wayainĩ cia thitima. Nĩguo?
Your child took the water pipe and directed it to the electricity wires. Is that true?

W: Aca.
No.

I: Si hivyo.
It is not like that.

C1: 'The plaintiff was playing with high voltage electricity lines, and thus posing unnecessary danger not only to himself but also to others.'

I: Mwana waku athakaga na wire cia thitima kũu igũru na kuoguo nĩwe wecinire. Nĩguo?
Your child was playing with the electricity wires up there and so he is the one who burnt himself. Is that so?

W: Acenjagia maĩ. Na onatithikũ ya mbere ni ũndũ aneka.
He was changing the water. It is not even the first time. It is something he had done before.

I: Sio ukweli. Alikuwa anabadilisha pipe za maji.
Not true. He was changing the water pipes.

C1: 'Farming beneath high voltage power lines in an unauthorized manner posing unnecessary endangerment'

I: Mwarĩmaga rungu rwa waya na gũtiĩtĩkĩrĩtio.
You were farming under wires and it is not allowed.

W: To ithuĩ. Nĩ andũ aingĩ marimaga kuma W__ nginya S__ . Ona rĩu no tũrĩmaga. Timahĩtia kurĩma.
We are not the only ones who farm. Many people farm from W___ to S___. Even now we are farming. Farming is not a crime.

I: Sio sisi peke yetu tunalima. Kuna watu wengi wanalima hata sasa.
We are not the only ones who farm. There are many people who are farming even now.

C1: 'The parent left the plaintiff to farm unsupervised, when they knew or ought to have known it was risky'

I: Mũrĩta aciari amwana ũcio, mũtiagĩrĩirwo nĩkũmũreka agachenjie baibũ ewiki tondũ nĩ muĩ hena ũgwati ũngĩoneka. Ũguo nĩ ma?
As the parents of the child, you should not have allowed him to go and change the water as you knew that the accident can occur. Is that true?

W: Ũcio ni ũndũ mekaga. Mũtino woimanire ũguo ndoiga wire ciachuhĩte.
That is something they do. The accident came from how I have explained the wires were bending.

I: Not true your Honour.

C1: Kwa hivyo sasa unauliza korti isaidie wewe na mtoto namna gani?
Now how do you want the court to help you and the child?

W: Vile ningeuliza korti mimi ningetaka inisaidie kwa mtoto apate elimu. Ni mwerevu sana kwa masommo. Na sasa hata hakuna kazi ingine anaweza kufanya, ni ya masomo tu. Pia kupata pesa ya kubadillisha hiyo mguu [sababu-]
What I would ask the court, I would like it to assist me with the child to get education. He is very clever in education. And now there is no other work he can do it is just education. Also to get money for changing the leg because-

M: [Counsel lets] save time.
Exactly what do you people want?

C1: Ooh yes, special damages, general damages, reimbursement of medical expenses, future medical expenses plus of course the cost of the plaint.

M: Mrs. ___

C2: Yes your Honour. Sasa umesema accident ilifanyika mahali kuna irrigation?
Now you have said where the accident happened there is an irrigation scheme?

W: Ndio.
Yes.

C2: Wire ziko wapi kwa hiyo scheme?
Where are the wires in the scheme?

W: Wire zimepitia kwa shamba=
They have passed through the farm.

C2: =Na irrigation mnafanyia chini?
And you are carrying out irrigation below.

W: Shamba ni ya acre tatu. Sasa wire imegawanya katikati. Wire imetoka S__ [inaenda-]
The farm is three acres. The wires divide it in the middle. The wires come from S__ going to-

C2: [Siulizi] hivyo. Nauliza irrigation inafanyikia wapi? Kama wire iko [hapa,= {((demonstrating))}
I am not asking that. I asking where is the irrigation being done? If the wire is here-

W: [Mmh

C2: =irrigation inafanyika wapi?
where is the irrigation being done?

W: Chini=
Below.

C2: =Chini ya wire?
Below the wires?

W: Ndio.
Yes.

C2: Hiyo shamba ni yako?
Is that farm yours?

W: Ni yangu.
It is mine.
C2: Kwa hivyo wakati hizo wire ziliwekwa pale na Kenya Power, wewe bado ulikuwa hapo?
So when those wires were put there by Kenya Power, were you still there?
W: Hizo wire ni za zamani sana hapo=
Those wires have been there for long.
C2: =Hapana. Vile nataka kujua ni, wewe ulikuwa unaishi hapo zikiwekwa?
No. What I want to know is, were you living there when they were put?
W: Mm.
C2: Na unajua kama kuna notice ilipeanwa na K__ Power kujulisha wenye wanakaa hapo wanataka kupitisha hizo wire hapo?
And do you know whether there was a notice given by K___ Power to inform those living there that they wanted their power lines to pass there?
W: Hiyo tulijua.
That we knew.
C2: Na ukalipwa?
And you were compensated?
W: Siku hiyo mtu hakuwa analipwa. Hizo wire ziliwekwa zamani sana.
Those days people never used to be compensated. Those wires were put there a long time ago.
C2: Lakini ulijua mtu hatakikani kulima chini za hiyo wire?
But you knew one is not supposed to farm under those power lines?
W: Niwatu wengi wanalima, sio mimi peke [yangu-]
It is many people who farm there. I am not the only one-
C2: [Lakini ni wewe] peke yako umeleta kesi kwa hivyo wachana na hao wengine. Ulijua ni hatia kulima hapo?
But it is you alone who has filed a case so leave out the others. You knew it is wrong to farm there?
W: Hapana, sijui.
I didn't know.
C2: Hizo wire zilikuwa distance gani kwenda juu?
How high up were those wires?
W: Your Honour nilisema ilikuwa iko futi thelathini lakini ilikuwa imekuja [chini futi kumi-]
Your Honour I said they were thirty feet but they had come down ten feet-
C2: [Zilikuwa] zimeanguka chini?
Had they fallen on the ground?
W: Sio kuanguka lakini zilikuwa zimebend chini kuliko vile zinatakikana. [Ndio-]
Not falling on the ground but they were bending down more that they should. That's why-
C2: [Wire] za stima huwa zinabend kwasababu ni wire na zinaexpand na kucontract. Na hiyo allowance huwa inapeanwa zikiwekwa. Nakuuliza, zilikuwa zimeanguka chini?
Electricity wires usually bend because they are wires and they expand and contract. And that is an allowance that is given when they are put up. I am asking you, had they fallen on the ground?
W: Sio chini.
Not on the ground.
C2: Hazikuwa zimeanguka chini. Nazilikuwa zimekatika?
They had not fallen on the ground. And were they cut?
W: Hapana.
No.
C2: Baada ya hio ajali watu wa K__ Power walikuja pale, si ndio?
After that accident personnel from K__ Power come there, isn't that so?
W: Walikuja.
They came.
C2: Wakafanya nini?
What did they do?
W: Sasa walikuja- unajua hio ni mambo ya stima. Sijui walifanya nini.
Now they came- you know that has to do with electricity. I don't know what they did.
C2: Lakini uliona wakiangalia hizo vikingi?
But you saw them inspecting those poles?
W: Walikuja, wengine walipanda juu ya hizo vikingi. Sijui walifanya nini. Mimi nilikuwa nashugulika na mambo ya mtoto.
They came, some of them went up those poles. I don't know what they did. I was busy with the child.
C2: Na pia mbeleni uliona watu wa Power walikuwa wakija pale?
And even there before personnel from Power used to come there?
W: Masaa ya jioni siku hiyo [wali-]
The evening hours of that day they-
[Sio siku] ya ajali. Hapo mbeleni ulikuwa unawaona wakija routine inspection, si ndio?
Not on the day of the accident. There before you used to see them come for routine inspection, isn't that true?

W: Ee, wanakujanga, naona hizo magari zao.
Ee, they usually come, I see their vehicles.
C2: Wanakujanga. Na wana kuja after how long?
They usually come. They come after how long?
W: Hio sijui.
That I don't know.
C2: Wanakuja kama kila mwezi ama:::?
They come like every month or?
W: Mimi si shugulikangi nao.
I don't bother with them.
C2: Lakini unaconfirm unawaona wanakuja kufanya inspection na kumaintain zile wire zao?
But you confirm you see them they come to do inspection and to maintain their lines?
W: Mm.
C2: Sasa wakati mtoto alikuwa anafanya irrigation, walikuwa na nani shambani?
Now when the child was doing the irrigatiom, with whom was he in the farm?
W: Walikuwa na kamtoto kengine kadogo.
They were with another small child.
C2: Katoto ka miaka ngapi?
A small child of how many years?
W: Kalikuwa kamiaka tano- nne.
The child was five- four years.
C2: Kwa hivyo hakukuwa na mtu mzima alikuwa anawaangalia?
So there was no adult supervising them.
W: Siku hiyo?
On that day?
C2: Ee.
W: Siku hiyo mimi na bibi yangu hatukuwa nyumbani.
On that day my wife and I were not at home.
C2: Na wewe kama mzazi, si nijukumu yako kuangalia mtoto?
And you as a parent, is it not your responsibility to look after a child?
W: Nijukumu yangu lakini sasa siku hiyo sikuweko.
It is my responsibility but on that day I was not there.
C2: Sasa nataka kukuambia,
Now I want to tell you,
W: Mm=
C2: =huyo mtoto wako alikuwa anacheza na ile pipe, akaiguzisha kwa zile wire nahio ndio ilileta hiyo accident. Si hiyo ndio ukweli?
Your child was playing with that pipe and brought it into contact with those wires and that is what caused the accident. Is that not the truth?
W: Hiyo si ukweli. [Hakuwa-]
That is not true. He was not-
C2: [Si umesema] ewe haukuwepo hapo wakati hii accident ilifanyika?
Were you there when this accident occurred?
W: Mimi sikuweko.
I was not there.
C2: Nautasemaje si kweli na hii mambo yote umeelezea yote ni ya kuambiwa?
And how would you say it is not true and all the things you have explained all of them you were told?
W: Hapana sio ya kuelezewa. Ni vile mimi [najua-]
No it is not being told. It is the way I know-
C2: [Sasa kama] haukuwa pale, ulijua aje vile ilifanyika? Ulisikia na mtu ama ulijuaje?
Now if you were not there, how did you know what transpired? You heard with somebody or how did you know?
W: Mimi hio ndio mambo najua-
Those are the things I know-
C2: Umesema mtoto alikuwa aninua pipe?
You have said the child was lifting the pipe?
W: Alikuwa ana pindua alafu ikashika wire.
He was changing it then it touched the wire.
C2: Pia umesema wewe siku hio haukuwa pale, si ndio?
You have also said you were not there on that day, isn't that so?
W: Ndio.
Yes.
C2: Ndio nakwambia hiyo yote ni hearsay. Mambo ya kuambiwa sababu hukuwa pale kushuhudia. Sasa hio pipe umesema imetengenezwa na nini?
That is why I am telling you all that is hearsay. Things that you were told because you were not there to witness. Now that pipe is made of which material?

W: Aluminum
C2: *Huyu mtoto alikuwa na miaka ngapi akipata accident?*
How old was this child when he was involved in the accident?
W: Alikuwa na miaka tisa.
He was nine years old.
C2: Umesema ilifanyika lini?
You said when did it occur?
W: Ilikuwa mwezi wa April 2004.
It was in the month of April 2004.
C2: 2004?
W: Ee.
C2: Hii birth notification umetoa hapa- hebu {((handing the witness a paper))} shika. Inaonyesha mtoto alizaliwa lini?
This birth notification you have produced here. Take this. When does it show the child was born?
W: Inasema alizaliwa tarehe ishirini na moja mwezi wa saba 1993.
It says he was born on 21st July 1993.
C2: 1993.
W: Mm.
C2: Na wewe ukifanya hesabu yako, kutoka 1993 mpaka 2004 ni miaka ngapi?
And if you do your calculations, from 1993 to 2004 are how many years?
W: Ee::: [1993-]
C2: [Nikurahishishie] hesabu yako?
Can I make the math easy for you?
W: Ee.
C2: Kutoka 1993 mpaka 2000 ni miaka ngapi? Sini miaka saba?
From 1993 to 2000 are how many years? Is it not seven years?
W: Ee.
C2: Alafu tuongeze miaka nne from 2000 to 2004. Inakuja ngapi?
Then we add four years from 2000 to 2004. They come to how many?
W: Seven plus?
C2: Four. Inakuja ngapi?
It comes to how many?
W: Ten- eleven
C2: Kwa hivyo mtoto akichomeka alikuwa wa miaka kumi na mmoja sio tisa yenye unasema, si ni ukweli?
So the child got burnt at the age of eleven years not nine as you are saying, is that not true?
W: Mm.
C2: Mtoto wa miaka kumi na moja hajui hatari ya kucheza na stima?
A child of eleven years doesn't know the dangers of playing with electricity?
W: Sikuwa ni memwambia.
I had not told him.
C2: Wewe kama mzazi haukuwa umefundisha mtoto wako kucheza na stima ni vibaya?
You as a parent had not taught your child that playing with electricity is bad?
W: Wakati huo sikuwa ni meingiza stima nyumbani. Lakini kuanzia siku hiyo nilimwambia mambo ya kucheza na stima staki.
At that time I had not installed electricity in the house. But starting on that day I told him I don't want to hear of him playing with electricity.
C2: Kwa hivyo baada ya ajali ndio ulimuonya asicheze na stima tena? Hizo wire mahali ziko hata kama zimebend vile unasema, mtu anweza kufikia na mkono?
So after the accident is when you warned him not to play with electricity again? When those wires are where they are even when they bend as you say, can somebody reach them by hand?
W: Unajua [mtoto-]
You know a child-
C2: [Jibu ndio] au hapana. Hata kama ni mtu mzima, anaweza kufikia wire za stima na mkono zikiwa juu?
Answer yes or no. Even if it is an adult, can he/she reach the electricity wires by hand when they are up?
W: Hapana.
No.
C2: Lakini mtoto alizifikia kwa kuinua pipe, si ndio umesema?
But the child reached them by lifting the pipe, is that no what you have said?
W: Ndio.
Yes.
C2: Kwa hivyo nataka ujue mtoto alishababisha ajali kwa sababu ya kucheza na wire za stima, kuziguza na pipe ya aluminium. Na pia wewe ni responsible sababu umesema haukuwa unamsupervise kwa shamba na hukuwahi kumuonya juu ya hatari za kucheza na wire za stima. Hiyo si ni ukweli?
So I want you to know the child caused the accident because of playing with electricity wires, touching them with an aluminum pipe. And even you are responsible because you have said you were not supervising him and you have never warned him of the dangers of playing with electricity wires. Is that not true?

W: Hapana hakuwa ana [cheza ni-]
No he was not playing-
C2: [Kuna mtu] mwingine amechomeka na hizo wire hapo?
Has anyone else been burnt by those wires there?
W: Iko wengi zimechoma [tangu-]
It is many they have burnt since-
C2: [Unaweza] kututajia mmoja amechomeka kwa shamba yako?
Can you name for us one who got burnt in your farm?
W: Sio kwa shamba yangu [lakini-]
Not in my farm but-
C2: [Kwa hivyo] kwa shamba yako hizo wire unasema zimebend hazijawahi choma mtu, si dio? Hapo kwa shamba yako.
So in your farm those wires you are saying have bent have never burnt anyone, isn't that so? There in your farm.
W: Ndio.
Yes.
C2: Na umesema zimekaa hapo muda mrefu, kama miaka ngapi?
And you have said they have been there for a long time. Like how many years?
W: Ziliwekwa 70s.
They were put in the 70s.
C2: Kwa hivyo over thirty years wire zimekaa hapo kwa shamba na hazijachoma mtu, si ndio?
So over thirty years the wires have been there on the farm and they have not burnt anyone, isn't that so?
W: Kuna [kuingine-]
There is elsewhere-
C2: [Umesema] watu wamechomeka kwingine na mliandikia K___ Power barua mkiwa wengi, si ndio?
You have said people have been burnt elsewhere and you wrote to K___ Power a letter as a group, isn't that so?
W: Ndio, tuliwaandikia barua.
Yes, we wrote them a letter.
C2: Hiyo barua, copy yake uko nayo?
That letter, do you have a copy of it?
W: Hiyo tulitumia hao.
That one we sent it to them.
C2: Na hamna copy mliweka? Si nikama petition mlikuwa mnafanya kwa kampuni? Uko na copy yake?
And there is no copy you kept? Is it not like a petition you were sending to the company? Do you have a copy?
W: Hiyo mimi sina.
That one I do not have.
C2: Huna chochote cha kuonyesha mahakama kuhusu hao watu wengine unasema.
You have nothing to show the about those other people you are talking about.
C2: Hiyo shamba unasema iko kwa scheme, wewe uko na title deed yake?
That farm you are saying is in a scheme do you have a title deed for it?
W: Hakuna mtu hapo ako na title deed. [Tume kaa-]
There is no one there with a title deed. We have stayed there-
C2: [Wachana na wengine]. Huna title deed sababu hamtakikani kuwa na shamba hapo na kulima chini ya high voltage wires. That's all your Honour.
Leave the others. You do not have a title deed because you should not be having farms there and farming under high voltage wires.

DS1Case02

C1: Fahamish korti majina yako.
Inform the court your names.
W1: Naitwa____
My name is __
M: Nani?
Who?
C1: Hebu rudia majina.
Repeat the names.
W1: ____ your Honour.
C1: Na Bw. ___unaishi wapi?
And Mr.__ where do you live?
W1: Mimi naishi___.
I live at __.
C1: Unafanya kazi gani?
What work do you do?

W1: Sifanyi kazi.
I don't do any work.
C1: In other words you are not employed?
W1: Yes your Honour.
C1: Na hapo mbeleni ulikuwa unafanya kazi wapi?
And there before where were you working?
W1: Nilikuwa nafanya kazi kwa kiwanda initwa S___ huko R__.
I was working at a factory called S___ there at R__.
C1: Unakumbuka mnamo terehe sita mwezi wa ___ mwaka wa elfu mbili na tisa?
Do you recall on sixth ___ 2009?
W1: Ndio nakumbuka.
Yes I recall.
C1: Eleza korti hii ulikuwa wapi na ulikuwa unafanya nini.
Tell this court where you were and what you were doing.
W1: Hiyo tarehe nilikuwa kazini nilikuwa [nafanya na-]
On that day I was at work I was working with-
C1: [Ulikuwa unafanya] kazi kama nani?
You were working as a what?
W1: Nilikuwa nafanya kama machine operator.
I was working as a machine operator.
C1: Eleza korti ni nini ilitokea hiyo siku.
Tell the court what happened on that day.
W1: Kwa hiyo siku nillikuwa nafanya kazi kwa machine alafu kukawa na [explosion-]
On that day I was working at the machine then there was an explosion-
C1: [Unajua kuna] kesi mbili kuna kesi moja hiyo ambayo uliumia uso .Sasa hii kesi tunazungumzia ni ile ambayo uliumia mguu.
You know there are two cases one that one where you were hurt on the face. Now this case we are talking about is the one you hurt your leg.
W1: Wakati huo nilikuwa nafanya kazi na illikuwa usiku, tulikuwa tunatransport vifaa zingine za kampuni tukiwa na___ na___. Sasa in the process nikienda kupeleka ee::: hizo vitu zilikuwa kwa troli.Tulikuwa na mwenzangu___ na alikuwa huko mbele ameshika na sisi wawilli tunasukuma huku nyuma. Tukafika pahali panaitwa marketing trolli ikalose control ee::: sijui mwenye huko mbele alifanya nini lakini nilianguka ikanigonga mguu.
At that time I was working and it was at night, we were transporting some other company items with __ and __. Now in the process when I was going to take::: ee those things were on a trolley. We were with my colleague___ he was in front holding there and the two of us were pushing from behind. We got to a place called marketing the trolley lost control ee:::I don't know what the one in front did but it fell and hit me on the leg.
C1: Uliumia huo mguu?
Was that leg hurt?
W1: Ndio.
Yes.
C: Umesema mlikuwa [ee:::-]
W1: [Tulikuwa] tumebeba blanketi tunapeleka ( ) Ilikuwa mzigo kubwa inatoshana hivi {((demonstrating with hands))} iko kwa troli.
We were carrying blankets taking them ( ). It was a huge luggage this size on a trolley.
C1: Wewe unasukuma mwingine anavuta?
You were pushing and another one pulling.
W1: Ndio nasukuma mwingine ako mbele anavuta.
Yes I am pushing and another one is in front pulling.
C1: Unasema mlikuwa mmnasukuma watu wangapi hiyo siku?
You are saying you were pushing as how many people on that day?
W1: Watatu, wawili nyuma mmoja mbele ana control.
Three, two people at the back and another one in front controlling.
C1: Alafu unasema nini ilifanyika.
Then you are saying what happened?
W1: Sijui kile kilitendeka lakini ee::: labda troli iligonga kitu- ilianguka ikanilalia kwa mguu, mimi nilikuwa on the left side.
I don't know what happened but ee::: maybe the trolley hit something- it fell and it landed on my leg, I was on the left side.
C1: Ulikuwa on the left [side =
You were on the left side
W1: [Yes your Honour
C1: =ikaanguka [ikakukata=
it fell and cut you
W1: [Ikanikata magoti.

It cut me on the knee.

C1: =magoti?
knee?
W1: Ee
C1: Alafu?
Then?
W1: Niliumia nikapelekwa hospitali.
I was hurt and I was taken to hospital.
C1: Ulipelekwa hospitali wapi?
Where were you taken to hospital?
W1: R___ Health Centre.
C1: Alafu wakakutibu huko?
Then they treated you there?
W1: Ndio walinitibu huko=
They treated me there
C1: =Alafu?=
Then?
W: =Nilikuwa narudi baada ya kitu kama siku tatu hivi.
I was going back after about every three days.
C1: Na wakati ulileta hii kesi kortini ulienda kuona Dr M__?
And the time you brought this case to court did you go to see Dr.M___?
W1: Ee?
C: Kabla ya kuleta hii kesi kortini, uliona Dr M__ kuhusu majeraha hayo unaeleza korti?
Before you brought this case to court, did you see Dr. ___ about the injuries that you are telling the court?
W1: Ndio nilienda [kwa-]
Yes I went to-
C1: [Na akatengeneza] medical report?
And he wrote a medical report?
W1: Ndio.
Yes.
C1: Ungetaka kuitoa kama ushahidi kwa hii kesi?
Would you like to produce it as evidence before this court?
W1: Ndio ningependa kuitoa.
Yes I would like to produce it.
C1: Na unasema ulienda R__ Health Centre? Ungependa kutoa hii kama ushahidi pia?
And you say you went to R___ Health Centre? Would you like to produce this as evidence also?
W1: Ndio.
Yes.
M: What is that now Mr. ___?
C1: Your Honour it is the treatment summary from R___ Health Centre dated 6th ___2009.
Kwa kifupi unasema uliumia ukiwa kazini?
I short you are saying you were hurt while you were at work.
W1: Ndio.
Yes.
C1: Kuna mtu yeyote ungelaumu kuhusu huko kuumia kwako?
Is there anybody you would blame for the fact that you suffered injuries?
W1: Ndio=
Yes.
C1: =Nani
Who?
W1: Nitalaumu kampuni ama yule mtu ambaye alikuwa akiendesha ile troli tulikuwa nayo.
I will blame the company or that person who was driving the trolley we had.
C1: Hiyo troli ilikuwa inaendeshwa?
That trolley was being driven?
W1: Kuna mtu alikuwa anacontrol. Unajua ina kitu kama steering [wheel ina-]
There was somebody controlling it. You know it has something like a steering wheel ina-
C1: [Kwa hivyo] mbele kulikuwa na driver?
So in front there was a driver?
W1: Ndio.
Yes.
C1: Unamlaumua huyo mtu?
Do you blame that person?
W1: Ndio na kampuni.
Yes and the company.
C1: Na kampuni kwa nini?
And the company why?

W1: Kama hiyo troli ingekuwa inaendeshwa kwa machine singeumia.
If that trolley was being driven by a machine I would not have been hurt.
C1: Wakati uliendea medical report ulilipa pesa yoyote huko?
When you went for the medical report did you pay any money there?
W1: Ee kunayo.
Ee there is.
C1: Pesa ngapi?
How much money?
W1: Ilikuwa elfu tano.
It was five thousand
C1: Nahii {((handing witness paper))} ndio risiti yake unatoa kama exhibit ingine?
And this is the receipt for that you are producing as another exhibit?
Ungetaka korti ikufanyie nini?
What would you want the court to do for you?
W1 Nilikuwa nataka kama inaweza order kampuni ini compensate to recover hata kama ni hiyo.
I wanted if it can order the company to compensate me to recover even if it is that.

C2: Bwana___ unasema uliingia kazi kampuni mwaka gani?
Mr.___ you are saying you started work at the company in which year?
W1: 1998 mwezi wa tatu.
1998 March.
C2: 1998. Uliajiriwa kama nani hapo? Kazi gani?
1998. You were employed as who there? Which work?
W1: Nilianzia ( )
I started ( )
C2: Na unasema ulikuwa unafanya kazi huko tangu 1998 na siku hii ya tarehe sita mwezi wa __ bado ulikuwa unafanyia ampuni kazi yake?
And you are saying you were working there since 1998 and on this date of 6th— 2009 you were working for the company?
W1: Bado nilikuwa naifanyia.
I was still working for it.
C2: Now kwa hii department ya ( ) nani alikuwa anasimamia?
Now in this department of ( ) who was in charge of it?
W1: Mwenye alikuwa anasimamia kuna mtu mmoja anaitwa__ Alafu assistant wake alikuwa mzee mmoja alikuwa anaitwa D__.
The person in charge of it there was one person called G__ and then his assistant was called D__ .
C2: Na G___ alikuwa anafanya kazi gani huko?
And G__ was doing which work there?
W1: G__ ni kama personnel manager.
G__ is like the personnel manager.
C2: Pia ulikuwa unajua B__?
Also did you know B__ ?
W1: B__ namjua kama mtu wa first aid, ukipata injury yeye ndiye alikuwa anahusika.
B__ I know him as a first aid person, if you got injured he would be involved.
C2: Ukipata majeraha ulikuwa unaenda [kwake=
If you got injured you would got to him
W1: [Ee
C2: =alikuwa upande wa administration?=
He was in the administration?
W1: =Ndio.
Yes.
C2: Unasema ulipojeruhiwa ulienda R__ [Health Centre =
You are saying when you got injured you went to R___ Health Centre
W1: [Yes your Honour
C2: =na report imeandikwa 6th___2009. Kuna barua ulitoka nayo kwa kampuni kuonyesha kwamba uliumia na ulitumwa kwa matibabu?
and the report is written 6th __2009. Is there a letter you left the company with to show that you were injured and you were sent for treatment?
W1: By the way kampuni hawapatiani barua, huwa wanachukua watchman kama kitu imefanyika mchana ama usiku huyo ndiye anakusindikiza mpaka hospitali. Kama unahitaji gari kama ni pick up hao ndio wanakupeleka [na pia wana-]
By the way the company does not give a letter; they take a watchman if something has happened during the day or at night that is the one who escorts you up to the hospital. If you need a car if it is a pick-up they are the ones who take you and they also-

C2: [Ulienda na] mtu siku hiyo?
Did you go with somebody on that day?
W1: Mimi nilipewa gate pass na hiyo gate pass ukipewa ukirudi unarudisha.
I was given a gate pass and that gate pass when you are given when you come back you return it.
C2: Ulipewa na nani?
You were given by who?
W1: Nilipewa na supervisor mwenye nilikuwa nayeye.
I was given by the supervisor whom I was with.
C2: Na ulishughulikiwa na B__?
And were you attended to by B__ ?
W1: B___ anafanya mchana na alikuwa ashaenda.
B__ works during the day and he had already gone.
C2: B__ alikuwa [ashaenda =
B__ had already left
W1: [Ee
C2: = na hukupewa yeyote kutoka kwa kampuni mwandamane hospitali?
and you were not given anyone from the company to go to accompany you to hospital.
W1: Sikupewa.
I wasn't given.
C2: Na kulikuwa na record yako ilikuwa na kampuni- kitu ilipewa hapo kabla kwenda kutibiwa kuonyesha kwamba umepata majeraha? Kuna record yeyote ilikuwa imeandikwa kutoka kwa kampuni?
And was there a record of you at the company- something you were given there before going to be treated to show that you had sustained injuries? Is there any record written at the company?
W1: Kwa department ama kwa[:::?]
At the department or at:::?
C2: [Kwa] hiyo kampuni?
At that company?
W1: Sasa hiyo sina habari sijui kama wanaandika.
Now that one I don't know whether they write.
C2: Hukuwa unajua kitu kama hiyo. Ulipata majeraha ( ) kampuni ilikuwa inachukua workers registration forms?
You didn't know anything like that. You sustained injuries ( ) the company was taking workers registration forms?
W1: Yes your Honour
C2: Na hakuna yeyote ulifill?
There was none you filled?
W1: Hakuna.
There isn't.
C2: Na Bw. __the first time ulieleza kwamba kutoka 1998 ulianza kazi yako ya kampuni. Na hiyo ni ukweli. Sasa nataka utwambie nikweli ama si kweli kwamba kabla ya tarehe ya ajali, ulikuwa umefanya kile tunaita resignation? Na hapa nakuonyesha barua useme kama ni yako.
And Mr. __ the first time you explained that from 1998 you started your work with the company. And that is true. Now I want you to tell us is it true or not true that before date of the accident, you had done what we call resignation? And here I want to show you a letter you say whether it is yours.
W1: Hii barua nimeitambua. [Wacha nieleze-]
I recognize this letter. Let me explain-
C2: [Ngoja.] Unakubali barua ni yako. Dated?
Wait. You accept the letter is yours. Dated?
W1: 18th ___2008.
C2: Uliandika hii barua kusema nini?
You wrote this letter to say what?
W1: Kusema nimeresign. [Niliandika-]
To say I have resigned. I wrote-
C2: [Kwa sababu] gani?
Because of what reason?
W1: Hii [barua-]
This letter-
C2: [Jibu vile] na kuuliza. Si hii barua ni yako umesema uliandika kuresign?
Answer what I am asking you. Is this not your letter you have said you wrote to resign?
W1: Ndio.
Yes.
C1: Sababu gani ulikuwa unaresign?
For what reason were you resigning?
W1: Kwa sababu ile imeandikwa hapa ndani.
Because of the reason written in here.
C2: Na nisababu gani umeandika hapo?

And which reason have you written there?

W1: Weak health status

C2: Na wewe ndiye uliandika na ukasign? Ulikuwa unasema nini kuhusu weak health status?
And you are the one who has written and signed. What were you saying about weak health status?

W1: Hapa- hii barua wacha [nikwambie-]
Here- this letter let me tell you-

C2: [Webu tusomee] vile uliandika. Soma {((giving witness paper and pointing))} hapa.
Read for us what you wrote. Read here.

W1: 'Due to my weak health status I have come to a conclusion to decide this, to leave both the company and ( ).

C1: Endelea.
Go on.

W1: 'I have worked as from ___ 1998 up to ___ 2008. I would appreciate it very much if you take my resignation with consideration.'

C2: The letter is dated?

W1: 18th __2008.

C2: Hii barua ulipea nani?
To whom did you give this letter?

W1: Nilimpatia __Assistant Personnel Manager.
I gave it to __ Assistant Personnel Manager.

C2: Na vile ulipeana hii barua kwa kampuni kuna hatua walichukua?
And when you gave this letter to the company is there action that they took?

W1: Hii barua your Honour nilikuwa naandika nikitaka loan yoyote bora inaexceed 10,000. Walikuwa wanatwambia you can write a resignation letter alafu against your service wanakupatia pesa Alafu unaendelea na kazi on contract basis. Sasa by then nilikuwa nataka pesa mzuri sio pesa kidogo.
This letter your Honour I had written wanting a loan exceeding 10,000. They would tell us you can write a resignation letter and then against your service they would give you money then you would go on with work on a contract basis. Now by then I wanted good money not little money.

C2: Na kulingana na hiyo barua yenye uliandika kampuni ilichukua hatua ya kukupatia hii discharge yenye ulisign dated 28th __ 2008. Hebu angalia {((giving witness paper))} hii. Unakumbuka?
An on the basis of that letter that you wrote the company took the action of giving you this discharge that you signed dated 28th __ 2008. Look at this. Do you remember it?

W1: Ndio nakumbuka.
Yes I remember it.

C2: Uli sign?
Did you sign?

W1: Ndio.
Yes.

C2: Sasa hayo mambo unasema ya pesa uliandikiana agreement ya hizo terms na kampuni?
Now the things you are saying about money did you write an agreement on those terms with the company?

W1: By the way hapo nikuongea naniwatu wengi walikuwa wanafanya [hivyo-]
By the way there you talk and it is many people who were doing that-

C2: [Wachana] na watu wengi. Mimi na kuuliza kuna agreement kama hiyo wewe umetoa mbele ya mahakama?
Leave the many people alone. I am asking you, is there such an agreement that you produced before the court?

W2: Bado.
Not yet.

C2: Unaweza toa chochote mbele ya mahakama kuonyesha vile unasema loan?
And can you produce anything to show what you are saying of a loan?

W1: Siwezi.
I cannot.

C2: Lakini mimi naweza toa hii letter of discharge yenye ulisign na ukapewa copy. Inasema kwamba wewe umeachana na kampuni on 28th ___2008 na wewe umeondolea kampuni kutokana na any liability na ukaondoka. Sasa wewe unasema tarehe 6 mwezi wa __ 2009 ulikuwa kazi, kampuni inasema, na iko na discharge letter, haukuwa kazi ulikuwa umetoka tarehe 28 mwezi wa __ 2008. Nani anasema ukweli, ni kampuni ama ni wewe?
But for me I can produce this letter of discharge that you signed and was given a copy. It says that you have left the company on 28th __ 2008 and you have removed from the company any liability and you left. Now you are saying that on 6th ___ 2009 you were at work, the company says, and it has a letter of discharge, that you were not at work you had left on 28th ___ 2008. Who is telling the truth, is it the company or it is you?

W1: Unajua [mimi-]
You know I-

C2: [Sema] ni nani.
Say it is who.

W1: Kusema aje?
To say how?

C2: Wewe uliandika hii {((pointing to the letter the witness is holding)} na uka sign kwamba umetoka from the company, si ndio?
You wrote this and signed that you had left from the company, isn't that so?

W1: Kuandika hivyo mimi nilikuwa nataka pesa sikuwa nataka kuacha kazi. Hata hivyo nimeelezea yule manager tulikuwa nayeye wakati huo akaniambia kama ni pesa unataka ( ) hii ( ) na utapata. Otherwise kampuni haiwezi kukupatia loan ya twenty thousand wako na maximum ya ten thousand na mimi nilikuwa nataka twenty thousand.
In writing that I wanted money I didn't want to leave work. I have explained that the manager we had then told me if it is money you want ( ) this ( ) and you will get. Otherwise the company cannot give you a loan of twenty thousand and they have a maximum limit of ten thousand and I wanted twenty thousand.

C2: Na hiyo yote haikuwa imeandikwa mahali. Mambo ya loan haikuwa imeandikwa, si ndio?
And all that was not written anywhere. Things about a loan were not written, isn't it?

W1: Hawangeandika.
They wouldn't have written.

C2: Na angalia hii {((giving witness a letter))} barua. Tarehe yahii barua ni gani?
And look at this letter. What is the date of this letter?

W1: 28th ___2008.

C2: Letter of service tarehe 21st ___2001 to 28th ___2008, si ndio? Hii barua inasema nini? Hebu soma {((pointing))} hapa.
Letter of service 21st ___ 2001 to 28th ___ 2008, isn't that so? What does this letter say? Can you read here.

W1: This is to confirm that Mr.__ has been in our employment from 21st ___2001 to 28th ___2008. At the time he was leaving he was working as a machine attendant in our company, he left on- [hii-]
this one-

C2: [Hiyo] barua, who had signed it?
That letter, who signed it?

W1: G__.

C2: Ambaye ulisema alikuwa nani? Kazi yake ni?
The one you said was who? What is his work?

W1: Personnel Manager. Lakini hii sijawahi iona.
But this one I have never seen it.

C2: Sema ukweli. Si ulipewa barua kama hii?
Tell the truth. Were you not given a letter like this?

W2: Sikupewa kama hii, nimeiona saa hii.
I was not given like this, I have seen it this time.

C2: So, tumesema hii kesi umeleta mbele ya mahakama si ya ukweli sababu wakati wa hii ajali, ulikuwa ushatoka kwa kampuni na hakuna thibitisho umeleta kwa mahakama kuonyesha kwamba ulikuwa unaendelea na kazi kwa kampuni?
So, we can say the case you have brought before this court is not truthful because when this accident happened, you had already left the company and there is no evidence you have brought before the court to show you were going on with work at the company?

W1: Hata mimi, sio wa kwanza kuchukua pesa hivyo. Kuna watu wengi wamechukua service na bado wanaendelea na kazi. Mpaka sasa hivi tunaongea kuna wengine wameandikwa kwa contract. Kampuni vile hufanya ukiresign kama vile mimi sikuwa nataka kuresign bado unaendelea na kazi.
Even I am not the first to take money that way. There are many people who have taken service and they are still going on with work. Up to now we are speaking there are many people who are employed on contract. What the company does when you resign like I never wanted to resign you still continue working.

C2: Start by telling us your name

W2: My name is B__.

C2: What do you do for a living Mr. B__?

W2: I am the Safety Supervisor with S__ Company at R___.

C2: When were you employed by the S ___Company?

W2: In the year 2000.

C2: Do you know the plaintiff in this matter Mr. ___?

W2: Yes I know him well.

C2: How do you know him?

W2: We used to work together- we used to work in the same department in the company.

C2: The department is called?

W2: ( )

C2: When did he join?

W2: According to the records, he joined in 1998 and left in the year 2008.

C2: So after his employment how long did he work in the company?

W2: He worked up to 28th ___ 2008 which means he worked for ten and a half years.

C2: What happened next?

W2: He wrote a letter to the management requesting to resign on 18th __ 2008.

C2: Here is {((giving the witness a paper))} the letter, tell us what it says.

W2: He is requesting resignation of duties and in the letter he was saying he was contemplating resigning due to weak health, he says due to weak health status he had come to a conclusion that ( ) 'I have worked as from ___ 1998 up to ___ 2008. I would appreciate it very much if you take my resignation with consideration.'
C2: Now what happened when you receive this letter?
W2: The Company accepted the letter and gave it to the Personnel Manager and the due process started. The discharge documents were prepared and he signed them.
C2: What date did he sign?
W2: On 28th __ 2008, he signed the full and final statement of discharge from the company which showed the amount he was supposed to be paid and returned copies to the Personnel Manager.
C2: So he signed all the discharge documents himself?
W2: Yes he signed.
C2: So, by signing those documents what does it show?
W2: The discharge letter showed the amount he was to be paid, so by signing it showed that he accepted what was there
C2: It was stated there? The money he was to receive was stated in the letter?
W2: It was stated.
C2: Now that discharge letter shows he left the company formally?=
W2: =Yes your Honour.
C2: Now after this process of discharge, did the employee ask for anything else?
W2: He requested to be given the letter of service.
C2: Was he given that letter of service?
W2: He was given and signed it on the 14th __ 2008.
C2: Do you have that original letter?
W2: Yes- he has the original.
C2: Now, after that did the employee continue to work for the company?
W2: No he did not continue
C2: Now the company is called upon by the employee that on 6th __ 2009 he was involved in an accident while working for the company. What do you say as far as that is assertion concerned?
W2: Your Honour that is untrue because he was not working in the company at that time. He had resigned.
C2: Now Mr. ___ earlier you told as you were the Safety Supervisor.
W2: Yes your Honour.
C2: What were you dealing with? What were your duties as the Safety Supervisor?
W2: To ensure that all safety procedures are followed by all the workers and that there is a process where each and every worker who is injured goes through to get the necessary help.
C2: So if somebody was injured they would report to you? You were responsible.
W2: Yes your Honour, I was there during the day and there was another person during the night shift.
C2: Who was the person?
W2: One of them is ___the other person is ___and any other person in the management.
C2: When an accident occurred and you were informed, what did you do?
W2: The first thing I did is that I took the person to hospital and recorded the accident in my incident book.
C2: Now, we are talking of 2009 July. In the company- in the month of July 2009, was there any injury recorded by this particular claimant?
W2: No your Honour
C2: There was no such record? =
W2: =Yes.
C2: You do not have such a record, and you have the book where you recorded such? =
W2: =Yes.
C2: So what do you say about this particular claim against the company by the claimant?
W2: The allegation is untrue because he was not working with us
C2: He says even after he was discharged, he continued to work in that company, is that true?
W2: It is not true your Honour.
C2 That's all your Honour.

C1: Mr. B___ according to your evidence Mr. ___resigned from the company?
W2: Yes your Honour.
C1: Now, do you have casual workers in your employment?
W2: Yes we have those workers.
C1: What is your terms of engagement with these workers?
W2: They work on a contract basis.
C1: And you give them any documents of identification?
W2: Yes we give them.
C1: What documents do you give them?
W2: We give them a work card that shows every day when the employee reports and then there is also ( )
C1: Do they retain company ( )?
W2: Yes they retain.

C1: You give an employee for example an identity card then he leaves the employment, does he leave this or go with it?
W2: The ID card is a property of the company that must be surrendered
C1: You are very categorical that the employment is a property of the company. An employee who is discharged formally from the company must surrender it. Now my question is if for some reasons an employee is discharged from the employment and still has that ID document, what's your take on that?
W2: That's illegal because it is a company property
C1: And all those discharged formally have to surrender it, isn't it?
W2: Your Honour what I am trying to say is that employees can leave through several ways, one of [them is-]
C1: [Mr. __ we] are not talking about employees here. Mr.___ here has the company ID, and you have stated he was formally discharged, you even, allegedly, gave him a certificate of service. Yet he has his work ID. For me it explains a very simple thing that you never really discharged him from the employment. Isn't that right?
W2: Your Honour two things can happen. An employee can say they have lost their ID and once they say that the ID is lost, we have no otherwise and Mr. __ said his was lost, so there was no way we could get it from him when he was discharged.
C1: Is there somewhere in your defence Mr. __ where you have stated he resigned from employment and that you formally discharged him from the employment? Do you have that in your statement?
W2: No your Honour I did not [put it-]
C1: [So I am] putting it to you Mr. K__ that you are concocting lies simply because the matter has progressed this far. Nowhere in your defence is the issue of resignation and formal discharge raised but you come here and raise it for the first time as an afterthought. My client has stated that he requested for a loan and he was advised that the loan you are asking for is beyond the limit you can be given. You can only get ten thousand maximum, so you just have to resign then the company can give you what you want and then you continue in the employment informally. What explanation do you have for that now that you were sent here to explain? What do you have to say to that?
W2: Your Honour there is no such agreement in the company.
C1: Now, you have come here armed with employment records and letters that my client has never seen. The most important record you would have brought is the check in check out log for the period of the accident. You do have a system of checking in and checking out, right?
W2: Yes we have a record.
C1: Do you have it with you among the many documents you carried?
W2: I didn't carry it.
C1: Now why didn't you bring it so that we can the checking in and checking out and confirm that Mr.__ was checking in and out during the period you claim to have discharged him? It is the best evidence, isn't it? You get records of the injuries of employees and you don't release them, so the employee has nothing to prove the injury occurred. You had another employee named E___ , my client, she got injured and she sued. You forced her to her to withdraw that case from court without my knowledge if she was to continue working. That's what you do at ___ Limited, isn't it?
W2: I am not aware of that your Honour.
C1: You are not aware of that you had an employee named E__ who filed a case after sustaining an injury at work?
W1: I am not aware.
C1: You had an employee by the name E___, right?
W2: Unless we check from the record your [Honour the-]
C1: [I have two] cases where two employees were seriously injured the same day and the doctor who treated them refused to release the medical records unless you say so. I have now applied to have him forced by the Medical Board to release those records. Do you know that employee called___. He was seriously injured. Are you aware of that?
W2: I am not aware.
C1: I am putting it to you that all these cases and the present one prove that you are engaged- that S___ Limited is engaged in unfair and unlawful trade practices, isn't that correct?
W2: We are engaged in fair employment ( ) and we follow the law.
C1: I am putting it to you that this gentleman was in employment, he got injured and even his purported resignation from permanent employment to casual employment was forced and is something that is against the labour laws in this country, true or false?
W2: False your Honour.

DS1Case03

P: Eleza korti majina yako.
Tell the court your names.
W: Naitwa P___
My name is P___
P: Na unaishi wapi?
And where do you live?
W: Naishi M____

I live at M____

P: Unajishugulisha na kazi gani?
Which work are you involved in?

W: Mimi na lima tu huko nyumbani.
I just farm there at home.

P: Wewe ni mkulima. Sasa eleza korti, unakumbuka nini kuhusu tarehe ( ) kama shahidi kwa kesi hii
You are a farmer. Now as a witness in this case tell the court what you remember about date ( ).

W: Ee::: siku hiyo nilikuwa nimetumwa dukani na tukaenda na mtoto wa sista yangu.
Ee::: on that day I had been sent to the shop and we went with my sister's child.

P: Nani alikutuma?
Who had sent you?

W: Ni sista yangu alikuwa ametoka Nairobi.
It is my sister she had come from Nairobi.

P: Sistako alikuja nyumbani kutoka Nairobi alafu akatutuma dukani. Alikutuma nini?
Your sister had come from Nairobi and then sent you to the shop. What had she sent you for?

W: Alinituma kununua sukari na unga.
She sent me to buy sugar and flour.

P: Ulisema mambo ya mtoto wa sista yako?
You said about your sister's child?

W: Ndio. Alinifuata twende nayeye.
Yes. S/he followed me we go with him or her.

P: Unaposema alikufuata unamaanisha nini? Ulitoka kwanza akakufuata ama mulienda pamoja?
When you say the child followed you what do you mean? You left first s/he followed you or you went together?

W: Tuliandamana pamoja.
We went together.

P: Huyo mtoto alikuwa na umri mgani?
How old was the child?

W: Miaka tano.
Five years.

P: Sasa nini ilifanyika mkienda?
Now what happened as you were going?

W: Sasa tulipokuwa karibu dukani tuliona gari ikitoka upande wa juu inakuja mbio sana. Ilipofika [mahali-]
Now as were almost at the shop we saw a vehicle coming from the upper side very fast. When it reached the place-

P: [Hiyo gari] ilikuwa ya aina gani?
What type/make of a car was it?

W: Ilikuwa ni Nissan.
It was a Nissan.

P: It was a Toyota *matatu* your Honour.

M: Which direction was it approaching from?

P: Hiyo matatu ilitoka mbele yenyu ama nyuma?
That matatu came from in front of you or behind you?

W: Ilitoka upande wa mbele.
It came from the front side.

P: Alafu?
Then?

W: Sasa ilipofika karibuu tulipokuwa, iligonga shimo na driver akalose control. Ikakuja na mahali tulipokuwa. Tulitoroka na watu walikuwa [wanapiga nduru-]
Now when it reached where we were it hit a pothole and the driver lost control. It came to where we were. We ran way and people were screaming-

P: [Ngoja.] Gari ilikuwa inaenda mbio ikapiga shimo kwa barabara alafu driver akalose control na ikatoka kwa barabara?
Wait the vehicle was moving fast and it hit the pothole on the road and then the driver lost control and it veered off the road?

W: Ndio.
Yes.

P: Nani walikuwa wakipiga nduru? Ni watu ndani ya gari ama nje?
Who were screaming? Is it people inside the vehicle or outside?

W: Mimi niliona wale walikuwa nje hapo karibu. Waliona gari inakuja kutugonga.
I saw those who were outside nearby. They saw the vehicle was coming to hit us?

P: Unasema mlikimbia?
You are saying you ran?

W: Ndio. Tulijaribu kutoroka. Hiyo gari ikamgonga mtoto wa sista yangu na ikaanguka kwa mtaro
Yes. We tried to escape. That vehicle hit my sister's child and it landed in a ditch.

P: Wewe uligongwa?

Were you hit?

W: Hapana niliweza kuruka mtaro.
No I was able to jump over the ditch.

P: Lakini gari iligonga mtoto?
But the vehicle hit the child?

W: Ndio.
Yes.

P: Hiyo gari namba yake unaijua?
Do you know the registration number of the vehicle?

W: Ndio, ilikuwa KBK _____
Yes, it was KBK____

P: Sasa mtoto amegongwa. Nini ilifanyika?
Now the child has been hit. What happened?

W: Tulimchukua na watu wenye walikuwa hapo tukamweka kwa gari tukamkimbiza hospitali.
We took him, together with the people who were there, put him in a vehicle and rushed him to hospital.

P: Mlimuweka kwa gari gani? Yenye ilimgonga?
You put him in which vehicle? The one that hit him?

W: Hapana. Kwa pick-up ya mzee mwingine hapo.
No. In a pick-up belonging to another man there.

P: Mlimpeleka hospitali gani?
Which hospital did you take him to?

W: Tulimpeleka M____
We took him to M____

P: That's M____ Sub-District Hospital your Honour.
Sasa nini kiliendelea huko hospitali?
Now what happened there at the hospital?

W: Tulipofika, daktari walituambia alikuwa amekufa.
When we arrived, the doctors told us the child was dead.

P: Mlikuwa na nani huko hospitalini?
Whom were you with at the hospital?

W: Tulikuwa na huyo mzee mwenye pick-up na wazee wengine wawili.
We were with the owner of the pick-up and two other men.

P: Unawajua majina?
Do you know their names.

W: Huyo mwenye pick-up anaitwa J____. Hao wengine ni K____ na M____.
The owner of the pick-up is called J____. The others are K_____ and M___.

P: Ni watu wenye unajua?
They are people known to you?

W: Ndio. Ni wa kijiji chetu.
Yes. They are from our village.

P: Alafu?
Then?

W: Mimi nilitibiwa, alafu mama yangu na sistangu walikuja na baadaye tukaenda polisi kupiga ripoti.
I was treated then my mother and sister came and later we went to the police station to report the matter.

P: Ulisema wewe haukugongwa na gari natena unatibiwa?
You said you were not hit by the vehicle and then you are being treated?

W: Sikugongwa lakini wakati niliruka nilianguka na nikaumia hapa {((pointing))} na kwa mguu. Nilikuwa natokwa na damu na niliwekwa bandange.
I wasn't hit but when I jumped I fell and I got hurt here and at the leg. I was bleeding and I was bandaged.

P: Mlipoenda polisi- mlienda polisi station gani?
When you went to the police… which police station did you go to?

W: Tulienda K____
We went to K_____

P: Mliandikisha [statement?]
Did you record a statement?

M: [K_____] is a police station or a patrol base?

P: It is a patrol base your Honour.

M: Yes.

P: Mliandikisha statement?
Did you record a statement?

W: Ndio.
Yes.

P: Nini ingine?
What else?

W: Nilipewa barua ya P3.
I was given a P3 letter.

P: That's all your Honour.
M: Yes. Mrs. ___
C: Umesema kwamba sista yako alikutuma sukari na unga dukani?
You said that your sister sent you sugar and flour at the shops?
W: Ndio.
Yes.
C: Alafu ukasema mtoto wake alikufuata, si ndivyo?
Then you said her child followed you, isn't it?
W: Ndio.
Yes.
C: Kwa hivyo wewe ulitoka ukienda alafu yeye akakufuata nyuma?
So you left and then he followed you from behind?
W: Tulitoka pamoja.
We left together.
C: Kwani huna uhakika vile unasema? Ulitoka na yeye akakufuata, si ndio umesema?
Are you not sure of what you are saying? You left and he followed you, isn't that what you have said?
W: Nyumbani tulitoka pamoja.
We left home together.
C: Mkienda dukani mlipitia wapi?
As you went to the shop where did you pass?
W: Tulipita kwa barababra.
We passed on the road.
C: Mlipita barabarani. [Na-]
You passed on the road. And-
W: [Tulikuwa] tunapitia kando ya barabara.
We were walking on the side of the road.
C: Mlikuwa upande gani wa barabara?
On which side of the road were you?
W: Tulikuwa upande huu. {((pointing))}
We were on this side.
C: Mlikuwa mnatembea kuelekea wapi?
Where were you walking towards?
W: Tulikuwa tunaenda hivi sasa tukiwa upande huu. {((demonstrating))}
We were going this way on this side
C: Kwa hivyo hiyo gari ulisema, ilitoka nyuma yenu?
So the vehicle you were saying, came from behind you?
W: Hapana. Ilitoka upande wa mbele. Mahali tulikuwa tunaenda.
No it came from in front. The place where we were going.
C: Una uhakika?
Are you sure?
W: Ndio.
Yes.
C: Sasa mkitembea kwa barabara, mlikuwa aje wewe na huyo mtoto? Ni wewe ulikuwa mbele au ni yeye?
Now as you walked on the road, how were you and that child? Were you in front or was s/he?
W: Alikuwa mbele.
He was infront.
C: Kwa hivyo wewe ulikuwa unatembea nyuma yake?
So you were walking behind him?
W: Ndio.
Yes.
C: Alikuwa mbele kama wapi? Kama pale {((pointing))} kwa mlango?
How far ahead was s/he? Like there at the door?
W: Hapana. Alikuwa karibu kama {((pointing))} hapa. Hata tulikukwa tunaongea.
No. he was near like here. We were even talking.
C: Huyo mtoto umesema alikuwa miaka ngapi?
That child how old did you say s/he was?
W: Miaka tano.
Five years.
C: Miaka tano. Unajua vile watoto wanapenda kucheza. Mkitembea alikuwa ana cheza cheza?
You know how children are playful. As you were walking was s/he playing?
W: Hapana. Tulikuwa tunatembea tu. Hakuwa anacheza.
No. We were just walking. S/he was not playing.
C: Lakini haukuwa umemshika mkono kwa sababu alkuwa mbele yako.
But you were not holding his/her hand as s/he was in front of you.
W: Hakuwa [mbali-]
S/he was not far-

C: [Nakwambia,] haukuwa umemshika mkono, si ndio?
I am telling you, you were not holding his/her hand, isn't it?

W: Hapana.
No.

C: Haukuwa umemshika mkono. Je, unajua vile sheria inasema kuhusu mtu mzima ma mtoto waktemea kwa barabara?
You were not holding his hand. Do you know what the law says about an adult and a child walking along the road?

W: ….

C: Unajua? Ndio au la?
Do you know? Yes or No?

W: Mimi sijui.
I don't know.

C: Inasema unafaa kumshika mtoto mkono akiwa away from the road. Sasa wewe ndio uliachilia mtoto mdogo akaingia kwa barabara na kwa hivyo ajali ikafanyika, si ni ukweli?
It says you should hold the child's hand away from the road. Now you are the one who left a small child to get into the road and thus caused the accident, is that not true?

W: Hakuingia kwa barabara, gari ndio ilitupata kando.
He didn't get into the road, it is the vehicle that came to us at the side.

C: Hiyo gari unasema, ilikuwa inaenda na kasi gani?
That vehicle you are saying, how fast was it moving?

W: Ilikuwa inaenda mbio sana.
It was moving very fast.

C: Kasi kama:::?
How fast:::?

W: Sijui.
I don't know.

C: Hapo mlikuwa kuna kona?
Where you were is there a corner?

W: Hapana.
No.

C: Lakini umesema barabara ina mashimo mengi, si ndio?
But you have said the road has many pot-holes, isn't that so?

W: Ndio [kuna-]
Yes there is-

C: [Kwa hivyo] gari haiwezi kwenda kasi, si ndio?
So a vehicle can't move fast, isn't that so?

W: Ilikuwa ikienda mbio ina hepa hepa hizo mashimo.
It was moving very fast, it was evading the potholes.

