

Chapter Six

Interpretation in Judicial Settings

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Introduction

This chapter focuses on interpreting in judicial settings and it takes the approach of identifying possible problem areas and suggesting ways of solving these problems. To ground the discussion on court interpreting, the chapter begins with a brief historical view of the development of court interpreting as a profession. This is followed by a discussion of the professional requirements for court interpreting and illustrations, from the Kenyan context, the errors that could arise if high professional standards are not maintained. The chapter ends with suggestions on how to ensure quality interpreting in the courtroom set up.

Translation studies are a branch of comparative linguistics without the synchronic versus diachronic distinctions that characterize most comparative language studies. This is because translation studies are concerned with relationships of meaning between languages and these relationships could be related or unrelated to social factors or the constraints of time and space. The language relationship that is the subject of translation studies is the process through which meaning already expressed in one language is transferred and expressed in another language. A distinction is thus made between the **Source Language** (SL), which is the language *from* which meaning transferred, and the **Target Language** (TL), which is the language *into* which meaning is transferred.

Catford (1) defines translation as 'a process of substituting a text in one language for a text in another'. However, some scholars use the term translation when the process of substituting meaning involves written texts reserving the term interpreting for a process of text substitution that involves spoken language. This distinction is the basis of the debate on whether interpreting is part of translation studies or a totally independent field. This point will be taken up later.

As Munday (4-5) notes, it is also important to note that the term translation itself can be used in different senses. Translation can refer to the general area of study that concerns itself with the transfer of meaning across languages or the product of this transfer of meaning. Translation or translating can also mean the process of transferring meaning from one language to the other. Translation studies also focus on the different

types of translation. These translation types are a factor of language in that they are categorized on the basis of the different domains and uses language is used for. These domains and uses of language provide thematic areas under which translation studies fall. The following is a list of such thematic areas as suggested by Munday (7).

- History of translation
- Literary translation
- Research models in translation studies
- Gender and translation
- Translation and globalization
- Legal translation
- Translation and training translators

Translation versus Interpreting

The distinction between translation and interpreting is taken by some scholars to be a distinction between parallel fields of study. Munday (13) observes the "Inclusion of interpreting as a sub-category of human translation ... [is] disputed by some scholars". The basis of the dispute is that the requirements for and activities in interpreting are very different from those in translation. Without seeming to dispute or water down the need for such a distinction, we adopt the position interpreting is encompassed in the wider field of translation studies.

Studies on interpreting lead us to the different types of interpreting. On way of classifying the types of interpreting is on the basis of the place where interpreting takes or the subject matter of the discourse being interpreted place. On the basis of this we can have

- Conference interpreting
- Business interpreting
- Medical (doctor – patient) interpreting
- Court interpreting

The last type of interpreting is the focus of the rest of this chapter with the discussion touching on some aspects of interpreter training, criticism of interpretations and policy on interpreting.

Court Interpreting

The practice of court interpreting has a long history. Mikkelsen (4) asserts that 'it is safe to assume that the practice of court interpreting is almost as old as the practice of law'. On her part Moeketsi (1995) observes that court interpreting 'dates back to the 17th century when the colonialists first set foot on our shores' (12). The 'shores' Moeketsi refers to

are of South Africa but her observation could hold true for the rest of the African countries where modern dispute management systems, of which courts are a part, are part of the colonial legacy. Court interpreting is also taken to be part of legal interpreting. The latter term is all encompassing and refers to interpreting that is done in settings where decisions of a legal nature are to be done and the interpreting is meant to facilitate such decisions. Such settings could include courts, police interrogation rooms, immigration departments' offices, lawyer-client conferences to name a few.

Despite its long history, it is only recently that court interpreting acquired a professional status. The trial of the Nazi war criminals after the end of the 2nd World War is taken by many to be the single event that birthed court interpreting as a profession. Gaiba (33) gives several reasons for this, the major one being the fact that all the victorious war allies were represented at the trials and since they spoke different languages, it became necessary to have interpreter services. In addition, the trials generated huge public and media interest worldwide and consequently it was decided that the proceedings would be conducted using simultaneous interpretation into diverse languages. This was the first time that simultaneous interpreting was being used in the court set up and interpreters had to be trained on the job. Even today, Mikkelsen (5) notes, many court interpreters have to learn their skill 'by the seat of their pants.'

However, the years after the Nuremburg trials (as the Nazi war criminal trials held in Nuremburg, Germany came to be known) saw a rise in demand for quality court interpreting services. This led to the initial attempts at training, certification and regulation of court interpreters as a professional group. Mikkelsen (11) traces the first regulation of court interpreting to Sweden in the 70s where a state authorization exam for court interpreters was first administered. The U.S.A., Australia, Canada and the United Kingdom followed suit by introducing court interpreter examinations that led to the certification of professional practitioners. In addition to the interpreter examination, the professional status of court interpreters was enhanced by the establishment of professional organizations the first one being the California Court Interpreters Association (CCIA) which was established in 1971 (Mikkelsen, 6).

The growth of court interpreting as a profession has not happened uniformly in all countries of the world as some can clearly be said to be a head of the others in this growth. But generally, the driving force behind the development of court interpreting as a profession remains two fold. First, there is increasing awareness 'of the barriers language differences

present to the administration of justice' which leads to the need for interpreting (González, Vásquez & Mikkelson 15) and second there is increasing awareness 'of the need to ensure the quality of interpreting services in the judiciary' (Mikkelson 6). The next sections address these twin needs of interpreting services and quality interpreting in the court setup.

