

**LANGUAGE MANAGEMENT IN RELATION TO LANGUAGE NEEDS, USES AND
PREFERENCES IN SUBORDINATE COURTS: A CASE STUDY OF MACHAKOS
COUNTY**

by

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DEDICATION

I dedicate my work to my parents, Phyllis Mukuvi Mutiso and Flavian Mulwa Mutiso.

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DECLARATION

STUDENT NUMBER: 5763-754-7

This research is submitted in accordance with the requirements for the degree of Doctor of Literature and Philosophy (DLitt et Phil) in the subject Linguistics at the University of South Africa.

I declare that **Language management in relation to language needs, uses and preferences in subordinate courts: a case study of Machakos County** is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

Signature :



(Emmah Mwende Mulwa)

Date: 19th October, 2020.

Summary

Language management in relation to language needs, uses and preferences in subordinate courts: A case study of Machakos County.

This study was an exploration of how language is managed in the subordinate courts of Machakos County in Kenya. It was an investigation into the language policy used in the courts, and whether the languages serve the needs, uses and preferences of the people. Language use in Kenya is constitutional (The Constitution of Kenya, 2010). The national language of the Republic of Kenya is Kiswahili and its official languages are English and Kiswahili. The constitution shall protect and promote indigenous languages of the people of Kenya. The constitution further indicates that there shall be general provisions to the Bill of Rights, fundamental freedoms, and that the authority of courts shall uphold and enforce the Bill of Rights. (The Kenya Constitution, 2010, (Cap 4, entitled “The Bill of Rights” has subcategories ranging from Part 1 to Part 5. Part 1 elaborates on general provisions relating to the Bill of Rights, Part 2 on Rights and fundamental freedoms, Part 3 on specific application of Rights, Part 4 on state of emergency and Part 5 on Kenya National Human Rights and Equality Commission). The study attempts to establish whether or not the subordinate courts adhere to these provisions, which policy makers need to adhere to.

This research further explores solutions to the problem of communication during court proceedings. Its aim was to advance scientific information that would inform the formulation of a more accommodating language policy in Subordinate Courts. The background information and the history of the courts language gave an overview of how language in subordinate courts is used according to various scholars. The evaluation of how language is used during court proceedings shed light on the people’s language needs, uses and preferences.

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Key Terms

Human Rights

Language Dominance

Language Management

Language Management Theory - LMT

Language Needs

Language Use

Language Preferences

Language Policy

Linguistic Human Rights - LHR

Subordinate Courts

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CHAPTER ONE

INTRODUCTION

1.1: Background and research context

This chapter deals with issues surrounding language needs, uses and preferences, specifically in Subordinate Courts of Machakos County in Kenya. Language management as used in this study refers to noting the language problem, evaluating it and coming up with an adjustment plan (Neustupney, 1978; Kimura, 2005; Nekvapil, 2012). Language is vital in any community for it enables harmonious communication. Communication and understanding among citizens enables economic, social, health and political development. This comes as a result of following the instructions and guidelines given, understanding formulas and functions indicated as well as understanding one another in discourse. Most communities and individuals today are multilingual, owing to colonialism and its introduction of education and religion, as well as the multi-ethnic situation. Language problems are therefore bound to arise and interfere with the competence and proficiency to use a language within different domains. Language management therefore is an attempt to solve these language problems at the individual and/or public level through self-correction or administrative measures (Neustupny, 2003; Kimura, 2005; Spolsky, 2009; Nekvapil, 2012).

In this context, language needs refer to the purpose for which a language will be required. It may be to pass on information, to warn, to educate or even, in the legal context, to understand what one is being accused of and defend themselves. Language use refers to the application of a language in order to communicate. There is no other means of passing on information as long as one has a voice and a sound mind. Language use patterns show one's competence in the language(s). Language preference refers to the language a person would rather use instead of another for successful communication. If the policy in a court dictates one to use English, a language that defendants and witnesses may not know, then they will opt or wish to use the language that they know.

The aim of the study is to note language problems and to evaluate them, then to gather information that can be used to come up with an adjustment plan about the language in

subordinate courts of Machakos County. Depending on the location, context and the interlocutors' social and cultural backgrounds, different languages are preferred to enable communication irrespective of competence and proficiency in their language use patterns. Efficient communication is enabled by; inter alia, their language choice. Kenya is a member state of United Nations Educational, Scientific and Cultural Organization (UNESCO), which held a conference on adult education that resolved that member states should raise awareness about prejudice and discrimination in society; that all indigenous people and nomadic people have a right of access to all levels and forms of state education, and the right to enjoy their own cultures and to use their own languages (UNESCO 1997:28, Ogechi, 2003:286). This is promoted by mother tongues. To this effect, participants in a court should be able to use their mother tongues.