C: Lakini dereva alishindwa kuhepa shimo kwa sababu alikuwa anazuia kugonga mtoto?
But the driver was unable to avoid one of the pot-holes as he tried to evade hitting the child?

W: Hapana. Aligonga shimo, sasa gari ikakuja ikagonga mtoto.
No. He hit a pot hole and the vehicle came and hit the child.

C: Wewe umesema haukugongwa na gari, si ndio?
You have said the vehicle didn't hit you, isn't that so?

W: Ndio [nili-]
Yes I-

C: [Ndio.] Ulikuwa kando na ukatoroka ukaacha mtoto mwenye alikuwa mbele yako kwa barabara, si ndio?
Yes. You were on the side and you ran away and left the child who was ahead of you on the road, isn't that so?

W: Sote tulijaribu kutoroka.
Both of us tried to run.

C: Lakini wewe haukugongwa. Umesema uliruka mtaro. Mtoto aligongwa kwa sababu alibaki kwa barabara, si ndivyo?
But you were not hit. You said you jumped over a ditch. The child was hit because s/he remained on the road, isn't that so?

W: Hapana. [Alikuwa-]
No.

C: [Ilikuwa] saa ngapi wakati accident ilitokea?
What time was it when the accident occurred?

W: Ilikuwa jioni
It was in the evening

C: Usiku?
At night?

W: Hapana. Kama saa kumi.
No. It was around 4 o'clock.

C: Kulikuwa kunanyesha?

Was it raining?

W: Hapana.
No.

C: Ilikuwa mchana na hakukuwa kunanyesha, kwa hivyo dereva aliwaona vizuri?
It was during the day and it was not raining, so the diver could see you clearly?

W: Sijui kama alituona.
I don't know whether he saw us.

C: Si wewe uliona gari vizuri?
You saw the vehicle clearly yourself.

W: Ndio.
Yes.

C: Kama sio usiku na wewe uliona gari vizuri, driver angekosa kuwaona kweli? Huyu driver mnajuana?
If it was not at night and you saw the vehicle clearly would the driver really have failed to see you? Do you and this driver know each other?

W: Hatujuani.
We don't know each other.

C: Unajua driver anasema gari ilianguka driver akijaribu kuhepa kugonga mtoto?
Do you know the driver says the vehicle crashed as the driver tried to avoid hitting the child?

W: ….

C: Eh? Driver alijaribu kuzuia kugonga mtoto kwa barabara ndio gari ikaanguka kwa mtaro.
The driver tried to avoid hitting the child and ended in a ditch.

W: Alimgonga, alafu gari ikaanguka?
He hit him/her and then the vehicle crashed.

C: That's all for this witness your Honour.

DS1Case04

P: Please introduce yourself.

W: My name is P____

P: P____ what do you do for living?

W: I am a tour and travel consultant working with S____ a tours and travel company which is located on A___ road.

M: Located?

W: Located on A___ road your Honour

M: Yes.

P: Now, do you recall ___ June 2010?

W: Yes I do.

P: Can you tell the court what happened in relation to the matter before this court

W: I was going home at around 9 when I received a call from Mr. M_____. He asked [me-]

P: [Who is] Mr. M___ to you?

W: He is a friend. He invited me to join him and his girlfriend E___ at M____ along T__ Street. I refused because it was late but he insisted. So I went there and joined him and E___. [We-]

P: [Were] there other people?

W: No. They were the only ones at their table.

P: Yes, then what happened?

W: After a while Mr. ___ and E___ also excused themselves to go for function on the second floor as we were sited on the first floor. When they left, I ordered dinner and one glass of wine. I took dinner and the E___ came down and found me alone. She insisted I join them second floor as they were finished with the meeting they were attending. I resisted because it was getting late. E___ insisted and so I decided to join them in fact she is the one who carried my glass of wine. We went upstairs. We found Mr. ____ and four women. [I-]

P: [Were] any of these women known to you?

W: Yes, I knew P__ and W__

P: Only those two?

W: Yes.

P: How did you know P__ and W__? Were they your friends?

W: No. I knew them through my friends. They were friends to my friends and that is how I knew them.

P: Are P__ and W__ in court?

W: Yes. P__ is that one {((pointing))} on the right.

P: That is the first accused your Honour

W: Yes and W__ is the one sitting on the left

P: That is the second accused your Honour.

Yes, then what happened when you joined them?

W: I sat between Mr. ____ and E___ and I was chatting to them.
Then I noticed P__ sneering at me.
She was talking to another lady.
I couldn't tell what she was saying.
Then she told W__ " Ametufuata mpaka huku".
She has followed us even here.
That is when I knew she was talking about me.
That is when W___ then said to me "Usifikirie hapa ni G___."
Do not think this is G___.

P: What does that mean?

W: When she said that I knew she was referring to the time I had quarreled with P__ at G___ that is a pub. It is a bar and restaurant located on B___ street. We had quarreled over four years back.

P: Okay. What did you do?

W: I told her that I had not followed them. I was there on the invitation of Mr. ____ and E__. P__ poured the beer she was drinking on me. She poured it on my face. I took out a *kikoi* to wipe my face. W___ stood up and came from behind me and grabbed {((demonstrating))} me like this.

P: Yes.

W: She stood up and hit me with a bottle on the head. Then they [started-]

M: [Who] hit you?

W: It was W__. She hit me on the head with a beer bottle. They started beating me. I was struggling to free myself as P__ was holding me. Other patrons came… because there was chaos and separated us.

P: What did you do next?

W: I decided to leave. I walked to the first floor. I was feeling cold at the back and I didn't know- and I thought it was the beer P___ had poured on me. But when I touched I found it was blood. I was bleeding profusely.

P: Yes.

W: I went to the reception and asked for first aid. Those people poured some sugar and other stuff on my head and I stopped bleeding, I demanded to see the manager or the supervisor on duty. I was told there was none. Then I talked to a man who introduced himself as in charge of security. He told me to go home. Because it was late, as it was about 10:30, I decided to go home

P: Did you go to hospital?

W: Yes. The following day, Saturday I went to T_____ Health Centre where I was treated. I had to be stitched on the head.

P: Did you go to the police?

W: Yes, I was treated and I went to C____ Police Station where I reported the matter.

P: Did you record a statement?

W: Yes, I wrote the statement and I was given a P3 form.

P: What happened later?

W: Yes.

P: Did you later learn that the accused persons were arrested?

W: Yes. In fact I learnt from a source that they were drinking at a bar where they always drink. I informed the investigating officer. The police went there and arrested them.

P: Now, what do you want to tell the court about this blouse?

W: Yes, this the blouse I was wearing on that day

P: And it has blood stains?

W: Yes it has blood stains, all this {((pointing))} is blood. I was bleeding profusely when P__ hit me on the head with a bottle.

P: When you were treated you were also given [some-]

W: [Yes.] I was given these documents at the clinic.

P: And these documents? There is a card and letter, treatment notes.

W: This is the card I was given at T____ Health Centre and this is the letter I was given to take to the police doctor

P: And you wish to produce the blouse as an exhibit in this case?

W: Yes.

P: Your Honour let the blouse be marked as exhibit ____

P: And the letter and the card do- now- you said you treated on 5th June 2010?

W: Yes.

P: The letter- the treatments notes what date is written?

W: Yes the letter is dated 7th June which was on Monday. I was treated on Saturday and I was told the people at the office where they keep the rubber stamp do not report on Saturday. So I was told to go back on Monday for the letter. But I was treated on Saturday.

P: Do you also wish to produce them as evidence before this court?

W: Yes

P: Nothing further your Honour.

M: Cross examination?

C: Yes your Honour. I wish to start by objecting to the prosecutor asking the witness to produce the card and the treatment notes. The law is very [clear-]

P: [Your] Honour, the [counsel-]
C: [Let] me [finish-]
P: [Your Honour,] he should have objected to the production before. The documents are already marked [and-]
C: [Can] you let me finish what I want to say.
M: Yes.
C: The witness is not the maker of these documents, she cannot produce them in court. Secondly, the prosecutor wants to ambush us here. This is the first time am seeing this document.
M: Now, there is confusion here, the documents were already marked.
P: Yes your Honour
C: They are not your Honour.
M: What is this marked as _____and _____? You know am new to this matter.
C: When we appeared before your Sister Honourable _____such documents were not before the court. In fact your Honour you can bear me witness that the witness has removed them from her pocket when the prosecutor asked for them.
P: Your Honour they were marked.
C: Then what? The witness was asked to keep them? She Has removed them from her pockets your Honour. You witnessed it your Honour.
M: Okay. The witness has testified she was treated and given a letter. Do you have an objection to the letter being part of evidence?
C: We don't have an objection as long as we are going to cross examine on that. So the prosecution must bring the maker of the document so that the doctor can produce it and we cross-examine on what is indicated in it.
M: Okay let's move on. Prosecutor, you will need to call the doctor if you want this produced.
P: Much obliged your Honour.
C: Okay P____?
W: That is my name.
C: You told us you work as a:::
W: Travel and tour consultant.
C: Now you said that you know P___ and W___ very well?
W: I did not say that. I know them through friends. They are friends to some of my friends. That is how I know them.
C: For how long have you known them?
W: Many years.
C: How many?
W: Many, maybe ten years.
C: Ten years. Good. So you know a lot about them?
Do you know whether they are married?
W: No, they are not.
C: They are not.
W: I would be surprised if they are. ((Laughter))
C: Why do you say that?
W: Because they are chaotic.
C: Chaotic. How do you know they are chaotic?
W: Through their behaviours. They fight with people always.
C: Can you tell the court one such as incident apart from when you fought with them?
W: Not one. Many.
C: Yes, but can you tell us of one?
W: Yes, they fought with another lady at ( )
C: What's her name?
W: Er::: she is G___ no J____
C: Yes. Another incident?
W: They also beat another lady at M_____
C: Her name?
W: I don't know her name.
C: Interesting. So know all their chaotic behavior because you have been following P___ and W___ around, right?
W: I have not been following them. I said I have seen them fighting.
C: But you have somehow managed to be at their every fight.
W: I was not at the fight, I observed maybe by coincidence.
C: Coincidence. You are able to document all their fights by coincidence and you know they are not married. Now do you have a family?
W: By family you mean? I have brothers, sisters, father and mother. ((Laughter))
C: Are you married? Do you have a husband?
W: No.
C: Children? Do you have children?
W: No
C: Your are not married and you don't have children. How old are you?

W: Am 38.
C: Now your last fight with P___ and W__ you said was at G__. What kind of place is G_____?
W: What kind?
C: It is a bar, isn't it?
W: It has everything. They sell food, meat and even beer. There is a restaurant.
C: There are also rooms, a lodging upstairs, isn't it?
W: I don't know.
P: Your Honour, the counsel wants to embarrass the witness.
C: I am within my rights.
M: Move on Mr.___. This court will however not entertain intimidation of any kind.
C: Most obliged your Honour. Er you have told us you fought with them at ____some time back. What was it about?
W: It was not a fight. I did not fight them. We quarreled because I refused to join their merry-go-round.
C: Why did you refuse?
W: As I said they are chaotic. Every group they join breaks up because they bring disagreement. So I refused to join their group.
C: Let me come back to the bar. You said that P__ and W___ are chaotic. You have seen them fight, you have been in a fight with them before, so you knew they are dangerous women, right?
W: Yes, more than dangerous in fact. ((Laughter))
C: Yet, you had no problem joining two chaotic and dangerous women at a bar?
W: I was not joining them, [I-]
C: [It is] your testimony that you went to second floor and joined them where they were?
W: I said I was invited by E__. I was joining E___ and Mr. _____. They are my friends.
C: Did P__ and W__ come to where you were seated?
W: E___ asked [me-]
C: [Answer my] question. Did they come to your table?
W: No. [I said-]
C: [In fact] you have testified that you left your table on the first floor of the bar and went all the way upstairs to where they were seated, to their table, isn't that your testimony?
W: I was invited by E___. I joined E___ and Mr. ____
C: Yes, where you found women whom you have told us you knew to be chaotic and dangerous, isn't it?
W: Yes=
C: =Did you leave?
W: Why should I leave? I was not bothered by them
C: You said you were drinking that night? It was at night, right?
W: I had a glass of wine with my dinner
C: When you joined P__ and W__ upstairs, were they drinking?
W: Yes they were taking beer
C: And you?
W: I had a glass of wine. I was taking wine.
C: How many glasses?
W: Two. Actually one and a half. I was on the second when W__ attacked me.
C: So you were drunk?
W: No I had just taken a glass of wine
C: You have said you were not bothered by them?
W: Yes, I was talking to E_____. I was not talking to them.
C: Yet you saw, what did you say, that you saw P___ sneering at you. Meaning you were staring at her, right? ((Laughter))
W: I was not looking- a sneer is an expression that you see [not-]
C: [But you] were talking to Mr. ____ and E____, right?
W: My eyes were not closed. The eyes were open, you see things, not that you are [looking-]
C: [You had] taken two glasses of wine you said and you were not drunk. How many do you take to get drunk? ((Laughter))
W: Your Honour do I have to answer that?
C: Yes you have to. I have the right to question you on anything because you have accused my clients. How many, do you take to get drunk?
W: I was not drunk. I had taken one glass of wine with dinner. I was just taking the second when P__ attacked me.
C: Were P___ and W__ drunk?
W: I don't know.
C: How did they look to you when you joined them? Did they look drunk?
W: I don't know how they look when they are drunk. ((Laughter))
C: You don't. Yet you have told us known them for ten years and joined them in several fights in bars
W: I [did-]
C: [Do] they look drunk now? ((Laughter))
P: Surely your Honour-
M: Mr. ____

C: Your Honour, I want to establish the mood at the table when she joined them.
P: That is not what you are asking [the-]
C: [The prosecutor] should not anticipate my [questions-]
M: [Can we] move on. Ask a direct question.
C: Yes your Honour. Now, when you joined P__ and W__ at their table were they shouting screaming or anything like that?
W: No.
C: So when you went upstairs, they were seated quietly enjoying their drinks, isn't it?
W: They were talking.
C: But the two dangerous women were not shouting or fighting, right?
W: They were talking.
C: Yes, they were talking quietly until you joined them. You said when you came upstairs fighting started, right?
W: They attacked me
C: They attacked you? Did they attack other people? Were there other people in the pub?
W: They [are-]
C: [Answer] my question. Were there other people in the club on the second floor?
W: Yes [there-]
C: [Did they] attack them too?
W: They attacked me [because-]
C: [Yes or no.] Did P__ and W__ attack the other patrons in the club? Yes or no?
W: No
C: Good. Now, the fight. How long did it take?
W: I don't know. I was not timing it. First of all it was not a fight I was attacked and beaten by two hefty women as you can see. I didn't have time to look at my watch, I was- it was chaos.
C: Chaos? Yes because you fought back. They didn't beat you when you were just sitting there, right? You fought them too, isn't it?
W: I was struggling to free myself from where P___ was holding me [and-]
C: [You said] who separated you?
W: The other patrons
C: Where was Mr. ____, and E___? You want to say he just sat there waited for other people to come to separate you? You said they are your friends, right?
W: Yes. I cannot recall what they did. There were many people and I was struggling with P__. I was not looking at what they were doing.
C: You said you sought treatment the following day?
W: Yes.
C: How come you didn't go to hospital that night if you were badly hurt?
W: At 11 am on my own. It was very late and bleeding stopped after I was given first aid.
C: It was late. But you had gone to a bar alone at night and you finally went home alone right?
W: The clinic I went to does not operate at night.
C: KNH operates 24 hours
W: I couldn't go to Kenyatta at night. At 11 all alone.
C: Now, at the hospital what was done to you?
W: I was treated. I had to be stitched
C: Stitched? How many stitches?
W: About five.
C: Did the doctor write that in the letter you were showing.
P: Your Honour, the Counsel asked for the doctor. He should wait to ask her what she wrote.
C: Yes we will ask the doctor but the witness says she was stitched and all I want her is to confirm that from the treatment notes. Find it for us where it says 'stitches'
P: Your Honour, the witness didn't write this, it is in medical language and it would be difficult for her
C: What is difficult about the word 'stitches'?
Read what you can read.
W: I can read 'bruises' and 'cut on the [head'-]
C: [Are] stitches there?
W: I can't read the rest.
C: So there is no mention of stitches?
W: I can see- I can't read the rest.
C: Very well. The date on that report
W: I explained that. I was treated on Saturday and the people with the rubber stamp were not in duty and so I couldn't get the letter. I was told to go for it on Monday.
C: So the medical notes were written on Monday.
W: Yes.
C: But you were treated on Saturday?
W: Yes, I was told to go for the letter on Monday
C: So no medical notes written when you were being treated?

P: Your Honour, the witness can't answer that. She didn't write them.
C: Did you see the doctor writing when she treated you on Saturday?
W: Yes she was writing.
C: So she wrote the letter on Saturday or on Monday?
W: I don't know what she was writing but she was writing.
M: Let's leave those questions for the doctor.
C: Nothing further your Honour.
M: Re-cross?
P: The questions were so well answered. I do not have further questions for the witness.

DS1Case05

C1: Please introduce yourself to the court.
W1: My name is C____
C1: Where do you work?
W1: I work with ____ Bank.
C1: And what is your position at ___ Bank?
W1: I am in charge of internal investigations section.
C1: Internal investigation section. What do your duties include?
W1: I am in charge- am responsible for conducting fraud investigations within the bank when they arise and er::: also appearing in court on behalf of the bank when such issues arise and get to court
C1: In your- does your work also involve liaising with law enforcement agencies?
W1: Yes I do. I liaise with Kenya Police, the Anti-Fraud unit at the Central Bank and also with Kenya Anticorruption Authority
C1: When you say you liaise with law enforcement agencies what does that mean? What does it involve?
W1: Well these agencies sometimes approach the bank to give them information or say documents regarding transactions or bank accounts that they may be investigating for fraud er::: corruption or you know whatever they are investigating. So such requests to the bank- I deal with such requests when they are made to the bank.
C1: Yes, now in this line of your duties, do you remember any request that was made to _____ Bank on ___ July, 2009?
W1: Yes. On that day we received- the bank received a request from Kenya Anti-corruption Authority [to provide-]
C1: [Was the] request in form of letter?
W1: Yes it was a letter
C1: Who had signed it from KACA? Do you know?
W1: Yes it was signed by Mr. _____
C1: Do you know who he is?
W1: Well in the letter he said he was a senior investigator at KACA.
C1: Okay tell us about the letter.
W1: Well the letter was asking the bank to provide details about the transaction of a particular account over a period of six months.
C1: Do you remember the account number?
W1: The account was a Premier Account. Number _____
M: Premier Account?
W1: Yes.
M: Number?
W1: Number _____
C1: Now was it the account of a company, or individual or:::?
W1: It was an individual customer account.
C1: Okay. So what did you do?
W1: I obtained the information requested.
C1: Yes.
W1: I printed it out- the details requested for and then gave it to Mr. _____ from KACA and another gentleman. I don't remember his name
C1: Was he introduced?
W1: Yes he was also an investigator with KACA.
C1: So you are saying they came for the report at the bank?
W1: Yes they did.
C1: Now what happened when you gave them the report?
W1: They circled three transactions in the report and requested for more details of the same.
C1: What was the nature of these transactions?
W1: Well, first one dated ( ) was an inward transaction of ten million shillings involving account [number-]
C1: [Just a minute.] What is an inward transaction?
W1: It means money was being credited to the account. This was money coming in through a SWIFT transfer.
C1: Okay. Account number?

W1: Number____
C1: The other one?
W1: The second was an outward transaction meaning the account was being debited.
C1: Money was withdrawn?
W1: Yes.
C1: From the same account?
W1: Yes.
C1: Now how much was withdrawn?
W1: 5 million Kenya shillings.
C1: Five million the third one?
W1: The third transaction was a transfer order through a cheque number____. Also an outward- a withdrawal. Same account and it involved five million Kenya shillings.
C1: Now what happened?
W1: The investigators took the report with them. And that was about it from our side.
C1: Your Honour, I would like the report to be named as _____
Were you asked to check where the money was coming from?
W1: No. I was not asked to do so.
C1: That's all your Honour.

M: Cross-examination?
C2: Ms. ____ I want to ask you a few questions.
Were you able to establish from whom or from where the ten million was coming from?
W1: No.
C2: You didn't establish that?
W1: It was not within my mandate to establish that.
C2: But it would have been possible to establish the origin, right?
W1: Yes it would have been possible.
C2: Did you trace the paper work that was involved in the inward transfer or any kind of record?
W1: It was not within my mandate [to-]
C2: [Now] Ms. ____ we have heard enough about your mandate. I am asking you very specific questions. Just answer yes or no.
Did you trace the record that accompanied the transfer? Yes or no?
W1: I did not.
C2: You did not. And such records are available, true?
W1: Yes
C2: But KACA did not ask for them.
W1: Not from me.
C2: They did not ask you for such records, right?
W1: Yes.
C2: Now, you said the account number involved is a Premier Account, right?
W1: Yes.
C2: What does that mean?
W1: Well its er::: a type of account held by high end customers.
C2: 'High end customers', meaning these are people who transact in large sums of money, isn't it?
W1: Yes.
C2: Do these customers er::: operate- transact business in the regular banking halls?
W1: Well, there are special areas set aside for them within the bank.
C2: Such areas, as the banking halls, are covered by CCTV cameras, right?
W1: Well, yes if there are CCTV cameras installed.
C2: And they monitor all transactions, deposits, withdrawals, isn't that so?
W1: Yes if there are there.
C2: This account is in which branch?
W1: ____ Plaza.
C2: Is this particular branch covered or was it covered by CCTV cameras at the time when the matters before this court transpired?
W1: I don't know.
C2: You are certainly being economical with information. This is a branch at your [headquarters-]
W1: [Well I can't] say- that is not my area unless I confirm, I can't say whether there were CCTV cameras or not.
C2: Isn't it normal practice for banks to have CCTV cameras in their busy branches? This is a busy branch, isn't it?
W1: It's busy but am saying I can't say whether they were CCTV cameras without confirming.
C2: Okay. Answer this, if they were there, they would capture customers in all sections withdrawing, depositing money, outside at ATMs and so on, right?
W1: If they are there they do.
C2: Now I want to ask you very specific questions. You didn't, Ms. ____, in your testimony tell this court the origin of the 10 million deposited in account number ___ on __, did you?
W1: I was not [required-]

C2: [I asked you] specific questions just answer. Did you or did you not?
W1: I did not.
C2: Good. And you did not, as you stand there, you didn't even tell the court the holder of this account, did you?
W1: I wasn't [asked-]
C2: [You did] or you did not. You did not tell us the name of the account holder?
W1: I did not.
C2: And you did not provide any records or documents that accompanied any of these transactions?
W1: I gave you the cheque number for the transfer order of the third transaction.
C2: A cheque number? Where is the cheque? Banks keep cheques that are received for payment, do they not?
W1: They do.
C2: But you did not produce the cheque, the actual cheque that you say gave orders to withdraw money, did you?
W1: No.
C2: That's all.

C1: Introduce yourself to the court.
W2: My names are P____
C1: Mr. P ___what do you do for a living?
W2: I do very many things.
C1: Are you a business man, employee, a farmer, or specifically what do you do?
W2: Well I do many things. I carry out very many businesses but I think what is pertinent M_____ you should ask me what I do that is pertinent to this case.
C1: And what is that?
W2: I operate a company that is registered and [deals-]
C1: [What] is the name of the company?
W2: It is called _____Enterprises
M: What?
W2: _____ Enterprises.
C1: What does this company do?
W2: Were are involved in IT generally. We provide IT solutions for companies, organizations and government ministries.
C1: Specifically what?
W2: We sell right from computers to creating internal and external networks for clients and such like.
C1: And you run this company?
W2: Yes I own it, I run it, that kind of thing
C1: Okay. Now tell us why you are a witness in this case- how are you involved in this matter?
W2: Okay. It is a long story
M: Give us facts. Prosecutor can you direct your witness so that we save time
C1: Okay, what is your involvement in this matter? How are you related to the accused persons there?
W2: Well on ___ June 2009, Mr. C____ there {((Pointing))} called me, he is a very good friend of mine and also my [nephew-]
C1: [Now] be specific. [What-]
W2: [Yes yes] am being specific. This is very important.
C1: Yes.
W2: He is a friend and a relative. We have done business with him many times.
C1: He called you?
W2: Yes. He called me and said that he had done some transaction of which he was expecting some payment. So he asked me to give him my account number so that he could receive the money through it.
C1: Did you ask what the transaction was?
W2: Now look, I have said Mr. C____ is my [friend-]
M: [Answer] yes or no did you ask what the transaction was? Let's not waste time. You either did or did not.
W2: I did not. This is somebody I knew very well. We had done business with him and I didn't have to start [questioning-]
C1: [So you] gave him your account number?
W2: Yes I gave him my account details [and-]
C1: [Was it] your personal account or that of your company?
W2: No no my personal account number.
C1: Which bank branch and number?
W2: It is in ____Bank ____ Plaza branch, account number _____
C1: So did the money come?
W2: Yes it did [and-]
C1: [When?]
W2: I can't remember the date but it was a few weeks after our conversation. Can I look at my statement?
C1: You Honour if the witness could refresh his memory?
M: Counsel?
M: No objection your Honour

C1: Much obliged your Honour
So when did the {((handing witness a paper))} money get into your account?
W2: It did on::: on yes ___June 2009.
C1: How much- before we get to that, how did you know the money had been paid to your account?
W2: Well I checked- in fact Mr. C ____ called me and told me he was expecting the money on that day, I checked with the bank and they confirmed it had been paid.
C1: On the same day Mr. C____ called you and on the same day you confirmed with your bank the money was in your account?
W2: Yes.
C1: How much was it?
W2: It was 10 million shillings.
C1: Ten million. Now what happened next?
W2: I called Mr. C____. I told him the money was in the account. He requested me to meet him at the bank the following day so that I could withdraw the money and give it to him.
C1: Did you meet him?
W2: Yes. [We-]
C1: [The] following day now?
W2: Yes.
C1: Now, where did you meet?
W2: At the bank.
C1: Your bank on _____ branch?
W2: Yes.
C1: Did you go together, you met outside or what happened?
W2: I went alone. I drove there you know er they have Prestige and Premier accounts. Mine is Premier so they have a waiting area for customers. So::: I waited there and Mr. C____ arrived [and-]
C1: [Was] he alone?
W2: No he was accompanied by another gentleman Mr. O____
C1: Is Mr. O____ in court today? Can you identify him?
W2: Yes he is {((pointing))} that one.
C1: Which one?
W2: The one fourth from right and second from left.
C1: Before this- before you met him at the bank did you know Mr. O___ there before?
W2: Yes I knew him. He is a friend of mine. I have in fact known him for a long time and done business with him
C1: Okay then what happened?
W2: Well when they came I talked to the manager. We wanted to withdraw 10 million.
C1: You wanted to withdraw all the money
W2: Yes that is what Mr. C___ wanted. I talked to the manager but he said his branch couldn't handle the whole amount so we withdrew 5 million
C1: When you say 'we', it was your account so you withdrew the money?
W2: We were with them but yes I withdrew the money and gave it to them [and-]
C1: [You] gave who the money?
W2: I said earlier Mr. C_____ came accompanied by [Mr. O_____-]
C1: [Yes but] who specifically did you give the money?
W2: Both were there as I withdrew the [money-]
C1: [Why is] this a hard question? Listen, you are in the bank you withdraw 5 million. Mr. C_____ is there and Mr. O_____. Whom between the two did you give the 5 million, Mr. C_____ or Mr. O____?
W2: I gave to Mr. C_____ [then-]
C1: [Yes,] you withdrew the money and gave it to Mr. ___, right?
W2: Yes.
C1: Then?
W2: Then he gave it to Mr. O____
C1: So you witnessed Mr. C_____ giving Mr. O_____ the money?
W2: Yes.
C1: All of it?
W2: Yes. Mr. O_____ had a bag where he put the money. In fact Mr. C ____ told him that next time he should come with a bigger bag because the one he had was small he was squeezing the money. You know five million is a lot of money. ((Laughter.))
C1: Then what happened?
W2: We left. I left in my car and they left in theirs. And we agreed to meet the following day to withdraw the rest.
C1: You were to withdraw the remaining 5 million the following day?
W2: Yes.
C1: So did you withdraw the money?
W2: The following day we met at the bank again.
C1: You met with who?
W2: Mr. C___ and Mr. O____

C1: Then?
W2: The manger told me that we couldn't- his branch did not have that kind of money. He called ____ branch they didn't have. He called _____ branch and I also talked to the manager there as I know her and she said she had money so we proceeded there.
C1: You went together?
W2: No. I drove my car and they drove theirs.
C1: They drove together?
W2: Yes.
C1: Then?
W2: At _____ branch I wrote a cheque to myself and I cashed it.
C1: A cheque for 5 million?
W2: Yes. The money was brought and counted. Mr. C_____ gave it to Mr. O____ who put it in a bag which was slightly bigger this time. ((Laughter))
C1: Then what?
W2: I escorted them to the basement where we had parked. There Mr. C_____ gave me 100, 000 KES which he removed from the pocket and told me it was for tea. ((Laughter))
C1: For tea?
W2: Yes, you know a thank you for my assistance. Money is money, so I took and we parted. They drove away and I also went to attend a function
C1: So you parted. Now when did you come to learn that there was an issue behind the money?
W2: In::: early October ( ) I received a call from Mr. ____who said he worked with KACA and he asked me to go and see him over some money that had been deposited in my account. I asked my bank, for details where the money had come from. They said it was from Mr. N_____
C1: Did you know Mr. N____?
W2: No I didn't know him.
C1: So your bank confirmed this?
W2: Yes.
C1: Did you go to KACA?
W2: Yes.
C1: What happened there?
W2: I met Mr. N____ and another gentleman. They took me to a room and questioned me about the money and I told them what I knew. That Mr. C_____ had asked [me-]
C1: [Did] you record a statement at KACA?
W: Yes.
C1: That's all your Honour
M: Cross-examination?
C2: Mr. P_____ I want to ask you some very direct questions.
It is your testimony that Mr. C_____ approached you asking to use your account to receive some money, isn't it?
W2: Yes.=
C2: =Didn't you find that suspicious?
W2: Why? Look I have already explained how I know Mr. C_____
C2: Yes and told us he is your nephew but my question to you is, didn't you find it suspicious that he wanted to use your account?
W2: NO. Why [should-]
C2: [You want] this court to believe you did not wonder why he was not receiving the money through his account?
W2: I have said that he is a friend and I could not question him.
C2: Do you know whether Mr. C_____ has a bank account?
W2: Now look here R_____ when you ask questions [like that-]
M: [Just a minute.] I don't care if you know each other out there but you will refer him as Mr. K___. He is in court as an officer of the court and you must respect that. He also has the right to ask you questions on the testimony you have just given.
C2: Very much obliged your Honour. That is very helpful
Do you know whether Mr. C____ has an account?
W2: I don't know.
C2: You expect the court to believe that?
W2: Why not. I don't know.
C2: You don't know. You have just told this court Mr. C_____ is your friend, a relative and you have done business together. Wasn't that your testimony?
W2: Let me clarify what I meant by business. It is not like we are partners. No, Mr. C____ is the ____ in the ministry of ____. I have dealt with him as my company has done some work for the ministry.
C2: So in that case you did business with the ministry not with Mr. C_____
Could it be that you were not suspicious of Mr. C____ asking to use your account because, you were 'doing business with him'?
W2: I was not involved in the transaction.

C2: Yet ten million, ten million found its way into your bank account?
W2: What are you saying? Why are you twisting my words?
M: Can you stick to answering questions. Let's move on Mr. ____
C2: Yes your Honour. Now you said that on _____ October you were summoned and interrogated at KACA headquarters by Mr. ____, isn't it?
W2: Yes.
C2: I put it to you that on that day Mr. _____showed you CCTV photos from the bank
W2: No he did not.
C2: I further put it to you that he showed you pictures showing you and you alone withdrawing money on the two days you have mentioned.
W2: You are now putting words into my mouth. Are you accusing me?
C2: I am asking you questions and giving you a chance to tell the truth. Were you not shown CCTV photos?
W2: No I was not.
C2: My client says he never accompanied you to the bank. It is his word against yours, isn't it?
W2: We went together.
C2: Answer my question. It is his word against yours, right?
W2: Yes.
C2: And you agree with me that CCTV pictures would show who is telling the truth, right?
W2: Yes, they would show the three of us [Mr._____-]
C2: [Are you aware] whether the bank _____ branch has CCTV cameras?
W2: Yes they do. Banks have CCTV.
C2: Are you aware of what happened to the tapes you were shown at KACA?
W2: Stop putting word in my mouth. I was not shown any tapes.
C2: I want to refer you {((giving witness a paper))} to your statement. Is that your statement?
W2: Yes.
C2: And you accept that you recorded it on _____ at KACA headquarters at 3.30 p.m. right?
W2: It is my statement. I have said that.
C2: Very well. Very well. Look at the second paragraph. The one starting 'on Tuesday'. Can you see it?
W2: Yes.
C2: Read it to the court loudly, your own words.
W: ((Reads.)) 'On Tuesday _____ Mr._____ informed me that the money that was wired to my account on _____ was sent by Mr. N_____ who was a suspect in a corruption case'.
C2: Mr. C_____ informed you. That is what it says. And yet you have told this court that you first obtained the identity of the person who deposited the money into your account from your bank. That is a clear contradiction Mr. ____, isn't it?
W2: I said I asked the [bank-]
C2: [We are talking] about your statement. Logically there is no way you would first obtain the information from the bank if you had earlier been interrogated by Mr. _____ and told the identity of the person who sent you money, do you agree with that logic?
W2: Look.
C2: No answer my question. Your statement about learning from Mr___ the identity of the person who deposited ten million to your account is in contradiction to the testimony you have given before this court that you first obtained this information from your bank, do you agree with that?
W2: There is discrepancy [that-]
C2: [Good.] Now could you please explain that discrepancy to the court?
W2: You see Mr. _____ if you are summoned to KACA and you are being interrogated, then you have to record a statement you are not very comfortable. You are- you are er:::
C2: Under duress?
W2: Yes, under duress and you can make mistakes.
C2: Thank you for that. For admitting that you made this statement under duress. [Now-]
W2: [No no] not really under duress you are uncomfortable.
C2: Yes call it what you want. The thing is you end up recording things that are not true. Now let's move on to another part of your statement. The one you wrote while you were uncomfortable. What have you told this court that Mr. C_____ wanted to use your account just because you were a friend?
W2: He is somebody I know and I trust.
C2: Did you sign any agreement with him showing that the money coming to your account was his and you would give to him once you got it?
W2: These things are not done that way [between friends-]
C2: [My question] to you is did you or did you not sign an agreement with him that you will receive money on his behalf?
W2: We did not. It was an agreement between friends verbally.
C2: You want this court to believe the money just passed through your hands to Mr. C_____ hands with very little benefit to you except the tea you say you were given. Is that so?
W2: There was no benefit. The money was [deposited-]

C2: [Your statement] paragraph five the one that starts 'My bank' can you see that the last sentence, read it loudly to the court. Read it.
W2: ((Reads.)) 'The money when deposited would boost the cash reserves for the company'- Now let me [explain-]
C2: [Now there] is your benefit and you actually put it down in your statement.
W2: [That is-]
C2: [Then you] went ahead and got into a funny deal with KACA, and that is why you are standing there and not in the dock as a suspect, isn't it?
W2: I did not get into any [deal with-]
C2: [And yet you] the beneficiary of this deal, you even admit ten million was paid into your account, is not facing any charges. How do you explain that? Nothing further your Honour.

DS1Case06

P: Introduce yourself.
W: I am number ____ Police Constable _____ attached to _____ Police Station.
P: Ee::: do you recall on ____January this year?
W: Yes. I was on patrol duty with Corporal _____when we received [information-]
P: [At what time] and where were you on patrol?
W: We were on patrol around ____ area and it was about 6:30 pm your Honour.
P: You received information. Was it through radio call or what?
W: Yes it was a radio call from the officer in charge at the station. He informed us that it had been reported that some five suspicious looking men had been seen at the T__ petrol station in B_____. They were in a car and [they-]
P: [What] kind of a car?
W: A white Toyota Corolla your Honour.
P: Registration number?
W: We were not given a registration number your Honour.
P: Now, why were the occupants of the car suspicious? Were they stealing?
W: Your Honour the owner of the petrol station had already reported that there was a group of people who seemed to be spying on his petrol station. So on that day he informed- that day now ___ he reported that he had seen the same people driving slowly near the road at the petrol station.
P: Now when you received the report what did you do?
W: Me and my partner we started walking to the petrol station your Honour. It was just nearby.
P: Yes.
W: When we were near, we received information [that-]
P: [From the] officer-in-charge?
W: Yes your Honour. We received information that the men had got out of the vehicle when they saw a police car and were now escaping on foot.
P: They abandoned the car?
W: Yes your Honour, they were now running.
P: So what did you do?
W: Your Honour, just then as we were walking towards the petrol station, we saw three men walking towards us. We challenged them to stop, but they started [running to-]
P: [Just a minute.] Can you describe to the court where you were and where you saw the men.
W: Your Honour, we were near the petrol station. There is a small road on the left. So we were walking on [this road-]
P: [A small road?] Is it a road or a foot path?
W: It is a footpath your Honour. A footpath. Now on one side- on the right there is a school and on the other side a small forest.
P: Where were the three men, in the forest or [school-]
W: [They were] on the footpath. That road- the footpath joins the main road that goes to the station-the petrol station.
P: So you saw the three men and told them to stop?
W: Yes your Honour. They got into the bushes and started running. At that time also the other three officers arrived.
P: In a car?
W: No your Honour. They were also walking. There were following those men.
P: What happened?
W: So we chased them in the bush and there is a wall on one end and it is very high they could no jump. We ordered them to lie down. One of them threw a gun in the bushes and [they-]
P: [When you] told them to lie down or when?
W: Your Honour, when we were chasing them and they saw they could not escape he threw the gun in the bushes.
P: Okay. What happened? You told them to lie down.

W: Yes your Honour, we told them to lie down and we arrested them. We handcuffed them and took them to the station.
P: Now you said you saw three men?
W: Yes your Honour.
P: In court we have two accused persons. Where is the other one?
W: One of them managed to escape your Honour.
P: When you arrested them or how?
W: No. Your Honour when we were chasing them, he ran back towards the road and got away.
P: But the other officers were there, you said they came from that direction of the road?
W: Your Honour, he ran into the bush but the others went straight. For him he changed and ran back to the road through the bush.
P: Did anybody chase him?
W: Yes your Honour but it was dark. When he reached the road he joined other people. There was heavy traffic and maybe he crossed the road your Honour.
P: So he got away?
W: Yes your Honour.
P: But you managed to arrest two?
W: We arrested two your Honour.
P: Are they before the court, those you arrested?
W: Yes they are there the 1st and the 2nd accused your Honour.
P: Did you get them with anything? Did you search them?
W: Yes we searched them [and-]
P: [While] there or at the station?
W: There. We found five mobile phones [and-]
P: [Now be] systematic. What did you find on the first accused?
W: The 1st accused your Honour had two mobile phones and two ID cards.
P: Two ID's. In his name?
W: Yes. One was original and the other was a scanned and sealed your Honour.
P: The mobile phones. Which makes:::
W: Nokia ____ and Samsung _____ your Honour.
P: And the second accused? Did you search him?
W: Yes your Honour. We searched him and found him with three mobile phones. Nokia ____, Nokia____ and Sony Ericson___.
P: Are the items you have described the ones before court?
W: Yes.
P: Look at them. Take them out of the paper. Are they the ones?
W: They are the ones your Honour.
P: Would you like to give them as evidence in this case?
W: Yes your Honour.
P: The mobile phones to be marked as ____, your Honour.
Now, there is a toy gun here. You said one of the suspects threw away a gun? Which one?
W: The 2nd accused.
P: He is the one who threw away the gun- the toy gun?
W: Yes your Honour.
P: But you were able to recover it?
W: Yes your Honour.
P: Did you get it on that day?
W: No your Honour. It was now dark. The following morning my partner and I went back there very early in the morning. By 6 we were there. We searched there in the bush and we recovered this toy pistol. It is made of metal and it looks like a real gun
P: And do you want to produce it as an exhibit in this case?
W: Yes your honour.
P: Your Honour the gun- toy gun to be marked as_____
That's all your Honour. Hey just wait there. Wait there.
M: Mr. ____?
C: Yes your Honour. PC _____
W: Yes.
C: I have some questions for you. Let us start with, you said your in-charge called you and told you of some suspicious looking people at a petrol station, right?
W: Yes.
C: These people, did he describe them to you?
W: No.
C: So as you went to- walked towards the petrol station, you had no idea whom you were looking for?
W: We were told they were five men in a white car- a [Toyota-]
C: [But you] also told us you were later informed what they were now on foot, right?

W: Yes.
C: So, now the car is no longer an identification?
W: They got out of the car.
C: Were the people described to you?
W: No.
C: On the way you met three men and challenged them to stop, that's your testimony, right?
W: Yes.
C: Why did you stop them?
W: ….
C: Why did you stop the three people you met?
W: We were on patrol [and-]
C: [No, no,] no. Listen to my question. My question is, you met with three men and as far as your information went, you were looking for five men. So why did you stop these three men?
W: We wanted to make sure they were not ones. And they ran away.
C: Were you armed?
W: Yes
C: And in uniform? Were you in your uniform?
W: No.
C: So the men had no way of knowing you were police officers, right?
W: We stopped them.
C: Even thieves stop people officer, and that does not make them police officers. Did you identify yourselves as police officers?
W: When we told them to stop, they ran away.
C: Yes, they ran. You have said you didn't identify yourselves so they had no way of knowing who you were and your motives, isn't it? Now according to your testimony they ran into a forest, right?
W: Yes.
C: And you ran in after them?
W: Yes.
C: Very brave of you. Now what time was it?
W: Around 6 p.m.
C: You told us earlier it was 6.30p.m?
W: It was around that time.
C: Around what time? 6 or 6.30 p.m.?
W: Between six and six thirty.
C: So now you want to change your testimony or you are not sure? Do you want your testimony to be read to you? Was it 6 or 6.30?
W: Around 6.30, not exactly.
C: 6.30 p.m. So it was dark?
W: It was not dark
C: Really? How long did the whole chase take, from the time the men got into the foretst until you arrested them?
W: Not long.
C: How long? Ten minutes, three hours?
W: No, about ten minutes.
C: About ten minutes. Good. You said one of the men got away because it was too dark, didn't you?
W: It was starting to get dark, but it was not yet dark.
C: And you were in a forest, right?
W: It is not a forest. There some bushes.
C We started with 6.30 that changed to 6 now a forest has become some bushes. Are sure of your testimony?
W: Yes.
C: So tell us, be specific. When somebody is in that forest or bush or whatever you choose to call it, can you see the person from the footpath?
W: There [are-]
C: [Answer] my question. Can you see the person or not, from the road?
W: Not clearly.
C: So you can't see them clearly because there are trees and other vegetations, right?
W: Yes.
C: You said the 2nd accused had a gun, you saw him throw a gun in the bush?
W: Yes.
C: In your testimony you told us that two men are running in front of you in the forest so you cannot see clearly and it is past six thirty. How did you confirm that it was a gun and you have said you never recovered it immediately?
W: I saw it.
C: How far would you say he was from you as he threw what you call a gun?
W: About ten meters
C: Ten meters. Ten meters and you saw that he is holding a gun and throwing it away?
W: Yes.

C: After he threw away the gun, how long did it take to reach the wall they couldn't jump?
W: Not long.
C: Be specific. Another ten minutes or 4 minutes?
W: About two minutes.
C: Good. You said why did you not recover the gun immediately? Because it was dark, right?
W: The gun- he threw it away and it fell in a long [grass-]
C: [There you] go again changing your testimony.
W: No, I said the gun fell in the bushes.
C: Let's not debate that. I wish the court to refresh your memory as to the reason you have given as to why you could not recover the gun immediately. Your Honour this witness is having problems recollecting the testimony he has just given.
M: You did say that you couldn't recover the gun because it was dark.
W: Yes.
C: Thank you your Honour.
Now are you listening to yourself? You say you clearly saw a gun that the accused threw away but two minutes later, you can't see the gun as it is dark. Can you be truthful did you see that what he threw was a gun?
W: Not clearly, it looked like a gun
C: But you could not be sure it was a gun, right?
W: Yes.
C: In fact it turned out not to be, isn't it. Is this {((holding up a toy gun))} a gun?
W: It is a toy but it looks like a gun.
C: Yeah, and a toy is not a gun. Okay, let's turn away from the alleged gun for a minute. You said you searched the suspects and found them with what?
W: The first accused had two mobile phones and two IDs
C: In fact an ID and a copy of that ID, isn't it?
W: Yes.
C: And the other?
W: These three were found on the second accused.
C: Now tell us officer, is owning two, three or four mobile phones a crime in this country?
W: We suspected [that the-]
C: [Don't give] me suspicions. I asked you a direct question. Is it a crime to own a phone in this country? One phone? Yes or no?
W: No.
C: Is it a crime to own two? Yes or no?
W: No
C: Which number of phones is it a crime to own?
W: If they are stolen it is crime.
C: Good, if they are stolen. Are the phones before the court stolen?
W: We suspected they were stolen.
C: And what have you established? Are they? Has anyone come forward to say, 'this here is my phone that was stolen'?
W: No.
C: Thank you. Is it a crime to have a photocopy of an ID in this country?
W: This one was scanned.
C: And that makes it a copy of the original ID, right?
W: Yes.
C: Is that a crime?
W: No.
C: Now between them which is the original?
W: This one {((picking one of the exhibits))}.
C: It is in whose name?
W: P____
C: As far as you can tell, as per your own investigations, is that ID forged? The one you are saying is the original one?
W: No
C: So having it- the accused having it is in fact a requirement of the law, right?
W: Yes.
C: Exactly. I wish officer you were telling us you asked them for IDs and they didn't have any. And making a copy of it you said is not illegal, yes?
M: Let's move on.
C: Now, let us go back to this. The gun. Did you find it on the accused?
W: No, he threw it away.
C: Which means when you arrested him he did not have it, right?
W: Yes.
C: You said you went back for it the next day, yes?
W: Yes.

C: Did any of you, your partner of the CID officers remain in the forest where the gun was?
W: No, it was at night.
C: Yes it was at night you finally admit. So why not get torches and search the place?
W: When we went back to the station we were assigned other duties.
C: So no one remained at the scene and nobody went back that night, right?
W: Yes. We went back early the next morning.
C: Now tell the court, who and who went the following day?
W: It was me and my partner Corporal _____
C: No one else?
W: Yes.
C: Where were the accused persons at that time?
W: They were in the station.
C: Locked up in cells, right?
W: Yes.
C: Are you, officer, familiar with the provisions of the law about gathering evidence?
W: ….
C: Are you?
W: No.
C: I want you to read this to the court.
W: (Reads) ( )
C: Did you do that?
W: We [could not-]
C: [Stop dancing] around. This a simple yes or no question. Did you do what that chapter of law provides, yes or no?
W: No.
C: So, in short, you broke the law? Now in that forest where you went to collect a gun... and you said a footpath passes there, would you find say a paper bag thrown there?
W: Yes.
C: So you can even find a toy car, the ones children play with right?
W: Children don't play there. That forest is dangerous and not many people pass there.
C: Why is it dangerous? Are there wild animals?
W: No. It is used by criminals and those who sell drugs.
C: Good. Now do the criminals go there at night or during the night?
W: At all time.
C: At all times. So that night that you left what you want to call evidence there, did these criminals and drug peddlers go there?
W: I don't know.
C: Is it possible that they went there?
W: ….
C: You have to answer my question officer. Is it possible?
W: I don't know, I can't tell.
C: Yes. You can't tell because you were not there guarding evidence. Now for you to establish whether the gun you saw was the one thrown during the chase or was a toy left by children, you would have to do a very simple thing. Did you have the gun, which you went to collect alone contrary to the law examined by a finger prints expert?
W: No.
C: So just how do you link this to the accused?
W: I saw him [throwing-]
C: [And remember] you told us, you are not even sure what you saw because it was dark. Nothing further your Honour.

DS1Case07

P: Hebu fahamisha korti majina yako.
Inform the court your names.

W1: Naitwa J____
My name is J____

P: J___ naona uko na uniform, unifanya kazi wapi?
J___ I see you are in uniform, where do you work?

W1: Nafanya kazi ___ Law Court.
I work at ___Law Court.

P: Ukiwa ___ Law Courts kazi yako inahusiana na nini?
At___Law Courts, what does your work involve?

W1: Kazi yangu ni kuchunga entrance watu wakiingia naangalia mizigo wamebeba.
My work is to guard the entrance as people get in I inspect the luggage they are carrying.

P: Unakumbuka mnamo tarehe ___2010?
Do you remember on date____2010?

W1: Ndio nakumbuka.
Yes I remember.

P: Karibu masaa ya saa mbili na forty five asubuhi nini ilifanyika?
At about 8:45 in the morning what happened?

W1: Watu walianza kuingia kama kawaida, na pia A____ aligia [kwa gate-]
People started getting in as usual, and even A___ got in at the gate-

P: [Unaposema]A__allingia, A____ ni nani?
When you say A___ got in, who is A____?

W1: Ndiye yule pale, mwenye ni mshtakiwa kwa hii kesi.
She is that one there, the one who is the accused person in this case.

P: Nini ilifanyika alipoingia?
What happened when she got in?

W1: Alipoingia- watu wanapoingia wanaweke mzigo kwenye scanner lakini yeye hakuwa na mizigo. Lakini alikuwa na kitu ameshika kwenye mkono.
When she came in- when people come in they pass their luggage through the scanner but she did not have any luggage. But she had something she was holding in her hands.

P: Hiyo kitu ni kitu ambayo ilikuwa inakaa namna gani?
That something, how did it look like?

W1: Hiyo kitu ni karatasi ilikuwa imefungwa na cellotape.
That thing was something wrapped in cellotape.

P: Sasa nini iliweza kufanyika wakati ulimwona na hiyo kitu allikuwa nayo?
Now what happened when you saw her with that thing that she was having?

W1: Nilimwomba A__ anipatie hiyo kitu niangalie kwa mkono akakataa akaendelea na safari yake kuingia kortini.
I asked A___ to give me what she was carrying so that I could inspect it but she refused and continued walking in to the court building.

P: Sasa wewe ulifanya nini?
Now what did you do?

W1: Mimi nikamsimamisha . Nikamwitisha chenye alikuwa nacho akanipea na akajaribu kukimbia.
I stopped her. I asked her for what she was carrying and she gave it to me then tried to run.

P: Wakati huo alipokupa hiyo kitu na akajaribu kukimbia wewe ulifanya nini?
When she gave you that thing and tried to run, what did you do?

W1: Nilimfuata na nikamrudisha hapo kwa security.
I followed her and returned her at the security desk.

P: Bada ya kumrudisha nini ilifanyika?
After returning her what happened?

W1: Nilimrudisha na nika kagua hizo vitu alinipea.
I returned her and I inspected those things she had given me.

P: Na uliweza kuandika statement yako katika kituo cha polisi baadaye?
And you recorded a statement at a police station thereafter?

W1: Niliandika statement katika ___ Police Station.
I recorded a statement at____ Police Station.

P: Hiyo statemernt yako ukiiona unaweza kuitambua?
If you see your statement would you recognize it?

W1: Naweza tambua.
I can recognize.
P: Sasa nataka kukuonyesha hii {((giving the witness papers))} statement. Unaweza kutambua hiyo statement?
Now I want to show you this statement. Can you recognize that statement?
W1: Naweza kuitambua.
I can recognize it.
P: Ni statement gani?
Which statement is it?
W1: Ile niliandika tarehe___
The one I recorded on__
P: Ni statement ambayo iko na pages ngapi?
It is a statement with how many pages?
W1: Pages mbili.
Two pages.
P: Now, nikiangalia hiyo statement yako kulingana na vile umeeleza korti- umeandika ya kwamba huyo A___ alikuwa na handkerchief na leo umetwambia alikuwa na karatasi. Sasa ni gani alikuwa nayo?
Now, when I look at your statement and the way you have explained to the court- you have written that A___ had a handkerchief and today you have told us she had a paper. Now which is it that she had?
W1: Alikuwa- hiyo karatasi alikuwa amefunga kwa handkerchief juu.
She had- that paper she had tied it with a handkerchief on top.
P: Sasa wakati aliingia ni nini uliiona akiibeba kwa mkono?
So when she got in, what did you see her carrying in her hands?
W1: Niliona handkerchief.
I saw a handkerchief.
P: Uliona kitu imefungwa na hankerchief. Baada ya kumrudisha security office nini ilifanyika?
You saw something wrapped in a handkerchief. After returning her to the security office what happened?
W1: Madam A___ alikuja [aka-]
Madam A___ came and she-
P: [Madam A___] ni nani?
Who is Madam A___
W1: Yeye ndio anatusimamia hapo kwa security.
She our supervisor at the security desk.
P: Okay, endelea.
Okay, go on.
W1: Akachukua hizo vitu. Bada ya kupeana hizo vitu kwa Madam___ nilimpiga search tukapata ako na karatasi nyingine imefungwa na cellotape.
She took those things. After giving those things to Madam___ I conducted a body search and we found she had another paper wrapped in cello tape.
P: Sasa baada ya kupata hiyo mlifanya nini?
Now after getting that one what did you do?
W1: Tulifungua ndani kuona kitu alikuwa nacho.
We opened to see what see had in them.
P: Ni nini kilichokuwa ndani mlipofungua?
What was inside when you opened?
W1: Tulipata 198 yellow tablets.
We found 198 yellow tablets.
P: 198 yellow tablets. Nini ingine?
What else?
W1: 198 yellow tabets na198 white tablets.
198 yellow tablets and 198 white tablets.
P: Mlipata 198 yellow tablets na198 white tablets? Zote zilitoshana?
You found198 yellow tablets and 198 white tablets? They were the same number?
W1: 909 yellow tablets.
P: Yellow tablets zilikuwa ngapi?
The yellow tablets were how many?
W1: Yellow tablets 909.
P: And white tablets zilikuwa ni ngapi?
And the white tablets were how many?
W1: 198.
P: Kilikuwa na kitu ingine?
Was there anything else?
W1: Kulikuwa na 157 rolls.
There were 157 rolls.
P: Sasa, kwanza ulisema mshtakiwa alikuwa na kitu kwa mkono amefunga na handkerchief na ukachukua kutoka kwake?

Now, earlier you said the accused had something in her hands wrapped in a handkerchief and you took it from her?

W1: Ndio.
Yes.

P: Hiyo mlifungua kuona ni nini?
Did you open that to see what it was?

W1: Tulifungua tukapata ilikuwa 400 sachets za white powder.
We opened and found it was 400 sachets of white powder.

P: Mlifugua na nani?
You opened with who?

W1: Tulikuwa na Madam A___.
We were with Madam A___.

P: So, baada ya kuzipata hizo vitu mlifanya nini?
So, after getting those things what did you do?

W1: Baada ya kupata hizo vitu Madam__ aliita mkubwa askari wa AP wenye walikuwa hiyo siku, wakakuja kuchukua hizo vitu.
After getting those things, Madam___ called the officer in-charge of APs who were there that day, they came and took those things.

P: Unamjua kwa majina huyo afisa?
Do you know that officer by name?

W1: Anaitwa Inspekta M___
S/he is called Inspector___.

P: Baada ya Inspekta M___ kuja, ni hatua gani ilichukuliwa?
After Inspector M__ came, what action was taken?

W1: Tulishika hizo vitu na kumpeleka yeye.
We took all those things to him.