The Need for Interpreter Services in Courts

Conflict is part of the human society and; for this reason, societies have developed mechanisms for managing conflict. Modern dispute resolution system through judicial proceedings is one such mechanism. Courts are an arena where parties to a dispute meet before an impartial arbiter and each party gets a chance to present its version of facts and challenge those of the adverse party. On the basis of such presentations and any other evidence adduced before the court, the neutral arbiter is expected to arrive at a judgment that is binding to all the parties. Court proceedings are largely linguistic events, with the direct and cross examination phases of a trial involving questions from the examining party and responses from a witness. Though questions are posed to the witness and the witness' responses directed at the examiner, the participants in courtroom discourse are aware that their utterances are meant for the primary addressee: the presiding judge or magistrate or the jury. Indeed, such contributions constitute the court record that is the basis of ruling and judgments.

Therefore, given the centrality of language in litigation, when the parties to a dispute do not share a common language, or in instances where a litigant does not understand the official language of the court, a potential for a communication breakdown presents. This is the breakdown a court interpreter steps in to prevent. In doing so, the interpreter fulfill a variety of functions: 'They...enable attorneys to communicate with their clients, interpret court proceedings for defendants and litigant, and interpret witness testimony for the court' (Mikkelson 10). She adds that in these roles the interpreter, just like the presiding judge or magistrate, serves as an impartial officer of the court.

Court interpreting is different from other types of interpreting in a number of ways. To start with, it differs from conference interpreting because whereas conference interpreters only interpret from language A into language B, court interpreters are expected to interpret from language A into B then from Language B into A. For instance, in a conference situation where a speaker uses English but a participant only understands Russian, the conference interpreter would only be expected

to interpret what is said in English and render it in Russian. However, in a scenario where the official language of the court is English and a witness only understands Gikuyu, the interpreter would be expected to render the questions posed in English into Gikuyu and then render the witness responses given in Gikuyu into English. This makes court interpreting to be more demanding.

Moreover in disputing, language use is goal oriented: either to implicate blame or to avoid blame, and the parties to a dispute are legally bound to abide by whatever judgment is rendered. This means that participants in courtroom discourse use a variety of language and pragmatic devices to achieve their divergent goals. In stepping in to facilitate communication, the court interpreter is expected to maintain a very high level of exactitude. The interpreter has to pay attention not just to the words used but also to the nuances behind the words. In addition, the knowledge that the judgment at the end of a trial could mean the deprivation of life or property; incarceration or imposition of fines on one of the parties must also weigh on the interpreter in execution of duty. Furthermore, judicial institutions rely heavily on the goodwill of the public that they serve for the relevance and the continued force of their decisions. As such, the interpreting services offered must contribute to public confidence in judicial institutions.

González, Vásquez and Mikkelsen (16) capture the rigorous requirements of court interpreting when they assert:

Instead of a summary, then, the court interpreter is required to interpret the original source material without editing, summarizing, deleting, or adding while conserving the language level, style, tone, and intent of the speaker or to render what may be termed the legal equivalence of the source language. ... Court interpreters are primarily charged with delivering to the court and a non-English speaking defendant linguistic equivalent of all spoken and written communication.

This is such a tall order for the court interpreter and we now look at what is required in order for the interpreter to deliver such high levels of equivalence.

Requirements for the Job

1. Bilingualism

The basic requirement for a court interpreter is to be bilingual. However, as Edwards (1) notes 'Bilingualism does not guarantee the ability to interpret'. At best, bilingualism is an indicator of the gift of interpreting but on its own does not qualify one to be an interpreter. A parallel can be drawn to the fact that whereas most people have two legs and can run,

this fact on its own does not qualify them to run in the Olympics. A court interpreter additionally needs to be bicultural because an interpreter mediates not just between languages but also between cultures. Different cultures have idiosyncratic customs and behaviours that are uniquely expressed in their languages, and have no direct equivalents in other cultures and languages or their equivalents could be meaningless in the TL.

Interpreting Skills

Court interpreters need to be proficient in the three major modes of interpreting that are used in the courtroom setting. We look at each one of them in turn below.

a) *Sight Interpreting:* González, Vásquez and Mikkelsen (401) define sight interpretation as a hybrid between translation and interpreting as it involves the unrehearsed interpretation of written documents, such as charge sheets, affidavits and expert witness' reports, during a trial. In sight interpreting (abbreviated SI), also known as sight translation, the interpreter is expected to silently read a document written in language A while loudly rendering its contents in language B. This is common in the arraignment phase of a trial and during direct and cross examination phases when written documents in the official language of the court are produced, but a witness or defendant is not conversant with this language.

The challenge in sight interpreting mainly lies in the fact that the interpreter is simultaneously engaged to perform three demanding cognitive activities. The interpreter has to read and understand a chunk of the document, then loudly render the same into the TL while at the same time reading the next chunk and preparing to render it. Moeketsi (120) observes that 'good sight interpreters produce an output so smooth and rhythmic that the audience may be deceived as far as the complexities of the activity is concerned'. It is worth remembering that apart from searching for the right words in which to frame the TL message, the interpreter may as well be searching for correct syntactic ordering of these words in cases where the SL and the TL have different syntactic ordering rules. Moreover, the interpreter still is bound to reflect all the legal and technical terms in the documents into a language that may not have equivalent terms. This makes González, Vásquez and Mikkelsen (407) conclude that sight interpreting call not just for linguistic agility but for mental agility as well.

b) *Consecutive Interpreting:* Consecutive interpreting (abbreviated CI) can best be defined with reference conference setting which is where the skill has been perfected. Jones (5) says that in conference interpreting 'the interpreter listens to the totality of a speaker's comments, or at least

a significant passage, and then reconstitutes the speech with the help of notes taken while listening.' But Mikkelsen (71) notes that this style of consecutive interpreting known as long consecutive cannot work in the courtroom setting where interpreters are duty bound to conserve all elements of the SL message as they render it into the TL. In long consecutive interpreting, conference interpreters edit out aspects of speaker hesitations, self correction and hedges as their goal is to render a polished form in the TL. But such pragmatic aspects are usually of great significance in the courtroom where fact finders focus not on just what a defendant or witness has to say but also on the demeanor of the speaker. As such, court interpreters use the short or sequential style of consecutive interpreting where instead of dealing with entire speeches or large chunks of information, the interpreter consecutively interprets smaller idea units such as clauses or a series of them.