1.1.1: Indigenous languages in Kenya

Kenya is multilingual, both at societal and individual level (Muaka, 2011). There are about forty-two ethnic groups, but the ten major ones are written in the table below:

Table 1: Ethnic Groups and their Population in Kenya

ETHNIC GROUPS	POPULATION IN MILLIONS	PERCENTAGE
1. Kikuyu	8.492	22
2. Luyha	5.404	14
3. Luo	5.018	13
4. Kalenjin	4.632	12
5. Kamba	4.246	11
6. Kisii	1.930	5
7. Meru	1.930	5
8. Mijikenda	1.544	4
9. Turkana	0.772	2
10. Maasai	0.772	2
11. Small indigenous groups	3.474	9
12. Non-African groups (Arabs, Indians, Europeans)	0,386	1
TOTAL POPULATION	38.6	100

Source: Kenya National Housing and Population Census (2009)

The majority of the tribes in Kenya have members living in the large cities where they speak English and Kiswahili, and still retain some of their native culture and ethnic languages. But as it is in a country, most of the people live in the rural and semi-rural areas. Among the languages

spoken in Kenya, both English and Kiswahili serve as official languages, while Kiswahili doubles as a national language and an official language (Muaka, 2011; Central Intelligence Agency (CIA), 2015). Kiswahili which is a Bantu language is used in Tanzania, Democratic Republic of Congo, Kenya, Mozambique (mostly Mwani), Burundi, Rwanda, Uganda, Comoros, Mayotte and the margins of Zambia, Malawi, Madagascar and South Sudan and so it is a lingua franca (Gross, 2016; Beverly, 1971). Kenya is also divided into forty seven counties along its major tribes. It therefore follows that each county has one, two or three dominant indigenous languages. This is shown below.

Table 2: Kenyan Indigenous Languages per County

COUNTY	INDIGENOUS LANGUAGE	COUNTY	INDIGENOUS LANGUAGE
1. Baringo	Kalenjin	25. Meru	Kimeru
2. Bomet	Kalenjin	26. Migori	Dholuo/Ekegusii/Kuria
3. Bugoma	Luyha	27. Marsabit	Somali/Borana/Daasanach
4. Busia	Luyha/Teso	28. Mombasa	Chichonyi, chidigo/chiduruma
5. ElgeyoMarakwet	Kalenjin/Keiyo/Okiek	29. Murang'a	Kikuyu
6. Embu	Kiambu/Mbeere/Kitharaka	30. Nairobi	Kikuyu/Gujarati/Maasai
7. Garissa	Somali/Pokomo	31. Nakuru	Kikuyu/Kalenjin
8. Homa Bay	Dholuo	32. Nandi	Kalenjin/Luyha
9. Isiolo	Turkana/Borana/Somali/Kimeru	33. Narok	Maasai/Ekegusii/Kalenjin
10. Kajiado	Maasai/Kamba/Taveta	34. Nyamira	Kisii/Dholuo
11. Kakamega	Luyha	35. Nyandarua	Tugen
12. Kericho	Kalenjin/Kipsigis	36. Nyeri	Kikuyu
13. Kiambu	Kikuyu/Maasai	37. Samburu	Turkana/Yaaku
14. Kilifi	Arabic/Mijikenda	38. Siaya	Dholuo/Nyala
15. Kirinyaga	Kikuyu	39. TaitaTaveta	Kamba/Maasai/Dawida
16. Kisii	Kisii	40. Tana River	Dahab/Mijikenda/Swahili
17. Kisumu	Dholuo/Luyha/Nandi	41. TharakaNithi	Kitharaka/Gichuka
18. Kwale	Kikamba/Mijikenda	42. Turkana	Turkana/Daasanach
19. Kitui	Kikamba	43. Trans Nzoia	Luyha/Nyala/Okiek
20. Laikipia	Borana/Kimeru/Tugen	44. Uasin Gishu	Luyha/ Kalenjin
21. Lamu	Swahili/Mijikenda	45. Vihiga	Luyha
22. Machakos	Kikamba	46. Wajir	Somali/Borana
23. Makueni	Kikamba	47. West Pokot	Kalenjin/Okiek
24. Mandera	Borana/Somali		