P: Ukianza ulisema A___ alikuja kuingia kortini. Ulikuwa unamjua mbeleni?
When you started you said A___ came to get into the court building. Did you know her there before?

W1: Sikuwa namjua. Tulipata hizo vitu alikuwa nazo pamoja na kitambulisho chake. Ukiingia kortini kawaida unapeana kitambulisho. Kwa hivyo nilimuuliza majina yake na nikachukua kitambulisho chake nika confirm anaitwa A___.
I did not know her. We found those things she had together with her ID, when you get into the court building usually you surrender your ID. So I asked her names and I took her ID and confirmed she is called A___.

P: Na hizo vitu ambazo mliweza kushika hiyo siku hiyo, unaweza uzitambua?
And those things you found to confiscate on that day, can you identify them?

W1: Ndio.
Yes.

P: Na mkifanya hiyo search mliifanya mkiwa na nani?
And when you conducted the body search, whom were you with?

W: Tulikuwa na Madam A___.
We were with Madam A___.

P: Kwanza ningependa kukuonyesha hii {((holding up a handkerchief))}. Unaweza kuitambua?
First, I would like to show you this. Can you recognize it?

W: Yes naitambua. Hii ndio handkerchief ilikuwa imefungiliwa juu.
Yes I recognize it. This is the handkerchief that was tied on top.

P: Sasa nataka kukuonyesha hizi kama utaweza kuzitambua.
Now I would like to show you these whether you can recognize them.

W: Naweza kuzitambua.
I can recognize them.

P: Ni nini?
What are they?

W: Hii ni rolls.
They are rolls.

P: Ni ngapi?
How many are they?

W: 157

P: You are able to see that?

W: Yes.

P: Let's put them in bundles of {((arranging the rolls))} ten and count. Okay count, count with me.

W: Yes.

P: 1,2,3,4,5,____15

W: 1,2,3,4,5,____15

P: How many are the bundles?

W1: 15.

P: 15 plus 6 that makes them 156.
Sasa unaweza jua kwanini ziko 157?

Now would you know why they are 156?

W1: Sijui, lakini tulipata 157.
I don't know but we found 157.

P: Sasa nataka kukuonyesha hizi kama utaweza kuzitambua.
I want to show these whether you can recognize them.

W1: Yes, nazitambua.
Yes, I recognize them.

P: Ni nini.
What are they?

W1: Hizi ni sachets za white powder.
These are sachets of white powder.

P: Fungua ndani. Unaweza hesabu hivyo zimefungwa umeseme kama ni 40. Na sauti.
Open inside. Can you count them way they are packed whether they are 40. Loudly.

W1: 1,2,3,4,5,6,7,8,9,10 ___40.

C: I wish to object to the manner in which the learned Prosecutor wants to handle evidence. Already the witness has said there are 156 rolls but she knows of 157. So these sealed packets the prosecutor wants to assume each has 10 packs in them. Some might have disappeared like the rolls.

P: Your Honour all these substances had to be taken to the government chemist for analysis. They took a sample. So- we also don't want to expose the witness. It may not be safe to ask her to open the [packages-]

C: [Then let her] not give us figures if she can't confirm.

M: The witness can tell us of what she found earlier if they counted them but as for confirming:::

P: Your Honour we may proceed then confirm them in the course of the proceedings when they are being produced. We will be calling somebody from the government chemist.
Nataka kukuonyesha hizi kama unaweza kuzitambua.
I would like to show you these whether you can recognize them.

W1: 198 white tablets.

P: Na hizi?
And these one?

W1: 909 yellow tablets.

P: Baada ya kuchukua hizo satchets, tablets na rolls kwa Inspekta K____ nini ilifanyika?
After taking those sachets, tablets and rolls to Inspector K___ what happened?

W1: Tulipelekwa ___ Police Station.
We were taken to ___Police Station.

P: Nini ilifanyika?
What happened?

W1: Tukaandikisha statement.
We recorded a statement.

P: Baada ya kuandikisha statement?
After recording a statement?

W1: After kuandikisha statement nikarudi kazini.
After kuandikisha statement I went back to work.

P: That's all you Honour.

M: Mr. _____?

C: Yes your Honour. Just a few questions J____. Tuanze tu mahali umemalizia. Kuna mahali popote mliweza kusign kwa polisi kuwa mlipata hizo vitu kutoka kwa A__?
Let's start where you ended. Is there any place where you signed at the police that you found those things on A___?

W1: Eti kusign?
Signing?

C: Baada ya kupata hizo vitu umesema mlienda mlienda ___. Kuna mahali popote mliweza kusign huko polisi kwamba mliweza kupata hizo vitu kwa A___?
After getting those things you have said you went to___. Is there any where you signed there at the police that you found those things on A___?

W1: Ndio tulisign.
Yes we signed.

C: Na wewe mwenye we ulisign?
And you yourself signed?

W1: Ndio.
Yes.

C: Nataka kukuonyesha hii {((giving the witness a paper))} kama unaweza kuitambua.
I want to show you this you say whether you recognize it.

W1: Naitambua.
I recognize it.

C: Ni nini?
What is it?

W1: Ni ile record tulisign kwa polisi.
It is the record we signed at the police.
C: Hapa juu imeandikwa ni nini? Hebu soma.
What is written on top here? Read.
W1: Narcotic drugs and ( ) substances.
C: How did you establish that they were drugs?
P: Your Honour the witness has not said she wrote the report she just signed it.
C: She [signed-]
M: [I am sure] you know the procedure Counsel. The police must have written that and she was asked to sign it. So if whoever wrote it is a witness, you will pose that question to him.
C: Very well your Honour. Umesema A___ alipokuja kortini hakuwa na mzigo yeyote ya kuweka kwa scanner, si ndio?
You have said___ did not have any luggage to pass through the scanner, isn't that so?
W: Ndio.
Yes.
C: Sasa hii kitu unasema alikuwa nayo kwa mkono nini ilifanya uichukue?
Now this thing you say she had in her hands, what made you take it?
W1: Alikuwa anaibeba kwa mkono ndio nikamuitisha ili niikague.
She was carrying it in her hands so I asked for it so that I could inspect it.
C: Is it the normal procedure?
W1: Yes.
C: Isn't the normal procedure to ask people to pass their luggage through the scanner? You didn't ask her to pass what she had through the machine, isn't it?
W1: No we only use the machine for big luggage.
C: Did you just ask for this particular handkerchief or you ask for handkerchiefs from everyone?
W1: No. I saw she was carrying something so I asked her to give it to me, she refused.
C: How did you attribute these substances how were you able to say that she is the one who had them?
W1: Alikuwa nayo kwa mkono.
She had them in her hands.
C: She had all those items?
W1: Yes.
C: You have told this court that the items were where?
W1: In the handkerchief
C: So you are saying that the handkerchief had all these things?
W1: They were in a paper. Zilikuwa kwa paper bag.
They were in a paper bag.
C: Your testimony is confusing. The items were in a handkerchief or the paper or the paper was in the handkerchief?
W1: Yes, in the handkerchief then ime wrappiwa. Iko wrapped.
it is wrapped. It is wrapped.
C: Now you said that whatever was inside was wrapped. They were wrapped in a handkerchief or a cello tape?
W1: In a cello tape and a handkerchief.
C: And you have not produced that cello tape that had wrapped those substances, have you?
W1: No, but there was a cello tape.
C: So you are confirming that the packages there are not in the form that you first saw them, correct?
W1: Pardon
C: You confirm that whatever you saw was wrapped in cello tape, right?
W1: There was a cello tape.
C: And yet what you have produced before this court is not wrapped in cello tape?
W1: No.
C: So you are confirming that the package that you saw on that day have been interfered with, isn't it?
W1: I don't [know-]
C: [It is a simple] question. The packages in court today are not as they were when you saw them, right?
W1: Yes.
C: So they were interfered with?
W1: Yes they were interfered because it [was opened-]
C: [We are done with] that. So what did you do with the handkerchief and the cello tape?
W1: My in-charge took them to the AP.
C: You took them?
W1: To the police.
C: You took them to the police?
W1: Yes.
C: So have you said that you forwarded them. Who were you with when you forwarded them to the police?
W: We were with Madam A__ we forwarded- we gave them to the AP.
C: ( )

W: ( )
C: Who did you forward to?
W1: The AP was called to come.
C: So what did you do with the items?
W1: AP alichukua .
The AP took them.
C: You never gave them to Madam A___, isn't that true?
W1: She was there.
C: But you never gave her the packages?
W1: I gave her.
C: Did you give to both the AP and Madam A___?
W1: I gave Madam A___ ndio akaita security.
then she called security.
C: So you gave them to Madam A __?
W1: Yes.
C: It is your testimony that these items you never gave them to the Administration Police?
W1: I gave to Madam A__.
C: So you are saying that at the same time, unless I didn't get it very clearly, you gave these items to both the AP and Madam at the same time?
W1: I gave them to Madam A___.
C: Now that you have said that when you discovered these items you gave them to the Administration Police did you record a statement there or where did you record the statement?
W1: ____ Police
C: So as you were there at ___ Law Courts you did not record whatever happened did the normal occurrence?
W1: Yes, I recorded at the ____ Police Station.
C: But you never reported anything of what you had done. In other words, _____ Security has no record from you as their employee as to what happened that day?
W1: Administration Police ndiye alirecord.
It is the Administration Police who recorded.
C: Now you have said that you did a body search. Who was with you?
W1: Madam A___
C: What did you find?
W1: We found a wrapped cello tape and paper bag.
C: Where was the paper bag wrapped?
W1: In the bra.
C: The paper bag which you referred to- have you produced any paper bag?
W1: No.
C: So you never found a paper bag?
W1: I found something rolled in there in the cello tape
C: Cello tape?
W1: Yes.
C: Where?
W1: In the bra.
C: What was the colour of that paper bag? Can you remember?
W1: It was colouresss.
C: The paperbag, the one you found on the 16th was courless, is that right?
W1: Yes.
C: But there is no package before court that is wrapped in a colourless paper bag, right?
W1: Yes.
C: And you recall that you said that you found another package wrapped in cello tape but the cello tape is now not here?
W1: Yes
C: What you have produced before this court- are there any packages wrapped in cello tape or paper bags?
W1: This {((pointing the substances on the witness stand))} is what we found
C: There is no way you can attribute any of these to A___ because you have testified that whatever you recovered on that day was packaged differently. That's all your Honour.

P: Unaitwa nani?
What is your name?
W2: A_____
P: A__ unafanya kazi gani?
A__ what work do you do?
W2: Nafaya na J___ as a security supervisor.
I work with the J___ as a security supervisor.
P: Na kwa muda gani umefanya hiyo kazi?
And for how long have you done that work?

W2: Kama miaka nane.
Like eight years.

P: Na kwa sasa uko- mahali yako ya kazi ya kawaida kwa sasa ni wapi?
And for now you are- where are you stationed?

W2: Nafanya pale gate number 1.
I work there at gate 1.

P: Na ____ Law Courts je umefanya kwa muda gani?
And___ Law Courts for how long have you worked?

W2: Nimefanya from ___ April this year.
I have worked from___ April this year.

P: Hapo mbeleni ulikuwa ukifaniya kazi wapi.
Before then where were you stationed?

W2: Nilikuwa nafanya ( )
I was stationed ( )

P: Wapi?
Where?

W2: ___ Court

P: Pande gani ___ Court?
Which side at the ____ Court?

W2: Gate number___

P: Kazi yako ya kawaida kama supervisor wa security huwa nini?
What are your usual duties as a security supervisor?

W2: Kazi yangu nikiwa supervisor ni yakusupervise the___ Security Guards wenye wako assigned kwa ___ Law Courts.
My work as a supervisor is to supervise the ___ Security Guards who are assigned to __ Law Courts.

P: Ni kitu gani ambayo watu wanaingia kortini huwa wanaangaliwa kabla ya wao kuruhushiwa kuingia ndani ya korti?
What is it that people coming to court are checked before they are allowed into the court premises?

W2: Kwa gate kuna machine mbili. We have a walk through metal detector na we have the second machine is a luggage scanner.
At the gate there are two machines. We have a walk through metal detector and we have the second machine is a luggage scanner.

P: Huwa zinatumika kivipi?
How are they used?

W2: Hutumika luggage scanner ina beba mizigo inaangalia mizigo yenye imepita kwa machine.
The luggage scanner carries luggage and scans the luggage that passes through it.

P: Sasa kwa walio na mizigo wakitaka kuingia huwa mnawasaidia kivipi?
Now, those with luggage and they want to enter how do you assist them?

W2: Huwa tuko na luggage are ambapo tunawawekea mizigo na wa chukua wakitoka.
We have a luggage area where we store the luggage for them and they pick it as they leave.

P: Unaweza kumbuka mnamo tarehe___2010 karibu saa tatu kasorobo nini iliweza kufanyika hapo kazini?
Can you remember on date___2010 at about quarter to nine what happened at our wolk place?

W2: Tulikuwa hapo kwa gate na kuna msichana mmoja alikuja akiwa amebeba kitu kimefungwa na handkerchief. Mwenzangu tuliyekuwanayeye akamsimamisha.
We were there at the gate and there is one girl who came carrying something wrapped up in a handkerchief. The partner we were with stopped her.

P: Kumaanisha wakati huo ni nani alimsimamisha?
Meaning at that time who stopped her?

W2: Mwenzangu pale {((pointing to the previous witness now in the audience))} anafanya kazi na ___ Security. Kumsimamisha chenye alikuwa ameshika na mkono kaliwacha hapo na akajaribu kutoroka. Ndio mwenzangu akamshika nakumrudisha. Sasa tukajua ni nini alikuwa ameshika.
My partner there who works with ___Security. On stopping her, what she was holding in her hands she left it there and tried to run. My partner got hold of her and returned her. Now, we wanted to know what she had been carrying.

P: Now wakati alirudishwa nini mliweza kufanya?
Now when she was returned what did you do?

W2: Tulimwingiza kwa security office tukamfanya search [tukapata-]
We took her into the security office and did a body search on her and found-

P: [Mkiwa na] nani?
You and who?

W2: Tukiwa mimi na mwenzangu C___. Kumwingiza ndani tuliweza kupata chenye alikuwa ameshika kwa mkono 400 packets za white powder. Tulimfanya search ndio tukakuta kuna vitu vingine alikuwa ameficha huko [ndani na-]
We were with my partner C___. On taking inside we found what she had been holding in her hands were 400 packets of white powder. We searched her and it is when we found there were other things she was hiding there inside and-

P: [Ndani wapi?]
Inside where?
W2: Kwenye bra.
In the bra.
P: Sasa ni nini mliweza kupata ambayo ilikuwa imefichwa ndani ya bra.
Now what did you find that was hidden in the bra?
W2: Tulipata ndani ana dawa za white na dawa zinginie za yellow na rolls za bangi.
Inside we found white and yellow drugs and rolls of bhang.
P: Mliweza kuthibitisha hapo kwamba ilikuwa bangi?
Were you able to confirm there that it was bhang?
W2: Hapana lakini tulisuspect ni bangi.
No but we suspected it was bhangi.
P: Sasa hizo rolls zenye mlisuspect kuwa za bangi zilikuwa zimewekwa kivipi?
Now how were those rolls that you suspected to be of bhang packed?
W2: Ilikuwa imefungwa na cellotape nabado zilikuwa na karatasi ya polythene zilikuwa zimefungwa nayo.
The bhang was wrapped using cello tape and still the rolls were tied up using a polythene paper.
P: Sasa zile dawa ilikuwa bado kwa hali ile?
Now were those drugs still in that way?
W2: Zilikuwa zimefungwa nakaratasi ya white zilikuwa zimewekwa kama ( )
They were wrapped with a white paper like ( )
P: Mlizihesabu?
Did you count them?
W2: Tulihesabu?
We counted.
P: Mlipata ni ngapi?
How many did you find they were?
W2: Tulipata ni 157 ( )
We found they were 157( )
P: Yellow zilikuwa ngapi wakati mlihesabu?
How many were the yellow ones when you counted them?
W2: Yellow tablets zilikuwa 909.
The yellow tablets were 909.
P: Na white zilikuwa ngapi?
The white one were how many?
W2: Zilikuwa 198.
They were 198.
P: Ningetaka kukuonyesha hii {((holding up a handkerchief))} kama unaweza kuitambua mbele ya korti. Ni nini?
I would like to show you this whether you can identify it in court? What is it?
W2: Hii ni handkerchief.
This is a handkerchief.
P: Umewahi kuiona hapo mbeleni?
Have you seen it there before?
W2: Nimewahi iona atena.
I have ever seen it.
P: Wakati gani?
At what time?
W2: A___ alikuwa nayo wakati tulimshika.
A__ had it when we arrested her.
P: Sasa nataka kukuonyesha hii {((pointing at rolls on the witness stand))}. Unaweza kuitambua?
Now I want to show you this. Can you recognize it?
W2: Ndio.
Yes.
P: Ni nini?
What is it?
W2: Bangi- Ni rolls za supeted bhang.
Bhang- they are rolls of suspected bhang.
P: Ni mara yako ya kwanza kuiona?
Is it the first time for you to see it?
W2: Niliona wakati tulimshika A__ alikuwa nayo.
I saw it when we arrested A__ she had it.
P: Tena nataka kukuonyesha hizi {((holding up a package))} kama utaweza kuzitambua.
Also I want to show you these whether you can I identify them.
W2: Ndio naweza.
Yes I can.
P: Na hizi ulikuwa umezitaja mbeleni kama nini?
And these one you had refered to them earlier as what?

W2: Nimetaja white powder- 400 packets.
I said white powder- 400 packets.
P: Sasa unaona ni::: [tablets-]
Now you see they are::: tablets-
W2: [Ilikuwa 909] yellow tablets na hizi {((holding up a package))} 198 white tablets.
P: They were 909 yellow tablets and these 198 white tablets.
Now baada ya kupata hizi vitu kutoka kwa huyo msichana ni hatua gani ulichukua?
Now after getting all these things from the accused which action did you take?
W2: Tulichukua tukapigia inspekta wa AP tukamwambia tumeshika vitu tukampeleka kwa ofisi ya AP hapo kwa entrance. Akaita hawa watu wa wenye walimshika na kumpeleka polisi.
We took the action of calling the AP inspector and we told him we had found things and we took to him at the AP office at the entrance. He called these people who came and arrested her and took her to the police station.
P: Hao polisi aliwaita kutoka wapi?
Those policemen ones where did he call them from?
W2: From ___ Police Station.
P: Hao polisi wa ___ walikuja?
Did those police officers from __come?
W2: Walikuja.
They came.
P: Walipokuja nini ilifanyika?
When they came what happened?
W2: Walichukua mshtakiwa wakaenda nayeye.
They took the accused and went with her.
P: Nawewe ulienda ___ kuandika statement yako?
And you did you go to __ to record your statement?
W2: Ndio nilienda.
Yes I went.
P: Mshtakiwa- huyo msichana mliweza kushika siku hiyo ako wapi? Akao hapa mbele ya korti?
The accused- that girl that you managed to arrest where is she? Is she before court?
W2: Ako mbele ya korti.
She is before court.
P: Wapi?
Where?
W2: Ndiye yule {((pointing))} ameketi pale.
She is the one sitted there.
P: Ulikuwa unamjua mbeleni?
Did you know her there before?
W2: Sikuwa namjua.
I did not know her.
P: Na saa hii unamjua? Si nimeskia unamuita jina?
And now do you know her? Have I not heard you call her name?
W2: Namjua sababu nilimshika.
I know her because I arrested her.
P: That's all your Honour.
M: Mr.____
C: Madam you have said you recovered all these items from A___?
W2: Yes.
C: Did you count them?
W2: Yes we counted.
C: Were you present during the counting?
W2: During the counting I was there.
C: So that whatever the exhibit form from the police says is what you counted.
W2: Mimi sikujaza hiyo. Hiyo niya polisi.
I did not fill in that. That is for the police.
C: Stop avoiding the question. You were counting all these so that you could write them down in the exhibit form or book, right?
W2: I am saying we counted the exhibit but the form ililetwa afterwards.
it was brought
C: Oh, now the documents were filled in later. Interesting. You confirm that you did a search?
W2: I did a search.
C: You did a search.
W2: Yes.
C: What did you find when you did the search?
W2: Tulipata bangi tukapata the white drugs and the yellow drugs.
We found bhang, we found the white drugs and the yellow drugs.
C: How did you know that it was bhang?

W2: We suspected it was bhang.
C: When you found it where was it placed?
W2: In the bra.
C: Inside?
W2: Yes.
C: You are saying all these items were being carried in a bra?
W2: Kwa kawaida bra inavaliwa na mwanamke. Sasa yeye kivaa alikuwa ameweka hizi vitu sasa bra ndio inazishikilia kwa mwili.
Usually, a bra is worn by a woman. Now for her when she was wearing it she had placed these things now so that the bra was holding them to the body.
C: So it was not the bra carrying them?
W2: Bra ilikuwa imezifunga kwa mwili.
The bra was tying them to the body.
C: How did you come to suspect that mara ya kwanza, for you to conduct a search?
the first time
W2: Wakati alikuwa ameingia kwa gate alikuja ameshika kitu imefungwa na handkerchief juu. Aliulizwa na C__ ni nini [amebeba-]
When she came in through the gate she was holding something that was tied with a handkerchief on top. She was asked by C __ what she was carrying-
C: [That time] where were you?
W2: That time I was there. I was standing there. Kuulizwa hivyo aliwacha hiyo kitu na ndio akakimbia. C__ alimkimbiza akamshika na akarudishwa.
On being asked that she left that thing and she ran. C__ ran after her caught her and she was returned.
C: Can you confirm to this court how many tablets you recovered?
W2: 198 white tablets and 909 yellow tablets.
C: Did you ever record that somewhere immediately?
W2: Niliandika kwa our OB. We do have our OB.
I wrote it in our OB.
C: You recorded?
W2: Yes.
C: Do you have the record?
W2: The OB?
C: Yes.
W2: The OB I don't have it here. It is in court.
C: So we can't we confirm that whatever you are telling the court is what you found and recorded on that day?
W2: The statement which I recorded in the [police station-]
C: [That you have] already said was recorded much later by the police. So you do confirm that you don't have the record you yourself made about these items, right?
W2: Hiyo ndio ilikuwa yangu.
That is what was mine.
C: Hii OB ambayo umesema ni yako iko?
This OB you are saying is yours where is it?
W2: Iko High Court.
It is at the High Court.

DS1Case08

W1: Number ___
P: Do you recall __December, 2008?
W1: Yes I do your Honour
P: Where were you?
W1: I was in office
P: Where?
W1: At T__ Police Station,
P: What time?
W1: It was noon, 12 noon.
P: Where were you?
W1: I was just walking out of the crime office; I was going to collect files from the court.
P: Yes.
W1: When I reached the report office, I heard a loud noise.
P: You heard a loud noise. Where?
W1: In the office of the OCS.
P: What kind of noise?
W1: It was like a commotion
P: When you heard the commotion how far were you from the office of the OCS?

W1: 10 meters your Honour.
P: 10 meters. What did you hear, if you can recollect?
W1: People shouting and a bang like someone was trying ( )
P: Mm, what did you do?
W1: I entered the office of the OCS your Honour.
P: When you entered the office what did you find?
W1: I found someone the accused person, he was the one causing a commotion and abusing the OCS.
P: You knew him?
W1: No, not before your Honour.
P: What did you do when you found him?
W1: We tried to escort him out your [Honour-]
P: [No, no.] Can you tell us exactly what you now heard him saying in the office?
W1: I heard him say, telling the OCS that he is a useless [person=
P: [Mhm
W1: = and he is going too fuck him your Honour.
M: He is going to?
W1: He is going to fuck him your Honour
P: On hearing that, what did you do?
W1: We tried to escort him out your [Honour=
P: [Mm
W1: =and when we got him out I proceeded to [court-]
P: [Where] did you leave that person?
W1: I left him outside when he started walking away.
P: How many people were at the office of the OCS?
W1: Around five your Honour.
P: Other than the OCS, did you know the others?
W1: Yes your Honour.
P: Who were they?
W1: There was S____, there was K___, and M____ and the accused your Honour.
M: Three others or you said five?
W1: Those are the one I knew your Honour.
P: Are they police officers?
W1: No the only one who is a police officer is M___ your Honour.
P: So when you escorted the accused from the office of the OCS you left him where?
W1: I left him near- when he was getting out of the police station.
P: Then from there?
W1: As I was coming from the court, I got him near the gate of the municipal council.
P: Alone?
W1: No, with the other people akina K___ and M___. They were there and he told [me-]
P: [Who] now?
W1: The accused er K__. He told me 'wewe, go and tell your boss that I am going to fuck *you* him. He is nothing to me he is very small'.
P: And then?
W1: Me I never bother with him I just walked on.
P: From there?
W1: I went and informed the OCS what K__ had told me and I recorded my statement your Honour.
P: Is that person here?
W1: Yes your Honour.
P: Where is he?
W1: There {((Pointing.))} your Honour.
P: Your Honour the witness is pointing at the accused person. Okay, you know when he got arrested?
W1: I never knew your Honour.
P: You said before you this date you did not know him?
W1: I did not know him, your Honour.

M: Mr. ___
C: The first time you heard noise or commotion in the OCS T__ office what time was it?
W1: I can't remember exactly your Honour
C: But you can recall whether it was after 12 or before 12?
W1: After 12 your Honour.
C: After 12?
W1: Yes your Honour
C: After 12 can be around 1, 2, 3, 4, 5 or 6.
W1: Around 2.00 pm.

C: Now around 2 can be after 2 pm or before 2 pm.
W1: After 2 your Honour.
C: After 2 pm.
W1: Yes.
C: And it is your testimony that as you walked from your office you could hear people quarreling inside the office of the OCS?
W1: Yes your Honour.
C: Around how many voices could you hear?
W1: The voice I heard was from the accused person, the OCS and the K__.=
C: =The voice of the accused person, the OCS and one K___?
W1: Yes your Honour.
C: What was the OCS saying when you heard his voice?
W1: I heard him saying they should now take the matter to M____ Police Station.
C: That cannot be called quarreling. You said you heard commotion?
W1: The commotion came about this way, K__ was saying they should not take the matter to M___. K__ was trying to cool down K___.
C: Yes, what were the words he used?
W1: He was telling K__ they should take the matter to M___ as that is where the incident had happened.
C: So K__ was also saying let us go to M___ where the incident happened?
W1: That is true.
C: Now you are outside?
W1: Yes
C: And you heard the accused person calling the OCS what? You are a [useless-]
W1: [I got] inside.
C: Okay.
W1: When he told the OCS 'you are useless' I was inside.
C: You were inside. Let us hear the words he used. Exactly. What was he saying? What were his exact words?
W1: He said 'I am going to fuck you as I did to the other OCS'
C: He said 'I am going to fuck you as I did to the other OCS' What else did he say?
W1: He said, 'You are useless'.
C: 'You are useless' How many other people were in that office?
W1: Er I can't recall.
C: You can't recall how many people?
W1: Ee::: they were around five.
C: You now recall they were around five. What did you find the accused person doing?
W1: He was banging the table of the OCS.
C: He was banging the table of the OCS.
W1: Yes.
C: Now as he said the words you are saying, was he holding the OCS?
W1: No.
C: Was he pointing at the OCS?
W1: No.
C: Did he say words like this 'you the OCS' or 'you Mr. N__ you are useless'. Did he say such words?
W1: He was addressing [him-]
C: [No, no.]I am asking you, did he say 'you the OCS' or 'you Mr. N__ you are useless'. Did he say such words?
W1: He said [that-]
C: [Answer me.] Did he say those words?
W1: No.
C: So it is you Mr. O__ who chose to say he was telling the OCS he is useless.
W1: No he was telling him. [He was-]
C: [And how] did you establish that he was addressing the OCS and you have said there were five people there? You have testified that he never said 'you the OCS' or 'you Mr. N__ you are useless', he was not pointing at the OCS you said. How did you know he was referring to him?
W1: He told him, 'you are a very useless police officer,' that is what he said put the word police officer?
C: Oh, now he said 'you are a useless police officer
Is that what you told the court when you gave your evidence in chief? That he said 'you the police officer' is useless? Is that what you said? The record is [there-]
W1: [No.]
C: No. Okay now tell us is it at that point that you arrested the accused?
W: We did not arrest him.
C: Now, here is a person banging the OCS table, telling the OCS 'you police officer you are useless' uttering the other words you told us here and you Mr. O__, you as an officer in the station did not arrest him. Did you arrest him?
W1: We did not arrest him.
C: Nobody arrested him when he uttered those words to the OCS, when he banged the table?

W1: No.
C: And you have told us here that inside that office were three police officers. The OCS, Mr. M__ and you Mr. O___, correct?
W1: Yes.
C: This is happening at a police station. There are very many policemen at T__ Police Station, isn't it?
W1: Yes.
C: Which office is next to the OCS office?
W1: The report office it near there.
C: The report office is usually manned by police officers, isn't it?
W1: That is true.
C: Is there a time the report office is left without a police officer inside there?
W1: No
C: Who were those police officers who were in that office at that particular day?
W1: They were __ and ___
C: These police officers who were in the report office, did any of them attempt to arrest the accused person for insulting the OCS directly?
W1: We did not arrest him.
C: Why not? Can you tell us why he was not arrested for abusing the OCS 'you police officer are very useless'?
W1: We were not given orders to arrest [him-]
C: [You don't] receive orders from above to arrest a person who is assaulting the other, insulting the other, in fact insulting- abusing your senior. Or do you usually wait to receive an order from above to arrest a person who is committing crime?
W1: No.
C: But in this case you just left the accused to go on and commit a crime?
W1: No, we escorted him out.
C: That is you and who else?
W1: Me and PC__ and K___
C: Where did you leave the accused person?
W1: I left him near the main gate.
C: Doing what?
W1: Just standing with kina K__ and S__.
C: Then you left them?
W1: Yes, they were there.
C: You say you saw the accused again together with the same people.
W1: Yes when I came from court that was the next time I saw him.
C: Then, where did you meet them?
W1: I met them near the Municipal Council office.
C: You met them near Municipal Council?
W1: Yes.=
C: =At the municipal council, what did the accused person allegedly say to you?
W1: He told me in Kiswahili, 'Wewe enda umwambie mkubwa wako nitamtoba na nimmalize.'
'You go and tell your senior I will fuck him and finish him.'
C: Alisema those exact words ati, 'Wewe enda uambie huyo wako nitamtoba na nimmalize'?
'You go and tell your senior I will fuck him and finish him'
W1: Yes.
C: Look at your statement, where you recorded that. Is there the word OCS there? Can you see the word OCS or Officer Commanding Station?
W1: In our place of [work-]
C: [No no,] can you see that word OCS anywhere?
W1: Yes.
C: Where? Show us.
W1: Here, 'mkubwa' ni [OCS-]
boss is
C: [Is it?] Now, this OCS word, is it a Kiswahili word?
W1: It is an English word.
C: It is an English word meaning Officer Commanding Station. I want you to show us where you recorded the word OCS or Officer Commanding Station, exactly like that in your statement. 'Mkubwa' does not mean OCS. Hata wewe najua unaitwa mkubwa.
'boss' *Even you I know you are referred to as 'boss'.*
Is the word OCS in your statement?
W1: When he was [talking-]
M: [Just] answer his question directly. Is OCS written there?
W1: No your Honour.
C: Thank you. Now were these words were uttered in the presence of the OCS?
W1: In the absence
C: Who was else was present when they were uttered.

W1: K__ and M___.
C: And it is your testimony that those words ati 'Wewe enda umwambie huyo mkubwa yako ati nitamtoba na nimmalize', those were the exact words that were uttered in your presence?
That 'You go and tell your senior I will fuck him and finish him.'
W1: That is true.
C: And in the presence of K__ who else?
W1: S__.
C: Were other words uttered in your presence other than these words?
W1: No.
C: How many words were uttered in your presence?
W1: No other word was released by the accused.
C: Again, did you arrest the accused person at that time?
W1: I have already told you [that-]
C: [You are] addressing yourself to the court. Did you arrest the accused person then because you have just testified that he abused the OCS again?
W1: No.
C: He was not arrested. You have said here that when you left K___, K___ and M___ at the gate of the municipal council, you went to the office of the OCS to inform him what you had been told, correct?
W1: Yes.
C: Did you put in your statement that 'I went to inform the OCS of what he had been told'?
W1: No.
C: So you are telling us things now that you decided not to record in your statement? When did you record your statement?
W1: On the same day.
C: You have also said you are not aware when and where the accused was arrested, correct?
W1: I am not aware.
C: That's all.

P: Swear yourself.
W2: I swear by the almighty God, that the evidence that I am going to give before this court, touching the matter in question, is the truth, the whole truth, so help me God.
P: Introduce yourself to the court.
W2: I am Number ___ , Corporal B___ attached to CID T__.
P: Okay on __ December, 2008, do you recall this day?
W2: Yes your Honour.
P: Where were you?
W2: I was at the station your Honour.
P: What happened at that particular day?
W2: When I was given instructions by the DCIO Mr. C__ to investigate a case whereby the OCS had been complaining that somebody has ee::: somebody who had abused him in his office and created disturbance in his office your Honour.
P: Were you given the name of the person who had abused him?
W2: Yes your Honour.
P: Which name were you given?
W2: I was told his name was K__.
P: When you heard the name K__ did you know that person before?
W2: I knew him before your Honour.
P: What did you do?
W2: I made all the statements to be recorded your Honour.
P: Mmh
W2: From the OCS and Mr. S__, Mr. K__ and the one for PC O__ and PC M___.
P: The OCS was the complainant. Why did you record statements from the others?
W: The others were witnesses. They were there when K__ abused the complainant.
P: How- did you know what happened?
W2: During the investigations I learnt they were in the office of the OCS tackling a matter of ( ) where one by the name of K ___started causing trouble, he abused the OCS=
P: =Mmh
W2: by quoting that he was stupid and banging of tables your Honour in front of the complainant who was the OCS.
P: Okay, then?
W2: After the recording of the statements, I realized that there was a crime committed your Honour and I arrested the accused person your Honour and charged him with the offence of ( ) your Honour.
P: Now, you said you arrested him. Can you tell the court where you arrested him?
W2: He had come to our office, since I investigated the case- he had come for other matters then I arrested him and put him in custody.
P: Is the person your arrested in court today?
W2: Yes your Honour.

P: Where is he?
W2: The one on the dock your Honour.
P: You said he created disturbance and abused the OCS in his [office?=
W2: [Yes your Honour.
P: =Can you tell the court how he abused him? What did he say?
W2: He called him stupid- by calling him stupid, he was banging tables infront of the customers and he told him he was going to fuck him and kick him out of the office
P: That's all your Honour.
M: Mr. ___
C: Yes your Honour. Mr.___
W2: Yes your Honour
C: You have told us that the accused person is here today because you as the investigating officer established that he had committed a crime of which you charged him with, is that right?
W2: Yes your Honour.
C: You have further told this court that your investigation revealed the accused person abused the OCS T__ in his office and caused disturbance by banging on his table in the office, isn't it?
W2: Yes your Honour.
C: According to your testimony the accused abused the OCS telling him he was useless and he would fuck him, and this happened in the office of the OCS in the presence of several eye witnesses, isn't it?
W2: Yes your Honour.
C: And your investigation involved recording statements from the complainant, the OCS and the eye witnesses, those who were in the office at the time of the incident, right?
W2: Yes your Honour.
C: Now look at all these. Are they the statements that you recorded from those who witnessed and happened in the OCS office?
W: Yes.
C: How many are they?
W: Three.
C: So you confirm they are the statement you recorded from the witnesses as you investigated this matter, right?
W2: The witnesses wrote the statements.
C: Yeah. Good. They wrote them because you required them to as the officer investigating this matter, isn't it?
W2: Yes.
C: Now let us start with this {((giving witness a file))} one. The statement of one K__, right?
W: Yes.
C: Show me where he says he heard K__ abusing the OCS and saw him banging the table in the office of the statement. Anywhere?
W2: Yes here.=
C: =Read it.
W2: 'While we were stading [there-']
C: [No,] sitaki unisomee mambo ya municipal council gate. Soma mahali umesema K__ aliandika aliona na akasikia K___ akitukana OCS kwa office yake. Where is that?
I don't want you to read for me things to do with the municipal council gate. Read where you have said K___ saw and heard K___ abusing the OCS in his office.
W2: Hata hapo [alimutukana-]
Even there he abused him-
C: [The complaint] that you received from the OCS, was it that somebody had abused him at the Municipal Council gate?
W2: No.
C: The OCS reported somebody had abused and caused disturbance where?
W2: In his office.
C: In his office. Now is there anywhere one of your eye witnesses one K__ who was in the office says he heard K__ and saw him in the office banging the table and abusing the OCS?
W2: It is not there [but later-]
C: [Good.] It is not there. Your eye witness never recorded having witnessed or heard such a thing. Now let us move on to the statement of S___. Where does he record that he heard inside the office of the OCS, K___ abusing the OCS and banging his table?
W2: He was [there-]
C: [Nakwambia,] tafadhali angalia statement ya S__ usome mahali ambayo inasema yeye alikuwa hapo kwa OCS na akasikia K__ akitukana OCS na akigonga meza. Unaona hiyo statement ya S___?
I am telling you, please look at the statement of M__ and read the place where it says he was there at the OCS and heard K__ abusing the OCS and banging the table. Can you see the statement of S__?
W2: Ndio naona.
Yes I see it.
C: Hebu angalia mahali yeye anasema alikuwa hapo akamwona na akasikia akigonga meza ya OCS nakumtukana akiwa ndani ya ofisi? Kuna pahali?

Now check where he says he was there and saw and heard as he banged the table of the OCS and abused him while he was in the office. Is there such a place?

W2: Hakuna.
There isn't.

C: Eye witness S___M___ N___ ambaye alikuwa hapo ndani kwa OCS hakuna pahali yeye ameandika alimwona ama akasikia___ akimwambia OCS yeye ni mtu ambaye hana maana na kumwambia nitakutoba?=
Eye witness S__ M__ N__ who was inside the office of the OCS there is nowhere he has written he saw or heard K__ telling the OCS he is a useless person and telling him he would fuck him?

W2: =There isn't.

P: Sasa twende kwa statement ya OCS. Kuna pahali anasema, OCS mwenyewe Chief Inspekta N___ anasema kwamba K__, na M___, walikuwa ndani ya ofisi yake wakati meza iligongwa na huyu akatukana yeye?
Now let us go to the statement of the OCS. Is there anywhere he says, OCS himself Chief Inspecter N___, he says that K__ and M__, were inside his office when the table was banged and this one abused him?

W2: He reported that.

C: Na mimi na kuuliza amesema hivyo kwa statement yake?
And I am asking you has he said that in his statement?
Read {((pointing))} here.

W2: 'They left all of them but K__ remained in the office. He started abusing me [saying-']

C: [Ndio hio] statement ya Chief Inspekta N__. Inasema watu wengine wote walitoka naye mshukiwa akaachwa ndani akigonga meza, si imesema hivyo?
There it is the statement of Chief Inspector N__. It says all the other people got out ant the suspect was left in the office banging the table. Is that not what it says?

W: ….

C: Si umesoma hivyo?
Is that not what you have read?

W2: Kwa initial report alisema walikuwa wote huko.
In the initial report he said all of the were there.

C: We are not reading the initial report we are reading his statement. Can you confirm the OCS in his statement says there was no one else in the office except for him and the accused when the incident happened, right?

W2: Haiko kwa statement but iko kwa initial report.
It is not in the statement but it is in the initial report.

C: It is not in the statement. Sasa twambie, at what time, according to your investigations,
Now tell us
what time did the incident happen?

W2: 2:30

C: 2:30. I want to refer you to these here. This is a certified record of the court proceedings when PW1 was giving his testimony. That is [one:::-]

M: [Was that] before me?

C: No your Honour this is when the matter was before your sister Mrs. W___. But they are certified copies of the proceedings. We can rely on them.

M: I don't think so in this case. You see this matter was ordered to begin a fresh. So I will not rely on that record.

C: Most obliged your Honour.
Now you said the office of the OCS T__ where it is located it is adjacent to which other office?

W2: The report office.

C: And at 2.30 pm on the 16th __ 2008, was the report office of T _ Police Station manned? Were there personnel there?

W2: There is usually personnel.

C: And who was designated to man that office at that time?

W2: I don't know, unless we ask for the record your Honour.

C: This office is adjacent to the OCS office where there was commotion and banging of tables. In fact another witness, one K__ claims to have heard the commotion from the crime office which is further away. Now, you have confirmed that at 2.30 of the said date there were police officers manning the report office. Did any of them record statements about the commotion in the office of the OCS?

W2: They were not requested to write

C: Who did not request?

W2: The OCS

C: You told us that the DCIO assigned you the case and I am sure he did that because you are a good investigating officer. As the investigating officer, it is you who was supposed to be taking statements from witnesses, isn't that the procedure?

W2: The complainant was a police [officer and-]

C: [Oh, I see.] Is it the OCS who told you who to take statements from and who not to take from because he is a [senior police officer?]

W2: [No no. He is the] complainant and he told me those who were present when the offence was being committed.

C: And you were to carry out an investigation. In your report you wrote that the police officers who were at the scene of the crime, which include O__ who was actually coming from the crime office when he heard commotion. Are you saying you established that the officers manning the report office heard nothing? O__ heard commotion when he is coming from the crime office but the officers in the office next to that of the OCS heard nothing. Is that what you want us to believe?

W2: By the time he was abusing the OCS or banging the table maybe [they were-]

C: [Don't give] us 'maybe'. If you say 'maybe' I can also say maybe the OCS directed you not to take statements from those officers because there was no offence committed in the first place. The question is did you record their statements?

W2: I did not. It was not necessary.

C: It was not necessary. Did you interview them to determine they had nothing to say, to determine it was not necessary to take their statements?

W2: They were not witnesses.

C: So you are confirming you never interviewed them, right?

W2: I did not.

C: In their statements, S__ and K__ say they never saw or heard K___ abuse the OCS and bang the table in his office, yet you decided to call them witnesses. The statement of the complainant, the OCS himself confirms they were not in the office as all of them had left the office. In their testimony, S___ and K__ say they were in the office. As the investigating officer, which account do you believe in?

W2: Walikuwa huko wote.
All of them were there.

C: Nani na nani?
Who and who?

W2: K__, M___, OCS na the accused.

C: If all of them were there- let me read you the statement of the OCS. Here it says, 'then
everybody left the office except K___ he told me that I decided the wrong way and he is going to show me, he insulted me, called me stupid and started banging the table' So you are saying the OCS recorded lies in his statement when he says 'everybody left the office'?

W2: Unajua , there are many offices hata wakitoka ofisi ya OCS they were still in the station
you know even after leaving the office of the
maybe they were in another office.

C: S now your new testimony is, K__ was not in the OCS office when he was abusing him, that is your new testimony?

W2: We can't say. After the discussion in the OCS office they could have gone to another [office-]

C: [That is] interesting. Where is the OCS table that was being banged?

W2: ….

C: Nauliza is the OCS table is in his office or in which office?
I am asking

W2: ….

C: Answer me. Meza ya OCS yenye iligongwa iko ofisi ya OCS or another office?
The table of the OCS that was banged is in the office of the OCS

W2: In his office.

C: Let us not try to be tricky Mr.__. This is a serious matter. Witnesses wamesema hapa walikuwa kwa ofisi ya OCS lakini yeye kwa statement yake anasema hawakuwa, si ndio?
Witnesses have said here they were in the Office of the OCS but in his statement he says they were not, isn't it?

W2: Ndio.
Yes.

C: Ulichunguza kujua sasa ukweli ni gani?
Did you investigate to find out what the truth was?

W2: Unajua OCS alikuwa- yaani mtu anaenda anamtukuana kwa ofisi- haheshimu hata hiyo ofisi. Sasa hata akiandika statement alikuwa::: alikuwa:::=
You know the OCS was- somebody goes and abuses him in the office- he does not even respect the office. So when he recorded he statement he was::: he was:::

C: =Confused?

W2: Confused hivi labda ndio alikosea.
Confused in a way that is why he made a mistake.

C: The OCS was confused when he made his statement. When did he record it? Masaa ngapi since hiyo incident?
How many hours after the incident?

W2: He did not record on that day.

C: Read there. When did he record it?

W2: 19th December.

C: How many days after the initial report?

W2: Three

C: Chief Inspector C__ was so confused because somebody had abused him in his office that when he wrote his statement three days later he made mistakes. And you are still insisting that this court believes him?

W2: Nivingumu sana kusikia OCS anacomplain. Lazima kuwe na [sababu-]

It is very hard to hear the OCS complaining. There must be a reason-

C: [Is that] why were are here? You are saying you decided to charge him {((pointing at the accused))} even if statements of the complainant and the eye witnesses are contradicting, you decided to charge the accused just because it is the OCS who had complained.

W: =No I -

C: =That's all your Honour.

DS1Case09

P: Where do you work?

W1: I am currently assigned to Kenya C___ as a copyright inspector your Honour.

P: Are you aware ( )

W1: Yes your Honour.

P: What is your duty as a copyright inspector?

W1: To ensure compliance following rules and regulations by the copyright act 2001.

P: What else?

W1: Arrest infringers of copyright work and to see all copyright works meet the required standards for the purpose of being marketed in Kenya.

P: Do you remember what happened on___ this year relating to the matter before court?

W1: Yes your Honour I and my other colleagues who were Senior Sergeant___ and Corporal __ were on routine inspections within T__ town your Honour. I and Corporal ___ entered one shop selling CDs. We found the owner and we identified ourselves and our purpose by showing our certificates and our ID from the Kenya Copyright Board and he allowed us entry your Honour .We were to inspect copyright works in the shop if they had identification stickers from the Kenya Copyright Board your Honour. Upon inspection we found 1175 audio visual CDs and 100 audio CDs all without stickers your Honour. We seized the said CDs and arrested the accused [person-]

P: [Where] is the shop located?

W1: Within T___ Township just around the bus stage. We arrested the accused and escorted him to T___ Police Station where we wrote the inventory of the said goods.

P: Is this the inventory you made?

W1: Yes your Honour.

P: Take us through it. The date=

W1: =It was on 7th __2011 at 1820 hrs stall number__. The items seized included 1175 audio visual CDs and 100 audio CDs without identification stickers and we also seized one single business permit number 2010/849 for purpose of identification your Honour .

P: Who signed the inventory?

W1: Senior Sergeant ___ your Honour Corporal __ and myself and the accused person J__ signed the inventory.

P: Was he forced to sign the inventory?

W1: No your Honour.

P: Let me- look at the single business {((handing the witness a paper))} permit confirm that this is it the one you took on that day.

W1: Yes your Honour it is the single business permit 2010 issued to K__ from municipal council of T__.

P: Who issues the stickers?

W1: The Kenya Copyright Board to genuine copyright owners.

P: By 'genuine' what do you mean?

W1: The person who owns copyright.

P: So it is not just anybody who can apply to Copyright Board?

W1: Each production house has a specific number indicated on the Copyright Board sticker.

P: And during inspection how do you identify genuine owners of copyright?

W1: The genuine copyright works are supposed to bear the stickers on top of the CD jackets each copyright work produced is supposed to have a distinct sticker. The number on the sticker identifies the production house. So it becomes very easy for inspectors to identify genuine ones in the market and the infringed copies produced from back doors.

P: Do you want to produce them as exhibit?

W1: Yes your Honour.

P: Had you come across the accused before?

W1: No your Honour.

P: That's all your Honour.

M: Mr. _____

C: Ningetaka uangalie hii permit utwambie kama iko kwa jina ya mshukiwa.
I would like you to look at this permit and tell us whether it is in the name of the suspect.

W1: No.

C: Anywhere in your statement did you write that the accused person was selling these works?

W1: He was [selling-]

C: [No, no, no.] I am asking where in particular did you record that was he offering these for sale? Did you record that?
W1: Yes
C: Where?
W1: Do I read it?
C: Yes where you recorded the accused was offering them for sale.
W1: Were inspecting identification stickers on copyright works in T__ Municipality. We found 1175 audio CDs and 100 CDs audio which were being offered for sale without ID [stickers-]
C: [Offered] for sale by who? Does it say the accused was offering the same for sale?
W1: There were people in the shop buying.
C: Who are these people who you are saying were buying?
W1: They were many people.=
C: =How many?
W1: About 4 or 5.
C: Are they there in the statement?
W1: It was not necessary to write that.
C: According to you it was not necessary. So did any of these people you found in the shop record a statement?
W1: They did not
C: Again you did not find it necessary. How much did you find the accused person selling the items at?
W1: There are some which were selling at Kenya shillings 250.
C: How many at 250?
W1: About 1175.
C: How about the others?
W1: At 100 shillings.
C: How many?
W1: About 100 of them.
C: When they are made what is the first point are these ID stickers put?
W1: Before they go out for sale from the production house.
C: Do you know when those CDs were made?
W1: Not unless we examine one by one.
C: When were they first offered to the public?
W1: I don't know.
C: When were they published?
W1: I don't know.
C: Where were they published?
W1: It is not relevant to me
C: So there are some things you chose to offer to the court and others that you don't? Something you wanted to hide, right?
W1: I am not hiding anything.
C: You have said you made an inventory of what you took from the shop?
W1: Yes.
C: And it is your evidence to the court that the inventory you have produced here was not made at the shop it was made at the police station.
W1: Yes your Honour.
C: It was made when the accused was in custody at the police station?
W1: Yes your Honour.
C: Was there a threat of violence or intimidation at the shop that made you not make the inventory at the place?
W1: It is a very small and congested place and it was not reasonable to start counting the these things at that place.
C: Did you mention in your statement that the shop where you found these things was small and congested and that is why you never took the inventory there?
W1: No.
C: Who are these people supposed to place the stickers?
W1: The owners
C: Where are the owners?
W1: I did not get them they are many.

M: Yes.
P: Can you confirm that the shop we are talking about is where you found these items.
W1: Yes your Honour.
P: And these works in court today is it possible perhaps to- would you be aware when the works were made?
W1: No unless you examine each one of them differently
P: Again confirm to the court that these stickers are issued by the Copyright Board to the owners of the work.
W1: Yes your Honour.
P: And it is the responsibility of the Kenya Copyright Board to protect copyright works.
W1: Yes your Honour.

W2: I am number ___ Corporal ___.
P: Where do you work?
W2: Currently at the Kenya Copyright Board as a Copyright Inspector.
P: Do you remember __2011?
W2: I do your Honour.
P: What happened on that day?
W2: On the said date myself and N____ and ___ and were within T__ Township where we had come to inspect copyright of videos your Honour.
P: Do you inspect videos only or what inspection were you doing at T__?
W2: Actually we were inspecting all the music shops. Our aim was to establish whether there were stickers on the CDs on sale. At the said time, we went to T__ bus stage and entered a shop which was selling musical videos. Then we introduced ourselves and there were people therein. We requested the attendant to enter in so we can carry out our inspection, we found the CDs that were on sale did not have ID stickers from the Kenya Copyright Board and we seized all the works without stickers.
P: What do you mean by all the works?
W2: In relation to the 1175 audio visual CDs and 100 audio CDs which we seized all did not have the ID stickers. We arrested the accused and took him to T___ Police Station and opened an inventory of the same. We also got a single business permit number 2____.
P: What else did you do?
W2: Nothing else your Honour.
P: You confirm that these CDs were found at the shop?
W2: Correct your Honour stall number136.
P: That's all your Honour.
M: Cross examination?
C: What are these?
W2: These are audio visual compact discs and audio CDs.
C: Would you be in a position to perhaps tell the court who the owners of these works are?
W2: Actually no.
C: Mr. O___ anywhere in your statement did you state that the accused person was offering for sale 1175 audio visual CDs and 100 audio CDs?
W2: I didn't.
C: Did you also indicate that you found some customers buying the said audio visual CDs, that you found customers in the shop buying?
W2: No I didn't.
C: Did you also indicate how much he was selling those audio visual CDs at?
W2: I didn't.
C: The single business permit is it in the name of the accused person?
W2: No your Honour.
C: It is in the name of another person. Can you read out the name on the business permit?
W2: K___ W__ your Honour.
C: The 1175 audio visual CDs and the 100 audio CDs where were they made?
W2: I don't know.
C: When were they first made available to the public?
W2: I don't know.
C: Who are the owners of these works?
W2: Several of them.
C: Did you mention them in your statement?
W2: I did not mention.
C: Did you mention how many they are?
W2: I can't remember.
C: How much was he selling those audio visual CDs?
W2: 100 shillings though not all of them.
C: And the others?
W2: The video ones about 250 shillings.
C: You mentioned that in your statement?
W2: I didn't.
C: Who is supposed to place the ID stickers?
W2: By the seller and the producer.
C: At what point or where?
W2: I don't know.
C: When?
W2: Before they are displayed or go for sale.
C: Mr. O___ anywhere do you say you found the accused person displaying for sale these audio visual CDs?
W2: Not indicated.
C: Did you also indicate in your statement that these stickers are supposed to be put before display for sale?

W2: No I did not.
D: Corporal O__ are there any restrictions ( )
W2: No restrictions to that.
P: You confirm that only the producer of the work can be issued with a copyright sticker.
W2: Yes your Honour.
P: What you were looking for on that day was the works that were being offered for sale without copyright?
W2: Correct your Honour.
P: And also confirm that all copyright works must have stickers from the Copyright Board of Kenya.
W2: Correct your Honour

DS1Case10

P: Eleza korti majina yako kamili.
Tell the court your full name.
W: Naitwa P___.
I am called P___.
P: Unafanya kazi gani?
What do you do?
W: Nafanya biashara.
I am a businessman.
P: Biashara gani na iko wapi?
Which business and where is it located?
W: Niko na duka pale K___ nauza spare parts za gari.
I have a shop at K___ where I sell vehicle spare parts.
P: K___ N__?
K__ at N__?
W: Ndio N__.
P: Unakumbuka mnamo tarehe thelathini na moja December mwaka uliopita?
Do you remember on 31st December last year?
W: Nakummbuka.
I remember.
P: Eleza korti nini ilifanyika.
Tell the court what happened.
W: Illikuwa tarehe thelathini na moja December mwaka uliopita. Nikatoka N__ nikielekea K__ kwa sababu nyumbani ni karibu hapo. Nikapigia marafiki wangu wawili simu, kwa sababu ilikuwa tunaruka mwaka mpya, nikawaambia tupatane M__ Petrol Station hapo kuna pub, hapo juu inaitwa M___ Pub.
It was on 31st December last year. I left N__ for K___ as my home is there. I called two friends, because we were ushering in the New Year, and I told them we meet at ___Petrol Station up there is a pub, it is upstairs and is called M__ Pub.
P: Na iko wapi?
And where is it?
W: Hapo K___.
There at K__.
P: Wewe ndiye uliwapigia simu mkutane M__ Pub mvukishe mwaka hapo. Niakina nani hawa ulipigia simu?
You are the one who cleed them you meet at M__ Pub you usher in the new year there. Who ar those you called?
W: Walikuwa D__ N__ na D__ K__. Tukaendelea kuburudika pale tumetulia pale juu kwa stairs tukaendelea hadi katika mwendo wa saa tano na nusu. Mahali nilikuwa mnimepark gari yangu [hapo-]
They were D___ and D__. We went on having fun upstairs until around eleven thirty. The place I had parked my car there-
P: [Gari] namba?
Vehicle number?
W: KBD __ Toyota Corolla, next there came another car a Subaru Legacy.
KBD __ aina ya Toyota Corolla, hapo kando kukakuja gari aina ya Subaru Legacy
P: Uliiona vizuri hiyo gari ya Subaru?
Did you see it clearly that Subaru car?
W: Niliona vizuri kwa sababu nilikuwa stairs. Hiyo gari ingine ilikuja next kwa yangu ikapakiwa. Watu wawili wakatokea wakafungua milango na wakakawia sana pale bila kuondoka. Vile walifungua milango hauwezi ona kama mtu anafanyia kitu gari yangu.
I saw it well because I was upstairs. That other car came next to mine and was parked. Two people got out and opened the doors and stayed there for a long time without leaving. The way they opened the doors one couldn't see if someone was doing anything to my car.
P: Ilikuwa kama saa ngapi?
It was around what time?
W: Saa tano unusu usiku. Wakatoka watu wawili ndani. Moja alishikilia gari yake juu kwa sababu ilikuwa kiwango hiki {((demonstrating))} ni ikama anaficha mwingine ako kando mlango imefunguliwa.