It needs to be noted that in CI, as much as there are two people speaking, their speech, ideally, should not overlap. The interpreter listens as the other party is speaking and when done, the interpreter renders the TL version. This is a major advantage in CI for the interpreter because he or she gets to hear the SL message, at least a part of it, before interpreting it. However CI still has the disadvantage of being time consuming as there is a sense in which twice the time is taken to say one thing. For this reason, CI is nowadays shunned in conference and courtroom settings in which advances in technology allows for simultaneous interpreting.

Apart from being time consuming, CI also has the disadvantage of being very taxing on the short term memory. Court interpreters are not expected to give a summary or the gist of what a speaker says but must render all aspects of the SL message as explained above. Consequently, if a speaker says too much before pausing, there is likelihood that the interpreter could forget some vital bits of the message. The interpreter, therefore, needs to be well versed with some situation control techniques, as will be discussed in the next section. However, in the courtroom setting, it has been observed that when people are aware that their utterances are being interpreted, they pause after an idea unit, mostly a sentence, to allow for interpreting (Kiguru 92).

Perhaps the greatest challenge in CI has little to do with the process of interpreting but the role of the interpreter in the discourse. It needs to be remembered that the interpreter is a facilitator of communication between the key discourse parties in the litigation process. To this end, the interpreter ought to render his or her services as unobtrusively as possible so that it remains clear just who the key participants in the discourse are.

For instance, when a lawyer poses a question to a witness who, in turn answers, the two are the key participants in the exchange plus the fact finder who is the primary addressee. But CI could potentially change these roles. This is because in CI, at some intervals, the key parties are silent and the interpreter takes the center stage in the communication process. This, as De Jongh (7) observes, draws undue attention to the interpreter rather than deflecting it. Thus, there is a greater demand for perfection in rendering the TL message, as mistakes made by the interpreter are more easily detectable.

c) Simultaneous Interpreting: Simultaneous Interpreting (abbreviated SI) is defined as 'the technique whereby the interpreter speaks at the same time as the SL speaker' (González, Vásquez and Mikkelsen 359). The technique, whose use in the courtroom setting can be traced to the Nuremburg trials, is by far the most complex as it requires the interpreter to listen and speak at the same time. The interpreter has to listen to the SL speaker, understand a part of what he or she says and begin rendering it in the TL. At the same time, the interpreter is listening to the next utterance and processing it in readiness for rendering it in the TL. Moreover, the interpreter has little control over the pace at which the SL message is given, and also has no idea where the SL message is headed, all these being factors at the control of the speaker (Mikkelsen 73).

In judicial proceedings, SI is mainly used to interpret rulings and judgments. This means that the interpretation is from the official language of the court into the language the defendant understands. It needs to be noted that SI cannot be as accurate as CI. SI requires a lot of linguistic and mental juggling which leads Moeketsi (117) to aptly comment 'the simultaneous interpreter is a performer who passes all understanding'.

2. Language Skills

The other job requirement for the court interpreter has to do with language skills and linguistic knowledge. As mentioned in 1.0, interpreters need to be bilingual and have a high competence in the languages they work in. This competence should be in the language skills of listening, note taking and speaking. They should fluently use different registers and styles of each of the languages and have knowledge of slang terms and idiomatic expressions used by different social groups. A good mastery of legalese with its unique vocabulary and syntax is also a mandatory requirement for the court interpreter (Hewitt 39).

3. Linguistic Knowledge

In addition, apart from just knowing the languages they work in, interpreters should also know about these languages. This is to say that a basic linguistic knowledge is necessary for a court interpreter. Such knowledge would include word formation processes, morphological

typologies, syntactic rules and a basic knowledge of translation theory. Such knowledge is necessary especially in cases where the interpreter has to work in languages with different morphology and syntactic rules. In such cases, linguistic knowledge would be an important asset in problem predicting and solving. Specifically, interpreters need to know the challenges in interlingual and intercultural communication. We highlight a few such challenges below as identified by González, Vásquez and Mikkelsen (306-10).