Source: www.ethnologue.com/country/ke/languages

1.1.2: The History of Kenya's Language Policy

There has been a series of decisions made in Kenya since the pre-colonial, colonial and post-colonial periods on the language policy. The history of language planning has involved three types of people. One, the missionaries, two, the colonialists and the third type is the leaders; politicians and administrators. The missionaries were the first people to introduce formal school education in the country. There was a need for a common language to communicate for learning to take place. The language of the missionary instructors and that of the learners needed to be

harmonised. Eventually, learning did take place. The colonialists felt that their sentiments should be taken care of, because they were in charge of the affairs of their subjects. The language that they proposed to be was interpreted as law. Their say on which language to be used for instruction greatly influenced the final choice of the medium of instruction in schools. Then there were the emancipated politicians and administrators who thought things should be done in the interests of the new free society. This included the use of a language chosen through consensus not dictatorship. The politicians and administrators were on the ground, and so they felt that they knew which language best served the interests of the learner and probably those of the teacher and goals of schooling (UNESCO 1999). In these three cases, the decisions considered more importantly the language to be used as the medium of instruction in schools. This amounted to language planning and language policy.

In 1901, during the United Missionary conference in Kenya, it was passed that mother tongues be used in primary class one to three; and that Kiswahili should be used in two of the middle classes in primary school and English in the rest of the classes up to university. The missionaries favoured Kiswahili over English, but in the Commission of Education in East Africa in 1919, the missionaries changed their minds in favour of English. The Phelps-Stokes Commission of 1924 retained mother tongues in primary classes one to three and English was to be taught from upper primary. In 1925, the East African Commission recommended that local languages be used as media of instruction during the elementary stages and English be introduced at later stages. English alone was to be used as a medium in secondary schools (King'ei, 2001).

In 1927, the Advisory Committee of the Colonial Office said that no attempt should be made to delay the introduction of English in African schools because they had noted that the parents regarded English as the principle means of economic advancement. In a counter reaction, the committee of the Governors of Uganda, Tanganyika and Kenya argued that it was impracticable to make English the medium of instruction. In 1928, the Hilton Young Commissioners (the Commission of Closer Union of the Dependencies in East and Central Africa) agreed with the governors' decision. The commissioners pointed out that there was a need for a policy to bring all East Africa together, and a common language to be used in a common council. They

recommended Kiswahili to be taught as a lingua franca but added “with gradual change to English” (Nabea, 2009; Mbaabu, 1996; King’ei, 2001).

The Educational Department Reports of 1950-1951, including Beecher’s 1949, Binns’ 1952 and the Drogheda Commission of 1932 moved English to be introduced in the lower primary school and to be taught together with mother tongues. Kiswahili was still dropped. The New Primary Approach (NPA) in the 1960’s implemented the English medium from the start of school. The Gachathi Commission of 1972 maintained the English supremacy from 4th grade (class four) to university, and reinstated Kiswahili as a subject in primary and secondary schools. The Mackey Commission of 1981 pronounced English the language of instruction in schools, and Kiswahili became a compulsory subject both in primary and secondary schools. Mother tongues were the languages of instruction in the lower grades. The 8:4:4 system, which meant eight years in primary school, four years in secondary school and four years in tertiary level was then introduced (Nabea, 2009:3, King’ei, 2001). The Kenyan constitution retained English as the official language of the country. Kiswahili was assigned both an official and a national language status in the country, and mother tongues were assigned intra-ethnic communication and languages of instruction in the lower primary school (Kioko, 2013:22, Albaugh, 2005).

With the Kenyan young population growing up in this linguistic environment, it automatically shaped the language to be used in different sectors. English became a very valuable and important language at work and schools as well as in conducting government business and trade. The pressure to learn English from the teacher, the parent and the student mounted.

A language policy harmonizes language use in a country. Kioko (2013) argues about preference and identifies three important factors that determine language policy development: opportunity, identity and equity. She pointed out that opportunity looked back to the populace and focused on bringing on board participation in order to make and share the national cake, as well as push the populace or some of them to the international scenes (Kioko 2013:24). The strife to attain opportunity has driven Kenyans to struggle to learn and have their children know English and not mother tongues. This has devastating effects because the mother tongues gradually lose their value to the community.