It was around eleven thirty at night. Two people got out of the car. One of them held the top of his car because it was like this level it is like he is shielding the one next to him with the doors open.

P: So hii mlango imefunguliwa open huyu mtu mmoja ametoka amejishika kwa gari yao hivi. So unamaanisha nini? Walikuwa wanafanya nini?
So this door is open and this one person has come out and is holding onto their car this way. So what do you mean? What were they doing?

W: Wakati ameshikilia yake amefungua mlango amefunika yangu, huyu mwingine wako nayeye anaendelea kufungua mlango ya gari yangu mlango. Inafunguliwa na huwezi ona mtu pale kama unapita.
When he is holding onto his and has the door open he is shielding the view of mine, the other one is opening the door to my car. It is being opened and somebody passing there can't see what is happening.

P: Kwa hivyo gari hii ya hawa watu imefunika yako na pia mmoja akasimama akishikilia gari yao ndio amfunikie mwingine afungue gari yako?
So the vehicle of this people is shielding yours and also one stood holding onto their car so as to shield the other to open the door of your car.

W: Ndio.
Yes.

P: Sasa walifungua?
Now did they open?

W: Mimi nikiwa pale juu, kwa sababu nilikuwa natazama hii gari yangu, nikaona imefunguliwa mlango. Nikawa sijaamini imefunguliwa nikauliza rafiki yangu tulikuwa tumekaa nayeye 'Gari yangu nimeona kama imefunguliwa'. Akaniambia ni kweli. Alafu mahali tulikuwa nikashuka moja kwa moja nikateremka. Kuteremka pale chini nikapata mtu mmoja anaendelea kugusa ignition gari igurume. Hapo ndio niliweza kumshika na kumwinua juu huyo mtu, kwa sababu sasa amechuchumaa hivi, nikamshika nikamwinua hivi {((demonstrating))}.
From up where I was, because I was watching my car, I saw the door was open. I did not believe it was open at first I asked my friend seated next to me, 'I see like the door of my car is open?'He told me it is true. Then from where we were I immediately went downstairs. On getting outside I found one person tampering with the ignition in an attempt to switch on the car. That is when I was able to get hold of him and I lifted him up, because he was squatting like this, I got hold of him and lifted him this way.

P: Ako hapa leo?
Is he here today?

W: Ndio.
Yes.

P: Ako wapi?
Where is he?=

W: =Ndiye {((pointing at the accused person))} yule pale.
He is that one there.

P: The first accused your Honour. Ulimwinua juu?
You lifted him up?

W: Nikamuinua juu nikishout. Kwa bahati polisi walikuwa partrol wakakuja wakatuuliza nini inaendelea pale. Nikawaambia kuna mtu alikuwa anavunja gari yangu pale nikawaonyesha hao watu. Sasa walikuwa wameshikwa wote sababu tulitoka na marafiki zangu na watu wengine kwa club. Mmoja alijaribu kutoroka lakini alishikwa na hao polisi.
I lifted him up while shouting. Luckily police who were on patrol came and asked us what was going on there. I told them somebody was breaking into my car and I showed them those people. By now all of them had been apprehended because I came out of the pub with my friends and other patrons. One of them tried to run away but he was apprehended by those police men.

P: Endelea.
Go on.

W: Wale wa patrol wakaita Flying Squad kutoka hapo M__wakaweza kuwashika na kuwapeleka M___ Police Station.
Those officers on patrol called the Flying Squad from M___ who arrested them and took them to M__ Police Station.

P: Wewe ulienda nao M__?
Did you go with them to M__?

W: Gari ilikuwa imevunjwa ignition haingeweza kuguruma. Nilienda nahao marafiki zangu kesho yake tukaandikisha statement. Alafu watu wa picha walikuja nakuchukua picha za ile gari.
The car's ignition had been damaged and it couldn't start. I went with my friends the following day and we recorded statements. Then police photographers came and took pictures of the vehicle.

P: Ulikuwa unajuana na hao watu mbeleni?
Did you know those people there before?

W: Sijawahi waona tena.
I have never seen them before.

P: Sasa nataka kukuonyesha picha za gari. {((Handing a photo to the witness))} Hii ndio gari yako?
Now I would like to show you pictures of a car. Is this your car?

W: Ee, ndio hii.

Ee, it is this one.

P: Sasa hebu angalia {((giving witness photo))} hii. Inaonyesha wapi?
Now look at this one. Where does it show?

W: Huku{((giving witness photo))}ni mbele.
This is the front part.

P: Na {((giving witness photo))} huku?
And here?

W: Nyuma.
Behind.

P: Side ya nyuma. Na {((giving witness photo))} huku?
The rear part. And here?

W: Ndani.
Inside.

P: Hapa ndani tunaona nini?
What do we see inside here?

W: Hii ni ignition wires zenya zilikuwa zimetoanishwa na zimekatwa.
These are the ignition wires which had been ripped off and cut.

P: Na hii gari ulinunua pesa ngapi?
And how much had you bought this car?

W: Nilinunua 600,000 thousand.
I bought it at 600,000 thousand.

P: Na uko na original log book yake?
And you have its original log book?

W: Niko na original.
I have the original.

P: Angalia kama ndio hii.
Check whether it is this one.

W: Ndio hii.
It is this one.

P: That's all you Honour.

M: Mr.___?

C: Unasema ulitoka N__ ukaja K__. Ulifika K__ saa ngapi?
You have said you came from N__ you came to K__. At what time did you get to K__?

W: Saa kumi na mbili na nusu.
At six thirty.

C: Na mlikaa hapo mpaka saa ngapi?
And you stayed there up to what time?

W: Mpaka saa tano na nusu.
Up to eleven thirty.

C: Na umesema hiyo masaa yote, masaa tano au sita, wewe unakunywa pombe, si ndio?
And you have said all those hours, five or six hours, you were drinking beer, isn't it?

W: Nilikuwa nakunywa laikini kwanza tuliingia pale tulipima nyama [tukaingia-]
I was drinking but at first we got there we ordered some meat, we got into-

C: [Mimi si] kuulizi mambo ya nyama. This is your testimony.Uliingia hapo saa kumi na mbili na mkakaa hapo mpaka saa tano na nusu mnakunywa pombe na marafiki zako. Si hivyo ndio umesema hapa?
I am not asking you about meat. This is your testimony. You got there at six and stayed there upto eleven o'clock drinking beer with your friends. Isn't that what you have said here?

W: Ndio.
Yes.

C: Na wakati ulitoka N___ pia huko ulikuwa pia umekunywa?
And when you came from N__ you had also drank?

W: Hapana, si kuwa ni mekunywa. [Hata-]
No, I had not drunk. Even-

C: [Kutoka] pahali hiyo club iko na pahali ulikuwa umepark gari ilikuwa umbali gani?
How far is it from the place that club is to the place you had parked?

W: Ni umbali wa kutoka hapa hadi ile korti ingine.
It the distance from here to that that other court.

C: Wakati uliweka gari yako pale kulikuwa na gari ingine?
When you parked your car was there another car?

W: Kulikuwa na gari zingine.
There were other cars.

C: Zilikuwa kiasi cha gari kama?
They were like how many cars?

W: Kumi.
Ten.

C: Kwa hivyo ilikuwa ni kiwanja ya gari- parking?
So it was a parking lot- parking?
W: Ndio.
Yes.
C: Hii gari unasema ilikuwa Subaru, nambari yake ilikuwa ni gani?
The car you were saying was a Subaru, what was its registration number?
W: Nambari yake saa hi siikumbuki.
I do not remember its registration number now.
C: Walikuwa watu wangapi?
How many people were there?
W: Watu wawili.
Two people.
C: Unakumbuka vile uliandikisa statement yako? Hii {((giving witness paper))} ni statement yako?
Do you remember how you recorded your statement? Is this your statement?
W: Ndio.
Yes.
C: Umeeleza mahakama wakati ulienda pale ulipata mshtakiwa akiwa amefungua gari anainterfere na ignition power, si ndio?
You have explained to the court when you went there the accused had opened the car and was interfering with the ignition power, isn't it?
W: Nimesema nilikuwa nimepark gari pale, gari ingine ikakuja ikapakiwa karibu [na yangu-]
I have said I had parked my car there, another car and was parked near mine-
C: [Nakuuliza,] ulipata mshatakiwa wapi?
I am asking you where was the accused?
W: Nilimpata pale kwa gari yangu akijaribu kuvurumisha.
I found him at my car trying to switch it on.
C: Pale kwa gari ni wapi? Alikuwa ndani ya gari?
Where is there at the car? Was he inside the car?
W: Alikuwa amechuchumaa sasa anajaribu kuvurumisha.
He was squatting now he was trying to switch on the car.
C: Swali nakuliza- alikuwa ndani ama alikuwa nje ya gari?
The question I am asking- was he inside or he was outside the car?
W: Alikuwa ndani ya gari kwa sababu half mwili ilikuwa ndani ya gari.
He was inside because half the body was inside the car.
C: Kwa hivyo unasema ulipata mshukiwa ndani ya gari yako?
So you are saying you found the accused inside your car?
W: Ndio.
Yes.
C: Unasema ulimuinua juu si ndio?
You are saying you lifted him up, isn't that so?
W: Ndio.
Yes.
C: Uliingia kwa gari ukamuinua juu. Hiyo iliwezekanaje Bw.__ venye ulikuwa unaoyesha hapa?
You got inside the car and lifted him up. How was that possible Mr.__ the way you were demonstrating here?
W: Sikumuinua ndani ya gari- nivile- ni hapo nje- unajua [alitoka-]
I did not lift him up in the car- it is that- it is out there- you know-
C: [Can we] be clear. Mshukiwa unasema ulimpata ndani ama inje ya gari? It can't be both.
You are saying you found the suspect inside or outside the car?
W: Alikuwa ndani [wakati-]
He was inside when-
C: [Haya,] your testimony is ulipata mshukiwa ndani ya gari yako. Kunayo pahali yoyote kwa statement yako umeandika ulimpata mshukiwa ndani ya gari yako?
Okay, your testimony is you found the suspect inside your car. Is there anywhere in your statement you have stated you found the suspect inside your car?
W: Ndio, nilielewa nilimpata ndani ya gari.
Yes, I understood I found him inside the car.
C: Lakini hapa kwa statement hakuna hiyo maelezo?
But here in the statement there is no that explanation.
W: ….
C: Anywhere?
W: Hakuna.
There isn't.
C: Pale kwa parking kulikuwa na watchman?
Is there a watchman at the parking lot?
W: Sijui kwa sababu sikupata mtu. Mimi nilikuja tu nikapark gari yangu.

I don't know because I did not find anybody. I just came and parked my car.

C: Wakati huo apart from hiyo gari unasema ya Subaru kunayo gari ingine illikuja kwa sababu space ile ilikuwa kubwa unweza weka hapa au pale ilikuwa kiwanja kubwa?
At that time, apart from that Subaru vehicle you are saying, is there any other vehicle that came because the space there is big you can park here or there, the parking lot is big?

W: Mimi sikuona gari ingine.
I did not see another vehicle.

C: Hukuona gari ingine?
You did not see another vehicle?

W: Sikuona.
I did not see.

C: Umesema ulikuwa na nani?
You have said you were with who?

W: Nilikuwa na watu wawili.
I was with two people.

C: Nani na nani?
Who and who?

W: Tulikuwa- wakati tulishuka tulikuwa na D__ na S___ tulikuwa watu wengi pale.
We were- when we came down the stairs we wer with D__ and S__ we were many people.

C: Umesema mshukiwa a likuwa aninterfere na ignition system. Alikuwa anainterfere nayo namna gani?
You have said the accused was interfering with the ignition system. How was he interfering with it?

W: Alikuwa amekata [wire za-]
He had cut the wires of-

C: [Alikuwa] amezikata. Alikata na nini? Nikifaa gani ulimpata nayo ya kukata wire za gari?
He had cut them. He cut using what? What tool did you find him with for cutting motor vehicle wires?

W: Sikumpata nayo labda alitupa.
I did not get him with it maybe he threw it away.

C: Alitupa wapi? Si umesema wewe ndio ulimshika ukamuinuwa juu, si ndio?
Where did he throw it? Have you not said you are the one who got hold of him and lifted him up, isn't it?

W: Ndio.
Yes.

C: Lakini huna chohote cha kuonyesha mshukiwa ndiye alikata ignition wires?
But you have nothing to show the suspect is the one who cut the ignition wires?

W: Nilimpata [hapo-]
I found him there-

C: [Gari] ilikuwa imefunguliwa mlango?
The car's door was open?

W: Ndio.
Yes.

C: Naulikuwa na umefunga?
And had you locked it?

W: Ndio.
Yes.

C: Nani na nani ako na funguo za gari yako?
Who and who has the keys to your car?

W: Ni mimi.
I am the one.

C: Nawalifungua na nini? Uliwapata na funguo ama kifaa kingine?
And what did they open with? Did you find them with a key or another device?

W: [Unajua-]
You know-

C: [Alarm] ya gari yako ndio ilikuita? Si gari iko na alarm?
Is the alarm of your car the one that alerted you? Does not your car have an alarm?

W: Iko nayo.
It has.

C: Sasa hebu tueleze, wewe ndio uliwashika hapo, hakuna funguo, hakuna kitu ya kukata wire, hakuna chochote chakuonyesha hawa walifungua gari yako, si ndio?
Now explain to us, you are the one who apprehended them there, no key no wire cutting implement, nothing at all to show these ones opened your car, isn't it?

W: Hao ndio wezi. Wao wanajua vile wanafungua gari za watu.
They are the thieves. They know how they open other people's cars.

C: Hivyo ndivyo wewe unataka tuamini, si ndio?
That is what you want us to believe, isn't it?

W: Hiyo ni ukweli.
That is the truth.

C: With no evidence to support it. That's all your Honour.

DS1Case11

P: Now can you tell the court your full names.
W: I am E___.
P: E__?
W: Yes
P: Unaishi wapi?
Where do you stay?
W: I stay at R__.
P: Unafanya aje huko R___?
What do you do at R___?
W: I am a public servant
P: Working with?
W: Ministry of ___.
W: And with regard to the case before the court you can recall the 39th of November the year 2010?
W: Yes
P: Yes, can you tell this court what happened around ten thirty ten am.
W: I had reported on duty as usual. I was to proceed while on m road I received an SMS indicating that I had received some 6,730 from one M___ and [immediately-]
P: [Go slowly.] Before you received that [message =
W: [yes
P: =did you do any transaction with Mpesa?
W: Yeah, I had reported to the office and at around 10, I loaded ten thousand shillings onto my phone. Then boarded the GK vehicle and headed for M__ while on M__ road that is the time I received this sms, indicating that I had received that sum.
P: The message was indicating that you had received how much?
W: Six thousand seven hundred and thirty
P: Now, this message was from which number? Can you recall?
W: Yeah, the number is 0720___
M: The message indicated you had received which amount?
W: Six thousand seven hundred and thirty
P: It was from which number?
W: 0720___
P: With the name?
W: The name which was sent is from M___
P: Your Honour the second name is N__
M: Yes.
W: After receiving the message I read I didn't know the name.
P: Yes
W: Immediately I received a call on the other end there was a voice that sounded like a lady sobbing requesting- the caller was requesting that the money was meant for a patient in hospital I send back the [money I-]
P: [Slowly.] That call was from which number?
W: It was now from this number 0720___.
P: So the same number that sent you the money?
W: Yes.
P: Yes.
W: So- ee::: then you know now the lady was crying, I decided- I was with my colleagues. What I did, I decided to wave back the money less the transaction charge. I wired back six thousand six hundred and thirty immediately.
P: Six..?
W: Six thousand six hundred and thirty I wired back.
P: Yes.
W: So immediately I waved back, that is the time I found it was a fraud because when I looked at the balance in any mobile phone , I realized that there is no money. I had been sent on empty message. It was not- you know Mpesa tell you the balance after a transaction- so I saw it was a fraud.
P: And then?
W: I called S____ customer care immediately who advised me to report to the nearest police station.
P: Yes
W: But because I was on a safari, I proceeded own to M__ and after the official assignment, the following week I took the initiative and reported at P____ Police Station.
P: Now, when ee::: you checked at your [balance=

W: [Umh
P: =did you call that number again?
W: Yes, I called that number first of all with my S___ number which they had allegedly put the money. On hearing it is me akakata simu
s/he disconnected the call.
My phone is twin SIM so I called again on A___. On leaving it's me again it was cut them the phone switched.
P: Now, after returning from your safari, you said you went to which station?
W: P___ Police Station.
P: Yes, how did P___ Police Station help you?
W: They recorded my statement. After a while they told me they had managed to trace the number 0720___ and the case was actually in court.
P: So were- did they make an arrest?
W: Yeah, they made an arrest.
P: Did you see the person who was arrested in regard to your report? Did you see that person who was arrested by the police?
W: Yeah, yeah. In remember sometimes back I went to P__ Police station.
P: Yes
W: And they had arrested someone although where he was I couldn't manage to see his face well.
P: So you cannot be able to identify him?
W: Yeah.
P: And to date has your money been returned back to you?
W: No, the money has not been returned.
P: So you lost how much?
W: I lost six thousand six hundred and thirty.
P: That's all your Honour.
M: Mr. ___ last time you said you didn't have statements. Was it from this witness?
C: Yes your Honour, but we got the statements
M: You got them?
C: Yes , thank you your Honour.
M: Proceed.
C: Mr. ___
W: Yes.
C: I have a few direct questions to ask you concerning your testimony. Now, you were in court when this matter was called, yes?
W: When? Today?
C: Yes, today you were in court when this matter was called?
W: Yeah
C: When the accused went to the dock?
W: Yeah
C: You heard the magistrate ask him which language we can use?
W: Yeah
C: You heard
W: Yeah I heard
C: You heard his voice
W: Yeah
C: Is that the voice that was calling you? Did he speak like a woman?
W: No
C: He did not. And did his voice sound like the one of the person you have said called you on __ saying she sent you money by mistake?
W: You know at that [time he-]
C: [It is a] simple yes or no question. Did the voice you heard from the accused today sound like that of the woman you spoke to on ___?
W: No, [but-]
C: [No.] Now, Mr.__ do you have evidence, any documentary evidence pertaining to what you said that on this day you loaded your phone with ten thousand shillings?
W: That is something we can get from [S____-]
C: [Mr. ____]
W: Yes
C: Listen to me. Do you have any documentary evidence to show that you sent any money, the six thousand six hundred to anybody?
W: As for now I don't have
C: You don't have. Do you have any evidence, documentary, at this ( ) that you ever received the six thousand from anybody?
W: I have the SMS [report-]
C: [No.] Mr. ___ I want us to go very fast and not waste time. Do you have any documentary evidence to show you ever received six thousand seven hundred and thirty? Any document?

W: I received it. I mean I have the [message-]
C: [Do you] have any documentary evidence to indicate that you received an SMS indicating that somebody had forwarded to you six thousand seven hundred and thirty?
W: No, I don't have [it in-]
C: [Very well,] you don't have. When did you realize something was not right?
W: Immediately
C: Immediately?
W: When I wired the six thousand six hundred and thirty, the message I got from Mpesa in my phone showed I had a balance less than what I had. That is when I discovered it was fraud and then when I called S___ they confirmed.
C: When you came back did you report?
W: Yeah, I reported to the [police-]
C: [Did you] report to S___?
W: S____- I reported the first thing- Immediately the same day, the same hour Monday 29th and they confirmed [to me that-]
C: [Can you listen] to my questions Mr.___ and stop adding unnecessary things. When you came back from M__ did you make a formal report to S___?
W: They had told [me to-]
C: [Did you] make a formal report? Yes or No.
W: No
C: It therefore follows that you never went to get to know who the registered owner of this mobile number is?
W: But S___ does not give you the number unless you are CID.
C: So you never went to find out?
W: I went there to find out and I was referred to the CID.
C: You reported to the CID?
W: Yes.
C: And after you- when you reported is if the same day you recorded your statement?
W: Yeah.
C: Same day?
W: Yeah.
C: Did you ever go back to them?
W: No.
C: You never?
W: But they investigated the matter.
C: They investigated the matter. It is your testimony that you spoke to a lady on ___ and that the Mpesa confirmation message informed you the person you sent money to was a lady- M___. After investigations, did the CID ever tell you whether they arrested M__?
W: The told me they had arrested the [person who-]
C: [Listen.] Did you ever get to know whether M__, the one you said sent you money and you sent it back to her, was she ever arrested?
W: What I know is that the bearer of the phone [was-]
C: [I am] asking you a simple question. Don't add anything. Yes or no whether M__ was arrested. Yes or no?
W: No [but-]
C: [That's] all your Honour
M: Re-cross
P: E::: when the police informed you they had arrested someone, did you know the connection between him and the lady you had a conversation with?
W: Yes.
P: Yes.
W: That is the person who was caught with the handset that had that [SIM card-]
C: [Your Honour,] will I be able to cross examine on that, because he is going out of my cross-examination?
P: Actually I am ee::: examining on a point the witness- was raised by counsel.
M: Did this arise?
C: No
P: He asked about somebody being arrested my question being the person who was arrested is a man. So I want to establish the connection-
M: You can't do that. You should look ahead in your examination because the defense can't raise issues that will incriminate their client. So the question of a connection between the accused and any other person did not arise in your examination or in the cross- examination. So you can't introduce it now.

P: Introduce yourself.
W: I swear by the almighty God that the evidence I shall give before this court is truth, the whole truth so help me God. My name is A__ I am a document forensic examiner attached to CID headquarters. I have done this work for ten years and I have a masters degree in___ form L___ University in the UK your Honour.
P: Yes.
W: Your Honour, on 6th February____, I received a request
M: Yes.
W: From PC S___ based at C __ Police Station here in Nairobi,
M: Yes.
W: To subject to examination some three questioned documents
M: Yes.
W: These were two bank account opening forms from___ Bank,
M: Yes.
W: They had handwritten markings on them your Honour.
M: Yes.
W: The third none was a withdrawal form from the same bank also with handwritten markings.
M: Yes.
W: Your Honor I also received at the same time a set of documents with specimen handwriting of one Mr. ___.
M: Yes.
W: We marked document as__ and __for the document with specimen handwriting but the court has not yet marked them your Honour.
P: Your Honour, we wish to mark the same, the account opening forms as __and the withdrawal forms as___ The specimen document as___.
M: Yes.
W: Your Honour I examined the set of documents marked ____and now marked __to___ for the court of 9thFebruary 2010. I examined by the accompanying letter from PC___.
M: Yes.
W: Based on my examination of the handwriting style and impression made on the paper. I concluded that the set of documents could have been authored by the same person. I prepared my report and dated it the same date 9th February 2010 and I wish to produce it as evidence before this honorable court. And that's all from me.
M: Mr.__
C: Yes Your Honour. Just a couple of questions for you Mr. A__. Ee::: Mr. A__ I just want you to clarify- look at the first set of documents ee::: account opening forms. They are in the name of?
W: Mr. _____
C: Please confirm that the same name is in the withdrawal form.
W: Correct.
C: And in these documents, you were to verify the handwriting and?
W: Handwriting only.
C: Handwriting only?
W: Yes.
C: Thank you. Now, Mr. A__ look at the three documents, do they have- each one of them has a signature, correct?
W: Correct.
C: What about the specimen handwriting documents you were given, do they have a signature?
W: No.
C: Would it be possible to tell whether the signatures on the three documents, account opening forms, and the withdrawal form are by the same person?
W: If I examined them- we examine signatures. But I was not requested to examine the signatures.
C: It would be possible. And in a case where the accused is not denying opening an account or filling out a withdrawal form, but denies signing the withdrawal form it would surely make sense to examine the signatures and not handwriting, isn't it?
W: I had no such request.
C: You had no such request even though it is the sensible thing to do and in fact, the investigating officer Mr. S___ never even supplied you with specimen signatures of Mr. ___, correct?
W: Correct.
C: Thank you. That's all for this witness your Honour.

Appendix 2: Data Set 2 (DS2) - Trials with Pro Se Litigants
DS2Case01
P: Eleza korti majina yako.
Tell the court your names.

W1: Naitwa W___.
My name is W____.
M: Who?
P: Ongeza sauti.
Speak up.
Unaitwa?
You are called?
W1: Naitwa W____.
Am called W___.
P: Unaishi wapi?
Where do you live?
W1: Naishi K____ estate
I live at K____ estate
P: Na unafanya kazi gani?
And what work do you do?
W1: Sina kazi.
I don't have work.
P: Unakaa tu?
You just stay like that?
W1: Ndio.
Yes.
P: Unaishi na nani?
Whom do you live with?
W1: Naishi na wazazi wangu.
I stay with my parents
P: Hapo K____ estate?
There at K____ estate?
W1: Ndio.
Yes.
P: Eleza korti- wewe ndio mlalamishi kwa hii kesi?
Tell the court- are you the complainant in this case?
W1: Ndio.
Yes.
P: Eleza korti nini kilifanyika tarehe ____May mwaka huu mwendo wa saa mbili usiku.
Tell the court what happened on ____ May this year around 8 pm.
W1: Kabla sijaeleza, nataka kusema huyu kijana ameniomba msamaha kwa kunigonga na ninataka kumsamehe. [Tunatoka-]
Before I explain, I want to say that this young man has asked for forgiveness for hitting me and I would like to forgive him. We come-
P:
[Wewe jibu] maswali ile ninakuuliza. Unasikia?
You answer the questions that I ask you. Do you hear?
W1: Ndio.
Yes.
P: Eleza korti ulikuwa wapi tarehe hiyo mwendo wa saa mbili.
Tell the court where you were on that date at around 8pm.
W1: Tulikuwa tumeenda hapo _____ kuona game kwa club.
We had gone there _____ to watch a game at a club.
P: Mlikuwa mmeenda na nani?
You had gone with whom?
W1: Nilienda peke yangu lakini sasa kulikuwa na watu mob wenye walikuja kuona game.
I went alone but now there were many people who had come to watch the match.
P: Na ilikuwa wapi- ilikuwa club gani?
And where was it- it was which club?
W1: Club ingine inaitwa _____ iko hapo_____.
Another club called _____ there at _____.
P: Wakati unasema club unamaanisha bar pombe inauzwa huko?
When you say a club you mean a bar beer is sold there?
W1: Ee kunauzwa pombe lakini mimi nilikuwa naenda tu kucheki game.
Ee beer is sold but I was going just to watch the match.
P: Alafu nini kilifanyika?
Then what happened?
W1: Sasa kuingia nikaona O_____ alikuwa ameketi karibu na dame mwingine. Nikaenda kuwasalimia.
Now getting in I saw O_____ seated near another lady. I went to greet them.
P: O_____ ni nani?
Who is O_____

W1: Ndio yule. {((pointing at the accused))}
He is that one.
P: Kwa hivyo ni mtu mlikuwa mnajuana hapo mbele ni?
So is it somebody you knew each other there before?
W1: Eeh tunajuana.
Yes we know each other.
P: Mnajuana kivipi?
How do you know each other?
W1: Ni wa hapo mtaani, tunaonananga hapo.
He is from the same estate, we usually see each other there.
P: Na huyo mwanamke unasema ulimkuta nayeye kwa bar, ulikuwa unamjua?
And the woman you are saying you found him with at the bar did you know her?
W1: Ee hata yeye ni wa hapo mtaa tu.
Ee even her she is from the same area.
P: Anaitwa nani?
What's her name?
W1: Anaitwa M_____.
She is called M_____.
P: Wote wawili uliwapata wapi? Nje au ndani ya club?
Both of them where did you find them? Outside or inside the club?
W1: Walikuwa ndani wamekaa pale mbele karibu na counter.
They were in the club seated in front near the counter.
P: Haya ukawasalimia. Alafu?
Okay, you greated them. Then?
W1: Alafu nikakaa hapo nikaanza kubonga na huyo dame. Alafu ndio O____ akakuja analeta fujo eti kwani ni maneno gani tunaongea hiyo muda yote.
Then I sat there and started talking to that lady. Then that's when O_____ came and brought fracas, that what were we talking about for all that time?
P: Unasema alikuja. Kwani alikuwa ametoka akawaacha?
You are saying he came. Is it he had gone out and left the two of you?
W1: Hapana hakuwa ametoka. Ni vile yaani mimi nilikaa hii side hivi {((demonstrating))} huyo dame hapa na O____ alikuwa upande ile. Sasa dame ndiye alikuwa katikati yetu. Sasa O_____ alisimama kutoka ile side yake akacome sasa hii side mahali niko. Mimi nikasimama akanishika shati
No he had not left. It is that I sat on this side and that girl here and O____ was that side. Now the girl is the one who was between us. Now O____ stood up from the side he was sitting and came to this side where I was. I stood up and the he grabbed me by my shirt.
P: Kwa hivyo ugomvi ulikuwa alisema unataka kumnyang'anya msichana yake?
So the quarrel was he said you wanted to snatch his girl from him?
W1: Hivyo ndivyo yeye alifikiria.
That is what he thought.
P: Wewe ulikuwa unafaya nini?
What were you doing?
W1: Mimi tulikuwa tunaongea tu coz ni mtu tunajuana. Tulikuwa tunaongea tu vitu casual
Me we were just chatting because it is somebody we are familiar. We were having casual conversation.
P: Sasa alipokushika shati ukafanya nini?
Now when he grabbed your shirt what did you do?
W1: Sasa tuli struggle kidogo nikijaribu kujitoa ndipo alichukua chupa akanigonga hapa {((touching a spot on his head))}.
Now we struggled a bit as I tried to free myself that when he took a bottle and hit me here.
P: Akakugonga wapi?
He hit you where?
W1: Alinigonga hapa kwa {((touching a spot on his head))} kichwa na hapa karibu na macho.
He hit me on here the head and here near the eye.
P: Hiyo chupa alikugonga nayo alitoa wapi?
The bottle he hit you with where did he get it from?
W1: Alichukua yenye msichana alikuwa anatumia. Chupa ya soda.
He took the one the girl was drinking from. A bottle of soda
P: Soda gani?
Which soda?
W1: Fanta.
P: Ilikuwa na soda ama empty?
Did it have a soda or was it empty?
W1: Ilikuwa na soda kama nusu.
It was about half full.
P: Alafu?
Then?

W1: Sasa aliponigonga mimi nilianguka chini, hata nikafaint. Ndio askari mwingine anaitwa B____ na rafiki yangu N___ [waka-]
Now when he hit me I fell down, even I fainted. That's when another police officer called ___ and my friend W___ they-

P:
[Ngonja.] Ulifaint. Ulikuwa wapi uliopata fahamu?
Wait. You fainted. Where were you as you regained consciousness?

W1: Nilijipata nimetolewa hapo nje ya club.
I found I had been taken outside the club.

P: Umesema mambo ya askari.Nani aliita askari?
You have said of a policeman. Who called the policeman?

W1: Hakuitwa. Alikuwa hapo kwa club. Sasa wakati vurugu ilianza watu wame crowd hapo hata yeye alikuja. Na kuna rafiki yangu mwingine anaitwa_____ hata yeye alikuwa hapo kwa club. Sasa venye niligongwa nikaanguka, wao ndio walitoa hapo nje, wakatafuta taxi wakanipeleka hospitali.
He wasn't called. He was there in the club. Now when the fracas started, people crowded there he came. And there is also another friend of mine called_____. Even him he was there in the club. Now when I was hit and I fell they are the ones who took me outside, they looked for a taxi and took me to hospital.

P: Walikupeleka hospitali wapi?
Where did they take you to hospital?

W1: Walinipeleka clinic hapo_____ alafu tukaambia twende _____kwa sababu nilitakiwa kushonwa.
They took me to a clinic there at _____ then we were referred to _____ as I needed stitches.

P: Mlienda huko?
You went there?

W1: Ndio tulienda na nikashonwa alafu nikaenda home.
Yes we went and I was stitched and then I went home.

P: Mwenye alikugonga alikuwa wapi wakati huo?
The one who hit you, where was he at that time?

W1: Alitoroka. Wakati alinigonga akaona nimeanguka alitoroka.
He ran away. When he hit me and saw I had fallen he run away.

P: Na chupa yenye alikugonga nayo uliipata?
The bottle he hit you with did you get it?

W1: Hapana. Hiyo sijui ilienda wapi?
No. I don't know where it went.

P: Na wakati ulienda hospitali_____ ulipewa barua?
And when you went to _____ hospital, were you given a letter?

W1: Ndio.
Yes.

P: Na hiyo barua ndio {((giving a paper to the witness))} hii? Angalia vizuri.
And is this is the letter? Look at it well.

W1: Ndio hii.
It is this one.

P: Ulifanya nini ingine?
What else did you do?

W1: Nilipewa P3 nikapelekea daktari akanijazia arafu nikairudisha station.
I was given the P3 form and I took to the doctor, he filled it and then I returned it to the station

P: Kwa hivyo ulipiga ripoti kwa polisi?
So you made a report to the police?

W1: Ndio.
Yes.

P: Usiku huo ama?
That night or?

W1: Hapana, siku hio nyingine
No. on the following day

P: Your Honour we wish to mark the treatment notes as ____ and the P3 form as _____ we also wish to produce the same as exhibit__ for the treatments notes and exhibit __ for the P3. Sasa yuko mbele ya korti mwenye alikugonga?
Now is he before the court the one who hit you?

W1: Ndio.
Yes.

P: Ako wapi? Onyesha.
Where is he? Point.

W1: Ndiye Yule ameketi pale. {((Pointing at the accused))}
He is the one seated there.

P: Umesema kijana alikugonga akatoroka. Nasasa yuko kortini. Alishikwa aje?
You have said the young man hit you and ran away. And now he is in court. How was he apprehended?

W1: Alijificha kwa muda mrefu. Hakuwa anaonekana hapo mtaani. Huyo askari alinisaidia kumtafuta na hata tulienda mahali anaishi mara kadhaa. Alafu baadaye, niliambiwa na vijana wengine mahali anaishi ndio nikaambia askari wakaenda kumshika.
He hid himself for a long time. He was not being seen at the estate. That policeman helped me to look for him and we even went to the place he lived several times. Then later, I was told by some young men where he was living and that's when I informed the police and they went and arrested him.

P: That all your Honour. Your Honour I noted that the complainant earlier expressed a wish to withdraw this matter. However, this application should have been made earlier. They were both called earlier and asked whether they are ready to proceed with the hearing and they said 'yes' your Honour. I object to that application your Honour as it is an ambush to the court. This is a serious charge that he is facing. And your Honour, the accused badly injured the complainant and even left permanent mark on his face. These are very serious charges your Honour and I wish to proceed so that the court can finally make a decision on the matter. I wish to object to that application your Honour.

M: Uliza maswali.
Ask questions.

Ac: W_____, nataka uanze na kueleza korti vile ulikuwa unataka kusema wakati [ulianza ku-]
W_____, I would like you to start by telling the court what you wanted to say when you started to-

M: [Umesikia] vile prosecutor amesema?
Did you hear what the prosecutor said?

Ac: ….

M: Umesikia?
Did you hear?

Ac: Sikuelelwa vizuri.
I didn't understand properly.

M: Amesema amepiga kuondolewa kwa mastaka vile mwenzako anajaribu kufanya. Kosa lililo mbele ya mahakam ni la uzito. Inasema uliumiza mwenzako na hata umempatia alama kwa uso. Hamuezi kutumia mahakama vile mnataka. Ombi hilo la Prosecutor nimelikubali na case itaendelea. Si mliitwa hapa asubuhi?
He has said he is objecting to the withdrawal of the charges the way your partner is trying to do. The charge before the court is weighty. It says you hurt your partner and gave him a permanent scar on the face. You can't use the court the way you like. That request by the prosecutor I have accepted it and the hearing is going on. Weren't both of you called out in the morning?

Ac: Tuliitwa.
We were called.

M: Uliulizwa kama uko tayari kuendelea na kesi ukasema uko tayari. Kesi inaendelea. Kwa hivyo uliza maswali kwa mwenye kukushtaki.
You are asked whether you are ready to proceed with the case you said you are ready. The hearing continues. So ask questions to the one who has sued you.

Ac: Ee::: W_____ hebu eleza korti si tunajuana?
Ee::: W___ can you tell the court do we not know each other?

W1: Ndio.
Yes.

Ac: Unaposema nilikugionga kwa club, si ni uongo?
When you say I hit you in the club isn't that a lie?

W1: Sio uongo, ulinigonga.
It is not a lie, you hit me

Ac: Ilikuwa hivi, tulikuwa tunapigana [alafu-]
It was like this, we were fighting then-

W1: [Hapana,] hatukupigana. Wewe ndio ulileta shida ukanigonga na chupa.
No we didn't fight. You are the one who started bringing problems then you hit me with a bottle.

Ac: Your Honour ilikuwa hivi, nilikuwa naenda kuona game kwa hiyo club. Sisi huwa tunaenda [hapo-]
Your Honour, it was like this, I had gone to watch a match in that club. We usually go there.

M: [Huu si] wakati wakueleza. Wakati wa defence yako haujafika. Uliza huyu maswali sasa. Wakati wako wakuelezea ukifika, nitakwambia.
This is not the time to explain. The time for defence has not yet come. Ask this one questions now. When the time for you to explain comes, we will I inform you.

Ac: Unasema ulinipata nje au ndani ya club?
You are saying you found me inside or outside the club?

W1: Ulikuwa ndani. Ulikuwa umeketi huko na W_____.
You were inside. You were seated there with W_____.

Ac: Kwa nini unandanganya korti? Mimi nilikuwa hapo nje mahali watu hukaa kwa sababu game ilikuwa haijaanza.
Why are you lying to the court? I was outside where people sit because even the game had not started.

W1: Mimi niliwapata ndani ya club.
I found you inside the club.

Ac: Hata ukiuliza hao jamaa hufanya hapo watasema nilikuwa nje ndipo tulipigana
Even if you ask the people who were there they will say I was outside and that where we fought.
W1: Hata wao waliona kile kilitendeka. Nilitolewa nje kama nimefaint wakati ulinigonga
Even they saw what happened. I was taken outside having fainted after you hit me.
Ac: Kama ulinipata ndani ni watu wengine gani walikuwa huko?
If you found me outside which other people were there?
W1: Watu walikuwa wengi.
There were many people
Ac: Hakuna mtu hujui hapo. Si wote ni wa mtaa?
There is no body you don't know there. Are they not all from the estate?
W1: Wewe ndio niliona na B_____ na J_____.
You are the one I saw with B_____ and J_____.
Ac: D_____ na T_____ uliwaona?
Did you see D____ and T____?
W1: Hapana siku [waona-]
No I didn't see them.
Ac: [Si] unaona uongo yako? Haukuwaoana na ulikuwa hapo?
Do you not see your lies? You didn't see them and you were there?
W1: Mimi sikuenda kuhesabu kila mtu mwenye alikuwa kwa club. Kama walikuwa ama hawakuwa mimi sijui.
I didn't go to count all the people who were in the club. If were there or not I don't know.
Ac: Hao jamaa waliona vizuri sana, tukipigana wewe ndio ulianza kunichokoza na hata wakija hapa watasema.
Those fellows saw very well as we fought and you are the one who started it all. If they come here they will say.
W1: Mimi sikukuchokoza. Niliongea tu na M___. Ni vibaya kuongea na M___ na ni mtu tunajuana? Eeh? Ni vibaya?
I didn't start the fight. I was just talking to M____. Is it bad to talk to M___ and it is somebody we know each other? Eeh? Is it bad?
M: Sio wewe unauliza maswali. Wewe ajibu maswali yake.
You aren't the one asking question. You answer his questions.
Ac: Mimi nataka hao jamaa, D____ na T____ waitwe hapa na watasema unandanganya.
I want those fellows, D___ and T____ to be called here and they will say you are lying.
M: Kama unataka wawe mashahidi wako hio sawa. Kuna vile kesi inaendelea. Leo tunasikiza mashahidi wa Prosecutor na unawauliza maswali. Korti ikiona unamakosa utaambiwa ujitetee na kama una mashahidi utawaita siku hiyo. Unaelewa?
If you want them to be your witnesses it's fine. There is away a case proceeds. Today we are listening to the Prosecutor's witnesses and you are asking them questions. If the court finds that you have a case to answer you will be told to defend yourself and if you have any witnesses you will call them on that day. Do you understand?
Ac: Ndio.
Yes.
M: Uko na maswali ingine?
Do you have any question?
Ac: Hapana.
No.

P: Eleza korti majina yako.
Tell the court your names.
W2: Naitwa N____.
I am called N_____.
M: What?
P: Ongeza sauti. Majina yako?
Speak loudly. Your names?
W2: Naitwa N_____.
I am called ____.
P: Unaishi wapi?
Where do you live?
W2: Naishi K_____.
I stay at K_____.
P: Na unafanya kazi gani?
What work do you do?
W2: Mimi ni kinyozi.
I am a barber.
P: Unanyolea watu wapi?
Where do you shave people?
W2: Hapo hapo tu mtaani K_____.
Just there at the estate K_____.
P: Sawa. Wewe ni shahidi kwa hii kesi na nataka ueleze mahakama tarehe ___mwezi wa May mwaka huu, kama mwendo wa saa mbili usiku ulikuwa wapi?

Fine. You are a witness in this case and I want you to explain to the court date _____of May this year, at about 8 pm where were you?

W2: Ee::: siku hiyo tulienda kuona game kwa bar moja [hapo-]
Ee::: on that day day, we went to watch a match at one bar-

P: [Mkiwa] na nani?
With whom?

W2: Tulikuwa na W_____ na hata O_____.
We were with W___ and even O___.

P: Mliendanisha pamoja kwa bar?
You accompanied each other to the bar?

W2: Hapana.
No.

P: Umesema mlikuwa na wao. Huyu {((pointing))} mlalamishi na mshtakiwa.
You've said you were together with them. This one the complainant and the accused.

W2: Ninamaanisha hata hao walikuwa kwa hio bar kuwatch game. Kulikuwa na watu wengi.
I mean even them they were in that bar to watch the game. We were many people.

P: Wakati wewe ulifika walikuwa hapo ama walikupata?
When you got there they were there or they found you?

W2: O_____ alikuwa hapo.
O____ was there.

P: Ndani ya bar?
Inside the bar?

W2: Ndio.
Yes.

P: Alikuwa peke yake?
Was he alone?

W2: Hapana, walikuwa wameketi na dame mwingine anaitwa M_____.
No, they were sitted with another girl called M___.

P: Na mlalamishi?
And the complainant?

W2: Alikuja baadaye akaenda akakaa mahali walikuwa.
He came later and went and sat where they were.

P: Wote ni watu alikuwa unawajua?
All were people you knew?

W2: Ee nawajua. Wote ni marafiki zangu.
Ee I know them. All are my friends.

P: Alafu nini kilifanyika?
Then what happened?

W2: Sasa tukiwa tumekaa hapo tunangoja game ianze, sasa huyu kijana {((pointing at the accused))} akaanza kuleta shida eti W____ alikuwa anaambia dame yake nini?
Now as we were there waiting for the game to start, this young man O____ now started fracas asking what W____ was telling his girlfriend.

P: Ulikuwa umekaa meza moja na hao?
Were you seated at the same table with them?

W2: Hapana.
No.

P: Na ulisikia mshtakiwa akiuliza vile unasema?
And did you hear the accused asking what you are saying?

W2: Walikuwa wanashout, sasa watu walikaribia kwa sababu huyu {((poiting at the accused))} alikuwa ameshika W____ shati, ndio kufika hapo karibu nilisikia anamuuliza hivyo
They were shouting, now people went near as this one was grabbing W____ by his shirt and on getting near I heard him asking him that.

P: Ulifanya nini? Ulijaribu kuwazuuia?
What did you do? Did you try to prevent them from fighting?

W2: Ilifanyika kwa seconds. Huyu alichukua chupa hapo kwa meza akamgonga nayo kwa uso. Hata hakuna mtu aliweza kufanya kitu.
It happened in seconds. This one took a bottle there on the table and hit him with it on the face. Nobody was able to do anything.

P: Uliona akimgonga na chupa?
You saw him hitting him with a bottle?

W2: Ndio niliona.
Yes I saw.

P: Ilikuwa chupa ya nini?
It was a bottle of what?

W2: Ilikuwa ya soda.
It was a soda bottle.

P: Na ilienda wapi?
And where did it go?

W2: Hata sijui ilienda wapi. Saa hizo kwanza tulishughulika kusaidia W_____ kwa sababu alianguka, anatokwa na damu kwa kichwa.
I don't even know where it went. At that time we were busy trying to help W____ because he fell down and he was bleeding on the head.

P: Na yule alimgonga- sasa mshtakiwa, alikuwa wapi?
And now the one who hit him- now the accused, where was he?

W2: Alitoroka. Hata sikumuona tena. Wakati W____ alianguka, yeye alihepa.
He ran away. I did not see him again. When W____ fell down, he escaped.

P: Sasa ulifanya nini?
Now what did you do?

W2: Tulimbeba W____ tukamtoa nje, alafu askari mwingine akaita taxi tukampleleka hospitali.
We carried W_____ and took him outside then another police officer called a taxi and we took him to hospital.

P: Huyo askari anaitwa nani?
What is the name of that officer?

W2: Anaitwa B_____.
He is called B_____.

P: Ni wa station gani?
He is from which station?

W2: Ni wa hapo _____station.
He is from _____ station.

P: Wewe ulienda hospitali?
Did you go to hospital?

W2: Ee, nilienda.
Ee, I went.

P2: Nani mwingine?
And who else?

W2: Tulienda na huyo askari.
We went with that officer.

P: Mlimpeleka hospitali wapi?
You took him to which hospital?

W2: Tulimpeleka kwa clinic iko hapo _____ akafanyiwa first aid, alafu tukaambiwa twende _____
We took him to a clinic that is at _____ and he received first aid, then we were told to go to_____.

P: Mlienda huko?
Did you go there?

W2: Ndio tulienda, kijana akatibiwa na tukampeleka nyumbani
Yes we went, he was treated and we took him home.

P: Usiku huo mlienda polisi kupiga ripoti?
That night did you go to make a report at the police station?

W2: Hatukuenda usiku, tulienda kesho yake.
We did not go at night, we went the following day.

P: Na wewe uliandikisha statement?
And you did you record a statement?

W2: Ndio.
Yes.

P: Angalia kama ndio {((giving witness some papers))} hii.
Check whether it is this one.

W2: Ee ndio hii.
Ee it is the one.

P: Your Honour, I wish the statement to be marked as _____.
Yule kijana uliona akigonga mlalamishi na chupa, ako mbele ya korti?
The person you saw hit the complainant with a bottle, is he before the court?

W2: Ee yuko.
Ee he is there.

P: Onyesha na kidole mahali ako.
Point withyour finger to where he is.

W2: Ndio Yule ameketi pale. {((pointing at the accused))}
He is the one sitted there.

P: Sasa ulisema alitoroka. Kukamatwa kwake unajua?
Now you said he ran away. Do you know of the circumstances of his arrest?

W2: Wakati tuliandikisha statement kwa polisi, walituambia hata sisi tumtafute tukijua pale ako tuwaambie.
When we recorded statements at the police station, they told us that even us we should look for him and when we get to know where he is, we inform them.

P: Na mlifanya hivyo?
And did you do that?

W2: Ndio, tulienda mahali alikuwa anaishi [lakini-]
Yes, we went to where he was staying but-
P: [Ulikuwa] unapajua- nyumba anaishi.
Did you know the place- the house in which he lived?
W2: Hapana lakini tuliulizia, lakini hakuweko. Tulienda mara nyingi lakini hatukumpata
No but we enquired, but he was not there. We went many times but we did not get him.
P: Mkafanya nini?
What did you do?
W2: Nilimpigia simu nika[mwabia-]
I called him and told him
P: [Alichukuwa] simu mkaongea?
He picked up the phone and you talked to him?
W2: Ndio.
Yes.
P: Ukamwambia?
You told him?
W2: Nikamwambia aje tuongee maneno iishe.
I told him to come we talk and end the matter.
P: Alikuja?
Did he come?
W2: Hapana. Sasa baadaye kuna vijana walituambia mahali alikuwa amejificha, tukaambia askari akaenda akashikwa.
No. Then later there are some young men who told us where he was hidding, we reported to the police, they went and arrested him
P: Wewe ulikuweko akishikwa?
Were you there when he was arrested?
W2: Hapana.
No.
P: Nothing further your Honour.
I: Simama. Uko na maswali ya kumuuliza?
Stand up. Do you have question to ask him?
Ac: Ndio.
Yes.
I: Basi uliza.
Then ask.
Ac: N_____
W2: Ndio.
Yes.
Ac: Kwa nini unatoa ushahidi wa uongo?
Why are you giving false testimony?
W2: Mimi hakuna mahali nimendanganya. Nii uongo gani nimesema?
There is nowhere I have lied. Which lies have I told?
Ac: Umesema kwamba mimi nilikuwa nimetoroka. Na mimi hakuna mahali nilikuwa nimeenda.
You have said that I had run away and there was nowhere I had gone.
W2: Utasemaje haujatoroka na nyumba yako tulikuja kama mara kumi na hatukukupata?
How would you say you had not run away and we came to your house about ten times and we never found you?
Ac: Mlikuja usiku au mchana kunitafuta?
You came looking for me during the day or during the night?
W2: Usiku.
At night.
Ac: Kwa nini mchana hamkuja College na mnajua mimi ni mwanafunzi?
Why didn't you, during the day, come to College and you know I am a student?
W2: Mimi hata sijui mambo ya College.
I don't even know about College.
Ac: Si unaona uongo yako. Kuna mtu K____ hajuii _____ College? Si iko hapo?
Do you see your lies. Is there anyone in K____ who doesn't know _____ College? It is not right there?
W2: College naijua, lakini mimi sikujua wewe ni mwanafunzi. Tunakutananga mtaa mimi sijui unafanya nini.
I know the College, but I don't know that you are a student. We meet in the estate I don't know what you do
Ac: Hujui mimi ni mwanafunzi? Si mimi ni customer wako na hata saa ingine tunashinda hapo kwa kinyozi?
You don't know I am a student? Am I not your customer and sometimes we hang out at your barber shop?
W2: Wewe ni customer wangu lakini hatuongei mambo ya masomo. Tumewahi kuongea mambo ya college mimi na wewe?
You are my customer but we don't talk about education. Have we ever spoken about college you and I?
M: Wewe jibu maswali. Usiulize
You answer questions. Don't ask.
Ac: Tulipigana na W____ au alinipiga?

We fought with W____ or he beat me?

W2: Ulimpiga [na-]
You beat him and-

Ac: [Sema] ukweli. Najua ni rafiki yako lakini ambia korti ukweli.
Tell the truth. I know he is you friend but tell the court the truth.

W2: Nyinyi wote ni marafiki zangu na mimi nasema ukweli. Wewe ulichukuwa chupa ukamgonga.
Both of you are my friends and I am telling the truth. You picked up a bottle and hit him.

Ac: Kabla hapo uliona akinigonga? Na useme ukweli.
Before that did you see him hitting me? And tell the truth.

W2: Hakukugonga.
He did not hit you.

Ac: Wewe sema ukweli.
You tell the truth.

W2: Hakukugonga. [Ulisimama-]
He didn't hit you. You stood up-

Ac: [Wacha] kundanganya.
Stop lying.

W2: Usio uongo.
It is not lies.

Ac: Yeye sindiye alinigonga kwanza?
Isn't he the one who hit me first?

W2: Hapana. Niliona kila kitu. [Ulisimama-]
No. I saw everything. You stood up-

Ac: [Wacha kusema] [uongo-]
Stop lying-

M: [Let him] answer you. Ngoja amalize kujibu swali lako.
Wait for him finish answering your question.

W2: Ulisimama ukamshika shati. Yeye alikuwa anajaribu kujitoa, ndipo ulichukuwa chupa ukamgonga. Hakukugonga.
You stood up and grabbed his shirt. He was trying to free himself, that is when you took a bottle and hit him. He did not hit you.

Ac: Ujue kuna watu walikuwa hapo wanaweza kuja waseme unadanganya.
Know there are people who were there and they can come and say you are lying.

W2: Hata mimi nilikuwa pale na ninasema kile niliona na macho yangu
Even me I was there and I am saying what I saw with my eyes.

Ac: Si nilikupigia simu nikakuuliza W_____ ako aje?
Did I not call you and ask you how W_____ was?

W2: Ee tuliongea kwa simu.
Ee we spoke over the phone.

Ac: Kama tuliongea unaweza sema aje nilitoroka?
If we spoke how can you say I was in hidding?

W2: Haukukubali kuniambia uko wapi. Nilikuuliza uje tuongee ukakataa sababu ulikuwa umejificha.
You did not accept to tell me where you were. I asked you to come we talk but you refused because you were hiding.

Ac: Kama ningefanya hicho kitendo, ningepiga simu kuuliza hali ya W_____
If I had done that act, would I have called to ask about W_____?

W2: Hata kitu kilifanya upige, ulikuwa unataka kujua kama ulimuumiza sana na pia uliniambia kama unaweza kulipa pesa zenye zilitumika kwa hospitali.
The reason you called is because you wanted to know whether you had hurt him badly and you told me whether you could pay the money spent in the hospital.

Ac: Ukiambia mahakama ukweli, mimi nilitoka hapo kwa sababu nyinyi marafiki za W____ walitaka kunivamia.
If you were to tell the court the truth, I left the club because you the friends of W____ wanted to attack me.

W2: Sisi tulikuwa tunashughulika na kupeleka W____ hospitali. Hakuna mtu alitaka kukupiga. Uliona kile umefanya ukatoroka.
We were organizing how to take W____ to hospital. No one wanted to beat you. You saw what you had done and ran away.

Ac: Sina swali ingine.
I don't have another question.

DS2Case02

P: Eleza korti majina yako.
Tell the court your names.

W: Naitwa J____.
My name is J____.

P: Unaishi wapi?

Where do you live?

W: Naishi W____.
I live at W___.

P: Na unafanya kazi gani huko W_____?
And what work do you do there at W____?

W: Mimi nimfanyi biashara.
I am a business person.

P: Biashara gani? Unafanya biashara gani?
Which business? Which business do you do?

W: Nimeweka baa.
I own a bar.

P: Hiyo bar iko hapo W___?
The bar is at W___?

W: Iko W____.
It is at W ____.

P: Sasa eleza mahakama nini kilitokea mnamo tarehe ____ mwezi wa pili mwaka huu.
Now tell the court what happened on ____ February this year.

W: Siku hiyo tulifunga kazi kama kawaida.
On that day we locked up the business as usual.

P: Ilikuwa saa ngapi?
At what time was it?

W: Kulikuwa kitu saa tano.
It was around 11 o'clock.

P: Usiku?
At night?

W: Ndio, saa tano usiku.
Yes, 11 o'clock at night.

P: Mlikuwa na nani?
Whom were you with?

W: Tulikuwa na msichana wangu wa kazi.
We were with my lady employee.

P: Mnafanya nyinyi wawili tu?
You work just the two of you?

W: Wako wawili lakini siku hiyo mmoja hakuwa. Alikuwa mgonjwa.
They are two but on that day one was not in. She was sick.