a) Different Semantic Areas – this means that SL and TL words that are equivalents do not belong to the same semantic areas. For example the English word 'house' can be taken to be equivalent to the Gĩkũyũ word 'nyũmba'. In English 'house' can denote multiple meanings such as (i) dwelling place, (ii) parliament (iii) an old and famous family (iv) people living in a house (v) a company involved in a particular kind of business. The Gĩkũyũ term 'nyũmba' does not denote meanings (ii) and (v) but it denotes meaning (i) and can also be said to denote meanings (iii) and (iv). However, the Gĩkũyũ meanings of 'house' that have reference to people are different from those in English. Any family, not necessarily an old or famous one, can be called 'nyũmba' and the term is also used in an extended way to refer to the whole Gĩkũyũ tribe as in 'nyũmba ya Gĩkũyũ na Mũmbi' meaning 'the house of Gĩkũyũ and Mũmbi' (these two being the mythical founders of the tribe). In the English expression 'don't wake up the whole house' the word 'house' refers to people living in a house but they need not be related, and thus the expression could well serve in a dorm house. In Gĩkũyũ, the term 'nyũmba' is mainly used where the speaker wants to emphasize a family relationship and thus excludes people who are not of a said family. So, it would be more correct to interpret the term 'house' in 'don't wake up the whole house' as 'andũ' (people) in Gĩkũyũ so that we have 'don't wake up all the people'. The point is as much as 'house' and 'nyũmba' are equivalents and have some meanings that overlap, these meanings may not all be in the same semantic areas and there are times when the choice of 'nyũmba' for 'house' and vice versa may miss out on some subtle distinctions.

b) Mismatched Levels of Precision between the SL and TL – in expressing concepts, languages do not always have the same degrees of specificity. A term in the SL language may be inherently precise in a way its equivalent in the TL is not. For example, the English term 'guilt' as used during the reading of the charges 'Are you guilty or not guilty' is distinct from the concept of 'truth'. In law, it could be true that somebody received some money but it is successfully argued that he or she is not guilty of receiving a bribe given that the term 'guilty' has in it elements

of responsibility necessarily with respect to a crime. But this term is substituted with 'true' when rendered in Kiswahili so that a defendant is asked to respond to 'Ni kweli au si kweli' (is it true or not true) during the reading of the charges. Kiswahili may not have a term that is as precise in meaning and connotation as the English term 'guilty'.

Also, the word 'hear' in English is specific to the auditory sense, but in Gikūyū, the equivalent 'kūigua' (to hear) can apply to many of the senses. Thus it would be the equivalent to the English words 'hear' (hear noise), 'feel' (feel cold), 'feel' (feel pain) and can even apply to the olfactory sense and the sense of taste.

Another example is the verb 'tease' which in English allows for the person doing it to either be joking or intending to embarrass or hurt another person. Thus, 'They were teasing him' could be taken to show malicious intent or just people being jocular. If the term 'tease' is translated into Gikūyū, a choice would have to be made on the intent behind the teasing. This will lead to 'kūmūthakīra' (to play with him) if the intent is taken to be jocular or 'kūmūthirikia' (to tease so as to embarrass or make angry) if the intent is taken to be malicious.

c) Idiomatic Expressions and Sayings – idioms and sayings are a feature of all languages. The challenge in interpreting such lies in the fact that the words that constitute them function as a unit to express a complete meaning known by the speakers of the language. The meaning expressed is thus not a factor of the words that constitute an idiom or saying. Thus in saying 'It is raining cats and dogs' a speaker is not saying anything about cats or dogs but rather using an expression that conveys the intensity of the rain. Another example from English is the use of an expression like 'I do not think much of him' which is a disparaging remark on the 'him' of the sentence. This can be translated into Kiswahili literally as 'Simfikirii sana' (I don't think a lot / much about him) and it loses any disparaging effect on the 'him'. To retain the disparaging meaning, the utterance would have to be rendered like 'Ninamdharau' (I despise him).

Ethical and Professional Requirements

In discharging their mandate, court interpreters are expected to demonstrate a high level of professional responsibility. This responsibility includes:

a) Upholding Confidentiality – court interpreters may work in an environment in which they become privy to information that is personal or that is privileged and is just meant for the two parties communicating. Interpreters should never share such information with third parties.

b) Impartiality – court interpreters work in environments in which disputes are processed and must always keep in mind that they are officers of the court whose allegiance is to justice and their service is to the public. They must, therefore, avoid any forms of favoritism to any of the parties in a dispute, which could include other officers of the court such as prosecutors and defence counsel.

c) Accuracy and Completeness – in rendering the SL utterances into the TL, court interpreters must always endeavor to conserve all elements of the original utterance. As such, interpreters should not undertake to correct mistakes in the original utterances, raise the levels of formality or edit out vulgarities or obscenities in the SL utterance. In this regard González, Vásquez and Mikkelsen (478) categorically assert that 'No matter how incorrect, illogical, incriminating, or non-responsive the statement, the interpreter must translate it unquestioningly, exactly as it was stated'. In other words, judgment of what is correct, sensible, proper, relevant or admissible before the court is outside the mandate of the interpreter.

d) Professional Demeanor – the court interpreter should not show personal emotions like sympathy, like or dislike to either of the parties in a dispute or the subject matter that is the focus of the discourse he or she is interpreting. In addition, the interpreter should strive to remain unobtrusive in the course of duty. However, the interpreter should not fail to correct their own mistakes or point out sources of difficulty such as a witness speaking inaudibly.

The knowledge and skills as well as the ethical considerations discussed above are a summary of what is expected of a professional court interpreter. However, in reality, the belief that bilingualism equals the ability to interpret is still a persistent one. We now focus on court interpreting in Kenyan court, which is done by persons who are bilingual but have no formal training in interpreting or specialized knowledge in linguistics. Our focus is on interpreter errors which we argue could be minimized through training.

Aspects of Interpreter Errors in Kenyan Courts

This section reports on the findings of a study that sought to identify categories of interpreter errors occurring in sampled courts in Kenya. The study sample was drawn from two Chief Magistrates Courts in Nairobi and Thika. A Chief Magistrates administers over a cluster of courts each with a presiding magistrate. Thus, the study collected data from several court presided over by different magistrates and each served by a court clerk. The data were audio recordings of court proceedings that involved

interpretation form and into English, Kiswahili and Gĩkũyũ. At the time of the study, English was the sole official language in Kenya, making it the official language of the court.