Kioko (2013:26) added:

‘...when a language policy development is in harmony with equity, it will promote measures of tackling the avoidable factors that fuel inequalities so that no individuals or regions are denied the chance to benefit’.

This argument affects and leans more on language choices made by those living in urban centres as opposed to those in the rural areas. While those in urban areas use English for instruction, those in rural areas use mother tongues. The ones using English seem to be more advantaged because they are advanced in the use of the examination language, hence an unfair situation for the Kenyan children. There is a general feeling that those using the language of instruction and examination in their daily activities are likely to benefit more than those using their mother tongues. Session paper No.14 of 2012 re-emphasised the language policy of Kenya, that parents, in association with teachers and some scholars did not like it and so were up in arms about the ‘new backwards’ policy (Uwezo Kenya, 2011). They do not support the use of mother tongues at all. This could be because some Kenyans do not see how some children will be taught in mother tongue and still have equal opportunities during examination and in the job market with the others. The policy that the lower primary class one to three be instructed in mother tongue is therefore being fought or not practised at all. And like Uwezo Kenya (2011) points out, the failure to use the language of the catchment area as the language of instruction in starting school explains the high levels of school failure at the end of the eight years of primary school because students do not understand the curriculum in a language they do not know.

The sense of identity is concerned with the language in education policy where mother tongue use is implemented so as to ensure that local languages and cultures ruralise, vocationalise and democratise education. Unfortunately, although English has been used as the Language of Instruction consistently for a long time, early literacy studies have shown that the literacy levels of many pupils are far below the minimum expected levels (Trudell & Piper, 2013). A study by Uwezo Kenya established that only three out of ten children in class three can read a class two story book, while slightly more than four out of a hundred children in class eight cannot read a class two story book (Uwezo Kenya, 2011:24). The Kenya Government Sessional Paper No. 5 of

2005 refers to some alarming figures that the cumulative dropout rate in primary education over the previous decade was as high as 37%, and the repeating rate at 14% between standards one and seven. The survival rate had been low at 40% in primary school and 84% in secondary. The concern is on people who did not survive the education system. Their use and literacy in their indigenous languages were dropped in standard three before they had developed, while their learning of English and Kiswahili had not yet developed. Their communication, especially in official matters is wanting. The language policy as it is in the education sector determines how it is and will be in the other domains of that country and in this case, only a few survived in school and became literate and competent in language use.

1.1.3: The language situation in Machakos County

According to the census of Kenya as at July 2014 estimates, the country has a total population of about 45,010,056, of which 24% is urban population and 76% is rural population. Literacy, the ability to read, falls at 87.4% of the total population as recorded in the World Factbook of the Central Intelligence Agency (CIA) 2015. There is therefore a low level of urbanisation, but a high level of literacy. This could mean that the dominant languages and their speech communities would result in heterogeneity and multilingualism. This includes Machakos County, where the dominant local language, Kikamba, is threatened by literacy in English and Kiswahili. The county relies on what the country has laid down for its courts and so very little has been recorded on language use in courts for Machakos County.

If Kenyans aspire to be part of the increasingly democratic world, then everybody should have a chance to participate. Everybody includes the elite, the highly and lowly educated, those in cities and rural areas, members of numerically large and small ethnic groups, the handicapped, monolinguals and bilinguals and the youth in the spirit of devolution (Ogechi, 2003).

1.1.4: Language use in the judiciary of Kenya

The judiciary of Kenya consists of Superior Courts made up of the Supreme Courts, Courts of Appeal, High Courts, Industrial Courts, Subordinate Courts, Environmental and Land Courts. The Subordinate Courts consist of Magistrate Courts, Court Martial and Kadhi Courts (Mbote and Akech, 2011). This study covers the Subordinate Courts because it is where the majority of

the judiciary cases are heard, for they are generally located in every Sub-County in Kenya, specifically the Magistrate Courts. The Kadhi Courts were created in Article 169 1 (b) of the Constitution of Kenya 2010 to hear civil matters relating to Islamic law. The Court Martial was also created in Article 169 1 (c) of the Constitution of Kenya to deal with matters involving members of the Kenyan Defence Forces. The Kadhi and Court Martial courts were created to serve the minority, that is, the Islam community and the armed forces members. The minority group that speaks their indigenous languages only has been left out. As it is now, Machakos County subordinate courts have to use the national judiciary language policy as stipulated. English is the official language of the court by virtue of it being the national language in the country following the British law. Machakos County has one (1) High Court Judge, one (1) Chief Magistrate, two (2) Senior Principal Magistrates and two (2) Senior/Resident Magistrates (Mbote &Akech, 2011:88).