P: Sasa mkafunga kazi. Alafu?
Now you closed work. Then?

W: Tukaenda nyumbani. Kesho [yake-]
We went home. The following day-

P: [Wewe] unaiishi hapo?
Do you live there?

W: Mimi naishi W____.
I live at W____.

P: Sio hivyo. Unaishi kwa baa hapo nyuma ama wapi?
No that. Do you stay at the back of the bar or where?

W: Sio hapo. Mimi nakaa mbali.
Not there. I live far.

P: Na msichana wa kazi?
And the lady employee?

W: Hata yeye anaishi mbali.
Even her she stays far.

P: Sasa mkafunga.
Now you closed.

W: Ndio. Natukaenda nyumbani. Kesho yake mimi nillipigiwwa simu asubuhi na msichana akaniambia baa ilivunjwa na vitu zikaenda.
Yes. And we went home. The following day I was called by the attendant who told me that the bar had been broken into and things had gone.

P: Alikupigia saa ngapi?
At what time did she call you?

W: Ilikuwa kitu saa moja.
It was around seven.

P: Yeye umesema anaishi mbali. Alijuaje kumevunjwa?
You have said she resides far. How did she know there had been breaking in?

W: Yeye alienda asubuhi kwa sababu alikuwa aende apange vile maji ya kuosha itachotwa, aoshe na apange ile stock ingetakiwa siku hiyo.

She went there in the morning because she was to organise how water for washing would be fetched, clean up the place and arrange for the buying of the day's stock.

P: Kwa hivyo yeye alikuwa na funguo.
So she had the keys.

W: Ndio. Ako na set moja na mimi hiyo ingine.
Yes. She has one set and I have the other.

P: Sasa alikwambia kumeenda namna gani?
Now she told you what had happened?

W: Aliniambia amefika akapata kufuli zote mbili zimevunjwa na mlango wa ndani umevunjwa.
She told me she arrived and found two padlocks and the inner door broken

P: Alafu?
Then?

W: Mimi nilimwambia asiguze kitu. Nikajitayarisha haraka nikaenda huko.
I told her not to touch anything. I prepared myself quickly and I went there.

P: Uko na mlinzi kwa hiyo baa?
Do you have a guard at that bar?

W: Hapana.
No.

P: Na hizo nduka ziko karibu? Si kuna maduka mengine hapo?
And those other shops nearby? Are there are no other shops nearby?

W: Ni makiosk tu kwa hivyo hatuna watchman. Sisi zote ni watu wa biashara ndogo ndogo.
They are just kiosks so we don't have a watchman. All of us are small business people.

P: Sasa ulipoenda ulipata nini?
Now when you went what did you find?

W: Nilipata ni vile tu alisema. Kufuli zilikuwa zimevunjwa.
I found it was just like she said. The padlocks were broken

P: Kuvunjwa aje? Uliona kama ni kukatwa ama?
Broken how? Did you see like they had been cut or?

W: Siokukatwa. Ni kuvunjwa na chuma hata vipande zilikuwa zimeanguka hapo chini.
They were not cut. It is being broken/ forced open with a metal bar even pieces were on the ground.

P: Na hizo vipande ndio hizi?
And are these the pieces?

W: Ee ndio hizi.
Ee they are these ones

P: Your Honour, I wish for the padlocks to be marked as exhibit ___.
Huko ndani ni vitu gani ziliibiwa?
Inside the bar which things were stolen?

W: Ilikuwa masaduku saba ya pombe.
It was seven crates of beer.

P: Pombe gani?
Which brands?

W: Tatu zilikuwa za Tusker, mbili za Pilsner na mbili za Citizen.
Three crates of Tusker, two of Pilsner and two of Citizen.

P: Nini ingine?
What else?

W: Pia kulikuwa na radio.
There was also a radio.

P: Make gani ya radio?
Which make of a radio?

W: Ilikuwa Sonitech.
It was Sonitech.

P: Nini ingine?
What else?

W: Hakuna.
Nothing else.

P: Sasa ulipopata vitu zimeenda ulifanya nini?
Now when you found those things had gone what did you do?

W: Mimi nilimuacha msichana na watu wengine [hapo-]
I left the attendant and other people there-

P: [Watu] gani?
Which people?

W: Watu walikuwa sasa wamekuja hao wenye wako na duka hapo [karibu.]
People had now come those owners of nearby shops.

P: [Majina yao?]
Their names?

W: Kuna _____na _____.

There is ___ and ____.

P: Hao ndio uliacha hapo?
Those are the ones that you left there?

W: Ee.

P: Ukaenda?
You went?

W: Nikaenda polisi hapo W_____ nikapiga ripoti.
I went to the police station at W_____ and made a report

P: Polisi walifanya nini?
What did the police do?

W: Niliongea na OCS nikapewa askari wawili tukaenda nao mpaka kwa baa.
I talked to the OCS and I was given two police officers and we went with them up to the bar

P: Alafu?
Then?

W: Waliona vile kulivunjwa na wakaandika list ya vitu zilizoibiwa.
They saw who the break in had been done and they wrote a list of the things that had been stolen

P: Yes

W: Sasa tulirudi na hao station. Niliandika statement na msichana pia akaandika. OCS akaniambia hata mimi nijaribu kuongea na watu nione kama nitapata habari.
We went back to the station with them. I recorded statement and the girl also recorded a statement. The OCS told me I should also talk to people and see whether I can get any information.

P: Ulipata habari ama hawa washtakiwa ulijua vile walishikwa?
Did you get any information or are you aware of how the accused persons were arrested?

W: Siku hiyo sikupata habari yoyote na hata polisi nilirudi wakaniambia bado wanachunguza
That day I did not get any information and even I went back to the police and they told me they were still investigating.
Sasa kesho yake [niliambiwa-]
Now the following day I was told-

P: [Tarehe gani] sasa?
Which date now?

W: Ilikuwa Sunday kwa sababu wizi ulifanyika Friday usiku.
It was on a Sunday because the theft occurred on Friday night.

P: Kwa hivyo unasema tarehe _____ February mwaka huu?
So you are saying _____ February this year?

W: Ndio. Mama mmoja alinipatia habari kwamba plot yenye anaishi, kuna mtu alikuwa ameweka masaduku ya pombe na kwamba hiyo Saturday kulishinda watu huko wakiuziwa pombe.
Yes. A lady informed me that in the plot she was somebody who was storing crates of beer in his house and that on Saturday people had been drinking beer there.

P: Kwa nyumba ya kuishi?
In a residential house?

W: Ndio.
Yes.

P: Ukafanya nini?
What did you do?

W: Mimi nilienda poisi na nikawaambia. Tukachukuwa taxi [tukaenda-]
I went to the police and I informed them. We took a taxi and went-

P: [Wewe na] nani sasa?
You and who now?

W: Tulienda na polisi wawili
We went with two police officers.

P: Yes.

W: Tulienda mpaka kwa hiyo plot niliambiwa na kuuliza mwenye hiyo nyumba tukaambiwa anafanya kwa workshop, iko hapo karibu.
We went upto the plot I had been told and on enquiring about the owner of the house we were informed that he works at a nearby workshop.

P: Mlienda huko?
Did you go there?

W: Tulienda na polisi walimshika na kumleta kwa nyumba. Alipofungua tulipata ile pombe ilikuwa imeibiwa hapo ndani.
We went and the police arrested him and brought him to t he house. When we opened we found the beer that had been stolen inside there.

P: Nini ingine mlipata?
What else did you find?

W: Hakuna.
Nothing.

P: Uliwezaje kujua hiyo crates ya pombe ilikuwa yako?

How did you know that those crates of beer were yours?

W: Nilijua kwa sababu ilikuwa saba tatu za Tusker, mbili za Citizen and mbili za Pilsner. Na hata hata yule mtu aliniambia alisema watuwalikuwa wanakunywa pombe Saturday.
I knew because they were seven, three Tusker, two Citizen and two Pilsner. And even the person who gave me the information said people were drinking beer there on Saturday.

P: Hizo crates za bia ziko hapa kortini?
Are the crates of beer here in court?

W: Ndio.
Yes.

P: Your Honour the crates are outside. Na zote ziko na pombe?
And do all of them have beer?

W: Tulipata pombe ingine wamekunywa kama chupa kumi na tatu ni empty na zingine ziko.
We found they had drunk some of the beer, about 13 bottles but the others are intact.

P: Mshtakiwa wa pili alikamatwa vipi?
How was the second accused arrested?

W: Huyu ndiye alitupeleka kwake. Alisema eti yeye na ndugu yake ndio waliweka hizo vitu kwake.
This is the one who took us to his home. He said that he and his brother are the ones who put those things in his house

P: Mlienda kwa nyumba ya mshtakiwa wa pili?
Did you go to the house of the second accused?

W: Tulienda, lakini hatukumpata.
We went but we did not find him there.

P: Mkafanya nini?
What did you do?

W: Kwa sababu ilikuwa jioni, police waliitisha gari na tukapeleka zile crates kwa station.
Because it was in the evening, the police called for a vehicle and we took those crates to the station.

P: Na mshukiwa mwenye mlikuwa na yeye?
And the suspect you were with?

W: Pia yeye alienda akafungiwa.
He was also taken and was locked in.

P: Mshtakiwa wa pili unajua kukamatwa kwake?
Do you know of the arrest of the second accused?

W: Nilipigiwa simu na polisi nikaambiwa ameshikwa.
I was called by the police and told he was arrested.

P: Kwa hivyo haukuweko.
So you were not there.

W: Hapana lakini nilienda station na nikamuona.
No. but I went to the station and I saw him.

P: Ulipata kujua alishikwa na nini?
Did you get to know what he was arrested with?

W: Alishikwa na chuma ile walivunja nyumba nayo, kufuli tano na master keys.
He was arrested with the metal bar they used to break in, five padlocks and master keys.

P: Hao watu wawili walikamatwa na polisi wako mbele ya korti?
Those two persons who were arrested by the police are they before the court?

W: Ndio wale. {((pointing at the accused persons))}
They are the ones there.

P: Your Honour the beer crates to be marked as exhibit __. The arresting officer will produce the other items found with the second accused. Nothing further.

I: Mshtakiwa wa kwanza simama. Uko na maswali?
The first accused stand up. Do you have questions?

Ac1: Ndio.
Yes.

I: Uliza.
Ask.

Ac1: Mimi nilishikiwa nini?
Why was I arrested?

W: Wewe ndiwe ulikuwa umeweka vitu zenye mliiba.
You are the one who was storing the things that you stole.

Ac1: Mimi nililetewa vitu niwawekee. Na sababu ni watu najua [nikawawekea-]
I was brought things to store for them. And because they are people I know I stored for them-

M: [Can you] stop explaining and ask questions.

I: Huu sio wakati wa kueleza. Muulize maswali kulingana na ushahiddi wake.
This is not the time to explain. Ask her questions as per her testimony.

Ac1: Mimi nikishikwa, si nilikuwa kazi workshop?
When they arrested me, was I not working at the workshop?

W: Huko ndio ulitolewa, ukaletwa kwa nyumba ndio tukapata vitu.
That is where you were gotten from, you were brought to the house where we found things.

Ac1: Mimi nilikuwa ni fundi kwa hiyo workshop. Mimi si mwizi. ____ na brother yake tunatoka [mahali moja-]
I was working as a carpenter in that workshop. I am not a thief. ____ and his brother, we come from the same place-

I: [Uliza maswali] sio kuelezea.
Ask questions not explaining.

Ac1: Wakati nilishikwa, si ulisikia vile nilieleza polisi eti nilikuwa nimewekea ____ and ____ vitu?
When I was arrested, did you not hear what I explained to the police that I had stored things for ____ and ____?

W: Hivyo ndivyo ulisema.
That's what you said.

Ac1: Sasa makosa yangu ni gani? Si hata wewe unaweza kuwekea mtu kitu?
So what is my mistake? Even you can you not store something for somebody?

W: Masanduku ya pombe ni kitu cha kuwekeaa mtu nyumbani? Hao unasema unawajua kwani wako na baa ndio wawe na hio pombe yote na wanaleta kwako usiku?
Are beer crates something you store for somebody in the house? Those people you are saying you know, do they own a bar so that they can have all that beer that they bring to your house at night?

M: You just answer his questions

I: Wewe unajibu maswali yake sio kumuuliza. Hebu muulize swali tena.
You answer his questions not asking him. Can you ask her the question again?

Ac1: Mimi waliniambia wanapanga kuanza baa niwawekee hiyo ni stock. Niwawekee kwangu watachukua, ndio [nikakubali-]
They told me they were planning to start a bar I store that stock for them. I keep it for them at my house they would come for it, that's why I accepted.

W: [Na hukujiuliza] kwa nini wanaleta usiku? Kwani kuna depot inafanya [hadi usiku?]
And you didn't ask yourself why they were bringing at night. Is there a depot that operates at night?

Ac1: [Huyu ni] mtu wa nyumbani [na-]
This is my brother and-

M: [Now] what's this?

I: Nyinyi. Si wewe nakwambia uulize maswali? Wewe ngoja swali ndiio ujibu. Wewe uliza swali kama uko nayo
You. Have I not told you to ask questions? You wait for a question so that you answer. You ask a question if you have one.

Ac1: Sina swali ingine.
I don't have another question.

I: Kaa chini. Mshtakiwa wa pili una maswali?
Sit down. The second accused person do you have questions?

Ac2: Ndio ninayo.
Yes I have them.

I: Uliza.
Ask.

Ac2: Nimesikia ukiambia mahakama kwamba uliibiwa crate saba za pombe na radio, ni kweli?
I have heard you tell the court you were robbed of 7 crates of beer and a radio, is that true?

W: Ndio.
Yes.

Ac2: Kwa hizo vitu, hebu eleza mahakama nini ilipatikana kwangu?
Among those things, can you tell the court what was found in my house?

W: Wewe ulipatikana na chuma ya kuvunja na kufuli.
You were found with a metal rod for breaking in and padlocks.

Ac2: Ni crate ngapi nilipatikana nazo?
How many crates was I found with?

W: Pombe mlikuwa mmeweka kwa huyu.
The beer you had stored it in his house.

Ac2: Nimeekuliza, ni crate ngapi zilikuwa kwangu?
I have asked you how many crates were in my house?

W: Mimi hata kwako sijui. Polisi ndio walikuja kwako.
I do not even know your house. It is the police who came to your house.

Ac1: Kwa hivyo hujui kama walipata crate?
So you don't know whether they found crates?

W: Nyinyi ndio mlivunja [na-]
You are the one who broke and-

M: [You] know you have to answer his questions. If you know give the answer if you don't say so. We are wasting time.

I: Ukiulizwa swali, nilazima ujibu. Kama unajua useme kama hauji useme.
When you are asked a question you must answer. If you know you say and if you don't know you say.

W: Hakukuwa na crate.
There wasn't a crate.
Ac2: Ulisema redio yako iliibiwa. Ilipatikana kwangu?
You said your radio was stolen. Was it found at my place?
W: Hapana.
No.
Ac2: Hii chuma na kufuli ziliibiwa kwako?
This metal rod and padlocks were they stolen from your place?
W: Hizo ni wewe ndio ulipatikana nazo.
Those ones you were the one found with them.
Ac2: Hii chuma unasema inavunja kufuli. Unajuaje?
This metal bar you are saying it breaks padlocks. How do you know?
W: Ndio mnaitumia. Hata polisi walisema ni nyumba nyingi sana W_____ mmevunja hivyo.
That is how you use it. Even the police said that there are many houses in W____ you have broken like that.
Ac2: Kwa hivyo hiyo maneno yote unasema ni ya nikuambiwa na polisi, si ndio?
So all the things you are saying you were told by the police, isn't that so?
W: Walisema na hata kwangu mliivunja hivyo.
They said and even my place you broke it like that.
Ac2: Nikiambia mahakama mimi ni fundi wa chuma, na niko na workshop iko na chuma za aina nyingi nitakuwa nandanganya?
If I tell the court I am an artisan dealing with metal, and I have a workshop dealing with metals of all kinds would I be lying?
W: Mimi sijui kitu unafanya.
I don't know what you do.
Ac2: Ni hatia mtu kuwa na kufuli na funguo?
Is it a crime for somebody to have padlocks and keys?
W: Ulishikwa na kufuli tano.
You were arrested with five padlocks.
Ac2: Nyumba yangu na workshop unajua ziko na milango mingapi?
Do you know the number of doors in my house and in my workshop?
W: Sijui.
I don't know.
Ac2: Nimesikia ukitaja mambo ya master key. Hebu eleza hiyo ni nini?
I have heard you talk of a master key. Can you explain what that is?
W: Si hizo ndio mnatumia kufungua kufuli za wenyewe.
Aren't those the ones you use to open other peoples padlocks.
Ac2: Kwa hivyo inaweza kufungua kufuli aina zote?
So it opens all types of padlocks?
W: Eeh.
Ac2: Sasa hizo hapa unajua ni master key na mna gani? Umejaribu kufungua padlock nazo?
Now those ones there how do you know they are master keys? Have you tried opening a padlock with them.
W: Polisi walijaribu kufungua hizi kufuli lakini hazifungui. Basi wakauliza unafanya nini nazo zote.
The police tried to open with them there padlocks and they don't open. Then they wondered what you were doing with all of them.
Ac2: Na kama ni master key kwa nini zikashindwa kufungua?
And if they are master keys, why didn't they open?
W: ….
Ac2: Eeh? Kwa nini zikashindwa kufungua?
Eeh? Why were they unable to open?
W: Polisi walisema wewe ndio unajua vile unazitumia.
The police said you are the one who knows how you use them.
Ac2: Kwa hivyo tuseme wewe ushahidi wako wote ni mambo uliambiwa na polisi kunihusu, si ndio?
So we can say all your evidence is about what the police told you about me, isn't that so?
W: Ee.
Ac2: Na polisi walileta watalamu wenye wanachukua vidole waangalie huko kwa bar yako kuonysha nani alivunja?
Did the police bring experts, those who take fingerprints to establish who had broken in?
W: Hawakuleta. Nyinyi ndio mlipatikana na vitu kwa hivyo ni nyinyi mlivunja.
They didn't bring. You were the ones found with things so you are the ones who broke in.
Ac2: Sina maswali mengine.
I don't have other questions.

DS2Case03
P: Eleza korti majina yako number na cheo.
Tell the court your name, number and rank.

W: Mimi ni police constable _____ number ____.
I am police constable ____ number _____.
P: Unafanya kazi wapi?
Where do you work?
W: Nafanya _____ patrol base.
I work at _____ patrol base.
P: Unakumbuka tarehe _____ mwezi wa pili mwaka huu?
Do you recall _____February this year?
W: Ndio nakumbuka.
Yes I remember.
P: Elezea korti ulikuwa wapi na nini ilifanyika kuhusiana na kesi hii.
Tell the court where you were and what happened with regard to this case.
W: Nilikuwa hapo kazini nikiwa on duty na mwenzangu [wakati-]
I was at the work place on duty with my colleague when-
P: [Jina yake?]
His name?
W: Anaitwa PC _____ you Honour.
He is called PC _____you Honour.
P: Haya endelea. Ilikuwa saa ngapi?
Okay continue. What time was it?
W: Ilikuwa saa kumi hivi jioni wakati kikundi cha watu walifika hapo kwa patrol base wakiwa wanaleta mshukiwa wa uhalifu.
It was about 4 o'clock when a group of people came arrived at the patrol base to bring a suspect of a crime.
P: Hao watu ulikuwa ni watu unajua?
Those people, were they people you knew?
W: Hapana.
No
P: Na huyo unasema ni mshukiwa- alikuwa mshukiwa ulikuwa unamfahamu?
And the person you are saying is a suspect- was a suspect, did you know him?
W: Hapana.
No.
P: Hao watu walikuwa wangapi?
How many were those people?
W: Walikuwa wengi- =
They were many-
P: =Wengi ni wangapi? Si uliwaona?
Many is how many? Did you not see them?
W: Sio wote waliingia. Walikuja kikundi cha watu lakini wanne ndio waliingia kwa office.
Not all of them got in. They came in a group but only four are the ones who got into the office.
P: Haya. Watu wanne wamefika wakiwa na mtu wanasema ni mshukiwa. Ulifanya nini?
Okay. Four people have arrived with a person they say is a suspect to a crime. What did you do?
W: Tuliwauliza watueleze nini kilikuwa kinafanyika [ndio-]
We asked them to tell us what had happened so that-
P: [Wewe] sema yako. Uliwauliza?
Speak for yourself. You asked them?
W: Ndio niliwauliza wanieleze nini kilifanyika.
Yes. I asked them to tell them what had happened.
P: Ndio.
Yes.
W: Mmoja wao ambaye alisema ndiye Sub-Chief wa [area hiyo-]
One of them who said he was the area Sub-Chief-
P: ['Alisema yeye] ni Sub-Chief'. Yaani we hujui Sub-Chief wa mahali unafanya kazi?
'He said he is the Sub-Chief'. You mean you don't know the sub-chief of the area you work?
W: Nilikuwa mgeni sana station hiyo. Nilikuwa nimefika tu siku chache. Hatukuwa tumekutana.
I was very new in that station. I had just arrived a few days earlier. We had not met.
P: Okay
W: Sasa Sub-Chief aliniambia kwamba huyo kijana alikuwa ameshikwa na raiya akijaribu kumnajisi mama mmoja.
The sub-chief told me that that young man had been arrested by members of the public for trying to rape a certain lady.
P: Alikuwa ameshikwa na raiya. Huyo mama alikuwa hapo?
He had been arrested by the public. Was the woman there?
W: Hapana alikuja baadaye- kesho yake.
No she came later- the following day.
P: Si yeye ndiye mlalamishi? Kwa nini hakuja?
Is she not the complainant? Why didn't she come?

W: Sub-Chief aliniambia kwamba alikuwa ameshtuka na pia alikuwa ameumizwa na huyo kijana na kisu kwa hivyo alipelekwa hospitali.
The Sub-Chief told me that she was in shock and that she had been hurt by the young man with a knife and so she had been taken to the hospital.

P: Sasa Sub-Chief alikuweko hapo ama? Umesema kijana alishikwa na raiya.
Now was the Sub-Chief there or? You said that the young men had been arrested by members of the public.

W: Aliniambia kwamba yeye alipigiwa simu na mzee mmoja anaitwa ____ akaambiwa akuje kwa boma ya ____kuna kijana ameshikwa akijaribu kumnajisi mama.
He told me that he had been telephoned by a man called ___ and he was told to come to the home of ___ there was a young man who had been arrested trying to rape a woman.

P: Huyo mzee mwenye kupiga simu alikuwa kwa hao walikuja kwa station?
Was the man who called among those who came to the station?

W: Ndio.
Yes.

P: Na mlimhoji pia?
And you interrogated him?

W: Ndio.
Yes.

P: Na unasema mlalamishi alikuja baadaye na akaandikisha statement?
And you have said the complainant came later and recorded a statement?

W: Ndio.
Yes.

P: Sasa kama ofisa anayechunguza kesi hii, hebu ambia mahakama ulibainisha nini ilikuwa imefanyika?
Now as the officer investigating this case tell the court what you established had transpired?

W: Huyu kijana alikuwa anafanya kazi kwa huyo mama. Siku hiyo mama alikuwa kwa nyumba, ndipo mshukiwa alimfuata huko kwa chumba cha kulala na akamtisha na kisu akitaka kumnajisi. Sasa walivutana ndipo kijana akamdunga na kisu kwa mgongo. Mama alipiga nduru, na jirani waliokuwa karibu wakakuja. Kijana alijaribu kutoroka lakini walimshika wakaita Sub-Chief, na ndio wa kamleta kwenye ituo.
This young man was working for that woman. That day the woman was in the house and that's when the accused followed her in the bedroom and threatened her with a knife wanting to rape her. They struggled and that's when the young man stabbed her with a knife at the back. The lady screamed and neighbours came. He tried to run away but they caught him. They called the sub-chief and that's when they brought him to the station.

P: Hao majirani waliomshika uliwahoji?
Did you interview the neighbours who arrested him?

W: Ndio. Hao ndio walimleta na Sub-Chief na waliandikaisha statement.
Yes. Those are the ones who brought him and they wrote statements.

P: Hao watu, Sub-Chief na wengine walileta nini ingine kwa sation?
Those people the Sub-Chief and others what else did they bring to the station?

W: Walileta viatu, ndio hizi. Hizi ni za mshukiwa, ndio aliacha kwa bedroom ya huyo mama wakati alitoroka.
They brought shoes, they are these ones. These belong to the accused, he left them in that woman's bedroom when he ran away.

P: Na unataka kuzitoa kama exhibit kwa hii kesi?
And you want them to give them as an exhibit in this case?

W: Ndio.
Yes.

P: Nothing further your Honour.

M: Cross-examination?

I: Simama. Uko na maswali ya kuuliza?
Stand up. Do you have questions to ask?

Ac: Ndio.
Yes.

I: Uliza.
Ask.

Ac: Corporal ____wewe ndio ulinishika?
Corporal ___ are you the one who arrested me?

W: Hapana, mimi sikukushika. Uliletwa kwangu.
No, I didn't arrest you. You were brought to me.

Ac: Kwa hiyo unatoa ushahidi kama nani?
So you are giving testimony as who?

W: Mimi ndio nilikubook.
I am the one who booked you.

Ac: Kwa hivyo kwa hii kesi wewe ndiye mwenye kufanya uchunguzi?
So in this case you are the one who did the investigation?

W: Ndio.
Yes.

Ac: Umeambia mahakama kwamba watu walikukuta kwa station wakiwa na mshukiwa, si ndio?
You have told the court that people found you at the station with a suspect, isn't that so?
W: Ndio. Uliletwa station.
Yes. You were brought at the station.
Ac: Wakati walinileta ukanibook, si ndio?
When they brought me you booked me, isn't it?
W: Ndio.
Yes.
Ac: Uliniandikia makosa gani?
What did you book me for?
W: Nilikuandikia attempted rape.
I booked you for attempted rape.
Ac: Ndio uniandikie hiyo makosa, ni uchunguzi gani ulifanya ndio ujue kitendo kama hicho kilifanyika na mimi nilihusika?
For you to book me with that what investigations did you do to know such an incident had happened and I was involved?
W: Wenye walikuleta, na pia Sub-Chief walikuwa wamekushika na walikuwa na ushuhuda.
Those who brought and even the Sub-Chief had testimony.
Ac: Kwa hivyo uliniandikia makosa kwa sababu watu walikuambia, haukufanya uchunguzi?
So you booked me for an offence because people told you, you didn't conduct an investigation?
W: Hao watu wote waliandikisha statement.
All those people recorded statements.
Ac: Na wewe ulifanya nini kama mchunguzi wa hii kesi?
And you what did you do as the investigating officer in this matter?
W: Wewe ndiye unajua kazi ya [polisi?]
Are you the one who knows the work of the police?
M: [You have] to answer his questions. Can you respond to him.
W: Niliandikisha statements zao.
I recorded their statements.
Ac: Ulienda, hata kama ni siku iliofuata ama siku ingine yeyote, mahali kitendo kilifanyika?
Did you go, even if it was the following day or any other day, to the place where the act took place?
W: Tulikuwa na kazi nyingi kwa ofisi.
We had a lot of work at the office
Ac: Kwa hivyo haukuenda?
So you didn't go?
W: Nimesema tulikuwa na kazi [nyingi-]
I have said that we had a lot of work-
M: [Now can] we stop wasting time. Did you or you did not go?
W: Sikuenda your Honour.
I didn't go your Honour.
Ac: Hiyo nyumba umesema kitendo kilifanyika hujui kama ni ya mbao ama mawe?
That house where act took place you don't know whether it is a wooden one or stone building?
W: Sikuenda.
I didn't go.
Ac: Wakati nililetwa kwa station, nilikuwa hali gani?
When I was brought to the station, in which condition was I?
W: Ulikuwa sawa tu.
You were just okay
Ac: Uliona nikama nilikuwa nimepigwa?
Did you see like I had been beaten?
W: Hapana hakuna mtu [alikupiga.]
No, nobody beat you.
Ac: [Haukuweko] nikishikwa. Unajuaje sikupigwa?
You were not there when I was arrested. How do you know I was not beaten?
W: Nilikuona, haukuwa umepigwa.
I saw you, you had not been beaten.
Ac: Si nilikuwa nimefungwa na kamba?
Wasn't I tied up with a rope?
W: Ulikuwa umefungwa kwa sababu ulikuwa unatoa fujo na kujaribu kutoroka hata hapo kwa station.
You were tied because you were violent and you were attempting to escape even there at the station.
Ac: Ningetoroka vipi ama kupigana na umesema nililetwa na watu wengi na nimefungwa?
How could I run away or fight and you have said I was brought by many people and I was tied up?
W: Ndio walikufunga kwa sababu ya fujo. Hata Sub-Chief alisema wewe anajua unatumia madawa.
That is why they had tied you because of violence. Even the Sub-Chief said the he knows you use drugs.
Ac: Ulinipata na bangi au dawa?
Did you get me with bhang or drugs?

W: Hapana.
No.
Ac: Umeambia mahakama kwamba mama alidungwa na kisu alafu akapiga nduru, si ndio?
You have told the court that the woman was stabbed with a knife and then she screamed, isn't that so?
W: Ndio.
Yes.
Ac: Sasa alipiga nduru amendungwa na kisu au kwa sababu ananajisiwa?
Now she screamed because she was stabbed or because she was being raped?
W: Sasa hiyo uliza mama, hivyo ndivyo aliandikisha.
Now that one ask the woman, that is what she recorded.
Ac: Hiyo kisu iko wapi?
Where is the knife?
W: Hakiko hapa. Walisema ulitupa.
It is not here. They said that you threw it away.
Ac: Nilitupa wapi na ulisema nilishikwa kwa boma ya huyo mama? Siwangeiona?
Where did I throw it and you said I was arrested in the homestead of that woman? Wouldn't they have seen it?
W: Hawakuleta lakini mama alisema ulikuwa nayo na ukamdunga.
They didn't bring the knife but the woman said that you had a knife and you stabbed her.
Ac: Mahali anasema alindungwa alitokwa na damu?
Where she says she was stabbed did she bleed?
W: Mimi sijui, sikuweko.
I don't know, I was not there.
Ac: Si ulisema alipelekwa hospitali kutibiwa majeraha?
But you said she was taken to hospital to be treated for injuries?
W: Mambo ya majeraha sijui. Sikuyaona. Uliza daktari mwenye alimtibu.
I don't know about injuries. I didn't see them. Ask the doctor who treated her.
Ac: Ulipewa ushahidi wowote kuwa alikuwa amendungwa kama vile nguo iliyo na damu sababu kisu haukuletewa?
Were you brought any evidence that she had been stabbed such as blood stained clothes as the knife was not brought to you?
W: Sikupatiwa nguo lakini mama alienda hospitali na akapewa barua.
I was not brought clothes but the woman went to hospital and was given a letter.
Ac: Sasa umeleta viatu mbele ya korti. Hizo viatu ni za kuonyesha nini kama exhibit?
Now you have brought shoes before the court. These shoes are meant to show what as exhibit?
W: Hizi viatu ni zako na zilitolewa kwa bedroom ya huyo mama.
These are your shoes and they were found in that woman's bedroom.
Ac: Zinaonyesha nini? Kiatu kinaweza dunga mtu? Huna kisu una viatu ndio exhibit yako. Zinathibitisha nini?
What do they show? Can a shoe stab somebody? You don't have a knife you have shoes as your exhibit. What do they prove?
W: Zinaonyesha ulikuwa kwa bedroom ya mlalamishi. Ukatoroka ukaziacha huko.
They show you were in the complainant's bedroom. You ran away and you left them there.
Ac: Uko na nini ya kuonyesha hizo viatu ni zangu?
What do you have to show those are my shoes?
W: Wenye walikushika walisema ni zako.
Those who arrested you said that they belong to you.
Ac: Kwa hivyo ushahidi wako wote ni vile uliambiwa na ulileteWa?
So your whole testimony is what you heard and you were brought?
Ac: Nikikwambia kwamba huyo mama alikuwa anataka kunifukuza kazi na asinilipe pesa zangu ndio akaniwekelea hiyo maneno, nitakuwa nandanganya?
If I tell you that that woman wanted fire me from work without paying me my money and so she brought these allegations against me, would I be lying?
W: Ndio, ni uongo.
Yes, that is a lie.
Ac: Hizo statement unasema nani aliandika?
Those statement you are saying who recorded them?
W: Ni mashahidi.
It is witnesses.
Ac: Waliandika ama ulandika alafu wakasign?
They wrote them or you wrote and then they signed?
W: Waliniambia nikaandika vile wanasema.
They told me and I wrote what they were saying.
Ac: Sasa hebu onyesha mahakama mahali hata moja uliandika mambo ya viatu.
Now show the court even one place where you wrote about shoes.
W: Hakuna.
There isn't.
Ac: Kwa hivyo hizi exhibit unatoa hakuna shahidi hata mmoja, hata wenye walizileta amezitaja kwa statement?

So this exhibit you are producing there is no witness even those who brought them mentioned them in their statement?

W: Hapana.
No.

Ac: Sina swali ingine.
I do not have another question.

DS2Case04

P: What do you do for a living?
I: Wĩkaga atĩa?
What do you do?
W: Nĩkũrĩma nĩmaga.
I farm.
I: I am a farmer
P: Where?
I: Ũrĩmaga kũ?
Where do you farm?
W: Okũu mũciĩ.
Just there at home.
I: At home
P: Nyumbani unapoishi ni wapi?
Where is your home area?
I: Wũikaraga kũ?
Where do you live?
W: M___.
I: M____village.
P: On this date can you remember ___February 2011, where were you?
I: Nĩũraririkana mweri ____wa ĩri mwaka ũyu tũrĩ?
Do you remember___ February this year?
W: Ĩĩ.
Yes.
I: Warĩ kũ?
Where were you?
W: Mũthenya ũcio ndaumĩte mũgũnda, ndoimĩte gũitĩrĩrĩa mboga [maĩ-]
On that day I had come from the farm watering cabbages-
I: [Wathiaga] kũ?
Where were you going?
W: Ndoimite mũgũnda gũitĩrĩria mboga maĩ.
I had come from the farm watering cabbages.
I: Wathiaga kũ?
Where were you going?
W: Ndathiaga mũciĩ.
I was going home.
I: Alikuwa anaenda nyumbani.
He was going home.
W: Rĩu ngĩinũka ndoimĩra [bara rĩ-]
Now as I was going home when I got to the road-
P: [So the] farm is far from where you stay?
I: Mũgũnda wĩharaihu?
Is the farm far?
W: Wĩharaihu no timũno.
It is far but not very far.
P: Iko karibu na kwa akina huyu mama?
Is it near the home of this lady?
I: Mũgũnda wĩ hanene na kwa mũtumia ũyũ?
Is the farm far from the home of this woman?
W: Hao nĩ nahau kĩanda.
Their home is there towards the south.
I: It is near.
W: Rĩu mũthenya ũcio ndoimaga mũgũnda.
Now that day I was coming from the farm.
Rĩu ngiuma mũgunda rĩ, ndoimĩra bara nĩguo ndakorereire inegene.
Now as I was coming from the farm, when I got to the road I found some noise / fracas.
I: Nilifika kwa barabara nikapata makelele.

When I got to the road I found some noise/ fracas.

W: Rĩu ngĩigua inegene nĩ rĩaingĩha. Tondũ harĩ handũ gathioroinĩ rĩ nĩho ndakorire andũ eri.
I heard the noise getting louder. Because it was at a bend, now that is where I found two people.

I: Na kwa sababu ilikuwa kwa kona, hapo kwa kona nikapata watu wawili.
Because it was at a corner, there at the corner I found two people.

W: Rĩu rĩrĩa mũndũrũme ũcio anyonire [rĩ agĩ-]
When the man saw me he-

P: [What were] they doing?

I: Nĩkĩĩ mekaga?
What were they doing?

W: Ndamakorire hau. Rĩu-
I found them there. Now-

P: Hebu sikiza ile swali unaulizwa.
Can you listen to the questions you are being asked

I: Nĩkĩĩ mekaga andũ acio?
What were they doing those people?

W: Maikarĩte thĩ. Mũtumia ũyũ arĩ na inegene rĩingĩ.
They were seated. This woman was making a lot of noise.

I: Hao watu wawili walikuwa wemeketi chini na huyu mama alikuwa anapiga kelele.
Those two people were seated and this woman was making a lot of noise.

P: Were you able to recognize them?

I: Nĩ wahotire kũmona nĩa wega?
Were you able to see who they were properly?

W: Ĩĩ.
Yes.

I: Niliweza kuwaona vizuri.
I was able to see them well.

P: It was not dark?

I: Gũtiarĩ ũtukũ?
It was not at night?

W: Kwarĩ na mairia, nĩ gĩthaa gĩa thaa ĩmwe.
It was slightly dark. It was around 7 o'clock.

I: Ilikuwa mwendo wa saa moja.
It was around 7 o'clock.

P: So could you see clearly?

I: Kuoguo nĩwonaga wega?
So you could see properly?

W: Ĩĩ.
Yes.
Rĩu rĩrĩa mwanake [anyonire rĩ-]
Now when the man saw me-

P: [Now did] you hear what the complainant was saying? What the 'kelele' was all about?
noise

I: Nĩ waiguire inegene riarĩ rĩa kĩĩ?
Did you hear what the noise was about?

W: [Inegenerĩ-]
The noise-

P: [Was she screaming,] talking or what was the noise?

I: Nĩwaiguire ũrĩa oigaga?
Did you hear what she was saying?

W: Inegene nĩ kũrĩra arĩraga, ĩmakelele ma kũrĩra
The noise is she was crying, it was crying noise.

I: Huyo mama alikuwa analia.
That lady was crying.

W: Rĩu hindĩ iyo nĩguo mwanake anyonire ndahũra gathioro {((demonstrating))} ũguo.
That is when the man saw me when I came round the bend like this.

I: Wakati nilipiga hiyo kona ndipo waliniona.
When I came round the bend is when they saw me.

W: Rĩu anyona nokũra orire- agĩũkĩra akĩũra.
When he saw me he ran way- he got up and ran away.

I: Wakati aliniona akatoroka.
When he saw me he ran away.

W: Naniĩ ngĩmũbuata.
And I followed him.

I: Na mimi nikamfuata.
And I followed him.

W: Rĩu ndamũbuata rĩ,- ngiugaga ‘mũnyite! mũnyite!’
Now when I followed him- I was shouting ‘catch him! catch him!’
I: Nilikuwa na mfuata nikisema ‘mshike’.
I was following him saying ‘catch him’.
W: Nake mũthuri wa mũtumia ũyũ nĩaiguire.
And the husband of this woman heard.
I: Naye bwana ya huyu mama alisikia.
And the husband of this woman heard.
W: Tondũ nĩ hakuhĩ na mũciĩ wao.
Because it is near their home.
I: Kwa sababu ni karibu na nyumba yao.
Because it is near their house.
W: Rĩu akiuma. Agĩthiĩ kũmũnyita, tondũ rĩu nĩ kwao kaũhainĩ.
He came out. As he went to catch him because it was in their coffee farm.
P: So the accused was not running along the road?
I: Kuoguo mũndũ ũcio ndoragĩra barabara?
So that person was not running along the road?
W: Arĩ baraba, rĩu agĩthiĩ kũnyitwo rĩ-
He was on the road. Now as he was about to be caught-
P: If he was on the road how the coffee does come in?
I: Akorwo oragĩra bara rĩ
If he was running away along the [road=
W: [Ĩĩ.
Yes.
I: =kahũanĩ gokĩra ha?
where has the coffee come in?
W: [Rĩu-]
Now-
P: [There] is a road in the coffee plantation?
W: Agĩthiĩ kũnyitwo-rĩ, nĩguo arũgire kahũainĩ.
When he was going to be caught, it is when he jumped into the coffee plantation.
I: Na wakati alienda kushikwa na bwana ya huyu mama, aliruka kwa kahawa.=
And when he was going to be caught by this woman’s husband, he jumped into the coffee plantation.
W: =Gwaithe mũkũrũ.
Of his elder father
I: Ithe mũkũrũ waũ rĩu?
Now whose elder father?
W: Ithe mũkũrũ wa mwanake mwene mũtumia ũyũ. Rĩu kũu nĩkuo aguthũranirwo nake akĩnyitĩrwo kũu kahũainĩ-akinyitĩrwo mũciĩnĩ gwa ithe mũkũrũ wa mwanake ũyũ.
The elder father of the husband to this woman. Now there he was chase and he was caught- he was caught in the homestead of the elder father of this man
I: Hapo nikakimbizana na yeye na akashikiwa myumbani kwa bwana wa huyu.
There I chased after him and he was caught at the home of this one’s husband.
P: Now, the person who was caught, can you see him the court?
I: Ũrĩa wanyitirwo nĩ ũramwona gũkũ igotinĩ?
Can you see the person who was arrested in court?
W: Kenjuge ndiamwonire wegaĩ, no nĩndĩrona nĩ ũyũ.
Let me say I never saw him properly, but I can see he is this one.
I: Sikumuona vizuri lakini naona ni huyu.
I didn’t see him properly but I see it is this one.
P: Since he was caught why do you say you never saw him?
I: Ona anyitwo ndwamwonire?
When he was caught you didn’t see him?
W: Nĩndamwaonire.
I saw him.
P: So?
I: Nanĩkĩĩ ũroiga ndwamuonire wega?
And why are you saying you never saw him properly?
W: Nĩũĩ hĩndĩ ĩyo kwarĩ ũtukũ.
You know that time it was dark.
P: We sikiza vile ninakuuliza.
You listen to what I am asking you.
W: Ee.
I: Egũkũ mũndũ ũcio?
Is that person here?
W: Egũkũ.

He is here.

P: Onyesha na kidole.
Point with your finger.

I: Eha?
Where is the person?

W: Nĩwe ũrĩa. {((pointing at the accused))}
He is that one.

P: Ulikuwa umemwona mbeleni?
Had you seen him before?

I: Nĩũrĩ wamuona mbere ĩyo?
Had you seen him before.

W: Ĩhĩ ndiamuonete mbere ĩyo.
No I had not see him before.

I: Sikuwa nimemwona.
I had not seen him.

P: Tangu aamke, mahali alikuwa amelalia mlalamishi na ukamfukuza, ulipoteza kumuona ama ulifuata yeye hadi mpaka akashikwa?
Since he got up from where he was lying on the complainant, and you chased him did you lose sight of him or you followed him until he was caught?
Kuna mahali popote alipotea kwa macho yako?
Is there any where he disappeared from your sight?

I: No hĩndĩ ĩyo mwamũtengeragia harĩ handũ wagire kũmuona?
But at that time you were chasing him is there a time you couldn't see him?

W: Rĩrĩa anyitirwo rĩ, twamũnyitĩire mũciĩ.
When he was caught, we caught him at home.

P: We mzee sikiza vile unaulizwa.
You listen to what you are being asked.

I: Ũrorio [atĩrĩrĩ-]
You are being asked this-

P: [Sikiza ile] swali nauliza na ujibu. Wacha kujibu vile unataka. Nauliza wewe, sasa umemuona baada ya yeye kuamka, mkakimbizana [na=
Listen to the question I am asking and answer it. Stop answering the way you like. I am asking you, now you have seen him after he has got up, you have chased after him and

W: [Ĩĩ.
Yes.

P: =bwana ya mlalamishi anatokea, akitaka kumshika akaingia kwa [kahawa.
the husband of the complainant emerged, when he wanted to get hold of him he went in to the coffe farm.

W: [Ĩĩ
Yes.

P: =Iko pahali alipotea kwa macho yako kabla mmshike ama ulifuatana nayeye mpaka mkamshika?
Is there anywhere he disappeared from your sight before you caught him or you followed him until you caught him?

W: Twamũnyitĩire kũu mũciĩ.
We caught him in the homestead.

P: Sasa hii nini?
Now what is this?

M: What is happening Prosecutor? You are losing patience with your own witness.

P: It is the way he is responding to [questions, he-]

M: [Would you like] to stand him down? Does he understand your questions? We have a heavy day today.

I: Harĩa wamuonire rĩambere nĩgetha- nĩ harĩa- nĩ mena mũtumia ũyũ, nĩguo?
Where you saw him first so that- is where- it is together with this woman, is that so?

W: Ĩĩ.
Yes.

I: Okĩra nĩgetha ore. Ageria kũnyitwo nĩ mũthuri wa mũtumia [ũyũ=
He has stood up to run away. The husband to this woman has tried to catch him

W: [Ĩĩ.
Yes.

I: =aingĩra kahũainĩ [akĩura=
he has got into the coffe plantation running away.

W: [Ĩĩ.
Yes.

I: =Nĩharĩ handũ wagire kũmwona?
Is there any place you lost sight of him?
Nĩgetha anyĩtwo, ehandũ orĩire?
So that he is caught, is there anywhere he disappeared?

W: Orĩire kũu.
He disappeared there.
P: Kwa macho yako?
From your sight?
W: Ĩĩ, twamuonĩre kũu kahũainĩ, agĩthiĩ kũu mũciĩ ũcio.
Yes we saw him in the coffee farm, he went to that home.
I: Mũciĩ ũrĩkũ?
Which home?
W: Gwa ithe mũkũrũ woyũ, tondũ nĩkuo orĩire tũkĩmũnyita kwuo.
At this one's elder father's home because that is where he ran to we caught him there.
M: Now where are we?
I: Alipotea akaingia kwa baba ya huyu mama huko ndio tulimshikia.
He ran and went into the home of the father of this woman. That is where we caught him.
P: Lakini bado mna muona?
But you could still see him?
I: No no mwa- no mwamuonaga hĩndĩ ĩyo yothe?
But you could- you could see him all that time?
W: Ĩĩ nitwamwuonaga.
Yes we could see him.
I: Tulikuwa tukimwona.
Yes were seeing him.
W: Rĩu twamunyitarĩ, nĩguo andũ aingĩ mokire.
When we caught him, that's when many people came.
Tũkĩgirĩrĩria ahũrwo nginya tũmũtware gwa chibũ.
We prevented him from being beaten until we take him to the chief.
I: Tulizuia apigwe.
We prevented him from being beaten.
W: Tũkĩmũtwara gwa chibũ. Chibũ nake akĩmuoya.
We took him to the chief. The chief took him.
I: Tulimpeleka kwa chifu.
W: Chibu akimutwara borithi
The chief took him to the police station.
I: Chief akampeleka polisi.
The chief took him to the police station.
P: Chief wa wapi?
The chief of where?
W: N _____ location.
P: Anaitwa nani?
What is his name?
W: K_____.
P: Yes. Mkampelekea chief akampeleka polisi gani?
You took him to the chief and s/he took him to which police station?
W: Huko N____.
There at N___.
P: Na uliandikisha statement siku hiyo hiyo au baadaye?
You recorded your statement on that very day or later?
I: Wandĩkire statement mũthenya ũcio?
Did you record your statement on that day?
W: Niĩ ndandĩkire mũthenya ũyũngĩ tondũ hehandũ ndarĩ wĩra.
I wrote my statement the following day because there was somewhere I was working.
I: Statement yake aliandikisha siku iliyofuata kwa sababu alikuwa kazi.
P: Kwani unafanya kazi usiku?
Do you work at night?
I: Kaĩ ũrutaga wĩra ũtukũ?
Do you work at night?
W: Aca nĩ mũthenya ũyũ ũngĩ.
No it is the following day.
I: Sio usiku.=
Not at night.
W: =Twamũneana gwa Sub-Chief niĩ no kũinũka ndainũkire.
When we surrendered him to the Sub-Chief I went home.
I: Tulipompatiana kwa Sub-Chief mimi nilienda nyumbani.
When we handed him over to the Sub-Chief I went home.
M: Is it the Chief or the Sub-Chief?
I: Nĩ Chibũ kana ni Sub- Chief mwamũtwaririe kũrĩwe?
Is it the Chief or the Sub-Chief you took him to?

W: Nĩ Sub-Chief.
It is the Sub-Chief.
I: It's the Sub-Chief your Honour.
P: Na mlalamishi ulimuona?
Did you see the complainant?
W: Ndio.
Yes.
P: Na alikuwa na majeraha yoyote mwilini?
Did she have any injuries on the body?
I: Niari mutihangie?
Was she hurt?
W: Ĩĩ.
Yes.
P: Wapi?
Where?
W: Hapa, {((touching parts of his body))} hapa.
Here, Here.
P: Wapi tena?
Where again?
W: Haha na gũtũ.
Here and the ear.
I: Mlalamishi alikuwa na majeraha kwa shingo na sikio.
The complainant had injuries on the neck and the ear.
P: Na unajua kama alipelekwa hospitali ama ulienda nyumbani?
And do you know whether he was taken to hospital or you went home?
I: Nĩatwariro thibitarĩ?
Was she taken to hospital?
W: Ĩĩ nĩatwarirwo.=
Yes. She was taken.
P: =Lakini wewe hukuenda?
But you never went yourself?
W: Aca.
No.
I: Alipelekwa hospitali lakini mimi sikuenda.
She was taken to hospital but I never went.
W: Ndainũkire na mũciĩ tondũ ndarĩ na indo cia wĩra.
I went home as I still had the work equipment.
P: Na huyo jamaa kuna kitu kama silaha alikuwa nacho?
And that fellow did he have anything like a weapon?
I: Ũyu gwĩkindũ mwamũnyitire nakĩo?
And this one is there anything you found him with?
W: Aca, ndarĩ kĩndũ arĩ nakĩo.
No there was nothing he had.
I: Hatukumshika na chochote.
We didn't catch him with anything.
P: Wakati mlizuia asichapwe alisema kitu?
When you prevented him from being beaten did he say anything?
I: Mwagiria ahũrwo nĩ mwamũririe ciũria?
When you prevented him from being beaten did you ask him questions?
W: Ndaragia we.
He was not talking.
I: Hakuwa anaongea
He was not talking.
P: That is all your Honour.
M: Cross examination?
I: Rũgama. Nĩwaigua ũira ũrĩa ũyũ aruta?
Stand up. Have you heard the testimony this one has given?
Ac: Ĩĩ.
Yes.
I: Mũrie ciũria.
Ask him questions.
Ac: Rĩurĩ wanyitĩire kũ? Twarĩ kahũani kana mũciĩ?
Now where did you catch me? Were we at the coffee farm or at home?
W: Rĩu kũu kahũaini twa kunyitarĩ- wathire ũkĩgwa mũciĩ kwa mũthuri ũcio na nĩ ho twakũnyitĩire
Now at the coffee farm, when we caught you- you went and fell in the home of that man and that is where we caught you.

Na twa kũnyita nĩwe watwĩraga 'Mũtikanjũrage! Mũtikanjũrage!'
I and when we caught you were telling us 'Do not kill me!' 'Do not kill me!'

I: Ulienda ukaingia kwa boma ya huyo mzee na ndio walikushika. Ulikuwa unasema 'Msiniuwe.'
You went and got into the homestead of that man and they caught you. You were saying 'Do not kill me.'

Ac: Wee nĩ ũjũi?
You do you know me?

W: Eeh?

I: Nĩ ũmũi?
Do you know him?

W: Niĩ ndiamũĩ tondũ twa mũnyita twamũrũndĩte hau thĩ.
I did not know him because when we caught him we had made him lie there on the ground.

I: Hakuwa anakujua. Ni vile ulikuwa umeshikwa umelala chini na wakakuzuia usipigwe sababu watu walikuwa wanataka kukua.
He did not know you. It is that you had been caught and forced to lie on the ground and they prevented you from being beaten as people wanted to kill you.

Ac: Kuoguo ndũnjũĩ?
So you don't know me?

W: Eh? Niĩ ndiraigua ũrĩa aroiga.
Eh? I can't hear what he is saying.

I: Anĩrĩra, na ũrie kĩũria kĩngĩ. Naithĩ kĩu ndwacokerio?
Speak up, and answer another question. Have you not been given the answer to that one?

Ac: Ndĩrĩ na kĩũria kĩngĩ.
I do not have another question.

I: Sina maswali ingine.
I don't have other questions.

DS2Case05

P: Introduce yourself to the court.

W: I am number ____ Police Constable _____

P: You are attached to which station?

M: Is the accused comfortable with English?

P: Unaelewa lugha gani?
Which language do you understand?

Ac: Kiswahili.

P: Unafanya stesheni gani?
You work in which station?

W: Nafanyia ____ Police Station.
I work at _____ Poice Station.

P: Basi eleza korti nini kilifanyika tarehe _____ kuhusiana na kesi hii.
Then explain to the court what happened on ____in relation to this case.

W: Siku hiyo mimi nilikuwa duty kwa reporting desk.
That day I was on duty at the reporting desk.

P: Na ilikuwa saa ngapi?
And what time was it?

W: Ilikuwa mwendo wa saa nne unusu.
It was around ten thirty.

M: At night or:::?

W: Ilikuwa mchana- asubuhi your Honour.
It was day time- in the morning your Honour.

P: Haya, endelea.
Okay, continue.

W: Saa nikiwa hapo nikaletewa mshukiwa.
Now as I was there I was brought a suspect.

P: Ukaletewa na nani? Na maafisa wenzako ama?
You were brought by whom? By your fellow officers or?

W: Hapana. Watu wawili walikuja wakiwa na watatu ambaye ndiye alikuwa mshukiwa wa uhalifu.
No. Two people came with a third who was a suspect of a criminal act.

P: Walijitambulisha? Hao wawili?
Did they identify themselves? Those two?

W: Ndio, mmoja ambaye ni mlalamishi aljitambulisha kama _____ na huyo mwingine alikuwa _____.
Yes, one who is the complainant identified himself as ____ and the other one was____.

P: Sasa unasema walileta mshukiwa. Alikuwa mshukiwa wa nini?
Now you have said they brought a suspect. He was a suspect of what?

W: Ee::: sasa huyo mlalamishi alisema mshukiwa alikuwa anafanya kazi kwake kama mlinzi. Alafu usiku wa kuamkia [siku hiyo-]
Ee::: now that complainant said the suspect was working at his home as a guard. Then on the previous night-

P:
[Tarehe ngapi?]
Which date?

W: Tarehe____ mwezi wanne mwaka huu.
On ____April this year.

P: Yes. Nini kilifanyika?
Yes. What happened?

W: Mlalamishi alikuwa amefika nyumbani usiku na gari yake na akaiegesha hapo nje.
The complainant had arrived home at night in his car and he parked it outside

P: Ukisema nje unamaanisha wapi? Ndani ya compound?
When you say outside where do you mean? Inside the compound?

W: Ndio, kwa compound.
Yes, inside the compound.

P: Kwa hivyo aliingia kwa compound yake na akaweka gari nje ya nyumba?
So he got into his compound and parked the car outside the house?

W: Ndio.
Yes.

P: Gari yenyewe ulipata kujua namba ya usajiri?
The car itself, did you get to know the registration number?

W: Ndio. Ilikuwa KBJ ____aina ya Toyota____ white in colour.
Yes it was KBJ____ Toyota____ make white in colour.

P: Endelea.
Continue.

W: Asubuhi yake alipoamka, alipata magurudumu yote manne yametolewa na pia ile ya spare, na vitu zingine zimeng'olewa ndani ya gari, kama stereo system na speakers.
In the morning when he woke up, he found all the car wheels missing also the spare wheel and other things had been removed from inside such as the stereo system and speakers.

M: Four wheels?

W: Five wheels your Honour including the spare, a stereo system and speakers your Honour.

M: How many speakers?

W: Two your Honour

M: Yes

P: Sasa mshukiwa alikuwa hapo?
Now was the suspect there?

W: Hapana. Mshukiwa naye alikuwa ametoweka.
No. The suspect had disappeared.