The study identified grammatical errors and errors of distortion / intrusion to be the most frequently occurring at 20% each of the 65 five interpreter errors identified. These were followed by lexical errors and errors of omission each with a percentage frequency of 17% and 16% respectively. Errors arising from undefined role and ethics had a frequency of 13%. The other errors identified included added information, ambiguity, literal translation and errors arising from the work environment and each had a percentage frequency of less than ten percent. We define and illustrate a few of these errors below. In the examples cited what constitutes an error is in bold type face while interpretations by the researcher are in italics.

Omission

This involves "omitting words, phrases, clauses, ideas, sentences or portions of discourse" in the interpreted utterance (González, Vásquez & Mikkelsen 288). When information is omitted, the party for whom the interpretation was meant does not get to hear it. This can lead to anxiety, misunderstanding or the exclusion of one of the parties in a trial.

Of particular note was the observation that interpreters in the study sample were found to regard lengthy discussions between presiding magistrates and prosecutors as 'off-the-record' remarks and thus never interpreted them, even when they were uttered in the presence of litigants and touched on the matter before the court. This practice goes against the ultimate goal of the court interpreting, which is to place the litigant who does not speak the official language of the court in the same position as the one who does. The exchange below illustrates this.

Example 1

- | | |
|--------------------|--|
| Magistrate: | Prosecutor, do you realize you have a serious problem here? |
| Prosecutor: | Your Honour? |
| Magistrate: | Why do you people do things this way? Eeh? Tell me, how are you going to connect accused one ... no accused two and three to the robbery? How? |
| Prosecutor: | You Honour, may be if we call the next witness, she ... |
| Magistrate: | No, no no. she is an employee at the bar, and she will only tell us what they found the next morning. Was she there during the robbery? |

Prosecutor:

No. she doesn't stay ...

Magistrate:

Even, your first witness, the complainant has said no body was in the premises at that time. Now, look, the stolen items were recovered at the house of the first accused, the 2nd and 3rd accused do not stay in that house. In fact, according to the complainant they were arrested at their homes that are far away from that of the first accused. So how will you connect them to the recovered items?

Prosecutor:

According to the complainant, the 1st accused is the one who told the police that the second accused, who is her brother, brought the items to her house at night together with the third accused. She is the one who showed the police ...

Magistrate:

Is she your witness? Will you call her?

Prosecutor:

Your Honour...

Magistrate:

You see, she is jointly charged with them for the robbery, so she won't testify. You will need may be... do you have a forensics witness, were they called to take finger prints at the bar?

Prosecutor:

No your Honour.

Magistrate:

You see. Do you see the problem you will face? You went ahead and decided to charge them all together. In fact, the only person you can get here is the first accused on the alternative charge of being found in possession of stolen property. I don't see how you will connect the others to the robbery. How did the complainant know that the items were at the house of the first accused?

Prosecutor:

She told the police that somebody told her, but she refused to give the name.

Magistrate:

You see, you are left without a crucial witness. Well, let's proceed, who are you calling now?

Given that none of the discussion in bold typeface is interpreted for the accused person, the concepts of 'presence' and 'due process' are brought into question. Due process demands, among other things, that an accused person be present at every stage. In the incident exemplified above, it could be argued that the three accused persons, who clearly did not understand English, since any utterance from the magistrate or the prosecutor had to be interpreted for them in Gikūyū, are linguistically absent from their own trial, given that matters touching on the case against them are being discussed in open court and they are not privy to the discussion. Justice Lockwood, cited in González, Vásquez and Mikkelsen, (49) in a ruling states that such a situation is comparable to one in which a defendant is forced to observe the proceedings from a sound proof booth or seated out of hearing at the rear of the courtroom, being able to observe but not comprehend the criminal processes, whereby the state has put his freedom in jeopardy. Although the exchange above was not directed at the accused persons, they should get to hear and understand because it as a discussion of their case, carried out in open court and in their presence.

But having said that, we must acknowledge that the example above represents what Frishberg, cited in González, Vásquez and Mikkelsen (500) calls 'the classic dilemma for the interpreter.' In the exchange, the magistrate, who should play the role of a neutral arbiter, seems to be pointing out to the prosecutor the weaknesses in his manner of prosecuting the case against the trio. The presiding magistrate explains to the prosecutor the 'serious problem' he will face connecting the 2nd and 3rd accused persons to the crime of robbery. While it could be argued it is unethical for the interpreter not to interpret this exchange, it could also be argued that it would be extremely awkward for the interpreter to render what her boss clearly means to be for the ears of the prosecutor and not of the accused person. The error of omission in such an instance, thus, is not solely of the interpreter's making but also contributed to by the other officers of the court who seem not to appreciate the role of an interpreter in court proceedings.

Distortion and Intrusion

Another problem arising from lack of understanding of the interpreter's role are errors that change or in some way alter the overall or partial meaning of the original message (González, Vásquez & Mikkelsen 493-99). The ultimate goal of the interpreter is to conserve every idea and paralinguistic feature in the source message whether or not these ideas seem consequential or appropriate to the formal court setting. But it was observed in the data that interpreters tended distort witness testimony meant for the court record. The likely consequence of this, as the following example shows, is that the court record captures things that were not really part of witness testimony.

Example 2

Witness:

Agĩtwĩra omũndũ **arute** ngiri ĩgĩrĩ
nĩegũtuoithia 'college'

*She told us each of us **to give** Kshs. 2000 **she would make us be selected** to join college.*

Interpreter:

She told us **to give her** two thousand shillings each and **she would take us** to college.