Record keeping in Kenya's Courts has been manual. Judges and Magistrates take notes by hand as cases proceed, so that their cases are largely handwritten (Mbote &Akech, 2011:89). This is done in English irrespective of the illiterates' lack of knowledge of the language. Interpreting and translation are used; but can they can be hundred percent accurate!

The subordinate courts are meant to serve everybody (Mbote &Akech, 2011). However, there seems to be a gap in terms of communication and interpretation. Poor or lack of communication is the result of lack of a language policy that accommodates everybody during court proceedings. English, which is the main language of the court (Muaka, 2011), is better known by the elite only. Interpreters may not interpret correctly. Conversations in court are therefore limited to the elite. The illiterate keep quiet and watch until such a time the interpreter will be required to interpret. Odhiambo, Kavulani and Matu (2013) found that illiterate people are given interpreters who, in most cases, are not competent in the use of indigenous languages.

An average Kenyan speaks at least three languages, English, Kiswahili and an indigenous language (Muaka, 2011). Chapter 49 of the Constitution of Kenya stipulates that an arrested person has the right to be informed promptly in a language that he or she understands, of the reason for the arrest, the right to remain silent and the consequences of not remaining silent. It

also stipulates that the accused persons have the right to have an interpreter without payment if the accused person cannot understand the language used at the trial. It further stipulates that if the accused person requires information, such information shall be given in a language that the person understands (Malan, 2016). Although these stipulations are made, the question is how well this use of a language that the accused person can understand is implemented, if it is at all. Is the interpretation done accurately, and is an interpreter readily available and conversant with the indigenous language?

Part Five of Chapter 75 of the Criminal Procedure Code directs (just like the constitution) that the language of the high court shall be English, while the language of the Subordinate Courts shall be English or Kiswahili. Since not all persons who appear before the court are competent in both languages, where testimony is given in a language not understood by an accused person, the law requires that it be interpreted (Gatitu, 2009). Again, all those at the court may not be competent in the languages used to interpret. The Mackay report (Republic of Kenya, 1984) found that most graduates schooled in English have poor command of Kiswahili and the rest of the indigenous languages. They therefore cannot articulate the knowledge and skills acquired to the general populace that does not speak English. The graduates cannot explain in their indigenous languages what they have acquired in the English medium (Ogechi, 2003). This presents the dilemma in most of the domains in life, especially in the courts. There is a big divide between those that use English and Kiswahili and those that use only indigenous languages.

UNESCO (2002) states that it is an injustice if the right of a person to enjoy their own cultures and to use their own language is denied. This means that the language policy as prescribed by Part 5 of the Criminal Procedure Code 75 is wanting and will also require academic interrogation. The Advisory Panel of Eminent Commonwealth Judicial Experts, which was called upon to advise the Constitution of Kenya Review Commission (CKRC) on constitutional reforms regarding the Kenya judiciary concluded that:-

‘...as presently constituted, the Kenyan judicial system suffers from a serious lack of public confidence and is generally perceived as being in need of fundamental structural reform. It is our considered view that strong measures are necessary for Kenya to achieve an independent and accountable judiciary, capable of serving the needs of the people of

Kenya by securing equal justice and the maintenance of the rule of law under a new constitutional order' (Mbote & Akech, 2011:48).

The Kenyan Judiciary has a crisis of confidence. A number of factors, including poverty, gender, religion, lack of knowledge of their rights, corruption, poor governance, tribalism, nepotism, illiteracy, discrimination, cumbersome process, courts that are far, fear and culture, are some of the identified causes of this lack of confidence in the judicial system (Mbote and Akech, 2011:161). Language has not clearly been captured well in the study by Mbote and Akech (2011), , instead they discuss about culture in general, and therefore this study attempts to fill the gap.

In conclusion, lack of a clear language policy that accommodates everybody during a court proceeding leading to poor or lack of communication can be solved by the creation of a policy that accommodates the needs, uses and preferences of a language by the language user.