P: Tukirudi nyuma, wakati mlalamishi alifika nyumbani usiku, mshtakiwa alikuwepo pale?
If we go back, when the complainant arrived home at night, was the accused person there?

W: Ee alikuwa. Hata ni yeye alimfungulia gate na wakaongea.
Ee he was there. He is even the one who opened for him the gate and they talked.

P: Lakini asubuhi vitu vimepotea na mshatakiwa pia amepotea?
But in the morning things have disappeared and the accused has also disappeared?

W: Ndio.
Yes.

P: Mlalamishi alikwambia aligundua mambo ya wizi saa ngapi?
The complainant told you he discovered about the theft at what time?

W: Asubuhi.
In the morning.

P: Asubuhi saa ngapi?
In the morning at what time?

W: Kitu saa moja.
About 7 am.

P: Akafanya nini?
What did he do?

W: Sasa akiwa na rafiki yake, yule walikuja nayeye kwa station walianza kumtafuta mshukiwa.
Now together with his friend, they came with to the station they started looking for the suspect.

P: Walimtafuta wapi?
Where did they look for him?

W: Walipiga ripoti kwa security firm yenye mshtakiwa alikuwa anafanya nayo, ndipo walipewa number yake ya simu na wakaelekezwa kwake.
They reported to the security firm that the accused was working with and they were given his phone number and directed to his house.

P: Endelea.

Continue.

W: Walienda huko ambapo walimpata mshukiwa na kuandamana naye hadi kituo.
They went there where they found the accused and they came with him to the police station.

P: Kwa hivyo walikuwa wanaripoti ni yeye alikuwa ameiba hizo vitu?
So they were reporting that he was the one who had stolen those things?

W: Ndio.
Yes.

P: Ulipopigiwa hiyo ripoti ulifanya nini?
When that report was made to you, what did you do?

W: In-charge aliniambia niandamane na wao wote mpaka kwa mahali ya kitendo.
The in-charge told me to accompany them up to the scene of the occurrence.

P: Ulifanya hivyo?
Did you do that?

W: Ndio tulienda mpaka huko na nikapata kweli gari ilikuwa juu ya mawe magurudumu yote imetolewa. Nikapanga vile picha ya hiyo gari zitapigwa.
Yes we went there and I true found the car on top of stones, all the wheels removed. I arrange how for the car to be photographed.

P: Hizo picha unaweza {((giving witness photos))} kuzitambua?
Can you identify those photos?

W: Ndio. Ndio hizi.
Yes. These are the ones.

P: Na unataka kuzitoa kama exhibit kwa hii kesi?
And would you like to produce them as exhibits in this case?

W: Ndio.
Yes.

P: Your Honour the photos of the vehicle to be marked as _____
Ndio. Ulifanya nini ingine?
Yes. What else did you do?

W: Pia tulienda nyumbani kwa mshukiwa, nilifanya search lakini sikupata chochote.
We also went to the home of the suspect. I conducted a search but I did not find anything.

P: Alafu?
Then?

W: Tulirudi kwa station. Na hao wawili, mlalamishi na mwenzake wakaandikisha statement na mshukiwa tulimfungia kwa cell na kumfungulia mashtaka yaliyo mbele ya korti hii.
We went back to the station. And those two, the complainant and his colleague recorded statements. The suspect, we locked him up in the cells and preferred charges against him that are before this court

P: Sasa umesema mshtakiwa hakuna kitu cha wizi ulipata kwake. Ulimfungulia mashtaka gani?
You have said there are no stolen things you found in the house of the accused. What charges did you prefer against him?

W: Nilimfungulia mashtaka ya kukosa kuzuia uhalifu kwa sababu wizi ulifanyika kama ako duty kama mlinzi.
I preferred the charges of failing to prevent the commission of a felony as he was the one on duty as a guard when the theft occurred.

P: Uliconfirm na security firm iliomwajiri? Wako na vitabu za handover kuonyesha ni yeye alikuwa kazini?
Did you confirm with the security firm that had employed him? Do they have handing over records showing he was the one on duty?

W: Hawana records kama hizo. Hawaweki lakini tuliambiwa kwa ofisi zao na supervisor mshtakiwa ndiye alikuwa analinda hapo.
They don't have such records. They don't keep them but we were told at their offices by the supervisor that the accused was the one on duty there.

P: Nothing further your Honour.

M: Cross-examination

I: Simama. Umesikia vile amesema?
Stand up. Have you heard what he has said?

Ac: Ndio.
Yes.

I: Basi muulize maswali.
Then ask him questions.

Ac: Wewe ndio ulinishika?
Are you the one who arrested me?

W: Hapana. Nimesema uliletwa kwa station.
No. I have said you were brought to the station.

Ac: Nilishikwa namna gani? Nikitoroka?
How was I arrested? While running away

W: Mimi sikuweko ukishikwa. Lakini mlalamishi alisema walikupata kwa nyumba yako.
I was not there when you were arrested. But the complainant said they had found at your house.

Ac: Kwa hivyo sikuwa natoroka?

So I was not running away?

W: Mimi sijui ulifanya nini wakati walikuja.
I don't know what you did when they came.

Ac: Unajua haowatu walinifanyia ujanja. Waliniita kwangu wakaniambia vitu vimeibiwa na wanataka twende polisi kupiga ripoti. Ndipo tulikuja hapo kwa station na ukaniweka ndani. [Mimi-]
You know those people tricked me. They called me from my home and told me things have been stolen and they want us to go and make a report to the police. That's when we came there to the station and you locked me up. I-

M: [Wacha] kuelezea maneno. Muulize maswali kulingana na ushahidi wake.
Stop narrating things. Ask him questiona as per his testimony.

Ac: Mimi nilienda vizuri kwa station kupiga ripotii ya wizi.
I went willingly to the station to make a report on theft.

M: Uliza swali. Uko na swali ingine?
Ask a question. Do you have another question?

Ac: Hapo kwa polisi, nililetwa na nini?
There at the police station, what was I brought with?

W: Hakuna.
Nothing.

Ac: Kwa hivyo mambo ya wizi ni nyinyi mnaniwekelea?
So the things to do with theft you are the ones who are blaming them on me?

W: Hakuna kitu nilikuwekelea, [nilipigwa ripoti-]
There is nothing am accusing you wrongly of, I was brought a report-

Ac: [Siwe we ndiye] alikuwa unaniambia nikubali hii maeno nirudishe vitu ili tumalize? Wakati ulinifungia Saturday, Sunday hao watu walikuja ukaniita kwa cell, ukaanza [kuniambia-]
Aren't you the one who was telling me I accept the allegations, I return the goods and we finish the case? When you locked me up on Saturday, on Sunday those people came and you called me from the cell, you started telling me-

M: [Sasa hayo] yote hayatakusaidia. Uliza swali. Muulize swali uache kuelezea.
Now all that will not help you. Ask a question. Ask him a question and stop explaining

Ac: Si mliniita kwa station na hao watu Sunday?
Didn't you call me at the station with those people on Sunday?

W: Walikuja na mliongea na hao. Mimi sijui kitu mliongea. Kama mlitaka kusikizana hayo ni mambo yenu.
They came and you talked with them. I don't know what you talked about. If you wanted to come to an agreement that is between you.

Ac: Wewe sindiye uliyenitoa kwa cell?
Aren't you the one who got me from the cell?

W: Ulikuwa rumande. Hawangekuja huko ndani kukutoa.
You were in remand. They wouldn't have come in there to get you.

Ac: Ukiniambia [nikubali-]
You told me to accept-

M: [Swali] ingine?
Another question?

Ac: Umesema mlalamishi alijua gari imeibiwa vitu saa ngapi?
You have said the complainant discovered that things have been stolen from the vehicle when?

W: Wakati aliamka asubuhi mwendo wa saa moja- saa moja na nusu.
When he woke up in the morning around seven- seven thirty.

Ac: Na mimi masaa yangu ya kazi unayajua?
And do you know my working hours?

W: Ulikuwa duty ya usiku.
You were on night duty.

Ac: Nilikuwa natoka asubuhi saa ngapi?
I was leaving in the morning at what time?

W: Wakati mlalamishi aliamka ulikuwa umetoweka. Haukuweko kwa sababu alipoona gari alianza kukutafuta, na haukuwa kwa compound.
When the complainant woke up you had disappeared. You were not there in the compound because when he saw the vehicle he started looking for you and you were not in the compound.

Ac: Wacha nikueleze. Mimi natoka kazi saa kumi na mbili za asubuhi. Naingia saa kumi na mbili natoka saa kumi na mbili. Na nikitoka gari [ilikuwa sawa-]
Let me tell you. I leave work at 6 o'clock in the morning. I get in at 6 pm and leave at 6 am. And when I left the vehicle was okay-

M: [Uliza swali] ingine.
Ask another question.

Ac: Huyo supervisor wa ____ security alikwambia ninatoka kazi saa ngapi?
That supervisor at _____security told you I leave work at what time?)

W: Alisema wewe ndiye ulikuwa duty [usiku huo-]

He said that you were the one on duty thet night-

M: [Did he] state the time he reports and leaves?

W: No he didn't your Honour

M: Swali ingine?
Another question?

Ac: Kuna kitu cha gari ulipata kwangu nyumbani?
Is there any vehicle part you found in my house?

W: Hapana.
No.

Ac: Na kwa nini unaambia mahakama mimi niliba? Ushahidi wako ni gani yenye unaweza onyesha?
And why are you telling the court that I stole? What is your evidence that you can show?

W: Mlalamishi ndiye alipiga ripoti [gari yake-]
The complainant is the one who made a report that his car-

Ac: [Na alikwambia] alinishika na magurudumu ya gari?
Did he tell you he found me with the vehicle's wheels?

W: Hapana.
No.

Ac: Na ushahidi yako unayoleta hapa eti niliiba ni gani?
And what evidence are you bringing here that I stole?

W: Mimi hata sijasema uliiba. Mashtaka yenye nilileta mbele ya korti in kwamba wewe kama mlinzi kwa ile boma ulishindwa kuzuia wizi.
I have not said that you stole. The charges that I have brought before the court is that you as the guard in that compound failed to prevent theft.

Ac: Saa kumi na mbili nikitokea kazi, mlalamishi alikuwa wapi?
At 6 am when I was leaving duty where was the complainant?

W: Mimi sijui. Pengine alikuwa amelala kwa nyumba.
I don't know. Maybe he was asleep in the house.

Ac: Wakati alikuja kwangu [aliniambia-]
When he came to my house he told me-

M: [We have] been through that. Mlalamishi atakuja hapa kama shahidi na utamuuliza maswali yake.
The complainant will come here as a witness and you will ask him his questions.
Uko na maswali ingine kwa huyu shahidi?
Do you have other questions for this witness?

Ac: Sina maswali ingine.
I don't have other questions.

DS2Case06

P: Introduce yourself.

W: I am number ___, ___ attached to CID headquarters.

P: For how long have you been at the CID headquarters?

W: Aa::: for the last five years.

P: ( )

W: Aa::: normally ( )

P: ( )

W: Yes your Honour.

P: So what happened when you reported to duty on___?

W: When I reported duty I was instructed by my former boss Mr.___ at about midnight to proceed to Kasarani to arrest an officer who was suspected to be a criminal and there was information that he had been seen there your Honour.

P: The person you were going to arrest was a policeman?

W: Yes your Honour. He was an AP officer.

P: So how many were you when you went? Were you alone?

W: I was with my colleague your Honour.

P: Who was it?

W: I was with Corporal____.

P: Who else?

W: I was with some other colleagues.
P: Who are they? We need names. Or you don't know them?
W: I know them your Honour. They are Corporal___, Corporal___and Corporal___.
P: So what did you do after the instructions?
W: I was to first of all report to ___Police Station where I got details about the suspects by the name__. He aah was a suspect of robbery with violence your Honour.
P: Did you know the person you were going to arrest?
W: No I never knew the person I was going to arrest your Honour.
P: So what did you do when you got the details?
W: So when we got the details we proceed to his house and on reaching there we saw him immediately- he was coming out. So I challenged him to stop after that we arrested him.
P: After the arrest what did you do?
W: After the arrest we recovered some items from the suspect.
P: What are the items that you recovered?
W: We recovered a mobile phone and an ID issued by the A____ Police Department your Honour.
P: So what did you do about the items and the suspect?
W: We took the items and the suspect to ____ Police Station where he was put in custody your Honour.
P: Now after you arrested him and took him to custody in ____Police Station did you proceed further with investigations into the allegations of robbery with violence?
W: Aa::: we handed over to aa::: Corporal ___ who was supposed to take over the investigations, your Honour.
P: So you never did anything else you just arrested the suspect?
W: Yes your Honour.
P: And you said that you met him out and you challenged him. Now how did you know that that was the person you were to arrest was the one coming out?
W: It was just like a coincidence we were supposed to go block __ but immediately as we were going in we met the suspect.
P: Yes how then did you identify him?
W: It was a coincidence because we stopped him and searched him. He was having an ID bearing his name and photo issued by the Administration Police your Honour.
P: That's all your Honour.

M: Cross Examination?
Ac: Yes your Honour. Corporal M___ Kabla ya siku hiyo umesema, umewahi kuniona hapo mbeleni?
Before that day you are saying had you seen me there before?
W: No your Honour.
Ac: Umeambia mahakama uliponishika ulini pata na simu na kitambulisho ya kazi?
You have told the court that when you arrested me you found me with a phone and a work ID?
W: Yes your Honour
Ac: Hebu tueleze zinahusiana aje na hii kesi?
Can you now tell us how they are related to this case.
W: That was the work of the investigating officer. He was supposed to find out whether they are related to the case your Honour.
Ac: Kwa hivyo tuseme wewe huna habari?
So we can say you don't know?
W: I was not investigating the case. That's now the work of the investigating officer to establish that.
Ac: Ulinishika nayo kitu yeyote amabayo inahusiana na hii kesi?
Did you arrest me with anything related to this case?
W: No the only items I recovered from you are the ones before the court your Honour.
Ac: Kuna silaha yoyote ulinipata nayo?
Did you find me with any weapon?
W: No your Honour.
Ac: Na wakati mlinisimamisha, nilitoroka?
And when you stopped me, I run away?
A: No your Honour.
Ac: Sikujaribu kutoroka hata kidogo, si ndio?
I didn't try to escape even a bit, isn't that so?
W: Yes your Honour.
Ac: Na habari kwamba tulipatana na wewe kwa gate ulinijuaje?
And the fact that we met with you at the gate, how did you recognize me?
W: We were coming to that block so we saw you and challenged you to stop.
Ac: Ni watu wangapi wamejitokeza kusema mimi nimewahi kuwaibia?
How many people have come out claiming I have ever robbed them?
W: I don't know that your Honour.
Ac: Kumewahi fanywa parade ambapo ni mekuwa identified?
Has there been held a parade where I have been identified?
W: I don't know that your Honour.

Ac: Ni hayo tu.
That's all.

DS2Case07

P: Eleza hii korti majina yako.
Tell this court your name.
W1: Kwa majina naitwa____.
My name is___.
P: Namba yako ya kazi?
Your personnel number?
W1: Namba yangu ya kazi ni ___.
My personnel number is___.
P: Unafanya kazi katika kituo cha polisi cha wapi?
Which police station are you attached to?
W1: Nafanya kazi katika kituo cha ___ Police Station wakati wa hiyo kesi nilikuwa nime attachiwa ___ Police Post.
I work at___ Police Post but at that time of the case I was attached to ___Police Station.
P: ___ Police Station umefanya kazi kwa muda gani?
At __Police Station for how long have you worked?
W1: Nimefanya kazi- hii ni mwaka yangu ya kumi na tano.
I have worked- this is my fifteenth year.
P: Wakati wa hii kesi ambayo unasema ulikuwa ___ Police Post, kulifanyika nini?
At the time of this case when you are saying you were at __Police Post, what happened?
W1: Nilikuwa kazi patrol ya [kawaida-]
I was on routine patrol duty-
P: [Unaweza] kumbuka ni tarehe gani na nini iliweza kufanyika?
Can you recall the day and what happened?
W1: Ilikuwa tarehe ishirini na sita mwezi wa pili mwaka huu.
It was on twenty sixth February this year.
P: Kama saa ngapi?
At around what time?
W1: Ilikuwa mwendo wa saa tatu na nusu hapo ikielekea saa nne.
It was at around nine thirty going to ten.
P: Nini ilifanyika?
What happened?
W1: Wakati tukiwa kwa patrol tulipigiwa simu na mwenzangu ya [kwamba iko-]
When we were on patrol we were called with colleague that there was-
P: [Ulipigiwa] simu ukiwa na nani?
You were called when you were with who?
W1: Tukiwa na mwenzangu ambaye tulikuwa tunafanya patrol ya kwamba [kulikuwa-]
Together with my colleague with whom we were on patrol that there was-
P: [Anaitwa] nani?
What is s/he called?
W1: Anaitwa___. Sasa tulipigiwa simu kwamba iko watu wawili walikuwa wanapigana juu ya soko inaitwa__.
He is called__. Now we were called that there were two people who were fighting on the upper part of the market called___.
P: Baada ya kupokea hii simu mliweza kufanya nini?
After receiving this phone call what did you do?
W: Tukakimbia mahali hapo tukafika tukapata watu wawili wako chini. Mmoja alikuwa pande hii {((pointing))} mwenzake alikuwa pande hii ingine wamelala. Wananchi walikuwa wanaendelea kumpiga huyu kwa maana walisema yeye ndiye alimpiga nakumuumiza huyo mwingine.
We rushed to the place and found two people down. One was lying on this side and his partner was on this other side they were laying. Members of the public were beating this one because they said he was the one who had beaten and hurt the other one.
M: You found them both lying down?
W1: Yes your Honour. One unconscious and this one was beaten by a mob.
P: Ilikuwa ni kama mita ngapi kutoka mahali hapo huyo ambaye alikuwa amelala baada ya kupigwa na mahali huyu alikuwa anapigwa na wananchi? Unaweza jua ilikuwa ni kama mita ngapi?
It was like how many meters from where the one who was lying after being beaten and the place this one was being beaten by members of the public? Can you know it is like how many metres?
W1: Ilikuwa kama mita kumi.
It was about ten metres.
P: Mlifanya nini mlipopata kuwa huyu anapigwa na wananchi na huyo mwingine amelala hapo?
What did you do when you found this one being beaten by members of the public and the other one lying there?
W1: Sasa tuka- jambo la kwanza tulifanya kwa sababu huyu wananchi walikuwa wanamvamia sana tukamwondoa ili kumsaidia. Wananchi walikuwa wanataka kumchoma.

Now we- the first thing we did because this one the members of the public were attacking him we moved him to save him. The members of the public wanted to burn him.

P: Mliweza kumwokoa nakuja nayeye hadi kituo cha polisi?
Were you able to rescue him and take him to the station?

W1: Ee, huyu {((pointing at the accused))} alikuwa na majeraha. Alikuwa ameumizwa sana na kichwa alikuwa anavunja damu.
Ee, this one had injuries. He was badly hurt and he was bleeding on the head.

P: Mliweza kujua ni kwa nini alikuwa akipigwa na wananchi?
Did you get to know why he was being beaten by members of the public?

W1: Sasa wakati tulifika wananchi wale walikuwa hapo hawakuwa- hakuna yule alikuwa anataka kujitolea kueleza vile mambo yalikuwa. Walikuwa wanasema tu huyu ameshambulia mwenzake. Hakuna aliyejitolea kabisa kusema vile mambo ilikuwa.
Now when we got there the members of the public who were they did not- there is none who wanted to volunteer to explain how things were. They were just saying this one has attacked his colleague. None volunteered to explain how things were.

P: Sasa ni hatua gani mlichukua baada ya kumwondoa hapo?
Now which action did you take after getting him out of there?

W1: Kwa sababu huyu alikuwa na majeraha na tulikuwa tunahofia ameumia sana tulimchukua tukampeleka K__ Hospital.
Because this one had injuries and we were worried he was badly hurt we took him to K__Hospital.

P: Na yule ambaye alikuwa amelala?
And the other one who was lying down?

W1: Huyo tuliwacha aki attendiwa nawale walikuwa pale. Wakiwa wanamshughulikia. Sisi tukatoa huyu mwingine.
That one we left him being attended to by the people who were there. They were attending to him. For us we took away this other one.

P: Nini ilifanyia baada ya kumpeleka hospitali?
What happened after you took him to hospital?

W1: Tulimpeleka hospitali akatibiwa, akashonwa kisha madaktari wa K__ wakasema hana shida kubwa hawezi kuwa admitted. Tukarudi nayeye mwendo wa saa kumi na mbili katika kituo cha ___ Police Station.
We took him to hospital he was treated, he was stiched and then the doctors at K___ said he did not have a serious problem he could not be admitted. We went back with him at around six o'clock to ____Police Station.

P: Kwa nini mlirudisha police station baada ya kumtoa hospitali?
Why did you return him to the police staion after taking him away from hospital?

W1: Kwa sababu tukimuokoa kulikuwa na maneno kwamba yeye ndiye amemshambulia mwenzake sasa tulikuwa tunataka kumshtaki kwa kumjeruhi mwenzake.
Because when we rescued him there was talk that he was the one who had attacked his colleague now we wanted to charge him for hurting his colleague.

P: Aliweza kushtakiwa?
Was he charged?

W1: Sasa wakati ilikuwa tunamshtaki na hiyo kumjeruhi mwenzake, tukamrudisha station ndio tukapata inspekta naye baada ya kumpeleka huyo mwingine hospitali akarudi na habari kuwa huyo mwingine alikuwa amekufa. Sasa ilibidi huyu tumshtaki na mauaji.
Now when were charging him with that of injuring his colleague, we took him back to the station that is when we found the inspector after taking the other one to the hospital came *back with the news that the other one had died. Now it necessitated we charge him with murder.*

P: Ulikuwa unaaamjua huyu kabla ya siku hiyo?
Did you know him before that date?

W1: Sikuwa namjua.
I did not know him.

P: Sasa kando na kumwokoa na kumpeleka hospitali, uliendelea kufanya uchunguzi wa hii kesi?
Now apart from saving him and taking him to the hospital, did you continue to do any other investigations of this case?

W1: Uchunguzi ulikuwa unafanywa na inspekta mwingine pale.
Investigation was being done by another inspector there.

P: That's all your Honour.

M: Cross examination?

I: Wewe simama. Muulize maswali kulingana na vile amesema.
You stand up. Ask him questions as per what he has said.

Ac: Unasema uliniokoa wapi?
You are saying you saved me from where?

W1: Kwa hao maraia.
From those members of the public.

Ac: Ee::: kwa wenye walikuwa wananipiga, kuna mwenye umeshika umeleta kortini?
Ee::: among those who were beating me, is there one you have arrested and brought to court?

W1: Kuna mmoja alikuwa kama witness sasa isipokuwa yeye sikujua kama alikupiga kwa sababu walikuwa watu wengi.
There was one who was like a witness even though I don't know whether he beat you as there were many people.

Ac: Huyo ni nani?
And who is that?

W1: Alikuwa mmoja wa wenye walikuwa hapo.
He was one of those who were there.

Ac: Anaitwa nani?
What is s/he called?

W1: Anaitwa __.
He is called__.

Ac: Wakati ulifika pale ( )
When you got there ( )

W1: Rudia.
Repeat.

Ac: Wakati ulifika pale ulikuta nikipigwa na raia, walisema walinipigia nini?
When you got to where you found me being beaten by members of the public, what did they say they were beating me for?

W1: Walisema wewe ulikuwa umegonga huyo mwenzako amelala chini.
They said you had hit your colleague who was lying down.

Ac: Ndio maana walinishika na kuanza kunipiga?
Is that why they held me and started beating me?

W1: Ee.

Ac: Kwa hivyo wewe hukuona tukipigana?
So you never saw us fighting?

W1: Sikuona.
I didn't see.

Ac: Hata mwenye alikupigia simu alikuwa hapo tulikuwa tunapigana?
Even the one who called you was he there where we were fighting?

W1: Wakati alinipigia simu alituambia sasa hata yeye alikuwa mbali alijaribu kutueleza area ya M__ sasa katika hali ya sisi kutembea tukakuwa attracted katika mahali umati walikuwa wanakupiga.
When he called me he told us even him he was far and he tried to direct us to the M__ area. Now as we walked we were attracted by a crowd where they were beating you.

Ac: Kama mlipata ninapigwa, kwa nini hamkukamata hao watu? Si walikuwa wananipiga?
If you found me being beaten why did you not arrest those people? Were they not beating me?

W1: Sasa sisi- wewe ndio tulisaidia kwanza kukutoa hapo. Nahata tukikutoa watu walikuwa wanatufuata na kurusha mawe. Hao watu wangekuua.
Now us- you are the one we assisted first to get you away from there. And even as we were escorting you away the people were following throwing stones. Those people could have killed you.

P: Hebu jitambulishe kwa korti.
Introduce yourself to the court.

W2: Majina naitwa Constable___ number___ kutoka kituo cha ___ Police Station.
My name is ___ number __ from __Police Station.

P: Umefanya kazi kwa muda wa miaka mingapi katika kituo cha ___ Police Station?
For how many years have you worked at ___ Police Station?

W2: Nimefanya kwa muda wa miaka saba.
I have worked for seven years.

P: Unakumbuka mnamo tarehe ishirini na sita mwezi wa pili mwaka huu, ulikuwa wapi?
Do you recall on twenty sixth February this year, where were you?

W2: Nakumbuka tarehe hiyo mwendo wa saa mbili kamili mimi nikaingia kambi kama kawaida tukiwa na mwenzangu Corporal __ tukaende patrol. Wakati ilifika mwendo wasaa nne hivi ndio tukaweza kupigiwa simu na mkubwa wangu pale ___ Police Post.
I recall that day at eight o'clock I got to the camp as usual with my partner Corporal___ we went for patrol. When it reached around ten o'clock we were called by my senior there at __Police Post=

P: =Huyo alikuwa anaitwa nani?
What was his name?

W2: Alikuwa anaitwa Constable___. Akaweza kutueleza kwamba hapo karibu na ___ Market kulikuwa na wananchi ambao walikuwa wanapiga mtu.
He was called Constable___. He told us that there near ___ Market there were members of the public who were beating up somebody.

P: Baada ya kupata hiyo information mliweza kufanya nini?
After getting that information what did you do?

W2: Tuliweza kukimbia mahali pale tukafika pale ndio tukapata watu wakipiga mayowe wakipiga mtu akiwa ameanguuka chini. Hapo nikaweza kuingilia tukiwa na huyo mwenzangu tukamwokoa yule aliyekuwa akipigwa

pale na wakati tulimuuliza ni kwa nini anapigwa akaeleza kwamba alikuwa anapigana na mtu na ndio akaweza kupigwa. Na hapo kulikuwa na mtu alikuwa amepigwa akaanguka chini.
We rushed to the place and we got there and that's when we found people screaming beating somebody who was on the ground. There I intervened together with my partner and we rescued the one who was being beaten there and when we asked him why he was being beaten he explained that he had fought with somebody and that is why he was being beaten. And there was somebody on the ground who had been beaten and had fallen on the ground.

P: Na huyu mtu alikuwa wapi? Mwenye alikuwa amepigwa akaanguka alikuwa wapi?
And where was this person? The one who had been beaten and had fallen down?

W2: Baada ya kuangalia ndio nikaweza kumwona kama mita ishirini kutoka mahali yule alikuwa anapigiwa.
After checking is when I was able to see him about twenty meters from where the one who was being beaten was being beaten.

P: Sasa mliweza kufanya nini?
Now what did you do?

W2: Katika ile hali watu wakipiga makelele wakiendelea kumpiga tuliweza kumtoa pale kwenye kikundi cha watu na tukaweza kumpeleka kwa kituo cha polisi cha ___ Police Station.
In that state of people shouting and still beating him we were able to take him away from the mob there and we were able to take him to __Police Station.

P: Alikuwa ameumia?
Was he hurt?

W2: Huyu mtu tuliokoa alikuwa ameumia. Alikuwa anatokwa na damu, alikuwa ameumizwa kwa mdomo na pia kutembea alikuwa anashindwa kutembea, tulikuwa tunamshikilia akitembea. Tukaweza kumpigia mkubwa ambaye alikuwa wakati huo ___ Police Station alikuwa anaitwa ___ akaweza kwenda na gari ya polisi kwenda kuangalia hiyo scene ambapo huyo mtu alikuwa amegongwa. Hapo sisi tuliweza kutafuta gari tukampeleka yule alikuwa anapigwa hospitali pale K___.
This person we rescued was hurt. He was bleeding, he had been hurt on the mouth and even walking he was having difficulty walking, we were supporting him as he walked. We called the senior officer and he went in a police vehicle to see the scene where that person had been hit. There we were able to look for a vehicle and we took the one who had been beaten to hospital at K___.

P: Baada ya kumpeleka ___ nini iliweza kufanyika?
After taking him to___ what happened?

W2: Baada ya kumpeleka ___ mwendo wa saa kumi na mbili jioni tukaweza kumrudisha katika kituo ambapo asubuhi kabla ya kumpeleka kortini, ndio tukaelezwa kuwa yule mtu alikua amegongwa pale ___ Market alikuwa ameaga dunia. Ndio tukamutoa kwa cell ndio tukaenda kortini na murder charge.
After taking him to __ at around six o'clock in the evening we returned him there at the station where in the morning before we took him to court, is when we were informed that the person who had been hit there at __ Market had died. So we got him from the cell and we went to court with a murder charge.

P: Kutoka hapo uliendelea na uchunguzi kujua ile kitu ilifanya wapigane?
From there did you go on with investigation as to why they fought?

W2: Niliitwa pale na mkubwa akanieleza niandike statement ya ile tulifanya lakini uchunguzi sikufanya.
I was called there and the officer in-charge told me to record a stement of what we had done but the investigation I did not do it.

P: Na yule mliweza kuokoa akipigwa na wananchi ako hapa?
And the person you rescued being beaten by members of the public is he here?

W2: Ako hapa ndani ya korti. Ndio {((pointing at the accused))} yule.
He is here in court. It is that one.

P: Ulikuwa unamjua mbeleni?
Did you know him there before?

W2: Sikuwa namjua mbeleni.
I never knew him before.

P: Na yule anasemakana aligongwa akaaga ulikuwa unamjua?
And the one you are saying was hit and he died did you know him?

W2: Pia simjui.
I also don't know him.

P: That's all your Honour.

I: Simama uulize maswali.
Stand up and ask questions.

Ac: Huyo ofisa alikutuma hapo alikuambia ushike nani?
The officer who sent you there sent you to arrest who?

W2: Aliweza kunieleza kwamba alikuwa amepokea simu kutoka kwa wananchi kuwa kuna mtu anapigwa pale __ Market.
He explained to me that he had received a call from members of the public that somebody was being beaten there at __Market.

Ac: Alikuwa pale au wakati nikipigwa au alikuwa wapi?
Was he there when I was being beaten or where was he?

W2: Aliniambia alipigiwa na watu simu.

He told me he had been called by some people.)

Ac: Ulipokuja mahali pale uliweza kuuliza ( )
When you came to that place did you ask ( )

W2: Rudia tena.
Repeat again.

Ac: Ulipofika mahali nilikuwa napigiwa uliuliza wananchi walikuwa wananipigia nini?
When you got to the place where I was being beaten did you ask the members of the public why they were beating me?

W2: Niliweza kuwauliza kwa sababu nilikuwa nataka kupata ushahidi kwamba ulikuwa umepiga yule mtu. Niliulizia lakini ni watu wengi na walikuwa nahasira. Wewe ndiye walikuwa tu wanataka wakufikie. Sasa wengine walikuwa wanasema kwa hasira kwamba umepiga mtu ndiye huyo amelala huko nabado wanakurushia vitu. Mimi nikaona kwanza nikukutoa pale.
I asked them because I wanted to get evidence that you had beaten the person lying there. I asked but they were many people and they were angry. You are just the one they wanted to reach. Now some were saying with anger that you had beaten the person lying there as they were throwing things at you. I saw the first thing is to get you away from there.

Ac: Na walipokwambia hivyo uliwambia waende wakaandikishe statement?
And when they told you that did you ask them to go and record a statement?

W2: Nilijaribu kuwaambia na kuna wale walinifuata watatu pia wakirusha mawe lakini ilifika wakati wakarudi nyuma.
I tried to tell them but there were those who followed me three of them still throwing stones but it reached a point they also went back.

Ac: Na wale waliandika statement ulienda na wao kwa station?
And those who recorded statements did you go with them to the station?

W2: Hatukufika pamoja na wao.
We did not arrive together with them.

Ac: Walifika baadaye?
They arrived later?

W2: Walikuja baadaye.
They arrived later.

Ac: Walikuja mwendo wa saa ngapi?
At what time did they come?

W: Wale waliandika statement waliweza kuja- sikuweza kujua ilikuwa lini lakini sio wale niliona.
Those who recorded statements came- I don't know when but they are not the ones I had seen.

Ac: Nani alikwambia huyo mtu alikuwa amelala ni kugongwa amegongwa?=
Who told you that the person who was lying there had been hit?

M: =I think that question has been asked and answered.

I: Uliza swali ingine.
Ask another question.

Ac: Na huyo mwingine mlimtoa hapo kwenda station kama amekufa?
And the other on did you take him away from there to the station while he was already dead?

W2: Ninakwambia wewe ndiye tulitoa hapo. Huyu mwingine si mimi. Wewe ndiye tuliokoa usiuliwe na watu.
I am telling you you are the one we got away from there. The other one it is not me. You are the one we rescued so that people would not kill you.

Ac: Pale mliangalia kama amekufa ama aliweza kufa baadaye?
There did you check whether he was dead or he died later?

W2: Sikuweza kuangalia. Ile kuangalia niliangalia tu haraka nikaona mtu amelala ameangalia juu. Singeweza kujua kama amekufa ama alikuwa unconscious ama nini.
I was not able to check. I only checked in passing and I saw somebody lying down facing up. I couldn't know whether he was dead or unconscious or what.

DS2Case08

P: Majina?
Names?

W1: Naitwa K___.
My name is K__.

P: Unaishi wapi?
Where do you live?

W1: Naishi K___ Location.
I live at K___ Location.

P: Na unafanya kazi gani?
Which work do you do?

W1: Mimi ni mkulima.
I am a farmer.

P: Na tarehe ___ mwezi wa saba 2009 saa tatu asubuhi ulikuwa wapi?

And on ___ July 2009 where were you?

W1: Nilikuwa nyumbani.
I was at home.

P: Kulitokea nini?
What happened?

W1: Nilikuwa katika shughuli zangu za nyumbani na nilipata kusikia mtu akigonga kwa fujo gate. [Sasa-]
I was going on with my business when I got to hear somebody knocking violently at the gate. Now-

P: [Gate] ya mlango ya nani?
Whose gate?

W1: Yangu. Hapo tukachukua hatua ya kwenda kuangalia na tukapata ni jirani yangu ambaye ni mshtakiwa yule anaitwa C__ wakiwa wameandamana na mshtakiwa wa pili na wa tatu na wakiwa pia na bibi yake na wengine ambao hawako hapa kortini.
Mine. We took the action of going to check and we found it was my neigbour who is that suspect called C___ accompanied by the second accused and the third and also together with his wife and others who are not here in court.

P: Walikuwa wamebaba nini?
What were they carrying?

W1: Walikuwa wamebeba mapanga na marungu [na-]
They were carrying machetes and clubs and-

P: [Hebu] twende pole pole. Mshatakiwa wa kwanza alikuwa na nini?
Let us proceed slowly. The first accused had what?

W1: Panga.
A machete.

P: Wa pili?
The second?

W1: Rungu
A club.

P: Wa tatu?
The third?

W1: Slasher.

P: Hawa ni nani kwako?
Who are these ones to you?

W1: Wao ni majirani.
They are neigbours.

P: Walitaka nini?
What did they want?

W1: Walisema kwamba wamekuja wakidai kwamba wanapakua mchanga ambayo nilikuwa nimeweka nje ya nyumba kwa gate.
They said that they had come claiming that they want to load the heap of sand I had outside the house at the gate.

P: Wapeleke wapi?
So that they take it where?

W1: Wapeleke kwao- wachukue kwa nguvu.
They take to their home- they take it by force.

P: Kwa nini?
Why?

W1: Wakidai kuna barua walinitumia ambayo mimeleta hapa mbele ya korti.
They were claiming there was a letter they had sent me which I have brought here before the court.

P: Walikuwa wame kuandikia barua wanakuja kuchukua nini?
They had written you a letter saying they were coming to take what?

W1: Mchanga.
Sand.

P: Ulikuwa na deni yao?
Did you have their debt?

W1: Hapana.
No.

P: Sasa ulifanya nini walipokuitisha mchanga ya kujenga na wewe hauna deni yao?
Now what did you do when they demanded from you sand meant for construction and yet you didn't have their money?

W1: Niliwaambia hakuna mchanga- sitawaruhushu wabebe mchanga.
I told them there was no sand- I wouldn't allow them to carry the sand.

P: Wakafanya nini?
What did they do?

W1: Mshukiwa wa pili alichukua hatua ya kuweka mchanga kwa wheel barrow na tukachukua hatua ya kuwazuia wasibebe ile mchanga na kumwaga. Na wakati huo kuna wapita njia- jamaa walikuwa pale wanapita kwa njia na wakati huo wakaanza hali ya matusi wakidai kwamba mimi ni mgonjwa, niko na HIV positive.
The second accused took the action of loading sand onto a wheelbarrow and we took the action of preventing them from carrying the sand by pouring it. At that time there were passersby- people who were passing by the road and at that time they started hurling abuses claiming that I am sick, I am HIV positive.

P: Na uko nayo?
And do you have it?

M: [Prosecutor,] you know you can't ask that.

W1: [Hapana.]
No
Pia wakasema kwamba mimi ni rapist na kwamba mimi ni maiti.
They also said that I am a rapist and that I am a corpse.

P: Nani alisema hiyo?
Who said that?

W1: Mshtakiwa wa pili na wa kwanza.
The second accused and the first.

P: Walikutusi ama walitumia hiyo silaha?
They abused you or they used the weapons?

W1: Walikuwa wanatumia hiyo silaha nisizuie wabebe mchanga.
They were using those weapons so that I don't prevent them from carting away the sand.

P: Wakafanya nini ulipotaka kuzuia?
What did they do when you wanted to prevent?

W1: Yule mshtakiwa wa tatu alikuwa ananisukuma kwa ukuta na sasa wakati raia walikuja ndio waliwanyang'anya silaha walizokuwa nazo.
That third accused was pushing me against the wall and now when the members of the public came they are the ones took away from them the weapons they had.

P: Zikapelekwa wapi?
Where were they taken?

W1: Walipewa.
They were given.

P: Nani aliwa nyang'anya?
Who took them away from them?

W1: Raia waliokuaja.
The members of the public who came.

P: Walipo wanyang'anya?
When they took them away from them?

W1: Alafu wakawarudishia wakati kulitulia?
And then they returned them to them when things calmed down.

P: Walienda baada ya kurudishiwa silaha zao?
Did they leave after being given back their weapons?

W1: Hawakuenda. Walianza matusi. Alafu kuna mama mmoja aliraise alarm akasema anaita polisi na wakati walisikia polisi wanaitwa ndio wakawa na hali ya kutulia wakasema wangojee polisi
They didn't leave. They started hurling abuses. Then there was one lady who raised the alarm calling the police and when they heard the police were being called they calmed down saying they wait for the police.

P: Polisi walikuja?
Did the police come?

W1: Polisi walikuja lakini hawakuweza kulocate hapo.
The police came but they were unable to trace that place.

P: Na hawa waliondoka?
And did these ones leave?

W1: Hawa waliondoka wakati umati wa watu ulijaa pale.
They left when a crowd of people gathered there.

P: Uliripoti?
Did you report?

W1: Nilichukua hatua ya kwenda police station M__ na nikaweza kuandika statement.
I took the step of going to M__ Police Station and I was able to record a statement.

P: Na hii barua ndio walikuandikia tarehe ___ mwezi wa sita mwaka huu?
And is this the letter they wrote you on ___ June this year?

W1: Ndio.
Yes.

P: Huyu mzee ndiye aliandika hii?
This man is the one who wrote this?

W1: Ndio.
Yes.

P: Alitaka nini kwa hii barua?

And what did he want in this letter?

W1: Kwa hii barua alisema kuna mchanga yake anataka wheel barrow kadhaa.
In this letter he says there is his sand he want several wheelbarrows.

P: Ngapi?
How many?

W1: Ishirini za mchanga.
Twenty of sand.

P: Na ya pili akasema nini?
And the second one what did he say?

W1: Ya pili akasema anataka niondoe nyumba yangu- ujenzi wa nyumba yangu.
The second he said he wanted me to remove my house- the building of my house.

P: Naya tatu?
And the third?

W1: Niondoe kuku kwa sababu mimi nafuga kuku.
I remove the chiken because I rear chicken.

P: Ya nne?
The fourth?

W1: Akasema niko na cowshed anataka niondoe.
He said there was a cow shed he wanted me to relocate.

P: Ya mwisho?
And the last one?

W1: Akasema kwamba niko- nimepanda miti kwa shamba anataka ning'oe.
He said that I have- I have planted trees in the farm he wants me to uproot.

P: Na hizo vitu ulikuwa una ng'oa siku ile walikuja?
And had you removed those things the day they came?

W1: Hapana lakini nimeondoa kuku pande moja.
No but I have relocated the chickens from one side.

P: That's all.

I: Mshtakiwa wa kwanza simama uulize maswali.
The first accused stand up and ask questions.

Ac: Nataka kujua ikiwa nilikwambia hiyo maneno kwa barua, kwa nini tena nilikuja asubuhi saa tatu?
I want to know if I told you all those things through a letter, why then did I come in the morning at ten o'clock?

W1: Ulikuja asubuhi kwa sababu ulikuwa unachukua mchanga.
You came in the morning because you were taking the sand.

Ac: Ni kwa sababu gani wewe hukujibu barua yangu ile nilikupatia tarehe __ mwezi was sita kwa sababu nilikuwa nimeelezea kila kitu ndani yake?
For what reason didn't you respond to my letter of ___ June because I had explaine everything in it?

W1: Sikujibu kwa sababu kama nigekuwa na deni yako ungeenda kuandikisha pahali. Kuna sheria.
I did not respond because if I had your debt you would have gone to report somewhere. There is the law.

Ac1: Nakuuliza kama unanifahamu vizuri?
I am asking you whether you know me well?

W1: Nakufahamu wewe ni jirani yangu.
I know you you are my neighbor.

Ac1: Hiyo siku tulikuja asubuhi kwako kubeba mchanga ambao ulichukua. Illikuwa imemwagwa na ndugu zangu ukachukua. Ilikuwa ni wewe ulichukua mchanga ya ndugu yangu. Kwa nini ulikuja huko?
That day we came to your home in the morning to carry the sand that you had taken. It had been brought there by my brother and then you took it. It was you who took my brothers sand. Why did you come there?

W1: Nyinyi ndio mlikuja kwangu na mlibisha kwa fujo.
You are the ones who came to my home and you knocked violently.

Ac1: Ulipotoka ukatupata ulifanya nini?
When you came out and found us what did you do?

W1: Niliwazuia kubeba mchanga.
I prevented you from carting away the sand.

Ac1: Kabla ya kuzuia kubeba mchanga si ulirudi kwa nyumba ukakuja na walking stick ukanicharaza mbili ukasema unafanya kazi kwa korti hakuna mahali tutakupeleka?
Before preventing us to carry did you not go back to the house and you came with a walking stick and you hit me twice and you said you work in court there is no where we can take you?

W1: Hapana hiyo ni uongo yako.
No those are your lies.

Ac1: Ingine unasema tulikutukana ukasema nilikuita rapist. Mimi sikuita wewe rapist wala sikuita wewe maiti. Nikisema nilisema unataka kuninyang'anya mali yangu nahiyo ni tabia umezoea hata mali ya watu wengine nitakuwa nasema uongo?
Another thing you have said is that we abused you and said you are a rapist. I did not call you a rapist or even a corpse. If I say I said you want to take away my property and that is something you usually do even the property of other people would I be lying?

W1: Hiyo ni ungo kwa sababu hatuna deni na [wewe-]

That is a lie I don't have any debt with you-

Ac1: [Ile deni] yetu na wewe ni mchanga na ndio maana tuko hapa mahakamani na kwa sasa. Na hata bibi yako ansema mchanga wewe ulichukua. Hata mlikosana na yeye juu ya vile unachukua vitu za watu, hamko pamoja. Hata baba yako na mama yako si wana wanasema kwamba umebeba mchanga ya ndugu yangu?=
The debt between us is the sand and that is the reason we are in court for now. And even your wife says you are the one who took the sand. You even quarreled with her because of the way you take people's things you are no longer together. Even your father and mother are they not saying that you carried the sand belonging to my brother?

W1: =Hiyo ni maneno yangu na bibi yangu.
That is an issue between me and my wife.

Ac1: Hiyo ingine umesema mimi nilikuwa na rungu. Mimi sikuwa na rungu. Wewe ndio ulirudi kwa nyumba ukakuja na walking stick kisha ukanipigia baba yako akakujia na panga ambayo alinyang'anywa akitaka kukata ndugu yangu mwingine. Nasema uongo?
The other thing you have said I had a club. I did not have a club instead you are the one who went into the house and came with a walking stick and you hit me then your father came with a machete which he was dispossessed trying to cut one of my brothers. Am I lying?

W1: Hiyo ni maneno yako unasema uongo.
Those things you are saying are lies.

I: Mshatakiwa wa pili.
The second accused.

Ac2: Mimi unanijua?
Do you know me?

W1: Wewe nakujua kama mtoto wa yule mzee wa kwanza.
I know you as a child of that first man.

Ac2: Wakati mimi nilikuja pale, si nilikuta watu ambao walikuja kubeba mchanga?
When I came there, did I not find people who were carting away the sand?

W1: Mlikuja pamoja nao.
You came together with them.

Ac2: Mimi nilikuja pale?
Did I come there?

W1: Mlikuwa pale mlichukua mchanga mkiwa watatu na wengine hawako hapa.
You were there taking the sand the three of you and others who are not here.

Ac2: Unasema mimi nilikuwa napigana na ni baba yako ambaye alikuwa na panga akanislash nayo akanyang'anywa akakata kijana yake. Ukweli ama uongo?
You are saying I was fighting and it is your father who was had a machete he slashed me with it and it was taken away from him and he cut his son. True or false?

W1: Hiyo ni uongo.
That is a lie.

I: Mshatakiwa wa tatu una maswali?
The third accused do you have questions?

Ac3: Hapana.
No.

P: Wewe ni nani?
Who are you?

W2: Mimi naitwa W___.
I am called W___

P: Kutoka wapi?
From where?

W2: Kutoka B__.
From B___.

P: Na unaishi wapi?
Where do you live?

W2: Hapa T__.
Here at T__.

P: Unafanya kazi gani?
Which work do you do?

W2: Nafanya kazi ya watchman.
I work as a watchman.

P: Unachunga kwa nani?
Whose premises do you guard?

W2: Nachunga kwa mzee anaitwa M__.

P: Unachunga nini?
What do you guard?

W2: Nachunga kwa bar.

I guard at a bar.

P: Unajua mwenyewe?
Do you know the owner?

W2: Ni ya M__.
It belongs to M__.

P: Na mbeleni ulikuwa unafanya kwa nani?
And there before at whose place were you working.

W2: Mbeleni nilikuwa huko tu kwa M___.
There before I was still there at M___.

P: Na unakumbuka tarehe kumi na tano mwezi wa saba this year kitu saa tatu asubuhi?
Do you remember ___ July this year about 9:00 am?

W2: Ndio nakumbuka.
Yes I remember.

P: Ulikuwa wapi saa hiyo?
Where were you at that time?

W2: Nilikuwa nafanyia huyu mzee.
I was working for this man.

P: Nani?
Who?

W2: Mr. K___.

P: Ulikuwa unafanya namna gani?
What were you doing?

W2: Alikuwa ameniambia nimsaidie kulinda kuku.
He had told me to help him guard chickens.

P: Alikuwa anakulipa pesa ngapi?
How much was he paying you?

W2: Shilingi elfu tatu.
Three thousand shillings.

P: Ilifanyika nini siku hiyo?
What happened on that day?

W2: Siku hiyo mimi nilikuwa natoka kazi akanipigia simu niende kwake. Nikakuja kwake nikapata hawa [wazee-]
That day I was coming from work when he called me to go to his home. I came to his place I found these men-

P: [Ulikuwa] unaenda kufanya nini kwake?
What were you going to do at his place?

W2: Nilikuwa naenda kulinda kuku. Nilipofika hapo nikapata watu wengi na mapanga. Sasa mimi nikashindwa ni nini hii. Nilipata wanachota mchanga alafu yeye [anamwaga-]
I was going to guard chickens. When I got there I found many people with machetes. Now I was at a loss as to what was going on. I found people scooping sand and then he would pour it-

P: [Mchanga] ya nani?
Whose sand?

W2: Mr. K___.

P: Nani alikuwa nachota?
Who was scooping?

W2: Huyu madam ndiye alikuwa anachota [alafu-]
This madam is the one who was scooping and then-

P: [Huyu] wakwanza alikuwa anafanya nini?
This first one what was she doing?

W2: Walikuja tu na kelele na mapanga wakaanza [kuchota-]
They just came with noise and machetes and they started scooping-

P: [Sikiza,] huyu mshtakiwa wa kwanza alikuwa na nini?
Listen, this first accused had what?

W2: Alikuwa na slasher.
She had a slasher.

P: Na wa tatu?
And the third one?

W2: Alikuwa na hii kitu ya kuchota mchanga. Alafu mafundi walikuwa hapo- hawa mafundi wakatoroshwa [wakaenda-]
He had this thing for scoping sand. Then some masons who were there- those masons were chased away they went-

P: [Hawa] walikuwa wanachota mchanga, kuna kitu walikuwa wanasema? Hebu tueleze walikuwa wanasema nini.
These ones who were scooping sand, was there something they were saying? Tell us what they were saying.

W2: Kelele- walikuwa wanatusi Mr. K__.
Noise- they were abusing Mr. K__.

P: Matusi gani? Huyu wa kwanza alisema nini?
Which abuses? What did the first one say?

W2: Alisema yule ana ukimwi.
He said that one has AIDS.

P: Na huyu wa pili?
And this second one?

W2: Akasema atakufa kama mbwa.
He said he would die like a dog.

P: Na huyu wa tatu?
And this third one?

W2: Wa tatu alikuwa anasukuma yeye anamfinyilia kwa ukuta {((demonstrating))} hivi.
The third one was pushing him pressing him against the wall like this.

P: Baadaye ilitokea nini?
Later on what happened?

W2: Baadaye wakapiga nduru- iko mama alipiga duru jirani wakakuja. Sasa hiyo mambo ikaanza kuisha pole pole ndio hawa sasa wakaanza kurudi kwao.
Later they raised alarm- there was a woman who raised alarm the neighbours came. Now that fracas started cooling off slowly by slowly and now these ones started going back to their home.

P: Na baadaye ulienda polisi kuandika statement?
And later did you go to record a statement?

W2: Tulienda huko.
We went there.

Ac1: Nikisema yale mambo ambayo unasema ni uongo mtupu naweza kuwa nasema uongo mbele ya Mungu?
If I say those things you are saying are total lies would I be lying before God?

W2: Hayo yalitoka kwa mdomo yako.
That came from your mouth.

Ac1: Nakuuliza yale ambayo umesema hapa. Nikisema ni uongo mbele ya Mwenyezi Mungu naweza kuwa nadanganya korti?
I am asking you what you have said here. If I say it is lies before the almighty God would I be lying to the court?

W2: Hiyo ni ya ukweli ile nimeongea.
It is true what I have spoken.

Ac1: Wewe unasema ulikuja ukanipata na panga. Ulinipata na kitu ingine? Kama nilikuwa na silaha kabla ya yeye kukuita na simu kitu gani ilinizuia nisimkate?
You are saying you came and found me with a machete. Did you find me with anything else? If I had a weapon before he called you by phone what prevented me from cutting him?

W2: Uliogopa. Kulikuwa na watu.
You feared. There were people.

Ac1: Nikisema kile kilinifanya niingie kwake na nikaita majirani ili nisikosee ni kwamba nilienda kumuuliza ahamishe kuku na ng'ombe naweza kuwa nasema uongo?
If I say what made me to enter his home and I called the neighbours so that I do things right is because I went to ask him to shift chickens and cows would I be lying?

W2: Si alihamisha?
Did he not shift them?

Ac1: Baada ya mimi kumwambia. Si alihamisha baada ya kumpatia hii barua, ukweli ama uongo?
After I told him. Did he not move them after I gave him this letter, true or false?

W2: Uliandika barua kama anajenga nyumba ya kuhamisha hao kuku.
You wrote a letter when he was already building a house for shifting those chickens to.

Ac2: Unanifahamu vizuri?
Do yo know me well?

W2: Mimi nakujua.
I know you.

Ac2: Unanijua kama nani?
You know me as who?

W2: Na kujua tu wa sura yako kama jirani ya Mr. K___.
I just know you by appearance as a neighbor to Mr. K___.

Ac2: Nikieleza hii mahakama ya kwamba wewe na mwingine aliwaokota huko njiani akawalipa ili mje mtoe ushuhuda wa uongo nitakuwa nasema uongo?
If I tell this court that you and another were picked and paid to come and give false testimony would I be lying?

W2: Unasema uongo.
You are telling lies.

Ac2: Nikieleza mahakama ya kwamba yeye aliambiwa atoe hiyo boma ya kuku naya ng'ombe alikuwa amejenga karibu na ukuta wetu. Ulikuwa unajua wewe na ni mshahidi mtu amejenga hapo kwa ukuta?
If I tell the court that he was told to shift that house for chickens and cows that he had build near our wall. Did you know and you are a witness that he had build near our wall?

W2: Kujenga alikuwa amejenga kwa ukuta lakini siku ile aliandikiwa barua alikuwa ashaanza kujenga pahali kuku na ng'ombe wako sasa.

He had build next to the wall but the day he was written a letter he had already started building where the chickens and cows are now.

Ac3: Ulipofika hapo mahali kulipokuwa na vurugu ulichukua hatua gani ya kutenganisha hawa watu?
When you reached the place there was fracas, what step did you take to separate those people?

W2: Mimi nilikuuliza wewe kwanini mnapigana ukanijibu sijui eti enda kazi yako mimi nikaenda kazi yangu.
I asked you why you were fighting and you told me to go to my work and I went to my work.

Ac3: Wakati ulinikuta pale nilifanya nini?
When you found me there what did I do?

W2: Wewe ulikuwa unamshika kwa gate hivi {((demonstrating))} unamgongesha kwa ukuta, jirani wakakukataza ndio ukaachana na yeye.
You were holding him at the gate like this and hitting him against the wall, neighbours told you to stop and that's when you left him.

Ac3: Ulisema nilikuwa na silaha, mimi nilikuwa na silaha yoyote pale?
You said I had a weapon, did I have any weapon?

W2: Ulikuwa na kijiko.
You had a spade.

Ac3: Kijiko ya nini?
A spade for what?

W2: Ya kuchota mchanga.
For scooping sand.

Ac3: Nilikuwa nafanya nini na kijiko?
What was I doing with the spade?

W2: Ulikuwa unasimama nayo ndio ukatupa ukaanza kumfinyilia kwa ukuta.
You were standing with it then you threw it aside and started pressing him to the wall.

P: Majina yako?
Your names?

W3: M___.

P: Unatoka wapi?
Where do you come from?

W3: T___.

P: Unafanya Kazi gani?
Which work do you do?

W3: Kulima.
Farming.

P: Na tarehe kumi na tano mwezi wa saba mwaka huu saa tatu asubuhi ulikuwa wapi?
And on __ July this year at 9 o'clock in the morning where were you?