The errors shown in bold above are distortion arising from grammar. The example above is from a case where the accused person is said to have acquired money fraudulently. The current witness uses a passive construction in which she does not name the agent that was to receive the said Ksh. 2000 or the one who would make them be selected to join college. But in rendering it, the interpreter uses the active voice and explicitly provides the accused person as the agent receiving the money, and the one responsible for taking the witness to college. Thus the interpreter's rendering makes the witness sound like she categorically placed the accused in a position of blame while in actual fact the witness has not. It needs to be remembered that the court interpreter is the 'voice' of witnesses and accused persons who are unable to express themselves in the language of the court, because the interpretation of the testimony of such persons 'is the only permanent record of what that person said under oath' (González, Vásquez & Mikkelsen 485).

Errors Arising from Undefined Role, Procedure and Ethics

Some interpreter errors stem from a general lack of professionalism and a misunderstanding of the role of the interpreter by themselves, the public and even persons working within the court system (González, Vásquez & Mikkelsen 209). From the study, it emerged that court interpreters in Kenya work without a clear definition of their duties or clarification of their role in the administration of justice. It is widely held that a court interpreter should strive to be an objective medium through which information is transferred from one language to another. González, Vásquez and Mikkelsen (475-513), however, note that some interpreters demonstrate a lack of professionalism by, inter alia, speaking to witnesses in an inappropriate tone, or commanding witnesses to answer questions. Consider the following example.

Example 3

Interpreter: Rĩu nĩkĩĩ kĩũru nainyuĩ. Kĩĩ mĩtaramenya gũkũ nĩ igoti-inĩ tigwa cibũ kũria mũlkanagĩria ciugo ũria mũkwenda? We ũrie ciũria na woria ũgeterera ũcokerio. Nawe ũkahe kahinda to kwanjia kwaria, nĩmwaigua?

Now, what is wrong with you? Don't you realize this is in court and not at the chief's office where you throw words at each other the way you like? *You, you ask questions and after asking you wait to be given an answer. And you, you give me time don't just start talking. Do you hear me?*

The example above is from a cross examination of a witness by an unrepresented accused person. The interpreter betrays his irritation at the way the accused person and the witness are 'throw[ing] words at each other' without giving time for interpretation. The attempt at controlling the verbal output of the two parties sounds more like a not too polite reprimand. By resorting to reprimanding the participants, the interpreter betrays his feelings and opinions about the accused person. González, Vásquez and Mikkelsen (498) categorically state that 'interpreters should keep their emotions in check', since an expression of feeling or personal opinion is likely to have an impact on the triers of fact and, as a result, erode the interpreter's impartiality.

Grammatical Errors

The study on which this section reports identified a variety of grammatical errors which included errors in number, tense and aspect as well as errors in the substitution of active voice for passive voice and substitution of question types. We illustrate the last type of these grammatical errors.

Example 4

Counsel:

That cow was sold to you by **the accused person or by his son?**

Interpreter:

Ng'ombe iyo wendeirio nĩ ũyũ ũthitangĩtwo, **naithĩtiguo?**

*That cow was sold to you by the accused person, **isn't that so?***

Should be:

Ng'ombe iyo wendeirio nĩ ũria ũthitangĩtwo kana nĩ mũriũ?

That cow was sold to you by the person who has been sued or by his son?

The question by the counsel in cross examination is an alternative question where the addressee is meant to choose between 'the accused person' or 'his son'. In rendering it into Gĩkũyũ, the interpreter the interpreter makes two changes. In the first place, he removes the choices in the original question and just focuses on the accused person, and secondly, he adds a tag to the question which demands the witness

confirm the proposition in the question that it is the accused person who sold the cow to the witness.

In courtroom discourse, the use of questions is strategic and thus the choice of question form for examiners is usually carefully thought out. Questions can be arranged in a scale that shows their degree of coerciveness i.e. the extent to which they constrain the response they elicit in terms of form and content. According to Tkačuková (43), the least coercive questions are Wh- questions while the most coercive are tag questions. Seen in this light, the change of question by the interpreter in the example above could have an impact on witness response which may not have been intended by the counsel as cross examiner.

Problem Solving

The preceding section has highlighted interpreter errors that could arise due to poor interpreting. In the judicial setting, the impact of such errors could be big and have many ripple effects. Errors could lead to entry of the wrong information in the court record and this could lead to an erroneous judgment. Such judgments, either singly or incrementally, can have an adverse effect on public opinion on the justice system and on the judicial officers.

We propose that such problems can be mitigated against on two levels. The first is through the designing and implementation of a court interpreter training programme and the second is through the formulation of policy guidelines on the practice of court interpreting. We will look at each of these problem solving techniques in turn as we suggest what each could entail.

Formal Training for Court Interpreters

The practice of court interpreting has not gained professional status in all countries of the world especially those on the African continent. *Black's Law Dictionary* defines the term profession, with reference to an occupation, practice or vocation, as 'the ability of a person to offer professional services due to the education qualification and expertise in a field'. The mention of educational qualification, in this definition, suggests that the skills required in a profession are mostly mental as opposed to manual. This means that if court interpreting is to be a profession, the practitioners need to undergo some formal training to impart them with requisite knowledge and skills which then need to be developed and sharpened as the interpreter engages in real jobs. The following are some of the skill and knowledge areas that a curriculum on court interpreter training course needs to focus on.