1.2: Statement of the problem

The research problem that this study sets out to investigate is lack of a language policy that accommodates everybody during a court proceeding, leading to poor or lack of communication. It is the cream of the society such as the richest, the most powerful, the best trained or even the best educated that most benefit from what seems to be the language policy of the court. English, which could be the prescribed language of the court, especially because the courts use British law (notice that there is no constitutionalised language of the court) is better known by the elite. Interpreters, who also happen to be part of the elite in the society, may not interpret correctly. Conversations in the court are carried out in English by the other participants apart from the non-elite. As mentioned earlier, the illiterate keep quiet and watch until the interpreter starts talking to them so as to interpret. This is the only time they participate in court proceedings. It is also stated by Odhiambo, Kavulani and Matu (2013) that illiterate people are given interpreters who are not competent in the use of indigenous languages. They may know the English language and mother tongues, but they are not professional in interpreting because they do not know these two languages adequately. This leads to judgments that are not appropriate hence setting criminals free or convicting the innocent on account of language use patterns. The literature on the County Subordinate Courts indicates that language is indispensable, and so must be factored in during

any communication. This study purposes to explore solutions to the problem of communication during court proceedings.

1.3: Research questions

The study addresses the following specific questions:

- Which languages are used and how are they selected during a Subordinate Court case proceeding in Machakos County?
- What are the language needs among the participants in Subordinate Court proceedings in Machakos County?
- How effective is the implementation of the use of the current language policy in Subordinate Courts in Machakos County?
- From the study findings, what are the intervening measures towards access to justice in language use in Subordinate Courts in Machakos County?

1.4: Aim and objectives of the study

The aim of this study is to advance scientific information that would inform the formulation of a more accommodating language policy in Subordinate Courts in Machakos County. The following objectives will guide the study:

- To establish the use of indigenous languages in subordinate courts in Machakos County
- To explore language needs among the participants in the subordinate courts in Machakos County
- To evaluate the implementation of the current language policy in subordinate courts in Machakos County.
- To recommend interventions that will facilitate access to justice in language use in subordinate courts in Machakos County based on the findings of the study.

1.5: Motivation of the study

This study is motivated by the need to minimise injustice in the judicial system where ordinary people are constrained by the use of English and Kiswahili. The language policy dictates the use of English or Kiswahili in official matters but not any of the other forty-two indigenous

languages in Kenya. Due to lack of language choices, the Kenyan population has started a struggle for superiority of languages and at the same time to intervene to resolve the dispute of linguistic hegemony as perpetrated by both English and Kiswahili (Nabea, 2009:122). Ngugi wa Thiong'o's paradigm shift to writing in Kikuyu language instead of English is an example of this contest and mediation (Mwaniki, 2010). There is also a lot of code-mixing, code-switching, laissez-faire use of non-standard language and creation of argots like sheng (a code developed by the youth in the less affluent areas and slums of Kenya, based more on Kiswahili structure and vocabulary, but with the lexicon drawn from English, Kiswahili and the various indigenous languages) and Engsh (a code developed by the youth in the affluent suburbs of Kenya based more on English structure and vocabulary, but with the lexicon drawn from English, Kiswahili and the various indigenous languages) (Nabea 2009). Following this contest, these developments in language use are a result of constraints on the use of the languages well known to the users. Eventually, the indigenous languages will lose their authenticity and the cultural attachment to its speakers as well as their development if constraints to their use are not lifted. Once these constraints are lifted, the indigenous languages will be used in various domains, including the courts.

This study is also motivated by four items of The Harare Declaration (1998) in its vision for:

- a democratic Africa that seeks to enhance the active participation of all citizens in social, economic, political and legal institutions;
- in broader terms, a democratic Africa that acknowledges its ethno-linguistic pluralism and accepts this as a normal way of life and as a rich resource for development and progress;
- a democratic Africa that seeks to promote the peaceful co-existence of people in a society where pluralism does not entail replacement of one language or identity by another, but instead promotes complementarities of functions as well as co-operation and a sense of common destiny; and
- a democratic Africa where democratisation in pluralistic context seeks to produce through sound and explicit language policies that Africans will be able to operate efficiently at local, regional and international levels (UNESCO, 2002:49).

UNESCO (2002) is a starting point that empowers African communities through their governments to use their indigenous languages in all forms of institutions and domains in their day to day activities in spite of their heterogeneity and irrespective of their different domains.