W3: Nilikuwa hapo juu kwa duka.
I was up there at the shop.

P: Duka ya nani?
Whose shop?

W3: Ya N___.
Of N__.

P: N___ ni nani?
Who is N__?

W3: Ni mzee mwingine ako na duka hapo.
It is another man who has a shop there.

P: Ilifanyika nini wakati ulipokuwa dukani?
What happened when you were at the shop?

W3: Nilikuwa nimenunua vitu yangu naenda nyumbani. Nikapitia kwa mzee mwingine anaitwa baba F___, njiani [nikakuta-]
I had made my purchase and going home. I passed at the home of another man the father to F___, on the way I found-

P: [Sasa Baba] F___ ni nani? Tuambie mambo yenye imetuleta hapa kortini. Nini ulishuhudia siku hiyo kuhusiana nahii kesi?
Now who is the father to F___? Tell us about the issues that have brought us to court. What did you witness on that day that is connected to this case?

W3: Sasa kulikuwa watu wengi hapo kwa njia. Tukakuta hawa ndio wako [na vita-]
Now there were many people there at the road. We found these ones were the ones with fracas-

P: [Hawa ni] kina nani?
These ones are who?

W3: Hawa {((pointing))} watatu.
These three.

P: Walikuwa na nini?
What were they having?

W3: Sasa kulikuwa na makelele [mengi hapo-]
Now there was a lot of noise there-

P: [Jibu vile] nakuuliza. Hawa watatu umesemawalikuwa na vita walikuwa na silaha gani?
Answer what I am asking you. These three you said were having fracas had which weapons?

W3: Niliona wheelbarrow na kijiko na hii nini thimbu na panga.
I saw a wheelbarrow and a spade and this called a club and a machete.

P: Nani alikuwa amebeba panga?
Who was carrying the machete?

W3: Mimi nilikuta kama ziko hapo kwa mchanga, yule {((pointing))} ndiye alikuwa anachota mcha [nga na-]
I just found them there on the sand, that one is the one who was scooping the sand and-

P: [Nani?]
Who?

W3: Huyu msichana. Na yule {((pointing))} amechukua mwenye mchanga anamsukuma yaani huyu kijana.
This girl. And that one had taken the owner of the sand and was pushing him agaist the wall that is this young man.

P: Na wa kwanza?
And the first one?

W3: Yule alikuwa anapiga makelele.
That one was making noise.

P: Ulisikia akisema nini?
What did you hear him saying?

W3: Ati ako na HIV, ati atakufa kama [mbwa-]
That he has HIV, that he will die like a dog-

P: [Nani] atakufa?
Who will die?

W3: Aliambia huyo jirani yake hivyo.
He told that neighbor of his like that.

P: Na wa pili ulisikia akimtusi namnagani?
And the second one how did you hear her abusing him?

W3: Huyu msichana ndiye alikuwa anachota mchanga-
This girl is the one who was scooping the sand-

P: Ni msichana ama ni mama?
Is she a girl or a woman?

W3: Ni msichana.
She is a girl.

P: Yeye ulisikia akimtusi vipi?
You heard him abusing him how?

W3: Alimtusi akasema ati yeye ni malaya, ati analeta wanawake hapo hata ndio bibi yake ametoroka.
She abused him and said that he is a prostitute, that he brings women there and that's why his wife has ran away.

P: Na huyu wa tatu?
And this third one?

W3: Huyu alikuwa anamshika tu na kumsukuma.
This one was just holding him and pushing him.

P: Yeye alimtusi?
Did he abuse him?

W3: Hata yeye alimtusi.
Even him he abused him.

P: Na kumwita nini?
What did he call him?

W3: Hapo sikusikia.
There I didn't hear.

P: Na waliacha kumtusi wakati gani?
When did they stop abusing him?

W3: Sasa walikuwa wanamtusi- saa hio walikuwa wanamtusi kukapigwa simu ikasemekana polisi wanakuja. Ndio huyu akaacha hiyo mchanga wakaenda kwao kama wanapiga makelele mengi.
Now they were abusing him- at that time when they were abusing him a call was made and it was said the police were coming. That's when this one left that sand and they went to their home making a lot of noise.

P: Na baadaye ulienda ukaandika statement kwa police sation?
And later did you go to record a statement at the police station?

W3: Ndio, M__.
Yes, M__.

P: Na kwa nini hawa walikuwa wanachota mchanga? Ulijua?
And why were these ones scooping the sand? Did you know?

W3: Mimi sijui lakini nilikuta msichana akichota mchanga na huyu mwenye mchanga anamwaga.

I don't know but I found the girl scooping the sand and the owner of the sand pouring it.

Ac1: Nikisema mbele ya korti mahali tulikutana n awewe nikaribu kwa mama F__ wewe hata hukuwa pale kulikuwa na vita naweza kuwa nasema uongo?
If I say before the court the place we met with you is near___ home and you were not even there where there were fracas would I be telling a lie?

W3: Umesema uongo.
You have told a lie.

Ac1: Wakati ulikuta nimesimama kwa gate nikigonga nikasema nimekuja kuitisha chochote kile kilikuwa nichangu pale nitakuwa nasema uongo?
When you found me standing at the gate knocking I said I had come to ask for whatever was mine there would I be telling lies?

W3: Hapana, hapo hauongei uongo.
No, there you are not speaking lies.

Ac1: Ulisikia ni sababu gani mimi niliingia kwa K___?
Did you hear for what reason I got in at K___ home?

W3: Mimi nimesimama kwa njia tu.
I was just standing at the road.

Ac2: Nataka kukuuliza wakati ule ulikuwa unatoka kwa duka ulifika kwa M___ ambaye ni jirani ya K___ mkasimama na mama M__ hapo- ukaambiwa usimame hapo utakuwa witness kwa hii kesi, ulisimama hapo?
I would like to ask you that time you were coming from the shop you got to M__ who is K__ neigbour you stood with the mother of M__ there- you were told to stand there you would be a witness in this case, did you stand there?

W3: Hapana.
No.

Ac2: Ulisimama wapi?
Where did you stand?

W3: Nilikuwa hapo tu karibu kwa K___, mimi nilikuta kama mmeshaanza vita.
I was just there near K___'s home, I found you already fighting.

Ac2: Wewe na mama M___ mlikuwa hapo mkaona tukibisha na saa ile tulibisha akarudi kwake akakuja na hiyo walking stick. Nikieleza mahakama wewe na huyo witness mwingine mmeokotwa mje kudefend information ya uongo nadanganya?
You and the mother of M__ were there you saw us knocking and when we knocked he went into his house and came with a walking stick. If I tell the court you and the other witness were just picked to come and defend untruthful information am I lying?

W3: Ni uongo.
It is lies.

Ac3: Wakati nilikuja pale nilifanya nini?
When I came there what did I do?

W3: Ulishika huyu ukamgonganisha na ukuta.
You took hold of this one and hit him agaist the wall.

Ac3: Na wakati baba yake alikuja na panga ulikuwa pale?
And when his father came with a machete were you there?

W3: Mimi sikuona panga.
I never saw a machete.

Ac3: Alikuja na panga akanigonga nayo?
He came with a panga and hit me with it?

W3: Hapana.
No.

Ac3: Ni kitu gani ilitokea baadaye?
What transpired later?

W3: Hiyo vita iliisha na hamkuchota mchanga.
That fracas ended and you never scooped the sand.

DS2Case09

P: Hebu tupatie majina yako.
Give us your names.

W: Mimi naitwa Father M___.
My name is Father M____.

P: Unafanya kazi gani?
Which work do you do?

W: Mimi ni padre wa kanisa ya K___.
I am a father of ___ church.

P: Una hudumu kwa kanisa ambayo iko wapi?
You serve in church located where?

W: Iko___
It is at ___

P: Na kuishi?
And residing?
W: Naishi __
I reside at__
P: Tarehe sita mwezi wa pili mwaka huu unakumbuka?
On sixth February this year do you remember?
W: Nakumbuka.
I remember.
P: Ulikuwa unafanya kazi gani? Bado ulikuwa huko___?
What work were you doing? Were you still at ___?
W: Hata saa hii niko kule.
Even now I am there.
P: Hiyo siku ulikuwa wapi?
On that day where were you?
W: Nilikuwa natoka T__ nilikuwa nimekuja kwa garage kuoshewa gari yangu so nilikuwa narudi.
I was coming from T__ I had come to a garage to have my car washed so I was going back.
P: Alafu?
Then?
W: Nikafika around 7.00 nikakaa kama kawaida. Nilikuwa kwa nyumba na Father V__ tulikuwa pamoja tuikuwa tunaangalia news. Tulikuwa pia na Father B__ .
I arrived at around 7 .00 and I settled as usual. I was in the house with Father V__ and we were watching news. We were also with Father___.
P: Mlikuwa watatu?
There were three of you?
W: Tulikuwa watatu.
We were three.
P: Nyumba ni ya room ngapi?
The house has how many rooms?
W: Nne.
Four.
P: Nini iliendelea.
What transpired?
W: Tulikuwa tumerelax tunaangalia news. Then mwendo wa 7.30 tukasikia mbwa wanabweka sana. Ndio tukaambia mpishi akaangalie ni nini. Anaitwa M__.
We were relaxing watching news. Then at around 7:30 when we heard the dogs barking so much. So we told the cook to check what was wrong. He is called M___.
P: Alikuwa wapi?
Where was he?
W: Kwa kitchen hapo. Sasa tukaulizana kwa nini mbwa wanabweka sana kwani watchman hayuko. Mpishi kufungua mlango akavurushwa akatupwa mpaka pahali tulikuwa.
There at the kitchen. Now we asked each other why the dogs were barking so much, is it that the watchman is not there. The cook on opening the door he was thrown and landed where we were.
P: Alivurushwa na nani?
He was thrown by who?
W: Waliingia na watu.
They came in with people.
P: Uliona watu wangapi?
How many people did you see?
W: Wale niliona wakiingia at a go walikuwa kama wane.
Those that I saw come in at a go were about four.
P: Wanaume au wanawake?
Men or women?
W: Wanaume.
Men.
P: Alafu?
And then?
W: Sasa wakati alitupwa kwa sitting ndio [tukaambiwa-]
Now when he was thrown into the sitting room we were told-
P: [Walikuwa] na nini?
What were they having?
W: Mapanga. Niliona wawili na panga. Sasa kuingia mmoja alikuja kwangu straight. Hakuwa na panga alikuwa na kisu. Stima ilikuwa inawaka hata hawakutuambia tufunge macho so tulikuwa tunaongeleshana. So wa kwanza alikuja kwangu na kisu- walikuja wawili kwangu, mmoja wa kisu akaovertakiwa na wa panga so wa kwanza ndiye alibaki na mimi wa kisu akaenda kwa Father V__. Wakati alienda kwa Father V___ mimi nikabaki na wa panga wa panga sasa after hiyo akatwambia tuingie kila mtu kwa room yake

Machetes. I saw two with machetes. Now on getting in one came straight to me. He didn't have a machete have had a knife. The lights were on and they did not even tell us to close our eyes so we were just talking directly. So the first one came to me with a knife- they came two of them towards me the first one with a knife was overtaken by the one with a machete so it is he who remained and the one with a knife went to Father V__. When he went to Father V__ I remained with the one with a machete and now after that he told us we go each one of us to our rooms.

P: Wewe ulienda?
Did you go yourself?

W: Mimi nilipelekwa na huyo wa panga mpaka kwa room lakini after kupigwa kwa panga kwanza kwa kiti. Kufika kwa room yangu nikaongezewa ingine ya kichwa {((pointing))} hapa. Sasa nikatoa pesa nilikuwa mnimeweka tu mahali kwa bag kwa drawer fourty thousand. Na kwa ile bag nilikuwa nayo ilikuwa na three thousand na five hundred so wakati aliniambia nimwongezee pesa nikakumbuka kuna ingine kwa bag nikamtolea three thousand five hundred. In the process ya kuchukua hio three thousand five hundred akaangusha five hundred so akabeba three thousand. Akaniambia twende sitting. Baada ya kwenda akaniambia lala. Nikalala {((demonstrating))} hivi. Akaanza kupiga yule Father B___. Alikuwa pale anapigwa, mimi sikupigwa tena after tuliwatolea pesa sasa wakaenda. After kwenda sisi tukaamka. Waliacha simu yangu hiyo ndio tuliitana nayo. Tukapigia Assistant Chief, akaita polisi wakaingia within the next 5 minutes.
I was taken by the one with a machete up to my room after being hit with the machete there at the sitting room. On getting to the room he hit me again here on the head, now I removed the money I had just put it in a bag in a drawer fourty thousand. And in that bag I had there was three thousand and five hundred so when he asked me to add him money, I recalled there was more in the bag. I gave him three thousand five hundred. In the process of taking the three thousand five hundred he dropped five hundred so he carried three thousand and told me we go to the sitting room. After going there he told me to lie down. I lay down like this. He started beating Father B___. He was there being beaten, I was not beaten again after giving them money now they left. After they left we go up. They left my phone and that is the one we used to call the Assistant Chief. He called the police and they came within the next five minutes.

P: Ulipoteza nini?
What did you lose?

W: Simu moja=
One phone

P: =Aina gani?
Which make?

W: Nokia___. Nikapoteza DVD player na pesa fourty three thousand , key yangu ya gari Rav4 K__. Hiyo ufunguo waliacha mahali ikaletwa the following day.
Nokia__. I lost a DVD player and money fourty three thousand, my key to the vehicle Rav4 ____. That key they left it somewhere and it was brought the next day.

P: Dhamana ya vitu ulizopoteza?
The value of the things you lost?

W: Around sixty thousand five hundred.

P: Umesema mlienda polisi kuandika statement?
You have said you went to the police to record statement?

W: Polisi tulienda- kwanza saa hio walipigiwa simu wakakuja. Then tulienda kuandika statement, tukaenda kuchukua [watchman-]
To the police we went- first at that time they were called and they came. Then we went to record statement, we went to take the watchman-

P: [Kwa polisi] ulienda mara ngapi?
How many times did you go to the police?

W: Nilienda mara mingi, watchman alienda huko kuandikisha- so nilienda mara mingi.
I went there many times, the watchman went there to record- so I went many times.

P: Ulienda kufanya nini huko na watchman?
What did you go to do there with the watchman?

W: Kwanza sababu watchman alichukuliwa nikaona Bw DC, tena kuchukua karatasi ya kesi.
Because the watchman was taken I saw the DC, then to collect the case papers.

P: Na unasema ulipoteza simu. Ulikuwa umenunua pesa ngapi?
And you are saying you lost a phone. How much had you bought it for?

W: Eight thousand five hundred.

P: Uko na risiti yake?
Do you have a receipt for it?

W: Niliitafuta nikaikosa.
I searched for it and I couldn't find it.

P: Na hii vitu vingine?
And these other things?

W: Hizo nilinununa zamani, 2002.
Those ones I bought them a long time back, 2002.

P: Hao watu waliwavamia kuna mwenye uliku unajua?

Those people who invaded you, is there any you knew there before?

W: Kuangalia niliweza jua mmoja.
When I looked at them I recognized one.

P: Nani?
Who?

W: Huyo hajawahi shikwa lakini nilimjua sababu tunaenda kanisa naye.
That has never been caught but I knew him because we go to church with him.

P: Ni nani huko?
Who is he there?

W: Anaimba choir.
He sings in the choir.

P: Hawa {((pointing at the accused persons))} unajua vile walishikwa?
These ones do you know how they were caught?

W: Sijui, niliiitwa tu baadaye.
I don't know, I was just called later.

P: Na hivi vitu vilipatikana?
And these things were they recovered?

W: Havikupatikana. Ni kifunguo tu iliachwa kwa njia.
They were not recovered. It is just the key that was left on the road.

I: Mshtakiwa wa kwanza.
First accused.

Ac1: Mshukiwa aliye mbele ya korti ulikuwa unamjua mbeleni?
Did you know the suspect before court there before?

W: Sikuwa nakujua.
I did not know you.

Ac1: Mshukiwa ulimtambuaje?
How did you recognize the suspect?

W: Kwa vile nilikuona. Unajua ukiona mtu na umeongea nayeye sometimes huwezi sahau haraka nayeye sometimes hawezi sahau haraka. Nilikutambua kwa kuona sura.
Because I saw you. You know if you see somebody and you talk with him sometimes you cannot forget quickly and even him sometimes he cannot forget quickly. I recognized you by seeing the face.

Ac1: Umesema wewe ndio ulipiga ripoti polisi?=
You have said you are the one who made a report to the police?

W: =Nimesema ripoti ya kwanza ilipigwa na yule tulipigia simu. Baadaye ndio tulienda kuripoti.
Have said the first report was made by the person we called. Later is when we went to record a statement.

Ac1: Wakati ulipiga simu ulipiga ripoti ya mshukiwa aliye mbele ya mahakama?
When you called, did you report about the suspect before the court?

W: Nilipiga ripoti polisi, polisi wakaniuliza maswali.
I reported to the police, they asked me questions.

Ac1: Kwa hivyo hukupiga ripoti ya mshukiwa yeyote?
So you never made a report about any suspect?

W: Hapana.
No.

Ac1: Na polisi waliwezaje kujua waliokuibia?
And how were the police able to know who had stolen from you.

W: Hiyo utauliza polisi. Mimi niliitwa watu tu.
That you will ask the police. I was just called to see people.

Ac1: Polisi alikuwa kwa kitendo?
Were the police at the scene of the incident?

W: Hapana, walikuja baadaye.
No, they came afterwards.

Ac1: Unasema mshukiwa aliye mbele ya mahakama unajua jina lake?
You have said the suspect before court you know his name?

W: Niliuliza after identification.
I asked after identification.

Ac1: Kwa hivyo wewe uliambiwa?
So you were told?

W: Ndio, niliambiwa na polisi.
Yes, I was told by the police.

Ac1: Kwa hivyo hii ripoti si wewe uliripoti.
So you are not the one who made this report.

W: Unajua wewe ndio umeshika hivyo. Sijui kama unayoshika ndio niliandikisha.
You know that is what you have understood. I don't know whether what you have understood is what I recorded.

I: Mshtakiwa wa pili.
Second accused.

Ac2: Mimi uliniona wapi hapo mbeleni?
Where had you seen me before?
W: Mimi hata sijawahi kukuona nilikuonea kwa ile identification parade.
I have never seen you, I saw you at the identification parade.
Ac2: Ukanitambua aje?
How did you identify me?
W: Ulikuwa kwa line nikakutambua. Na nimesema hata mbeleni sikuwa nakujua lakini siku ya wizi nilikuona ulikuja kwangu na kisu kidogo lakini haukuenda na mimi ukadivert kwa Father V___.
You were on the line and I identified you. And I have said there before I never knew you but on the day of the theft you came to me with a small knife but you never went with me you diverted to Father V___.
Ac2: Hiyo kisu nilikuja nayo kwako wakati ulipiga ripoti kwanini haukuandikisha.
That knife I came to you with when you made your report why didn't you record it?
W: Kwa statement nilisema wa kwanza alikuwa na kisu na yule alinipeleka kwa bedroom alikuwa na panga.
In the statement I have said the first one had a knife and the one who took me to the bedroom had a machete.
Ac2: Ulielezea polisi namna gani.
What did you tell the police?
W: Following day ndio tulienda police station kuandikisha statement kama vile nimesema mimi kile nilijua niliona jamaa wawili wanakuja kwangu na mmoja tukaongeleshana ( )
The following day is when we went to the police to record statements and as I have said what I know I saw two people that came to me and one of them we spoke to each other ( )
Ac2: Ukienda kuandika statement hukukumbuka wale watu walikuja kwako ulikumbuka kwa parade?
When you went to record a statement you did not remember those people who came to your place, you remembered those at the parade?
W: Siwezi kumbukia kwa parade, niliwaona hiyo siku pia.
I didn't just remember the parade, I saw you on that day too.
Ac2: Ulikubaliana na polisi namna gani baada ya kuibiwa?
What agreement did you arrive at with the police after you were robbed?
W: Nilikubaliana watafanya uchunguzi na ku arrest wezi wenye walituvamia.
I came to an agreement they would investigate and arrest the thieves who had invaded us.
I: Mshtakiwa wa tatu.
Third accused.
Ac3: Wakati ulipokuja kwa parade ulipata watu wangapi?
When you came to the parade, how many people did you find?
W: Walikuwa watu wengi sana.
There were very many people.
Ac3: Wakati unasema uliibiwa uliweza kunitambua siku hiyo.
When you say you were robbed, were you able to recognize me on that day?
W: Nimesema kwa vile walikuwa wengi niliweza kutambua wale walikuja kwangu mimi. Sikukuona, nilikuona baadaye ile siku ulishikwa. Kwa hivyo mimi sikukuona kwa hiyo tukio.
I have said because they were many I was able to recognize those that came to me. I never saw you, I saw you later that time you were arrested. So I never saw you during that incident.

P: When they came in did they came in a rush or politely?
W: They came in a rush. Waliingia in a rush.
They came in a rush.
P: Did they have a dialogue withyou?
W: First they talked- they rushed in commanded us 'pesa na simu' they were just talking to us like that.
'money and phones'
P: Can you say who said what to you?
W: Ndio, nimesema yule {((pointing at one of the accused))} aliniongelesha kwa kusema 'simu na pesa'.
Yes, I have said that one talked to me by saying 'phone and money'.
P: Who led you to the room?
W: That other man{((pointing at one of the accused))}.
P: Father V__?
W: Alilalishwa immediately after sasa kuambiwa tunataka pesa then after that tukaambiwa tulale. Badala ya kulala mimi nilishikwa nikaambiwa twende kwa room.
He was made to lie down immediately after now being told we want money and then after that we were told we lie down. Instead of lying down I was told we go to the room.
P: Before ordering you to get out the cell phones you were all seated and then they started collecting from each and every one of you. They were pulling them out while you lay down or were they still standing with you?
W: Mimi wakati walisema watu walale mimi badala ya kulala mimi na Vincent tulishikwa tukapelekwa kwa room sasa Father B__ wakabaki wamelalishwa pale.
When they said people to lie down instead of lying down I and Vincent we were held and taken to the room, now they remained with Father B___ making him lie there.
P: So you have told the court that in your room you went with the one who had a panga, is that correct?
W: Nilimwona kwa parade na ile tuliongeleshana one on one.

I saw him there and we talked with him one on one.

P: How did you come to go for the identification parade?

W: Kwanza tulijulishwa kuna washukiwa wamepatikana.
First we were informed some suspects had been found.

P: When did you go at the police station?

W: I can't remember.

P: You went there the three of you. Then?

W: Tukaambiwa kuna washukiwa na tumewaita mwone kama mnaweza kuwajua. So tukawekwa in different places kila mtu anakuja peke yake.
We were told there were suspects and we have called you you see whther you can identify them. So we were placed in different places everyone on his own.

P: Now what were you told by the person conducting the identification parade.

W: You should not identify a person who you didn't see. That's was all about the warning

P: At that time you were all of you?

W: Mimi aliniambia wakati ilifika kwanza kuangalia akaniambia.
I was told when I first arrived to check I was told.

P: And at the identification parade how many people did you see

W: The number I could not know. I can't tell. But I positively identified these two.

DS2Case10

P: Introduce yourself.

W: I am number___ PC___ .

P: Where are you attached?

W: I am attached at the CID Headquarters.

P: And then in September, 2010 where were you attached?

W: I was attached to the___ Flying Squad.

P: Now, tell the court, what happened on___ September, 2010.

W: I remember that day we received a report that a dangerous highway robber [was staying-]

M: [Have you] established he is comfortable with English?

P: Ongea na Kiswahili ndio asikie.
Speak Kiswahili so that he can hear.

W: Siku hiyo tarehe__ mwezi wa tisa 2010, tulipata habari kwamba jambazi mwenye alikuwa amewaibia watu katika barabara ya___ kwenda ___alikuwa anaishi kwa nyumba moja hapo ___.
On that day___ September, 2010, we received information that a criminal who had been stealing from people along the___ ___ road was living in the house at___. .

W: Mlipata habari kutoka wapi?
Where did you get the information from?

W: Tulipata kutoka kwa informer wetu.
We received it from our informer.

P: Mkafanya nini?
What did you do?

W: Sasa tukaenda huko kitu saa kumi ya usiku.
Now we went there at aound 4 am

P: Mlienda na nani?
You went with whom?

W: Tulienda na Seargent___ PC___ PC ___ PC___ PC ____na driver PC___.
We went with Seargent___ PC___ PC ___ PC___ PC ____and a driver PC___.

P: Alafu?
And then?

W: Kufika huko tuligonga mlango na ikafunguliwa na mama. Tulifanya search na tukapata vitu nyingi sana ambazo ziko mbele ya korti.
On getting there we knocked on the door and it was opened by a woman. We conducted a search and found very many things which are before the court.

P: Elezea vizuri. Mshtakiwa aliye mbele ya korti ni mwanaume. Ndiye mlikuwa mnaenda kushika kwa sababu umetaja mama?
Explain well. The accused person before the court is a man. Is he the one you were going to arrest because you have mentioned a woman?

W: Huyo mama ni bibi yake.
That woman is his wife.

P: Wakati mlienda huko, mlijua mnaenda kushika nani?
When you went there, did you know whom you were going to arrest?

W: Ndio.
Yes.

P: Mlikuwa mmeambiwa aje? Mlipewa picha?
What had you been told? Were you given a photo?

W: Hapana tulikuwa tumeambiwa anaitwa___.
No we had been told he is called___.
P: Haya mlipewa jina. Sasa mlipofika kwa hiyo nyumba?
Okay, you were given a name. Now when you arrived at the house?
W: Kufika huko, mama ndio alifungua mlango wakati tuligonga.Tukajitambulisha kama afisa wa polisi.
On arrival there, it is a woman who opened the door when we knocked. We identified ourselves as police officers.
P: Ndio.
Yes.
W: Tukamwambia tunataka___, kama anaishi kwa hiyo nyumba.
We told her we want ___, whether he lives in that house.
P: Ndio.
Yes.
W: Akatwambia mzee hayuko.
She told us the man is not there.
P: Mzee gani? Aliwaambia huyo mlikuwa mnaenda kutafuta ndio bwana yake?
Which man? Did she tell you that the one you were going to look for is her husband?
W: Ndio.
Yes.
P: Alimwambia nani?
Whom did she tell you?
W: Alitwambia ___ ni bwana yake lakini hayuko nyumbani.
She told us___ is her husband but is not home.
P: Na huyo___ ndiye mshtakiwa na ndiye mlikuwa mnaenda kushika?
And that___ is the accused person and he is the one you were going to arrest?
W: Ndio.
Yes.
P: Na huyu ___mlikuwa mnaenda kumshika sababu alikuwa mshukiwa wa wizi, si ndio?
And this___ you had gone to arrest him because he was a robbery suspect, isn't that so?
W: Ndio.
Yes.
P: Kwa hivyo ndio ilifanya mwingie kwake kufanya search, si ndio?
So that is what made you get into his house and conduct a search, isn't that so?
W: Ndio, hiyo ndio ilifanya tuingie na kufanya search.
Yes, that is what made us get in and conduct a search.
P: Sasa mshtakiwa hamkumpata hapo ndani?
Now the accused person you never found him inside there?
W: Hapana, hakuweko.
No, he was not there.
P: Haya, turudi kwa vitu ulisema mlipata kwa hiyo nyumba. Mlipata nini?
Okay, let's go back to the things you said you found in that house. What did you find?
W: Tulipata motorcycle moja ambayo haikuwa na registration.
We found one motorcycle that did not have registration.
P: Make?
W: Ilikuwa model___.
It was model___.
M: What does it mean it did not have registration? It was not registered with who?
P: Nini motorcycle haikuwa nayo?
What is it that the motor cycle didn't have?
W: Haikuwa na number plate your Honour.
It didn't have a number plate your Honour.
P: Rangi?
Colour?
W: Blue your Honour.
P: Your Honour the motorcycle is outside. It is the one at the door. Let it be marked as__. Nini ingine mlipata?
What else did you find?
W: Tulipata sewing machine mbili.
We found two sewing machines.
P: Make?
W: Moja ilikuwa Seagull na ingine ilikuwa Swan.
One was Seagull and the other one was Swan.
P: To be marked ___your Honour. Endelea. Toanisha hizi. Si umezileta kama exhibit?
Continue. Unpack these. Have you not brought them as exhibit?
W: Pia tulipata DVD make Airtech.
P: To be marked ___your Honour.
W: Wheel spanner, vibiriti total ya 60 packets, hand gloves za white, na explosive device.

P: Wheel spanner __, matchboxes the sixty of them ___, hand gloves__, wheel spanner ___your Honour. Hiyo explosive unasema iko wapi?
The explosive you are saying where is it?

W: Hiyo haiko hapa. Ilipelekwa kwa ballistics experts na haijarudi.
That one is not here. It was taken to a ballistics expert and it has not been brought back.

P: Kuna vitu vingine mlipata?
Are there other things you found?

W: Hapana.
No.

P: Nakuuliza juu {((holding up an item))} yahii.
Am asking you because of this.

W: Oh ndio. Your Honour tuliweza pia kupata album ya picha.
Oh yes. Your Honour we were also able to get a photo album.

P: Album mlichukua ya nini?
You took the album for what?

W: Tulichukua ya identification. Iko na picha ya mshtakiwa na bibi yake. Inaonyesha hiyo nyumba ni yake.
We took it for identification. It has photos of the accused and his wife. It shows that is his house.

P: Sasa hizi vitu mlichukua aje? Mliandikisha?
Now how did you take this things? Did you record them?

W: Ndio tuliandikisha.
Yes we recorded.

P: Where is the list? Are you the one the who wrote it?

W: Hapana iliandikwa na PC___ lakini nilikuwa hapo.
No it was written by PC___ but I was there.

P: Sasa wakati ulipata hizi vitu ulifanya nini?
Now when you got these things what did you do?

W: Tulizibeba na pia huyo mama tukaenda ____Police Station for further interrogation. Lakini kwa sababu alikuwa na mtoto mdogo aliachiliwa baada ya kurecord statement.
We took them together with that woman and went to ___Police Station for further interrogation, but because she had a small child, she was released after recording a statement.

P: Kwa interrogation alimwambia hizi vitu zilitoka wapi?
During the interrogation, where did she tell you these things had come from?

W: Alisema bwana yake ndiye anakuja nazo.
She said her husband comes with them.

P: Sasa hizi vitu zingine ni za nyumba. Kama hii DVD, ni hatia mtu kuwa nayo?
Now these things, some of them are household items. Like the DVD player, is it a crime for somebody to have it?

W: Sio hatia lakini, lazima mtu aweze kuonyesha vile zilikuja kwake, nizake kivipi. Awe na kitu kama risiti.
It is not a crime but it a must that a person be able to explain how they came to his or her house. How they are his or hers. He or she should have something like a receipt.

P: Na mama hakuwa na receipt?
And the woman did not have a receipt?

W: Hapana.Tulimwambia aende aambiye huyo bwana yake alete risiti achukue vitu kama ni zake.
We told her to go and tell her husband to come with receipts so that he could take the things if they were his?

P: Alileta?
Did he bring?

W: Hapana.
No.

P: Hata hii kiberiti mlitaka risiti?
Even these matchboxes, you wanted a receipt?

W: Hapana your Honour. Kiberiti tulichukua kwa sababu hii chemical iko kwa kichwa ndio wanaweka kwa hiyo explosive device ndio wakigongesha inalipuka inalia kama bunduki.
No your Honour, we took the matchboxes because the chemical on the matchstick head is the one they put in the explosive device so that when they bang it, it explodes making a sound like that of a gun.

P: Sasa hizi zote mlitoa huko unataka kuzitoa kama exhibit kwa hii kesi?
Now all these things you got from there, would you like to produce them as exhibits in this case?

W: Ndio.
Yes.

P: Huyu mshtakiwa alikuja kukamatwa namna gani?
This accused person how did he come to be arrested?

W: Alishikwa kama wiki tatu baadaye na askari wa AP hapo___. Wakatuita tukaenda kumchukua.
He was arrested about three weeks later by the AP at___. They called us and we went and got him from them.

P: Na ni mtu ulikuwa unajua hapo mbeleni?
Was it a person known to you there before?

W: Wakati alishikwa niliona kuwa kuna siku ingine alishikwa juu ya wizi.
When he was arrested, I saw there was another time he had been arrested because of theft

P: Lakini mkienda kumshika wakati mlipata ripoti haukuwa unajua ni yeye.
But when you went to arrest him when you got a report you didn't know he was the one?
W: Hapana sikuwa najua ni yeye.
No I didn't know it was him.
P: That's all your Honour.

I: Simama. Uko na maswali juu ya hayo amesema?
Stand up. Do you have questions on what he has said?
Ac: Ndio.
Yes.
I: Muulize.
Ask him.
Ac: Ndĩrenda gũkũria [atĩrĩrĩ-]
I want to ask you this-
M: [Muulize] kwa Kiswahili.
Ask him in Kiswahili.
Ac: Sijui Kiswahili.
I don't know Kiswahili.
M: Na hiyo unaongea. Si hiyo ni kiswahili?
And that which you are speaking. Is that not Kiswahili?
Ac: Sijui vizuri. Nataka kuuliza na Kikuyu.
I don't know it well. I want to ask in Kikuyu.
M: Na mimi sijui Kikuyu. Hata karani wangu hajui.
And I don't know Kikuyu. Even my clerk doesn't know.
Umesoma mpaka wapi?
You went to school up to which level?
Ac: Nilifika class five.
I went upto class five.
M: Na si uulize na ile kidogo unajua. Ya kawaida tu. Si mtihani unafanya.
Just ask with the little you know. The common one. You are not sitting for an exam.
Ac: Kusikia nasikia lakini kuongea siwezi vizuri.
I can hear but I can't speak it well.
M: See whether you can get another clerk in the registry- or you, are you a pupil?
Pupil: Yes.
M: What is your name?
Pupil: ___your Honour.
M: So you know Kikuyu. Interpret for him. We are wasting time. Okay ask the questions.
I: Haya, uliza maswali.
Okay, ask the questions.
Ac: Ndĩrenda kũria atĩrĩrĩ, mũciĩ ũcio ũrauga mwathirerĩ ũikarĩte atĩa?
I want to ask this, how is the layout of that homestead you went to?
Pupil: Hiyo nyumba yake kwenye mlienda, kuko aje?
His house where you went, how is it?
W: Kuko aje namna gani? Si ni nyumba tu ya kawaida.
How is it meaning what? It is just a normal house.
Ac: Kũhana atĩa?
How does the place look like?
Pupil: Kuna kaa aje?
How does the place look like?
M: What is he asking. Unauliza nini? Si umejibiwa?
What are you asking? Have you not been answered?
Ac: Aruta ũira auga mũcĩi ũcio nĩ wakwa na niĩ ndangorire kuo na ndianyitĩirwo kuo.
He has testified that that homestead is mine and he never found me there and I was not arrested there.
M : What is he saying?
Pupil: Anasema kwamba huyu amesema huko ni kwake lakini hakumpata [huko-]
He is saying that this one has said that is his home but he did not find him there-
M: [Tell] him to stop giving a defence and ask questions.
Pupil: Uliza maswali, wacha kuelezea.
Ask questions, stop explaining.
Ac: Na mwĩkũĩrwo ũrĩa wĩ mbere ya igoti nĩ mwamũkorire mũciĩ ũcio mwathiĩte?
And the suspect before the court, did you find him at the homestead you had gone to?
Pupil: Yeye mlipata huko nyumbani?
Did you find him there at home?
W: Hapana. Nilisema wewe hatukukupata.
No. I said we did not find you.
Ac: Na wamenyire nakĩĩ atĩ kũu nĩ gwakwa?

And how did you know that that is my home?

Pupil: Na mlijuaje anaishi huko?
And how did you know that he lives there?

W: Tulikuwa tumepata habari na tulipofika huko tulipata bibi yako.
We had information and when we got there we found your wife.

Ac: Ũcio ũrauga mwakorire niĩ ndimũĩ.
That woman you are saying you found, I don't know her.

Pupil: Huyo mama si bibi yake.
That woman is not his wife.

W: Ni bibi yako. Alisema ni bibi yako na hata alikuwa na mtoto wako. Huwezi kataa bibi yako.
It is your wife. She said she is your wife and she even had your child. You cannot deny your wife.

Ac: Nĩ mũtumia wakwa atĩa? Amwĩrire etagwo atĩa?
How is she my wife? What did she tell you her name is?

Pupil: Anaitwa nani?
What's her name?

W: Anaitwa A___.
She is called A__.

Ac: A___ waũ?
A___ of who?

Pupil: Nahiyo jina ingine?
And that other name?

W: Sijui hiyo ingine. Lakini ni bibi yako na hapo ni kwenu.
I don't know the other name. However she is your wife and that is your home.

Ac: Niĩ ndĩroiga ti mũtumia wakwa. Rĩtwa rĩũ rĩngĩ rĩroiga nĩ waũ?
I am saying she is not my wife. As per her third name what is her marital status?

Pupil: Yeye si bibi yangu.
She is not my wife.

M: Uliza swali ingine.
Ask another question.

Ac: Korwo nĩ mũtumia wakwa rĩ, marĩtwa make nĩmangĩhanaine na makwa.
If she is my wife, her name would be like mine.

M: What's the question?

Pupil: Anasema huyo sio bibi yake.
He is saying that is not his wife.

M: Move on. Uliza swali ingine kama uko nayo.
Ask another question if you have one.

Ac: Mũtumia ũcio nĩ mũthitangwo cirainĩ ũyũ?
Is that woman an accused in this case?

Pupil: Huyo bibi yake ni mshtakiwa?
Is his wife an accused?

W: Hatukumshika. Yeye alisema hizi vitu zote ni zako.
We did not arrest her. She said all these things are yours.

Ac: Mwagire gũthitanga mũtumia ũcio nĩkĩ na nĩwe mwakorire na indo ici?
Why didn't you charge that woman and she is the one you found with these things?

Pupil: Kwa nini haukushtaki bibi yake nayeye ndiye alikuwa na hizi vitu?
Why didn't you charge her and she is the one you found with these things?

W: Vitu alisema ni zako. Ni wewe ulileta na pia nilisema alikuwa na mtoto mdogo.Yeye aliandika statement na tukamuachilia.
She said the things are yours. You are the one who brought them. I also said she had a small child. She just wrote a statement and we let her go.

Ac: Nagithĩ ndũngĩoire irore indoinĩ ici kana kũu mũciĩ kuonania nĩ ciakwa?
Should you not have dusted the items or the home for fingerprints to show they are mine?

Pupil: Mlichukua fingerprints kuonyesha vitu ni zake?
Did you dust for fingerprints to show the things were his?

W: Vidole haichukuliwi kwa zile vitu zimepatikana kwa nyumba ya mtu. Inachukuliwa kwa vitu imepatikana na huko kwa barabara.
Fingerprints are not dusted for items recovered in somebody's house. They are dusted for items found out there.

Ac: Niĩ ndĩroiga hau hatirĩ kĩndũ gĩakwa.
I am saying here is nothing that belongs to me there.

Pupil: Hizi vitu sio zangu.
These things are not mine.

M: Umemaliza maswali?
Are you done with the questions?

Ac: Nĩkĩĩ ũngĩrũgamia haha igotiinĩ gĩa kuonania indo ici nĩ ciakwa?
What can you give the court as evidence to show that these things are mine?

Pupil: Unaweza kuonyesha aje hizi vitu nizake?

How can you show that these things are his?

M: Uliza swali ingine. Ya mwisho sasa. Wacha kurudia mambo yenye umeuliza.
Ask another question. The last one now. Stop repeating the things you have already asked.

Ac: Mũciĩ ũcio nĩ wakorire andũ angĩ?
Did you find other people in that homestead?

Pupil: Mlipata watu wengine kwa hiyo nyumba?
Did you get other people in that house?

W: Hapana.
No.

Ac: Gũtirĩ andũ angĩ maikaraga kuo? Kwĩ nyũmba ĩmwe?
No other people live there? There is only one house?

Pupil: Kwa hizo nyumba zingine mlipata watu?
In those other houses did you get people?

W: Baba yako na mama walikuweko. Ni watu wazee na hao hatukushughulika nao.
Your father and mother were there. They are elderly people and we didn't bother with them.

Ac: Kũoguo mũciĩ ũcio mwarĩ githĩ tiwa mũthuri ũcio?
So the homestead you went belongs to that man?

Pupil: Hapo mlienda ni kwa huyo mzee baba yake.
The place you went is at his father's.

W: Ndio ni kwake, na pia hata wewe mnaishi huko. Umejenga nyumba mahali tulipata bibi yako.
Yes it is his and also even you live there. You have build a house the place we found your wife.

Ac: Na akorwo indo mwarutire mũciĩ kwa mũthuri ũcio, mũciĩ ũcio nĩ wake rĩ, ũkĩagĩte kũmũthitanga nĩkĩĩ?
And if these things you recovered them at that man's home, the home is his, why have you not charged him?

Pupil: Na kwa nini haujashtaki baba yake na vitu zilipatikana kwake?
And why haven't you charged his father and the things were recovered from his home?

W: Vitu tulipata kwa nyumba yako sio ya baba yako. Baba yako ni mzee sana hatukushugulika na yeye.
We found the things in your house not your father's. Your father is a very old man we never bothered with him.

Ac: Na hĩndĩ ĩyo ndanyitirworĩ, nĩ kũrĩ kĩndũ ndanyitirwo nakĩo kĩa mũndũ?
And when I was arrested, was I found in possession of somebody elses property?

Pupil: Wakati alishikwa kuna vitu alipatikana nazo?
When he was arrested, was he found with anything?

W: Hapana.

Ac: Na ndanyitĩirwo kũu mũciĩ ũcio kana ndanyitiĩrwo kũ na nĩkĩĩ ndekaga?
Was I arrested in that homestead or where was I arrested and what was I doing?

Pupil: Wakati alishikwa alikuwa kwa hiyo nyumba [ama-]
When he was arrested was he in that house or-

M: [We] have covered that. Uliza swali ya mwisho sasa.
Ask the last question now.

Ac: Mũgĩthiĩ kũu rĩ, nĩ mwarĩ na sachi?
When you went there, did you have a search?

Pupil: Eti?
What?

Ac: Ndĩramũria atĩrĩrĩ, magĩthiĩ kũu makuire indo rĩ marĩ na sachi?
I am asking him when they went there where they carried things did they have a search.

Pupil: ….

M: What is he asking?

Pupil: I don't know.

M: Swali ingine? Umemaliza? Okay.
Another question? You have finished?

Ac: ….

M: Okay.

DS2Case11

P: Unasema majina unaitwa nani?
You are saying what is your name?

W: Naitwa S__.
I am called S___.

P: S__ sasa utaongea kwa sauti.
S__ now you will speak loudly.
Kutoka wapi?
From where?

W: [Natoka-]
I come from-

P: [Angalia] korti pale mbele ukiongea. Umh?
Face the front of the court as you speak. Umh?

W: C__ village
P: Iko wapi hiyo?
Where is that?
W: O____
P: Unafanya kazi gani?
What work do you do?
W: Retired C__ Council officer.
P: Wewe ni retired. Na sasa unafanya kazi gani?
You are retired. And now what work do you do?
W: Nakaa tu.
I just stay.
P: Unakumbuka tarehe ishirini na mbili ___ 2011 saa sita ya usiku?
Do you remember 22nd ___ 2011 at mid-night?
W: Ndio.
Yes.
P: Ulikuwa wapi saa hiyo?
Where were you at that time?
W: Saa hiyo nilikuwa nalala.
At that time I was sleeping.
P: Ukiwa na nani?
You were with who?
W: Nilikuwa na bibi na mtoto mwingine mgonjwa.
I was with my wife and another child who is sick.
P: Alafu nini ilifanyika mkilala?
The what happened as you slept?
W: Nikasikia sauti [ya-]
I heard a voice of-
P: [Ikito]ka wapi?
Where was it coming from?
W: Ikitoka nje ya K__
Coming from outside of K__
P: K__ ni nani?
Who is K___?
W: Sauti ilikuwa yake hapo nje.
The voice was his out there.
P: K__ ni yule mshtakiwa?
Is K__ that one the accused?
W: Ndio.
Yes.
P: Yeye ni nani kwako?
Who is he to you?
W: Ni mtoto wangu wa nne.
He is my fourth child.
P: Na ulisikia sauti akiwa wapi?
And you heard the voice where was he?
W: Akiwa nje.
He was outside.
P: Yes.
W: Akiwa nje anasema ‘toka’, ‘nita kuua’, ‘fungua mlango’, ‘nitakuua’, ‘nilikwambia nitakuua.’ Akagonga mlango na madirisha. Akagonga akavunja dirisha, akapiga mlango akashout ‘mbwa toka’, ‘toka nitakuua’, ‘nilikwambia nitakuua.’ akapiga mayowe, akapiga mayowe. Nikawasha taa nikakaa ndani. Nikakaa chini. Nikakaa, nikakaa, [nikakaa-]
He was saying ‘get out’, ‘I will kill you’, ‘open the door’, ‘I will kill you’, ‘I told you I will kill you.’ He hit the door and windows. He hit and broke the windows, he hit the door and shouted ‘get out dog’, ‘get out I will kill you.’ He screamed and screamed. I lit the lamp and stayed inside. I sat down. I stayed and stayed and stayed-
P: [Ulitoka?]
Did you get out?
W: Kwanza nilikaa nikakaa baada ya kulemewa akaanza kuongea polepole kwa sababu alikuwa mlevi. Nikachukua panga na fimbo=
At first I stayed and stayed and after he was overcome he started speaking slowly as he was drunk. I took a machete and a club
P: =Ulichukua panga na [fimbo-]
You took a machete and a club-
W: [panga] na [fimbo=
a machete and a club
P: [Yes.

W: =na nikafungua polepole nikatoka. Kuniona hivi akaanguka akasema ‘niue’. Nikafikiria sasa nikuue- Mimi sikuongea nikarudi nikasonga kidogo. Akakamata kisu [aka-]
and I opened the door slowly and got out. On seeing me he fell down saying ‘kill me’. And I though how do I kill you- I did not speak I went back a bit. He got hold of a knife and he-

P: [Alikuwa] na kisu saa hiyo?
He had a knife at that time?

W: Kisu amekamata na fimbo ingine alikuwa anagonga nayo hii madirisha. Nikasonga kidogo nikakaa, nikakaa. Akaniambia: ‘Unajua nataka mwambia kazi yangu ile mimi nafanya, kazi yangu ni kuiba. Miaka hiyo yote kazi yangu ni kuiba. Na sasa mimi nataka hiyo kitu wewe uko nayo, nitakukatakata alafu nikuue nikunywe damu yako na tarehe ishirini mimi narudi Nairobi, mwezi wa nane. Kwa hivyo wewe jua wewe maiti.’
A knife he is holding and the club he had hit the windows with. I went back a bit and waited and waited. He told me? ‘You know I want to tell you the work I do, I am a thief. All these years my work has been stealing. And now I want what you have, I will cut you up and then I will drink your blood and on 20th I am going back to Nairobi, in August. Just know you are a corpse.’

P: Wewe ulisaidika vipi?
How did you get from this?

W: Mimi nilisaidika kwa kunyamaza.
I got out of it by keeping quiet.

P: Ulienda wapi?
Where did you go?

W: Nilienda nikarudi nikakaa. Alafu nikakaa chini, alafu akafifia kitu saa kumi na moja asubuki akasikia [saa-]
I went back and stayed. Then I sat down and then when he reached at around 5:30 in the morning he heard the time-

P: [Alilala?]
Did he fall asleep?

W: Hakulala. Alikaa tu.
He didn’t sleep. He just sat.

P: Na wewe unakaa nayeye hapo nje?
And you stayed with him out there?

W: Hapo nje.
Out there.

P: Mpaka saa ngapi?
Up to what time?

W: Mpaka saa kumi na moja. Sasa hapo alikuwa amesema ati ataniua na arudi N__ ndio akarudi N__ huko H__.
Up to 5:00. Now there he had said he would kill me and go back to N__ so he went back to N___ at H___.

P: Uliripoti hii mambo yote kwa polisi?
Did you report all these things to the police?

W: Nilienda, saa kumi na mbili nilikuwa polisi.
I went, at 6:00 I was at the police.

P: Wapi?
Where?

W: O___

P: Alishikwa namna gani?
How was he arrested?

W: Alipoondoka, anafanya kazi ya kwenda kushinda stage kubebea watu mizigo, alikaa huko. Sasa alimaliza kitu kama wiki mbili bila kuonekana.
When he left, he does the work of waiting at bus stops to carry luggage for people, he stayed there. He stayed for two weeks without being seen.

P: Alishikiwa wapi?
Where was he arrested?

W: Alikuja tu baadaye tarehe saba ndio alikuja [asubuhi-]
He came later on 7th is when he came in the morning-

P: [Mwezi] gani?
Which month?

W: Mwezi wa nane kama amelewa alafu akakuja akalala pahali hapo nje. Na mimi nikakimbia nikaenda nikaita mzee moja ya kijiji chairman na nikaita mwana kamati mwingine. Nikaja nikawaambia, ‘Ndiye huyu tupeleke.’
August as he was drunk then he came and slept outside there. I ran and called one village elder the chairman and I called another committee member. I came and I told them ‘He is the one let us take him’.

P: Walimshika?
Did they apprehend him?

W: Walimshika tukapeleka yeye mpaka polisi.
They apprehended him we took him up to the police.

P: Polisi ya wapi?
Which police station?

W: O__.

P: Na ile kisu ulikuwa unasema alikuwa [nayo-]

And the knife you were saying he had-

W: [Ndio] hii.
It is this one.

P: unasema ni hii?=
You are saying it is this one?

W: =Ee.

P: Na hii kisu ilipatikana wapi?
And where did you get this knife?

W: Hapo alikuwa analala.
Where he was sleeping.

P: Aliacha hapo?
He left it there?

W: Wakati alishtuka hivi akaona kumekucha aliamka akakimbia.
When he started and saw it was daylight he got up and fled.

P: Ukapeleka wapi hii kisu?
Where did you take this knife?

W: Nikapeleka polisi.
I took it to the police.

P: Ukapeleka polisi ya O___?
You took it to the police at O__?

W: Ee.

P: Your Honour this is the knife that was recovered. To be marked as ___.
Na alitaka kukundunga na kisu wakati gani?
And when did he want to stab you?

W: Wakati huo usiku.
That time at night.

P: Wakati gani? Ukiwa kwa nyumba ama ulipotoka nje?
At what time? When you were in the house or when you got out?

W: Wakati nilipotoka nje, alitaka kuninduga. Na mimi nilikuwa na panga. Sasa nilisimama na nilikuwa na [fimbo-]
When I got out he wanted to stab me. And I had a machete. Now I stood and I had a club-

P: [Kwa] hivyo hiyo panga ndio ilimzuia kukundunga.=
So that machete is what prevented him from stabbing you?

W: =Ee na hiyo siku si mara ya kwanza. [ali-]
And that is not the first time. He-

P: [Your Honour] I am through with examination.

I: Wee simama. Uko na maswali yakuuliza?
Stand up you. Do yo have questions to ask?

Ac: Ndio.
Yes.

I: Uliza.
Ask.

Ac: Your Honour, hiyo yote babangu ameeleza hapa ni [uongo-]
Your Honour, all that my father has explained here are lies-

I: [Uko] na maswali? Muulize huyu maswali.
Do you have questions? Ask this one questions.

Ac: Ulinikata na panga, na nikaenda asubuhi yake [nikatibiwa-]
You cut me with a machete, and I went the following morning I was treated-

M: [Hiyo ni] swali kweli? Hatutaki maelezo, uliza yeye swali.
Is that really a question? We don't want an explanation, ask him a question.

Ac: Eleza mbele ya korti, mnamo tarehe __ mwezi wa sita, si uliweza kunikata na panga?
Explain before the court on __ June, did you not cut me with a machete?

W: ….

I: Ulimkata na panga?
Did you cut him with a machete?

W: Sijui.
I don't know.

M: Hujui namna gani mzee? Kuna siku ulimkata na panga?
How can you not know? Is there a day you cut him with a machete?

W: Mimi hapana kata yeye.
I have not cut him.

Ac: Niko na barua your Honour kutoka hospitali hapo O__ [nilitibiwa-]
I have a letter your Honour from a hospital there at O__ I was treated-

M: [Sawa.] Endelea kumuuliza maswali.
It's okay. Go on asking him questions.

Ac: Baba ile kitu tunaulizana na wewe ni shamba ama si shamba?
Father the quarrel between you and I is land or is not land?

W: Shamba nilikupatia ukakataa.
I gave you land you refused.

Ac: Mimi naambia hii korti ya kwamba wewe unataka kuniua na kunifukuza nyumbani. Ninandanganya?
I am telling the court that you want to kill me and to chase me from home. Am I lying?

W: Hiyo si swali ya kuniuliza. Hebu wewe [sema-]
That is not a question to ask me. Can you say-

M: [Jibu] swali lake. Umesikia vile ameuliza?
Answer his question. Have you heard what he asked?

W: Anauliza eti mimi nataka ua yeye.
He is asking that I want to kill him.

M: Eeh, unasemaje kwa hiyo?
And what do you say to that?

W: Mimi nataka ua wewe na nilienda ni karipoti mpaka polisi na ulikuwa hapo?
I want to kill you and yet I went to report ot the police and you were there.

Ac: Wewe unataka- mamangu alikufa 1998 na ukaoa bibi mwingine na ndio unataka kunifukuza.
You want- my mother died in 1998 and you married another wife and that is why you want to chase me away.

W: Hiyo sasa nini unasema. Nafukuza wewe nipeleke wewe wapi? Si nilikuzaa na nikakulea. Nafukuza wewe na ni mtu unaishi N__, umekaa huko tangu ukiwa na miaka ishirini na tano sababu ulienda huko [1999-]
Now what is that you are saying. I want to chase you to where? Did I not give birth to you and raise you. I want to chase you and you live in N__, you have stayed there since you were 25 years because you went there in 1999-

M: [Ngoja.] Wewe endelea na swali ingine.
Wait. You go on with another question.

Ac: Sisi tulizaliwa tukiwa vijana wawili na huyo wa kwanza umemptatia haki yake. Mimi ndiye hutaki kuona huko. Hata nikija hapo nyumbani mnaanza kunipiga na huyo [brotherangu-]
We were born two brothers and the first one you have given him his right. I am the one you don't want to see there. Even when I come there at you home you and my brother start beating me.

W: [Hiyo una]ndangaya ukisema kwamba yeye ndiye nilimpatia kwanza. Wewe ndiye nilipatia kwanza 2007. Nikaita mzee wa kijiji na nikakuonyesha shamba. Hukujuenga.
That is telling a lie when you say he is the one I gave first. You are the one I gave first in 2007. I called a village elder and I showed you the land. You did not put up a house.

Ac: Hii mambo yote inatokea wewe kuoa bibi ya pili. Ndio hukuwa unataka mimi kukaa pale sababu wewe na huyo bibi mlikuwa mnaendelea kuuza shamba. Nanilipo kuuliza haki yangu, wewe babangu mzazi uliamua kunikata na panga. Hata ulinikata mara mbili na ukanifukuza.
And all these things are coming from you marrying a second. That is why you never wanted me there because you and that wife are selling off the land. And when I asked for my right, you my father decided to cut me with a machete. You even cut me twice and chased me.