Language Skills

An interpreter by profession is first a student of language. As mentioned in 6.0, an interpreter needs to be well grounded in the languages he or she works in. Edwards (3-4) suggests that an interpreter should have completed a language course before embarking on an interpreter course. This would mean that, though the interpreter course would focus on language, the aim would be to build on such skills and link them to interpreting rather than the focus on starting the teaching of language skills from scratch. The implication here is that to qualify for a court interpreting course, one should have passed well in languages at high school level or one could have a diploma or a degree in language and linguistics. Such prerequisite requirements could at least show that one has an aptitude for interpreting.

The language skills that the interpreting course will seek to strengthen and build on are varied. We present a few below drawing the link they have with the interpreter skills required for the job as discussed in 6.0.

a) Oral Language Skills – these are perhaps the most utilized by the interpreter in the course of duty. The interpreter needs training on proper articulation of sounds and words as well as the public speaking skills of voice projection, pacing and clear enunciation. These are skills that are necessary in all the three modes of interpreting namely sight interpreting, consecutive interpreting and simultaneous interpreting.

b) Reading and Comprehension Skills – though different, we group these two skills together as a pointer to the fact that interpreters use all of them concurrently in sight interpreting. In reading, the interpreter should be adept at identifying the main parts of a sentence such as the subject and the verb and distinguish between main and dependent clauses. In addition, the ability to chunk a text into idea units is important as well as the ability to predict the succeeding information by appealing to both knowledge about language and general knowledge. Exercises on paraphrasing, shortening and expanding a text would help in developing comprehension and retention ability which is key in sight interpreting. The reading and comprehension training could also include register manipulation exercises.

c) Note Taking Skills – Note taking is also a crucial skill especially in consecutive interpreting where the interpreter needs an aid to help him or her retain all aspects of the SL message for rendering when a speaker pauses. Here, court interpreters need to be versed with what is referred to as the Rozan Method. This is a note taking system developed by Jean-François Rozan in 1956 in which the SL message is captured in symbols and a variety of other notations which assist the interpreter to recall

the totality of the message. Ultimately, court interpreters are expected to develop a mastery of the system and even come up with their own symbols for representing ideas and other meanings in the SL message which then become aids as the message is rendered into the TL.

Interlingual and Intercultural Interpreting Strategies – these are job specific skills that could help court interpreters deal with potential problems that dog communication across languages and cultures:

a) Transposition: in rendering the TL message the court interpreter makes changes with regards to parts of speech or word order so that the message conforms to the grammatical rules operating in the TL. For instance, in interpreting 'The money was hers' into Gikūyū, one has to take note of the use of the definite article 'the' and the feminine gender marking on the pronoun as they are grammatical notions that Gikūyū does not have. The definiteness of the money can be captured by using the pronoun 'that' while the pronoun would have to be replaced with an appropriate noun. One could have 'Mbeca icio ciarī cia mūtumia / mūirītu ūcio' (money that was of woman / girl that) 'That money belonged to that woman / girl.' In this case the TL message involves the substitution of the article and the pronoun with a pronoun and noun respectively and this is followed by a rearrangement of the word order so that the TL message is meaningful.

At times, the transposition is more drastic depending on the distance between the languages involved. For example, the English sentence 'John had promised me that he would pay Ben the money' would require more drastic transposition when rendered into Gikūyū because of the verb 'promise'. In the English utterance, the promise is to the speaker but it is made in reference to money to be paid to a third party. In Gikūyū, the verb equivalent to 'promise' is 'kwīrira' (to promise) cannot be used by a first person to refer to a promise made to him or her regarding yet another person. So rendering in the sentence above into Gikūyū, the promise would have to be made to the person the money is to be paid. 'Joni nīanjīrite atī nīakarīha Beni mbeca icio' (John had told me that he would pay Ben the money). The challenge here is where the verbs 'to promise' and 'to tell' are synonymous, and clearly they are not. One way the interpreter could deal with this is to resort to an intensifier to show the 'telling' was in earnest and this could show it was meant as a promise. 'Joni nīanjīrite nama atī nīakarīha Beni mbeca icio' (John had told me truthfully that he would pay Ben the money)

b) Adaptation: this strategy comes in to help deal with cultural differences rather than grammatical ones. Thus, faced with an idiomatic expression or a saying, the interpreter looks for how the TL (and hence culture) expresses the same phenomenon idiomatically. For instance

an English speaker could say 'I could not tell them apart. They are like two peas in a pod.' In Kiswahili, the idiom could be '...wanafanana kama mapacha' (they resemble each other like twins). This would be more natural rather than to literally translate the metaphor and demand for more processing effort to the target audience as the metaphor it is not there in Kiswahili.

c) Amplification: here the interpreter expands the TL rendering in order to make meaningful a SL term that may not have a simple TL equivalent. 'The money was meant for miscellaneous expense' rendered into Gikūyū would be something like 'Mbeca icio ciarī cia mahūthirow mangi ma mwanya / mahūthirow ma haha na haria' (the money was for other expenses on the side / expenses of here and there) as the language does not have a single word that can be said to the equivalent of 'miscellaneous'.

d) Explication: at times, the SL message might mean something implicitly but the same meaning is not explicitly stated. In such a situation, the court interpreter is expected to make such meaning explicit in the TL. For example, the English word 'deceased' is formally used to refer to a dead person. In Gikūyū, there are several potential equivalents but two of them contain implicit information. The terms 'mutigairi' and 'mwendwoniri' refer to a deceased person but the former implicitly means that the dead person was married and had children while the latter term implicitly means the dead person was not married and did not have children. Such distinctions could be of significance in succession cases and the interpreter would have to explicitly state the deceased had dependants or not depending on the Gikūyū term used.