The study is further motivated by the accommodating linguistic situations in other countries such as South Africa which, Mwaniki (2004:16) observes, has eleven official languages recognised constitutionally. In India, apart from the Lingua francas, English and Hindi, eighteen languages are also constitutionally recognised (Singh, Zhang, Besmel, 2012:366). It is possible to create and implement a multilingual policy and plan that officially recognises indigenous languages at each Kenyan County level as a means of improving service delivery, accessibility of the County's structures by residents, and facilitation of participatory governance and democracy at the local government sphere, especially in subordinate courts in Machakos County.

1.6: Rationale and significance of the study

The society today is fast changing in its language choices and use patterns especially with modernisation. The indigenous languages have been being shelved further and further away from official matters. This has led to injustices being committed on the users of the courts especially if they are not proficient in the use of English and/or Kiswahili. The society has many of those that need the services of the courts but cannot access them due to the language barrier. This study hopes to explore means and ways in which indigenous languages can be elevated to the official status so as to accommodate every other person in the society. The study also hopes to make an important contribution to the literature on issues concerning multilingualism and language management on the co-existence of official and indigenous languages. The uniqueness of language management by subordinate courts, especially of the language needs of court users, their use patterns and preferences has, to the best of my knowledge, not been captured widely in scholarly discourse. Hence this study seeks to help fill this gap.

The study will also become a springboard for other researchers on similar studies as it will give a starting point for further research on language management in subordinate courts and other domains. The significance of this research is therefore to gather information that will address the

needs relating to the use of indigenous languages in subordinate courts and, based on the findings, recommend a strategy for language use in these courts in the county.

A few scholars have focused on language management (including Neustupney, 1978, 1994,1999,2003; Neustupney and Nekvapil, 2003; Nekvapil, 2006, 2012; Nekvapil and Sherman, 2015; Kimura, 2005; Mwaniki, 2004, 2010, 2011, 2014; Spolsky, 2009, Ndlovu, 2013) but the majority have focused more exclusively on language planning and policy, especially on language use, attitudes and preferences. Among them are Kembo-Sure (1996, 1987), Kiliku (2010), Wangia (2014), Mwaniki (2014) and Mulwa (2013). This study shifts the focus from studies of language planning and policy theories alone to add language management theory. This is a contribution to the wider language planning and policy studies.

1.7: An Overview of Research design and methodology

This study is a descriptive case study that has employed both qualitative and quantitative research techniques to collect and analyse data. The mixed methods led to a triangulation of the results. These methods include interviews of magistrates and other officers of the courts, non-participant observation of court proceedings, and questionnaires by other court participants such as accused persons, witnesses and other members of the public. The study's data collection methods, instruments and data analysis have been informed by the literature review covered, the language management theory and the linguistic human rights paradigm used. These methods will be fully discussed in chapter two.

1.8: The Scope of the research

The research is about the language needs, language uses and language preferences in line with language management and language policy in subordinate courts in Machakos County. The 2010 constitution states the official languages in the country (English and Kiswahili) and promises to promote and protect indigenous languages as well as the development and use of these languages, the Kenyan sign language, Braille and other communication formats and technologies to persons with disabilities. These provisions are also in line with linguistic human rights that have an impact on the languages needs, uses and preferences of accused persons and witnesses, and other participants during court proceedings. The English language, which seems to be the

language of business in court, might be violating people's rights. English provokes different feelings among its users, an exploration that this study will undertake. This thesis is divided into six chapters:

Chapter one presents the background of language needs, uses, preferences and management of the language. The background also highlights indigenous languages in Kenya, the history of the language policy in the country, the language situation in Machakos County and the use of language in the judiciary of Kenya. This chapter further covers the aims and objectives, motivation, significance of the study and rationale for the study, an overview of the research design and methodology and the scope of the thesis.

Chapter two covers literature review and gives an overview of language planning, policy and management. The chapter discusses language management in courts in various parts of the world, including the developing world, and narrows down to Kenya and hence subordinate courts in Machakos County. It further discusses the linguistic human rights in the judiciary, the management of networks and power levels. The theoretical framework that guides the study is also given. It includes language management theory and the linguistic human rights paradigm.

Chapter three discusses the research methodology. It discusses the research design and the research approach that this study has used to investigate language needs, uses and preferences in subordinate courts of Machakos County.

Chapter four presents the data collected through questionnaires, interviews and non-participant structured observation.