W: Makosa yote ni yako wewe. Hebu kumbuka 2007 ulikuja ukafukuza dada yako kwa fimbo. Na nikakupatia shamba. Hio bibi nilioa kwa sababu hapo unajua kuna mtoto mgonjwa, dada yako mdogo na singeweza kukaa nayeye peke yangu na huyo mwigine ulifukuza. Yule ndugu yako yeye alikuja [pole pole-]
All the mistakes are yours. Remember 2007 you came and chased away your sister by beating her. I gave you land. That second wife I married her because there is a sick child, your younger sister and I could not manage to care for her alone and you chased away the other one. Your other brother came respectfully-

M: [Hakuna haja] ya kumuelezea hii [maneno yote-]
There is no need to explain to him all these things-

W: [Nilioa] bibi [yapili-]
I married the second wife-

M: [Ngoja mzee.] Wewe uliza swali yenye inaweza kukusaidia kwa hii kesi.
Wait old man. You ask a question that can help you in this case.

Ac: Ile yangu ya mwisho your Honour ni kwamba wakati nilimuuliza shamba, aliniambia niende nifufue mama yangu anipe [shamba-]
My last one your Honour is that when I asked him for land, he told me to go and dig up my mother to give me land-

M: [Hiyo haita] kusaidia. Uliza swali inahusiana na hii kesi. Wachana na mambo ya shamba. Swali yenye inahusiana na hii kesi. Uko nayo ama umemaliza?
Ask a question related to this case. Leave out issues of land. A question that is related to this case. Do you have one or have you finished?

Ac: Ndio.
Yes.

DS2Case12

P: Twambie unaitwa nani na unafanya kazi wapi.
Tell us your name and where you work.

W: Mimi naitwa R____nafanya kazi na ____ huko N___.
I am called R___ and I work with___ at ____.

P: Na tarehe ishirini na tano ___ this year, unakumbuka siku hiyo?
And on 25th ___this year, do you recall that day?

W: Nakumbuka siku hiyo vizuri sana.
I recall that day very well.

P: Saa kumi na mbili asubuhi ulikuwa unatoka wapi?
At 6 in the morning where were you coming from?

W: Nilitoka kwangu huko R___ nikielekea kazini N___.
I left my home at R__ going to work at N___.

P: Ulikuwa unasafiri namna gani?
How were you travelling?

W: Nilikuwa natembea na mguu. Wakati nilipofika karibu na shule [iko hapo-]
I was walking on foot. When I got near a school that is there-

P: [Saa hiyo] umetoka kwako kama kilomita ngapi?
By then you have left your home like how many kilometers back?

W: Si kilomita. It's about three hundred meters. Sasa kwa barabara nikapitia kwa hiyo shule iko hapo karibu.
Not kilometers. It's about three hundred meters. Now on the road I passed near that school that is near there.

P: Shule inaitwa?
The school is called?

W: Sikumbuki hiyo jina lakini najua ni ya Yule mzee. Wakati nillipofika tu, nikaona mbwa tatu zimechomoka kwa compound yake.
I don't remember the name but I know it belongs to that man. When I just got there I saw three dogs emerge from his compound.

P: Kwa shule ama kwa nyumba yake?
From the school or his house?

W: Zikatoka ndani ya hiyo shule zikakuja kwa barabara. Sasa mimi nikajaribu- sasa vile niliona zinakuja kwangu nikajaribu kukimbia lakini nikaona zitaniuma. Nikasimama. Wakati niliposimama, zilikuja tatu, moja ikakuja mguu nikang'ang'ana [nayo-]
They came from that school they came to the road. Now I tried- now when I saw they were coming towards me I tried to run away but I saw they would bite me. I stopped. When I stopped, they came three of them, one came to the leg I struggled with it-

P: [Ilifanya] nini mguuni?
What did it do to the leg?

W: Ilikuja [kuniuma=
It came to bite me

P: [Mguu gani?
Which leg?

=nikapiga teke hivi. Ya pili ikakuja nayo nikaipiga na hii mguu tena. Haikuniuma. Ya tatu ndio ilikuja pande ya nyuma ikaniuma [hapa.] {((pointing))}
I kicked it like this. The second one came I hit it with this leg again. It did not bite me. The third one came from behind and bit me here.

P: [Mguu] gani?
Which leg?

W: Mguu wa right.
The right leg.

P: Ikakuuma mguu wa right. Pande gani? Wapi kwa mguu?
It bit you on the right leg. Which side? Where on the leg?

W: Iliniuma hapa {((pointing))}. Wakati iliponiuma niliruka juu. Saa hiyo yote nilikuwa napiga nduru kabisa. Wakati niliruka juu nilirudi chini namna hii {((demonstrating))}. Sasa nikaanguka na mgongo, mkono yangu ya kushoto ndio ilishika chini ikabeba mwili yote. Sasa nikasikia ko! Hapo hapo.
It bit me here. When it bit me I jumped up. All that time I was screaming loudly. When I jumped up I fell down this way, now I fell on my back and my left arm is the one that touched the ground and carried the weight of the whole body. Now I heard ko! There and there.

P: Ilivunjika?=
It broke?

W: =Ilivunjika. Ndio {((lifting up the hand))} hii.
It broke. Here it is.

P: Hiyo ni kuvunjika ama ni kuumwa?

That is being broken or bitten?

W: Hii ni kuvunjika.
This is being broken.

P: Bado unapiga duru?
And you are still screaming?=

W: =Bado napiga duru. Wakati nilipoanguka na nyuma hivi {((demonstrating))} mbwa hazikuniuma tena. Zilirudi kwa mwenyewe mbio. Zikirudi sasa nilikuwa nimeamka.
I am still screaming. When I fell down backwards like this the dogs did not bite me again. They went running to their owner's compound. As they went back I was on my feet

P: Ukaamka?=
You got up?

W: =Ee.

P: Na umeumia mkono?=
And your hand is hurt?

W: =Mkono wakati sasa mimeumia iko namna hii. {((demonstrating))} Wakati ziliporudi huyu kijana ndiye amekaa hapo, sijui kama ni kijana yake ama ni mfanyikazi, I don't know, so wakati ziliporudi kijana alikimbia [huko-]
The hand when I got hurt it was like this. When they went back this young man seated there, I don't know whether he his son or employee, I don't know, so when they went back the young man ran there-

P: [Uliona] akikimbia?
Did you see him running?

W: Nilimuona na macho yangu aliita mbwa wakaenda nazo kwa huyu mzee, hiyo compound ya huyu mzee is is not fenced unaona vizuri. Sasa mimi nilikuwa nashikiwa mkono yangu namna hii {((demonstrating))}. Sasa unajua nilisimama hapo, nilikuwa naona nikirudi nyuma- nirudi kwangu kama hizo mbwa zitanifuata tena. Sasa kutoka hapo nilirudi kwangu nyumbani. On my way mzee mmoja jirani akanipigia simu.
I saw him with my own eyes ha called the dogs and they went with them to this man's home, the homestead is not fenced and you can see clearly. Now I was holding my hand like this. Now you know I stood there, I was feeling like if I got back- I go back home those dogs would follow me again. Now from there I went back to my home. On the way one man, my neighbor called me.

P: Anaitwa nani?
What is his name?

W: Anaitwa I___. Aliniuliza niko wapi nikamwambia mzee nilikuwa naenda kazini lakini saa hii narudi nyumbani. Sasa akashangaa naenda kazini na nimemwambia narudi nyumbani so akaningonjea huko nyumbani nikafika. Wakati nilipofika nikakuta kijana yangu bibi yangu na huyu mzee na nikawaelezea vile mambo ilikuwa.
He is called I___. He asked me where I was I told him I was going to work but now I coming back home. Now he was surprised I am going to work and I have told him I am coming back so he waited at home till I got there. When I got there I found my wife, my son and that man and I told them the way things were.

P: Ulipelekwa wapi?
Where were you taken?

W: Nilipelekwa saa hiyo- mzee akamwambia kijana yangu, anajua kuendesha gari na yeye ako na gari, anipeleke N___ Hospital.
I was taken immediately- the man told my son, he knows how to drive and him he owns a car, to take me to N____ Hospital.

P: Ulienda huko ukatibiwa?
You went there and was treated?

W: Nilienda huko nikapelekwa X-ray, na hata hizo picha ziko hapa, nikaambiwa mkono wangu uko na fracture.
I went there I was taken for X-ray, and even those prints are here, I was told my hand has a fracture.

P: Hii ndio ulipewa na daktari kuonyesha ulikuwa na fracture kwa mkono?
This is what you were given by the doctor to show you have a fracture on the hand?

W: Ndio.
Yes.

P: Ulikuwa pia- mbwa wali kuuma?
You also had- the dogs bit you?

W: Majeraha ya mbwa nilitibiwa na nikaandikiwa sindano sita.
The injuries from the dogs I was treated and I had to receive six injections.

P: Na hii ni barua mbayo inaonyesha ulitibiwa?
And this is the letter that shows you were treated?

W: Niliandikiwa, I have been going there for the vaccinations.
It was written for me

P: Ulienda huko muda gani? Ulimaliza?
For how long did you go there? Did you finish?

W: Sindano saa hii your Honour nimemaliza.
The injections this time your Honour I have finished.

P: Na unasema hii ndio note ya kuonyesha vaccine, na unasema hii ni ya picha na report kuonyesha mkono yako ilikuwa imevunjika?

You are saying this is a note to show vaccine, and you are saying this is a picture and report to show your hand was broken?

W: Kuonyesha fracture vile niliumia.
To show the fracture the way I was hurt.

P: Your Honour the note from N___ Hospital to show the treatment for dog bites and X-ray pictures and report showing there was a fracture on the left arm to be marked ___. Your Honour all of them are dated on twenty fifth ___ this year. Na uliripoti?
And did you report?

W: After three days ndio I was discharged from hospital. I just went straight from hospital to ___Police Station I reported that issue and I was issued with a P3 form.

P: Na uliandika statement police station?
Did you write a statement at the police station?

W: Ndio, niliandika statement.
Yes, I wrote a statement.

P: Mshtakiwa kushikwa kwake ujua?
Do you know of the circumstances of the arrest of the accused person?

W: Wakati sasa niliambia polisi habari ya huyu mzee walitafuta namba yake ya simu wakamwita, akaja yeye [mwenyewe=
When I told the police about this man they looked for his phone number, they called him and he came himself

P: [Wapi?
Where?

W: =Police station, wakati alipokuja ndipo sasa nikamwacha akitumania huyu kijana yake. Mimi polisi wakaniambia niende kwa sababu ya vile nilikuwa nasikia uchungu niende nikapumzike.
police station, when he came there now I left him sending for this young man. The police told me to go since I was in pain, I go and rest.

P: Ndio akashikwa wakati huo?
That is when he was arrested?

W: Mimi nikamwacha ___ Police Station.
I left him at ___ Police Station.

P: Na labda niende nyuma kidogo. Ulisema hiyo shule ni ya huyu mzee. Unajua kama anaishi huko ndani?
And maybe I go back a bit. You said that school belongs to this man. Do you know whether he lives in there?

W: Nilijaribu kufanya uchunguzi wangu. Mzee haishi huko. Huyu kijana ndiye anaishi huko.
I tried to do my own investigation. The man does not stay there. This young man is the one who stays there.

P: Na ulikuwa unamjua huyu mzee hapo mbeleni?
And did you know this man there before?

W: Mimi simjui. Tulikuwa tunakutana tu kwa barabara. He is very familiar hata ukimwangalia. We were just meeting along the road. He is very familiar even if you look at him.
I don't know him. We were just meeting on the road. He is very familiar even if you look at him.

P: Na mbwa ulijuaje ni zake?
And how did you know the dogs are his?

W: Vile zilitoka immediately kwa compound yake- mahali zilitoka. Na hata saa hii tukienda nitaonyesha maafisa wa korti ni wapi zilitokea na there is a complaint in the whole village.
The way they immediately came from his compound- where they came from. And even now if we went there I would show the officers of the court where the came from and there is a complaint in the whole village.

P: Unajua shule ni yake na mbwa zilitioka na zikarudi kwa hiyo shule?
You know the school is his and the dogs came out and went back to that school?

W: Ndio.
Yes.

P: Na huyu mshtakiwa wa pilli ulimwona mara ya kwanza siku hiyo akifungia hizo mbwa kwa hiyo shule ya huyu mzee?
And this one the accused person you saw him the first time as he was locking up the dogs in this man's school?

W: Kijana mimi wakati alifunga mbwa nilimwona na macho yangu na wakati alifika police station pia niliimwona.
The young man I saw him with my eyes when he locked up the dogs and when he came to the police station I also saw him.

P: Wakati walipoitwa polisi walikujulisha kama mbwa wamekuwa vaccinated?
When they were called to the police did they inform you whether the dogs had been vaccinated?

W: Hiyo sikujua kama they are vaccinated or not.
That I didn't know whether they are vaccinated or not.

P: That's all your Honour.

M: Cross-examination?

I: Mshtakiwa wa kwanza simama umuulize masawali.
The first accused stand up and ask him questions.

Ac1: Kama mlalamishi unasema wale mbwa waliweza kukuuma wewe na since morning kuna watu wengi kwa hiyo barabara kwa nini haukuonekana na wengine?

If you the complainant you are saying the dogs bit you and since there are many people in the morning on that road why weren't you seen by others?

W: I said mimi nilikuwa naenda kazini. Nilikuwa peke yangu, sikuwa na watu wengine.
I said I was going to work. I was alone I was not with other people.

Ac1: Si ungeonekana na watu wale wako kwa maduka hapo?
Would you not have been seen by people who have shops there?

W: Hakuna duka ilikuwa imefunguliwa wakati huo.
There was no shop that was open at that time.

Ac1: Duka huwa zinafunguliwa 6:00 am tena 6 ndio watu wanaenda kazini ambao wanatembea na magari wengine na mguu. Kulikosa aje hata mtu mmoja ambaye angekuona na umesema hapa vile ulipiga nduru?
Shops open at 6:00 am and six is when people go to work whereby they travel in cars and others on foot. How could there have lacked even one person to see you and you have said the way you screamed?

W: Mimi sijui wakati ule watu wengine wanaenda kazi na kufungua duka. Mimi najua wakati huo ndio nilikuwa napita kwa barabara.
I don't know the time other people go to work and open shops. I know that was the time I was passing on the road.

Ac1: Wakati uliporudi nyumbani- katika eneo tuko kuna wazee wa eneo ambao unawajua, na kuna Chief, na Headman. Tena kuna majirani wanatoka hapo kwako kama huyo jirani yako umesema alikupigia simu. Na katika manyumba yale yote hapo kuna wazee. Kama hakuna hila yoyote ulikuwa nayo kwa nini haukutuma hata mzee yeyote kwangu nyumbani anielezee?
When you went back home- in that area there are village elders that you know, and there is the Chief , and Headman, also there are neighbours who come from near your home like that neighbor of yours you have said called you. And in all those homes there are elders. If you had no ill motive why didn't you send me even an elder to inform me?

W: Wakati niliporudi nyumbani nilikuwa na uchungu na mkono ulikuwa umefura. Nikakuta M___ kwangu na ndio nimeelezea, ndiye aliniona immediately after, akapanga vile nitaenda [hospitali-]
When I went back home I was in pain and the arm was swollen. I found ___ at my home that's what I have explained and he is the one who saw mw immediately after, he arranged how I would be taken to hospital-

Ac1: [Kijana yako] alikupeleka hospitali. Huyu naye, kwa nini hukumtuma aje kwangu?
Your son took you to hospital. Why didn't you send this one to come to my home?

W: Sasa kwanza nilishughulikia kwenda hospitali kwa vile- sikuwa nashughulikia wewe kwanza.
I first concerned myself with going to hospital because- I did not bother myself with you first.

Ac1: Na kwa nini wakati unasema kitendo hiki kilitendeka mimi ni jirani yako hapo kuna majirani wengi wako, kwa nini hukunitumania?
And why when you say this incident happened and I am your neighbour there and there are other neighbours, why did you not send for me?

W: Sasa mimi ndio niliumia sikuwa na haja nikutumanie. Niliona kwanza nijishughulikie kwa vile nillikuwa na uchungu.
Now I am the one who got injured I did not have the need to send for you. I saw I should first look after myself as I was in pain.

Ac1: Ndio uchungu ulikuwa nayo, lakini wakati ulirudi kwa nini hujatuma hata yeyote kusema hata kama ni Chief?
Yes you were in pain, but when you came back why have you not sent anyone to report even if it is the Chief?

W: Mimi nilienda kwa polisi kwa maana hapo ndio sheria iko. Na hao mbwa wako watu wote wanalalamika, so nikajua nikikuja kwako, hakuna kitu ya maana tutaongea, mimi nilienda kushtaki mahali nastahili kushtaki.
I went to the police because that is where the government is. And there are many people complaining about your dogs, so I knew if I came to you there was nothing meaningful we would talk about, I went to file accusations where I am supposed to.

Ac1: Nani ako karibu na wewe; polisi, chifu ama wazee wa kijiji?
Who is closer to you; police, chief or village elders?

W: Hata Chief mwenyewe saa hii anajua. Nilimpigia simu.
Even the Chief himself now knows. I called him.

Ac1: Wewe umesema watu wengi wanalia juu ya hao mbwa, wewe unajua malalamishi yao. Wanaleta malamish yao kwako uwasaidie na nini?
You have said many people are complaining about those dogs, you know of their complaints. They bring their complaints you so that you help them in which way?

W: Mzee mimi [sikujui-]
I do not know you-

Ac1: [Wanakuletea] uwasaidie na nini kwa maana mimi ndiye mwenye mbwa na hakuna mtu ameleta malalamishi? Wewe unaletewa malalamishi na watu wengine uwasaidie na nini?
They are bringing you complaints expecting what help from you because I am the owner of the dogs and there is no one who has brought me complaints? You are brought complaints you give them what assistance?

W: Mzee mimi sikujui na hata kwako nimesema sijui. Kusema watu wanacomplain juu ya mbwa zako sijasema wanaleta complains kwangu.
I have said I do not know you and your home I do not know it. Saying that people complain about your dogs does not mean they brings the complains to me.

Ac1: Complain kama hii kwanini huwezi enda kwa Chief [ama-]
Why can't you take a complain like this to the Chief or-

M: [Hiyo] swali umeuliza mara ngapi? Amesema alienda kuinform the police. What's your problem with that? Hebu uliza swali ingine na usiulize ya chifu tena.
How many times have you asked that question? He has said he went to inform the police. What's your problem with that? Ask another question and do not ask about the Chief again?

Ac1: Nasema ningetaka kuona kwa macho yangu mguu ulioumwa.
I am saying I would like to see with my own eyes the leg that you were bitten.

W: Iko hapa ukitaka kuona umeona.
It is here if you want to see you have seen it.

Ac1: Nimeangalia vile meno ya mbwa huwa kwa maana sasa hiyo tu ni alama ya zamani. Mbwa haumi na meno moja bali na pande zote mbili kwa hivyo hiyo yako si mbwa hiyo ni alama ingine. Tena unasema tarehe 25 ndio uliumwa na tarehe 25 tulikuwa polisi na unasema ulilazwa. Sasa hii ni tofauti ya siku ngapi? Tarehe 25 ndio tulikuwa polisi na bado unasema ulikuwa umelazwa?
I have seen the way the teeth of a dog are because that is just an old scar. A dog does not bite with one tooth but with both sides so that one you have is not of a dog it is another scar. Then are saying on date 25th is when you were bitten and date 25th we were at the police and you are saying you were admitted. Now this is a difference of how many days? On date 25th we were at the police and you still say you were admitted?

W: Mzee usichanganye korti. Nimesema 25 asubuhi ndio niliumwa na nikalazwa N__ Hospital for three days, wakati nilikuwa released ndio nikaenda kuripoti.
Do not mix up the court, I have said 25th in the morning is when I was bitten and I was admitted ___ Hospital for three days, when I was discharged is when I went to report.

Ac1: Umesema tarehe 27 ndio uliona kijana mara ya kwanza haukuwa umemwona mbeleni. Hiyo ni kusema ulimwa hiyo tarehe 27?
You have said on 27th is when you saw the young man first you had not seen him before. That is to say you were bitten on that date 27th?

W: Wacha nirudie mzee. Niliumwa tarehe 25 na wakati nilipoamka kijana wako ndiye alifungia hao mbwa.
Let me repeat. I was bitten on date 25th and when I got up your young man is the one who locked up those dogs.

Ac1: Polisi tulikuwa na wewe wakati gani?
When were we with you at the police?

W: Kesi yako iliripotiwa tarehe 27.
Your case was reported on 27th.

Ac1: Basi kama ulilazwa siku tatu ukaripoti 27th siku tatu zinatoka wapi? Umesema 'tarehe 25 nikalazwa 26 na nikawa dischargiwa 27 na ndio niliripoti'.
So if you were admitted for three days you reported on 27th where are three days coming from? You have said 'date 25 I was admitted 26th I was discharged 27th is when I reported'?

W: Ukiongeza 25 siku tatu itakuwa ngapi? Nimesema 25, 26, 27 ndio nilikuwa discharge na ndio niliripoti. Hiyo ni siku ngapi?
If you add three days to 25 how many will they be. I have said 25th, 26th, 27th I was discharged and it is when I reported. How many days are those?

Ac1: Nani atakusaidia kujua ile kitu unaongea kwa maana kama tarehe 25 ndio uliumwa siku tatu itakuwa tarehe 27?
Who will help you to know what you are saying because if on date 25th is when you were bitten will three days be 27th?

W: Nasema 25, 26, 27. How many days are those? Hizo ni siku ngapi kwako?
I am saying 25th, 26th, 27th. How many days are those to you?

Ac1: Nataka kusema kwa nini, kama ni kweli si pesa unataka, hapo ___ kuna hospitali, wewe ulichukua hatua ya kwenda N__ Hospital? Hakuna hospitali ya serikali iko karibu?
I want to say why if it is true your interest is not money, at ___ there is a hospital, you took the action of going to N___ Hospital? Is there no government hospital that is near?

W: Mtu akitaka kwenda N__ Hospital ama K___ Hospital unashida gani? Huko ndio mimi naenda hospitali.
If someone wants to go to N___ Hospital or K__ Hospital what is your problem? That is where I go to hospital.

Ac1: Ndio maana nasema kulikuwa na mipango ingine. Unasema mimi tu ndio niko na mbwa__. Mbwa zote huko nani alikwambia ni zangu?
That is why I am saying you had other motives. You are saying I am the only one who owns dogs at R___. Who told you all the dogs there are mine?

W: Sikusema mbwa zote R___ [nizako.]
I have not said all the dogs in R___ are yours.

M: [Uko na] swali ingine?
Do you have another question?

Ac1: Amesema anajua mbwa wangu na akasema aliona zikitoka [na zikarudi=
He has said he knows my dogs he said they came out and went back

M: [Uko na swali ingine?
Do you have another question?

Ac1: =ningependa ueleze korti unazijua namna gani?
I would like you to explain to the court how do you know them?

M: Uko na swali ingine?

Do you have another question?

Ac1: Nilikuwa nataka anijibu hiyo. Ni ngapi mbwa?
I wanted him to answer me that one. How many are the dogs?

W: Tatu zenye zilinivamia.
Three that attacked me.

Ac1: Sio zangu ziliuma wewe, kwa maana zangu ni nne na umesema sijazingira shule kwa hivyo mbwa zingine zinakuja ndani ya compound. Yangu inakaa huko.
It is not mine that attacked you because mine are three and you have said I have not fenced the school other dogs come into the compound. Mine stay there.

M: Second accused.

I: Mshtakiwa wa pili simama uulize maswali.
The second accused stand up and ask questions.

Ac2: Nani aliweza kuitaa mbwa zikawachana nawewe?
Who called the dogs so that they stopped attacking you?

W: Hukuziita. Nimeeleza korti wakati nilianguka hivi mbwa zilirudi zikaingia compound zikakukuta ukazifungia.
You did not call them. I have explained to the court that when I fell like this the dogs went back to the compound they found you and you locked them up.

Ac2: Kwa hivyo mimi makosa yangu ni gani nanilizuia mbwa wasikuume?
So what is my mistake and I prevented the dogs from biting you?

W: Ukazuia namna gani? Mimi ndio niling'ang'ana na hizo mbwa na hata wakati zilirudi kwa compound hata haukuja kuangalia vile nilikuwa. Ulisimama tu pale alafu ukajificha.
How did you prevent them? I am the one who struggled with those dogs and even when they came back to the compound you did not come to check how I was. You just stood there then hid yourself.

DS2Case13

P: Eleza hii korti majina yako.
Tell the court your name.

W: Mimi naitwa, naitwa B___.
I am B___.

P: Unafanya kazi gani?
What work do you do?

W: Mimi nafanya kama clerk na M____ Company.
I work as a clerk with M___ Company.

P: Hiyo M____ Company iko wapi?
Where is that M__ Company?

W: Iko E____ along E____ Road.
It is at E___ along E___ Road.

P: Kwa hiyo kampuni umefanya kwa muda gani?
How long have you worked in that company?

W: Hiyo kampuni nimefanya kazi kwa zaidi ya miaka kumi.
I have worked in that company for over ten years.

P: Kazi yako ya kawaida kama clerk ni nini?
As a clerk what are your usual duties?

W: Mimi sanasana hutumwa na kampuni kwenda kuchukua petty cash ya kulipa wafanyakazi wa kibarua.
Mostly I am sent by the company to collect petty cash for paying casual labourers.

P: Mnamo tarehe ___ mwezi wa nne mwaka huu unaweza kumbuka?
Can you recall ___ April this year?

W: Eeh, naweza kumbuka.
Eeh, I can recall.

P: Siku hiyo nini ilifanyaika?
What happened on that day?

W: Siku hiyo nilitumwa na kampuni kutoa pesa kwa C___ Bank of which nilienda nikatoa cash money ninety five thousand and fifteen. Baada ya hapo nilitoka bank kwa sababu ilikuwa nilipe ( ) N___ Bank along H___ Avenue. Kutoka [hapo-]
On that day I was sent by the company to withdraw money from C__ Bank of which I went and withdrew ninety five thousand and fifteen. After that I left the bank as I was to pay ( ) N___ Bank along H__ Avenue. From there-

M: [Elezea]
taratibu ndio korti iweze kuelewa. Unasema ulienda wapi na wapi? Pole pole.
Explain systematically so that the court can understand. You are saying you went where and where? Slowly.

W: Okay, nilikuwa- nilienda C__ nikatoa shilling elfu tisaini na tano, na kumi natano. After which kutoka kwa hiyo bank eer nilikuja nikapatana na mwenzangu K___ ikawa twende tulipe ( ) pale H____ Avenue- N_____ Bank, H____ Avenue.

Okay, I was- I went C__ and withdrew ninety five thousand and fifteen. After which from that bank eer I came and I met with my colleague K__ it was we were to go and pay ( ) there at H____ Avenue- N_____ Bank, H____ Avenue.

P: K___ mkipatana nayeye alikuwa anatoka wapi?
As you met with K__ where was he coming from?

W: Yeye alikuwa ametoka City Hall eer kuna kitu alikuwa ameenda kulipia huko.
He had come from City Hall there is something he had gone to pay for there.

P: Baada ya kukutana na K___?
After meeting with K__?

W: Baada ya kukutana na K___ nilienda mpaka N___ Bank nikalipa ninety five- I mean five thousand. Baada ya kulipa nikatoka nayeye.
After meeting with K__ I went up to N__ Bank I paid ninety five- I mean five thousand. After paying I left with him.

P: Mlipotoka na K___ nini ilifanyika?
When you came out what happened?

W: Tulipotoka na K___ kwa ile benki, tulienda towards eer G__ House tuchukue gari turudi kazini. Sasa kufika ile crossing ya M__ Avenue- H___ Avenue, M___ Avenue ndio sasa baada ya kuvuka tu hivi commotion ikaanza hapo.
When we left that bank with K__, we went towards G__ House we take a vehicle we go back to work. Now on getting at that crossing of M__ Avenue- H__ Avenue, M__ Avenue that is when after just crossing commotion started there.

P: Sasa watu walikuwaje hapo mahali unasema commotion ilitokea?
Now how were people there at the place you are saying commotion occurred?

W: Okay. Siunajua baada ya- kabla ya kucross mataa ikiwa red inamaanisha msimame. Sasa wakati mataa ilifunguka wote tulikuwa tunataka kucross. Sasa baada ya kucross ile barabara ndio nilishtukia mtu ameniguza kwa nyuma. Sasa kuangalia mwenzangu ako [wapi-]
Okay. You know after- before you cross when the lights are red it means you stop. Now when the lights opened all of us wanted to cross. Now after crossing that road is when I suddenly felt somebody touch me from behind. Now on checking where my colleague was-

P: [Ngoja] kwanza.
Wait first.

W: Okay.

P: Yes, unasema?
Yes, you are saying?

W: Sasa baada ya kucross ile barabara nilishtukia mtu ameniguza nyuma. Kuangalia nikapata ni yule jamaa mrefu lakini baadaye alikuja akanisukuma chini. Sasa ile pesa nilikuwa nimebeba kuna mmoja ya wale alikuwa kati yao akaokota ile pesa na akakimbia nayo. Sasa huyu{((pointing at the accused persons))} huyu wa pili ndio sasa yeye alikuwa anakimbilia ile pesa ilianguaka kuokota. Sasa wakati mimi kuangalia huyu mwenye alikuwa amenishika baada ya kuniachilia polisi alikuja akashika huyu. Na mwenzangu kuangalia naye kumbe alikuwa ameshikwa na [huyu-]
Now after crossing that road I suddenly felt somebody touch me from behind. On looking I found it was that tall guy but later he pushed me to the ground. Now that money I was carrying, there is one of those who was among them, he picked that money and ran off with it. Now this second one ran to collect that money that fell. Now me on looking at this one who was holding me after letting me go police came and arrested this one. And my colleague on looking it was that he was being held by this one.

M: [Now] 'huyu' ninani?
Now who is 'this one'?

W: Huyu wa katikati.
This one in the middle.

M: Prosecutor you people are losing us. Who is doing what? People are doing things and they are just identified as 'huyu'. We have three accused persons here.

P: Enda pole pole. Twende polepole. Kabla ya kufika hapo mahali umefika nilikuwa nimekuuliza mbeleni, hapo mahali hiyo commotion ilikuwa inafanyika, watu walikuwaje hapo?
Proceed slowly. Let us proceed slowly. Before you get to where you have got I have asked you, at the place where the commotion was occurring, how were people there?

W: Watu walikuwa wengi baada ya kucross.
People were many after crossing.

P: So baada ya kucross hii unaita commotion nini ilikuwa inafanyika?
So after crossing this that you are calling commotion, what was happening?

W: Sasa hapo ndio nilishtukia mimi nimeshikwa na nyuma. Sasa kung'ang'ana kuangalia ni nini nikapata nimeshikwa na nyuma alafu baadaye akanisukuma chini.
Now there is when I suddenly felt being grabbed from behind. Now on struggling to see what was happening I found I was being held from behind and then later he pushed me to the ground.

P: Sasa ulikuwa unajua ni nani amekushika?
Now did you know who had grabbed hold of you?

W: Eeh nilijua. Ni huyu mmoja.

Yes I knew. It is this one.

P: Mgani?
Which one?

W: Huyu {((pointing at the accused persons))}huyu upande huu, mwenye ako na white na blue.
It is this one on this side, the one in white and blue.

P: That's the third accused your Honour. Na mwenzako alikuwa wapi wakati huo?
Now where was your colleague at that time?

W: Mwenzangu sasa kushtukia- kwanza sikuwa namwona sasa ndio nilishtukia polisi ameshika yule na ameshika mwenzangu mkono.
My colleague I suddenly realized- at first I did not see him. Now is when I suddenly realized the police have arrested that one and is holding my colleague by the hand.

P: K___?

W: Eeh.

P: Sasa polisi walishika nani na nani?
Now the police arrested who and who?

W: Walishika hao wawili. Polisi wali shika wale wawili a yule mwenzangu pia. Kwanza hawakujua tuko nayeye, alikuwa ananisaidia.
They arrested those two. The police arrested those two and my colleague to. At first they did not know we are with him, he was trying to help me.

P: Sasa uliona hawa walikuwa wamefanya nini? Tuambie kila mtu uliona akifanya nini.
Now did you see what these ones had done? Tell us what you saw each person doing.

W: Eer huyu sikuona ile kitu alikuwa amefanya.
Eer I did not see what this one had done.

P: Mgani haukouna kitu alikuwa amefanya?
Which one did you not see what he had done?

W: Huyu wa katikati. Yaani hao wawili ni huyu alikuja akashikwa na raiya. Na huyu wa upande huu alishikwa na na polisi akiwa amenisukuma chini.
This one in the middle. That is those two it is this one who came to be apprehended by members of the public. And this one on this side was arrested by the police as he had pushed me on the ground.

M: After you fell down can you be clear- uliona nani akifanya nini?
You saw who doing what?

W: Okay kwanza nilianguka chini. What I saw kuna huyu ambaye alikuwa anakimbilia ile pesa [kuokota-]
Okay first I fell down. What I saw there was this one who was rushing to pick that money-

M: [Wacha] kusema 'huyu'. 'Huyu' ni nani kati ya hawa?

W: Huyu {((pointing at the accused persons))} mnono [huyu-]
This fat one this one-

M: [The first] accused?

P: Eeh huyu {((pointing at the accused persons))} wakwanza. Alafu baada ya hapo ndio nikaona polisi ameshika hawa wawili. Kila polisi- walikuwa polisi wawili, wamewashika. Sasa hawa wawili wanaenda mbele na mimi bado kama nimeanguka chini sasa hapo. Ndio nilianza kuwafuata tukaenda mpaka police station.
Eeh this one the first one. Then after that is when I saw the police had arrested these two. Each police- there were two police officers, they had arrested them. Now these two are going forward and I am still on the ground there. That is when I started following them and we went up to the police station.

P: Hao polisi unasema nani aliwaita hapo?
Who called those police officers there?

W: Hakuna mtu aliwaita. Walikuwa hapo kwa umati wanavuka barabara. Sasa ndio commotion ilianza walitoa bunduki na wakashika hawa. Ilikuwa tu bahati. Hata hawa kuwa na uniform.
Nobody called them. They were there in the crowd crossing the road. Now when the commotion started they took out guns and arrested these ones. It was just luck. They were not even in uniform.

P: Huyu mtu ambaye alikushika kuna kitu chochote- alikuwa ameongea na wewe?
This person who was holding you is there anything- did he speak to you?

W: Hapana hakuongea na mimi.
No he didn't speak to me.

P: Na unajua ni kama wangapi- ni watu wangapi ambao walikuwa hapo?
And do you know it is like how many- how many people were there?

W: Hapo watu walikuwa wengi. Siwezi jua the exact number but watu walikuwa wengi. Lakini sasa wale ningeweza ku identify ni huyu juu ni yeye alikuwa amenishika hapo. Ndio niliweza kumuidentify huyu wa kwanza na huyu wa tatu.
People were many there. I can't know the exact number but people were many. But now the ones I could identify it is this one because he is the one who had grabbed hold of me there. That is why I was able to identify him this first one and the third one.

P: Now umeeleza kwamba wakati ulishikwa ile pesa ambayo ulikuwa umebeba ilianguka alafu mmoja wahawa watu akanyakua. Huyo mtu ambaye alichukua hiyo pesa unaweza kumjua?
Now you have explained that when you were grabbed the money you were carrying fell and then one of these people snatched it. Can you tell the person who took that money?

W: Siwezi mnotice saa hii, siwezi mjua juu unajua I was shaken. Nilikuwa confused lakini sasa ni yule alikuwa amenishika ndio nikajua. Pengine ni yeye alichukua.
I can't notice him now, I can't know him because you know I was shaken. I was confused but now it is the one who grabbed hold of me that I can recognize. Maybe he is the one who took it.

P: Sasa ni pesa gani ambayo unasema huyu wa kwanza alikuwa anakimbilia?
Now how much money are you saying this first one was rushing at?

W: Okay, eeh nilikuwa nime withdraw tisaini na tano elfu na kumi na tano. Sasa elfu tano nililipa kwa N___ Bank. Sasa kwa hiyo pesa coins ilikuwa elfu mbili mia tano na kumi na tano. Sasa huyu alikuwa anakimbilia- juu yule ali grab ile karatasi akaenda nayo. Ilibaki ile coins- ilianguka because of the weight. Sasa huyu alikuwa anakimbilia only twenty five fifteen. Zilikuwa zimefungwa kwa karatasi.
Okay, eeh I had withdrawn ninety five thousand and fifteen. Now I paid five thousand at N__ Bank. Now that the money the coins were two thousand five hundred and fifteen. Now this one was rushing for- because the one who grabbed that paper and ran away with it. It remained the coins- they fell because of the weight. Now this one was rushing for only twenty five fifteen. They were wrapped in a paper.

P: So wakati wakati mlienda C___ nini ilifanika?
So when you went to C___ what happened?

W: Nilienda eer C___ Police, eer kwa:::- nikaandikisha ile statement. Ikawa nitoke hapo nikaenda hospitali because nilikuwa nimeumia. Sasa baada ya kutoka hospitali juu kutoka pale ilikuwa late sana. Sasa the following day ndio tulipeleka ile barua ya daktari pale police karibu K___, pale kwa traffic kwa daktari. Yule daktari akatuandikia P3 ambayo tulipeleka C___ Police Station.
I went to C___ Police Station, eer to:::- I recorded that statement. It was that I had to leave there I went to hospital because I was hurt. Now after getting from hospital because getting from there it was very late. Now the following day is when we took that letter from the doctor there to the police near K__, there at the traffic to the doctor. That doctor wrote for us a P3 which we took to C___ Police Station.

P: Na hii pesa ambayo unasema ilikuwa in coin iko wapi?
And this money you are saying it was in coins where is it?

W: Tuliwacha kama exhibit pale C____ Police Station.
We left it as exhibit there at C___ Police Station.

P: Ilikuwa pesa ngapi in total?
How much was it in total?

W: Elfu mbili mia tano na kumi na tano.
Two thousand five hundred and fifteen.

P: That's all your Honour.

Ac1: Bwana B___
Mr. B___

W: Ndio.
Yes.

Ac1: Wakati ulikuwa pale kwa bank, uli communicate na mwenzako una muita:::
When you were there at the bank, did you communicate with your colleague you are calling him:::

W: K___.

Ac1: Ndio, K___ uli communicate nayeye pale kwa bank?
Yes, K___ did you communicate with him there at the bank?

W: Ndio.
Yes.

Ac1: Unatwambia mtu anaruhusiwa kuongea na simu akiwa kwa bank?
You are telling us one is allowed to use the phone while in the bank?

W: Hapana. Kwa bank nilitoka nje nikaongea na K___ akaniambia mimi nitakuja hapo C__.
No. At the bank I got outside and I spoke to K___ and he told me he would come there at C__.

Ac1: Nakuuliza, haukucommunicate nayeye ukiwa ndani ya bank, si ndio?
I am asking you, you did not communicate with him when you were inside the bank, isn't it?

W: Sikucommunicate nayeye nikiwa bank.
I did not communicate with him when inside the bank.

Ac1: Na kwa statement yako uliandika hivyo, kwamba ulitoka nje bank ukampigia simu?
And in your statement did you write that, that you got outside the bank and called him?

W: Eer, nilikuwa nime communicate nayeye before niingie hapo kwa bank. Ikawa yeye kuna kitu anaenda kulipa alafu aje tupatane [hapo C___-]
Eer, I had communicated with him before I got into the bank. It was that there was something he was going to pay then he comes there at C__-

Ac1: [Aha aha.] Jibu swali langu. Nauliza mli communicate nayeye ukiwa ndani ya bank au nje?
Aha aha. Answer my question. I am asking you communicated with him when you were inside the bank or outside?

W: Kwa statement nilisema nilikuwa ndani ya [bank-]
In the statement I said I was inside the bank.

Ac1: [Baas.] Hiyo statement siniwewe mwenyewe uliandika?
Enough. That statement, is it not you yourself who wrote it?
W: Umm.
Ac1: Baada ya hapo unasema ulienda M__ Avenue ambapo ulikutana na a group of ten young men ambao walikushika na wakakuibia, si ndio?
After that you are saying you went to M__ Avenue where you met with a group of ten young men who grabbed hold of you and stole from you, isn't it?
W: Sijasema wote walinishika.
I have not said all of them grabbed hold of me.
Ac1: Ni wewe uliandika. Naomba korti upewe statement yako utusomee paragraph two.
It is you who wrote. I am requesting the court that you are given your statement you read for us paragraph two.
W: While crossing M__ Avenue a group of about ten young men attacked us holding us together and robbed us.
Ac1: Wewe ndiye uliandika hivyo. Sasa na kuuliza ukivuka barabara mtu anaangalia mbele ama anafaa kuangalia magari?
You are the one who wrote that. Now I am asking you when you are crossing the road one looks straight ahead or is supposed to be looking at vehicles?
W: Anaangalia gari.
One looks at vehicles.
Ac1: Ulikuwa unaangalia gari. Ukiwa unaanagalia gari uliweza aje kuhesabu watu kumi?
You were looking at vehicles. As you were looking at vehicles how were you able to count ten people?
W: Eer, eer gari- saa hizo- kucross taa ime eer taa imewaka watu wacross na gari imesimama.
Eer, eer vehicles- at that time- to cross the light is eer the light is on for people to cross and the vehicles have stopped.
Ac1: Taa iliwaka ukavuka [barabara=
The light came on and you crossed the road
W: [yes
Ac1: =na kama haujui hao watu wako mbele yako ulihesabu aje ten people?
and if you don't know those people who are in front of you how did you count ten people?
W: Ile tu ni average I didn't give the exact. Around ten people.
That ten is just an average.
Ac1: Around ten people?
W: Yeah.
Ac1: Hiyo ni M___ Avenue?
That is M__ Avenue?
W: M____ Avenue.
Ac1: Kuna watu wengi sana hiyo masaa unasema ya lunch. Uliwezaje kujua ten?
There are very many people that lunch hour you are saying. How were you able to tell ten?
W: Unajua kwa nini, wale walikuwa pale- wale watu walikuja wakikimbia. Juu niliona watu wakikimbia they were around eight to ten people.
Do you know why, those who were there- those people came running. Because I saw people running
Ac1: Usiseme eight to ten. Kwa statement umeandika ten. Ulijuaje wale ten ni wezi nahao wengine wote walikuwa hapo si wezi?
Don't say eight to ten. In the statement you have written ten. How did you know those ten were thieves and all the others there are not thieves?
W: Sasa ile kitu ilifanya nijue ni waizi ni kwa vile nilishikwa. Nilijua ni waizi wakati nilishikwa nikarushwa chini. Ndio nilijua. Nikaona mking'ang'ania hiyo pesa ilikuwa kwa ile bahasha, ndio nikajua kumbe mlikuwa waizi.
Now the thing that made me know they were thieves is the way I was grabbed. I knew they were thieves when I have grabbed and thrown to the ground. That is when I knew. I saw you scrambling for that money that was in that envelope, it is when I realized so you were thieves.
Ac1: Kwa hivyo ulishikwa kutoka na nyuma?
So you were grabbed from behind.
W: Nilishikwa na nyuma.
I was grabbed from behind.
Ac1: Lakini hawa unasema kumi walikuwa mbele yako?
But you are saying these ten were in front of you?
W: Ndio.
Yes.
Ac1: Wenye walikuibia walikushika kutoka nyuma. Kwa hivyo wenye uliona mbele hakuna vile unaweza sema walikuibia.
Those who stole from you grabbed you from behind. So the ones you saw in front there is no way you can say they stole from you.
W: Walikuwa nao.
They were with them.
Ac1: Kwa hivyo ni watu ulikuwa unajua mbeleni wanakuwa pamoja?
So they were people you knew there before they are usually together?
W: Nimesema kwamba hao siwajui. Hakuna mtu nilikuwa najua pale.

I have said that those one I don't know them. there I no one I knew there.

Ac1: Baada ya hii kitendo, wakati ilifanyika unasema kwa ghafla, ulikuwa hali gani immediately?
After this act, when you are saying it happened suddenly, in what state were you immediately?

W: Nilishtuka hata ilikuwa ni kama natoroka juu I was shocked.
I was shocked even it is like I was running away because I was shocked.

Ac1: Ulitoroka ama nikama ulitoroka?
You ran away or it is like you ran away?

W: Nilitoroka kidogo [lakini-]
I ran away a little but-

Ac1: [Baas,] [ulitoroka=
Enough, you ran away

W: [Yeah lakini-
Yeah but

Ac1: =nani alikupasha habari baada ya wewe kutoroka ya kwamba washukiwa walikuja kushikwa na polisi?
who informed you the news after you ran away that suspects came to be arrested by the police?

W: Sinilikuwa hapo. Niliona. Si kwenda mbali si hapo tu kushtuka.
Was I not there. I saw. I didn't go far it is just there being shocked.

Ac1: Umesema ulishtuka ukatoroka, si ndio?
You have said you got shocked and ran away, isn't it?

W: Si ati kutoroka. Eer nilishtuka nikaenda kitu kama hatua mbili juu nilikuwa nimeshikwa hivi, nikaangushwa chini.
I didn't run away. Eer I was shocked I went for about two steps because I was being held this way, I was wrestled to the ground.

Ac1: Nani uliona akishikwa na polisi?
Whom did you see being arrested by the police?

W: Mimi niliona- sasa nilipoamka niliona polisi akienda na mwenzangu na huyu.
I saw- now when I got up I saw the police going with my colleague and this one.

Ac1: Mwenzako alishikwa na polisi.
Your colleague was arrested by the police?

W: Ndio.
Yes.

Ac1: Mshukiwa aliye mbele ya korti uliona akishikwa na polisi?
The suspect before court did you see him being arrested by the police?

W: Moja huyu ndio iliona. Ndiye alikuwa amenishika kwa shingo yangu huyu mmoja. Na mimi nimesema kwamba wewe kushikwa ulishikwa pale na wale raia ukienda kuokota ile pesa. Lakini huyo {((pointing at one of the accused persons))} mwenzako nikaona ameshikwa na polisi na mwenzangu.
One this one is the one I saw. He is the one who was grabbing hold of me by my neck this one. And I have said that you were apprehended there by members of the public as you were going to pick up that money. But that colleague of yours I saw him being arrested by the police and my colleague.

Ac1: Kwa hivyo mshukiwa aliye mbele ya korti haukumwona akishikwa na polisi?
So you never saw the suspect before court being arrested by the police?

W: Nani huyo?
Who is that?

Ac1: Mshukiwa aliye mbele ya korti?
The suspect before the court?

W: Wewe ama nani?
You or who?

Ac1: Mimi uliniona nikiwa na polisi?
Did you see me being arrested by the police?

W: Hapana. Wewe niliona ukishikwa na umati.
No. I saw you being apprehended by members of the public.

Ac1: Mimi uliniona nikishikwa na umati?
You saw me being arrested by members of the public?

W: Yeah.

Ac1: Na umesema ulishtuka na ukaangushwa chini umeshikwa shingo lakini bado uliona nikishikwa?
And you have said you were shocked and you were wrestled to the ground and you are being held by the neck and still you saw me being apprehended?

W: Wajua baada ya kushtuka ndio niliona kwamba [umati-]
You know after being startled is when I saw members of the public-

Ac1: [Aha aha.] Jibu swali langu. Mtu akishtuka ako katiaka hali gani?
Aha aha. Answer my question. When one is startled one is in which state?

W: Si ile hali ya kushtuka.
In that state of shock.

Ac1: Kwa hivyo ulishtuka na ulikuwa confused?
So you were shocked and you were confused?

W: Yeah
Ac1: Na katika ile hali ndio ulihesabu watu kumi, ukaona polisi wakishika watu na raiya wakinishika?
And in that state is when you counted ten people, you saw police arresting people and members of the public apprehending me?
W: Sasa unajua katika ile commotion baada ya kuanguka sasa nikaangalia ile pesa nilikuwa nayo kwenda kuangalia ndio nikaona wewe unaokota ile [pesa-]
Now you know in that state of commotion after falling down I looked at the money I had and on looking is when I saw you picking that money-
Ac1: [Ukaniona] nikiwa nimeokota?
You saw me having picked the money?
W: Haukuwa umeokota unaenda sasa kuokota. Ndio sasa wale watu walikuwa kwa umati wakakushika.
You had not picked it you were now going to pick it. That is when people who were in the crowd apprehended you.
Ac1: Sikuwa nimeokota ile pesa. Kwa hivyo hakuna kitu yako hata hao raiya walinishika nayo?
I had not collected the money. So there is nothing belonging to you even those members of the public apprehended me with?
W: Ulikuwa unaenda kuokota ile pesa wakakushika kabla uchukue.
You were going to pick up the money they apprehended you before you took it.
Ac1: Na katika mbele ya mahakama kunaye raiya ambao unasema walinishika ambaye mliweza kuandamana hadi police station akaweza kuandikisha statement?
And before the court is there any member of the public that you are saying apprehended me who you went with to the police statement and recorded a statement?
W: Hakuna.
There isn't.

Ac2: Bwana B___ hebu eleza mahakama mimi uliniona wapi kwa hiyo kitendo.
Mr. B__ can you explain to the court where you saw me in that incident.
W: Wewe sikukuona.
I did not see you.
Ac2: Kwa hao watu kumi unasema mimi sikuweko?
Those ten people you are saying I was not there?
W: Mimi- unajua mlikuwa wengi, wengine mbele na mwenye alinishika nyuma.
I-you know you were many, some in front and the one who grabbed me behind.
Ac2: Uliona polisi wakinishika mimi?
Did you see the police arresting me?
W: Wewe sikuona.
You I did not see.
Ac2: Kwa hivyo tuseme wewe huna habari kwa nini polisi wananileta hapa?
So let us say you have no idea why the poloce have brought me here?
W: Sasa unajua polisi wako na uchunguzi [yao na-]
Now you know the police have their own investigation and-
Ac2: [Lakini] wewe haukuniona pale?
But you never saw me there?
W: Sikukuona.
I did not see you.

Ac3: Unasema ulikuwa unavuka barabara kwenda wapi?
You are saying you were crossing the road going where?
W: Tulikuwa tunaenda kungojea gari ndio turudi kazini.
We were going to wait for the vehicle so that we can get back to work.
Ac3: Hebu twambie the reason- gari ilikuwa unataka ya nini?
Can you tell us the reason- why did you want the vehicle?
W: Ya kunipeleka town na kunirudisha kazini.
To take me to town and take me back to work.
Ac3: Basi kwanini hiyo gari haikukungojea hapo nje ya bank?
So why didn't the vehicle wait for you there outside the bank?
W: Hakukuwa na parking.
There was no parking.
Ac3: Bank si iko na parking ya customers?
Does not a bank have parking for customers?
W: Parking hakukuwa. Ni ngumu sana kupata parking town.
There was no parking. It is very hard to get parking in town.
Ac3: Mlikuwa mmepanga gari ikuache ndio utembee ukiitafuta?
You had arranged for the vehicle to leave you so that you walk looking for it?
W: Hakukuwa na hakuna parking hapo kwa bank. Driver alinidrop hapo akaenda kupark G__ House.
There was no parking there at the bank. The driver dropped me there and went to park at G__ House.

Ac3: Pesa ulikuwa umebeba vipi?
How were you carrying the money?
W: Nilikuwa nimebeba kwa karatasi I mean eer bahasha.
I had carried it in a paper I mean eer an envelope.
Ac3: Isipokuwa pesa ya kampuni kuna kitu ingine yako iliibiwa?
Apart from the money belonging to the company is there anything of yours that was stolen?
W: Hakuna.
There isn't.
Ac3: Hakuna. Kwa hivyo nataka tukubaliane Bwana B__ hii ni npango ya undangayifu mlipanga na mwenzako na driver.
There isn't. So I want us to agree Mr. B___ this was an arrangement to defraud you arranged with your colleague and the driver.
W: Hapo hatuwezi kubaliana na wewe because nimeeleza nyinyi mliniattack kuninyang'anya pesa.
There we cannot agree with you because I have explained you are the ones who attacked me and robbed me money.
Ac3: Kama si udanganyifu mbona haukuibiwa simu ama pesa yako, ukaibiwa tu pesa ya kampuni?
If it is not fraud how come you were not robbed of your phone or money, you were just robbed the company money?
W: Ndio nimesema simu yangu iko kwa mfuko, everything iko kwa mfuko. Vitu zangu vingine zilikuwa kwa mfuko hakuna ile hakuna yenye iliibwa sababu mling'ang'ana kuchukua ile bahasha.
That is why I have said my phone is in the pocket, everything is in the pocket. My other things were in the pocket and there is none that was stolen because you scrambled to take that envelope.
Ac3: Na mshukiwa aliyeko hapa unamfahamu?
And do you know the suspect before the court?
W: Namfahamu vizuri sana.
I know him very well.
Ac3: Unamfahamu kwa jina gani?
You know him by which name?
W: Jina sijui. Sijui jina lako nakufahamu kwa sura.
I don't know you name. I know you by appearance.
Ac3 Umesema mbele ya mahakama watu waliokuvamia walikuwa- waliweza kutokezea na upande gani?
Say before the court the people who attacked you were- they came from which side?
W: Nimesema mtu ambaye alinishika ni wewe na ulinishika na nyuma.
I have said the person who grabbed me is you and you grabbed me from behind.
Ac3: Haya, mtu akikushika na nyuma na kwa statement unasema ulipigwa ngeta- hebu kwanza elezea hiyo ngeta unasema ni nini?
Okay, if somebody holds you from behind and in the statement you have said what was done to you is ngeta- can you first explain to the court what that ngeta you are saying is?
W: Ni ile kushikwa kutoka nyuma hivi {((demonstrating))} umfinywa koo. Hivyo ndio ulinishika.
It is being grabbed from behind like this and your throat is squeezed. That is how you grabbed me.
Ac3: Kwa hivyo unasema ulikuwa umefinywa koo?
So your saying your throat was being squeezed?
W: Nilikuwa nimefinywa.
I was being squeezed.
Ac3: Na sasa uliwezaje kuona mtu ambaye amekushika na ako nyuma?
And now how were you able to see the person holding you and he is behind?
W: Katika ile hali ya maumivu na [kung'ang'ana-]
In that state of pain and struggling-
Ac3: [Jibu swali langu.] Mtu alikufinya akiwa pande gani?
Answer my question. The person squeezed you being on which side?
W: Ulikuwa nyuma, [sasa-]
You were behind, now-
Ac3: [Na] uliambia mahakama ulikuwa confused, ulipoteza fahamu haukujua kitu inaendelea, si ndio?
And you told the court you were confused, you lost consciousness and you did not know what was happening, isn't it?
W: Mimi nilikuwa confused because ulikuwa [umenishika-]
I was confused because you were grabbing-
Ac3: [Haukuwa] unaelewa kitu inaendelea?
You did not understand what was happening?
W: Sikuwa naelewa nini inaendelea.
I wasn't comprehending what was happening.
Ac3: Kwa hivyo hungeweza kuona nani amekushika?
So you couldn't see who was holding you?
W: Nimesema ya kwamba wakati nimesukumwa chini na wewe mwenye ulikuwa umenishika ndio sasa tuling'ang'ana. Sasa haukuwa nyuma nilikuona na niliweza kutambua wewe.

I have said that when I was pushed to the ground and you yourself was holding me that is when we struggled. Now you were not behind I saw you and I was able to recognize you.

Ac3: Lakini wewe mwenyewe umekubali ulikuwa umepoteza fahamku kwa hivyo haukuelewa nini kilikuwa kinaendelea?

But you yourself have agreed you had lost consciousness so you did not understand what was happening?

W: Sikupoteza ile conscious ati ile ya kama kufaint. Nikuwa confused hujui nini kinaendelea lakini nilikuona na hata askari alikutoa kwa shingo yangu.

It is not losing consciousness like that of fainting. I was confused I did not know what was going on but I saw you and even the police officer took you away from my neck.