In addition to these strategies that smooth out interlingual and intercultural communication, the court interpreter needs to be well versed in general interpreting skill like chunking and décalage. Moeketsi (115) explains chunking to be the skill in which the court interpreter segments the SL message into chunks during simultaneous interpreting. The chunks are usually syntactic or semantic units which an interpreter processes separately. So in interpreting, the interpreter listens and chunks the input SL message. Processes the first chunk by coming up with equivalent semantic and syntactic forms in the TL semantic and renders them. This is done as the interpreter listens to and processes the subsequent chunks in the SL message. Thus, the SL message is managed by dividing it into manageable chunks that allow for processing, rendering and listening to occur simultaneously.

Décalage is a technique that also finds use in simultaneous interpreting. In SI two people are speaking at the same time but the interpreter has to lag behind the speaker so that he or she has content to interpret. The lagging behind of the speaker is what is known as décalage. Knowing

how to do this properly is a very crucial skill because the interpreter does not know where the SL message is going. Following the speaker too closely, for example word for word, would obviously lead to a meaningless TL rendering and lagging too far behind would result in the interpreter being overwhelmed by the SL output, processing, rendering and listening. Déclage is thus a delicate balancing act on the part of the court interpreter that would require intensive training through mock exercises involving a variety in pace and register in the SL message as these are the major determining factors as to just how far behind the SL speaker the court interpreter should lag.

Policy Guidelines for Court Interpreting

Without seeming to suggest the value of policy guidelines decreases with time, we wish to assert that such guidelines are most critical for emerging professions. The 9th edition of *Black's Law Dictionary* defines policy as 'the general principles by which a government is guided in its management of public policy.' Policy guidelines for court interpreting emanate from the judicial arm of governments and are meant to oversee the actualization of requirement in many constitutions about the provision of interpreting services for litigants not conversant with the official language of the court or the language of other key participants in judicial proceedings.

The drafting of policy guidelines is an issue that should involve reaching out to various parties that are involved in the administration of justice as well as other parties who have technical knowhow about different aspects of the subject of the policy. Given this, we cannot assume the role of policy makers but, guided by best practice from elsewhere, we will suggest the areas that could be the focus of policy guidelines.

To begin with, it needs to be clear just who needs and qualifies for interpreter services in the courtroom setting. The obvious response would be any litigant who is not conversant with the language of the court. But the issue is more complex because it is necessary to state how competence in a language will be measured. Kiguru (57) reports on presiding magistrates insisting defendants or witnesses use Kiswahili because it is believed that almost everyone in Kenya speaks the language. But if one feels they need to argue their case, whose outcome has far reaching effects on them, in their mother tongue as it is the one they feel more competent in, should one insist they use Kiswahili assuming they can speak it? How we use the languages we speak seems to be the issue rather than just how many languages we speak. But there is the reverse side to this issue. Could litigants take advantage and insist on using a particular language even though they understand and express themselves in the official language

of the court with ulterior motives? This would mean that litigants could take advantage of the provision of interpreting services so that they get to hear the message twice (in one of the official languages and then in their mother tongue) so that they end up having a longer time to reflect on questions before they have to respond. This could make the litigation process unnecessarily longer.

The second issue that needs clarification is the role of the interpreter in the justice process. Policy guidelines need to make clear whose interests the interpreter serves. Is it those of the process or the parties in the process. For instance, one of the ways suggested above for dealing with interlingual and intercultural communication challenges is adaptation. Whereas this can work non-controversially when dealing with idioms, should interpreters use this strategy when faced with SL technical vocabulary that have no equivalents in the TL. Should the interpreter assume the adaptation role where he or she tries to simplify and outline court procedures and explain individual questions or should the interpreter take the conservation role where he or she tries to attain equivalence between SL and TL messages and leaves other challenges unresolved? Answering this question is not easy as there is need to look at loop hole that may arise when we adopt either. If interpreters can explain questions and other court procedures, who is to tell how far such explanations can go? If interpreters do not give such explanations and this leads to misunderstandings, is the failure the interpreter's or is it a failure of the wider system?

Thirdly, policy guidelines need to address the related issue of the duties of a court interpreter. This is important because part of being a professional is specialization. Kiguru (99) established that in Kenya, interpreting in courts is done by persons whose official title is Court Clerk. As such, whereas they interpret, they are also expected to, at times concurrently, perform clerical duties such as organizing files, calling out the names of defendants, writing down exhibits produced in court, writing out warrants for the magistrates' signature and providing stationery for the presiding magistrate. This could impact negatively on the interpreting activity which has already been shown to be a very intensive mental activity.

Finally, there is need for policy guidelines on the ethical standards expected of court interpreters in performance of duty. The aspects of confidentiality, impartiality, accuracy and professional demeanor, as discussed in 6.0, need to be made explicit and binding to the practitioners of the profession. Such guidelines would provide for uniformity in the performance of duty by court interpreters as well as provide benchmarks against which quality can be guaranteed.

Conclusion

The need for quality interpreting in the judicial setting cannot be emphasized as the impact of language use in this setting has wide reaching consequences not just for individual litigants but also for judicial institutions. This chapter has given a brief sketch on the historical foundations of court interpreting as a profession and highlighted possible interpreter errors that can occur. In the current world, service providers both in the private and public sectors strive for best practice as the only way of remaining relevant. We urge the same for judicial institutions with regard to interpreter services. There is need to learn from countries that have fully embraced and planned for the growth of court interpreting as a profession. The long term benefits of having professional court interpreters, we assert, far outweigh the short term cost.

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