Chapter five analyses the data collected and discusses language management in subordinate courts. It therefore discusses the findings.

Chapter six presents the summary, conclusion and recommendations for further study. The indigenous languages must be embraced and the English language challenged in the corridors of justice.

1.9: Conclusion

To conclude, this chapter examined language management in subordinate courts. The research focuses on language needs, uses and preferences of an area dominated by an indigenous language (Kikamba) speaking community in Machakos County. The background information gave an overview of how other scholars have perceived language use in subordinate courts and the historical overview since colonial times to today. Kenya has adopted the British system, thereby looking down upon her indigenous languages. This has given English a very high status and indigenous languages a low status. The English language was embraced in schools as the language of instruction, but many left school before they had known it well. Yet they dropped mother tongue use in schools before they had learned the literary skills. The product therefore is a group of people that are not competent enough in English and Kiswahili, and cannot use their mother tongues any other way apart from orally.

The indigenous languages are supposed to be promoted and developed, especially in lower primary schools. This has scantily happened. Although many Kenyans would have participated better in their indigenous languages, the languages have not been embraced. This has led to poor communication and has as well affected the users of the subordinate courts.

The use of interpreters is supposed to solve the language barrier in the courts. But again there are language problems emanating from personal backgrounds of interpreters and the country's language background. Most interpreters are not competent enough to interpret from their mother tongues to English or Kiswahili. A language policy that accommodates and protects the linguistic rights of the people should be upheld.

This study is grounded on the language management theory (LMT) and the linguistic human rights paradigm (LHRP). Proponents and other researchers have extensively discussed these aspects (Neustupny, 1978, 1999; Jernudd & Neustupny, 1987; Webb, 2002; Mwaniki, 2004, 2010, 2011; Kimura, 2005; Spolsky, 2009; Nekvapil & Sherman, 2015; Skutnubb-Kangas in Ricento, 2006; Rojas Reagan, 2003; Skutnubb-Kangas & Phillipson, 2017; Batibo, 2009; Lubbe, 2008; Tollefson, 1991). This study focuses on defining terms and ways in which indigenous languages

can be used in areas in which they have been sidelined such as subordinate courts in order to enable an inclusive national participation, particularly in these courts.

The researcher will use questionnaires, interviews and observation to collect data in her research. A mixed research method of qualitative and quantitative research methods that will result in triangulation of the data will be used. The issue of language problems as created by language barriers leads to people being wrongly convicted or set free. This will be the main focus of the study.

CHAPTER TWO

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1: Literature Review

2.1.1: Introduction

Language is an important resource for any human being in a community. There are language needs that should be catered for, and language usage and preferences that people have. In order to understand the relationship between language management and language needs, use and preferences, it is necessary to delve into the relevant literature review. Research on language in courts is scattered across works in language planning, language policy and language management. Language management in courts begins with language planning and policy by the government, and should be aimed at serving the community justly and fairly. An investigation into the indigenous language use and preference in courts will reveal much of what should or should not be the case as far as the language policy in courts is concerned. An analysis of debates around indigenous languages sharing an official status as the ‘European’ languages at the county level where these indigenous languages are dominant will follow. The chapter highlights the view that language barriers have been recognised in subordinate courts and will focus on negative consequences that could result in misunderstanding and hence giving wrong judgments.

2.1.2: Language planning, language policy and language management

Tracing the development of these terminologies as used in language studies, “Language planning” was conceptualised as rational problem-solving in specific social, economic and political contexts. Nekvapil (2012:8) claims that the term ‘language planning’ is meant for the 1960s and 1970s, and should therefore be reserved for theories and activities of that period. He analyses Spolsky’s (2004, 2009) development of ‘language planning’ to ‘language management’ as he considers his (Spolsky’s) description of the three components in the theory of language policy. These components include language practices, language beliefs and ideologies, and any specific efforts to modify or influence that practice by any kind of language intervention, planning and management. Nekvapil (2012) refers to these three components as ‘language management’. Whether we call it language planning or policy or management, the idea of making decisions about a language amounts to a speech community being advantaged or disadvantaged depending on whether or not their language is picked or left out. How free a

community is to use its language makes communication effective and efficient. The beliefs and ideologies help keep the identity of that speech community. The efforts to modify or influence that practice is what brings about the difference. It is given that any speech community or an individual would want to participate in the larger community globally, and so calls for the intervention of the governments. In this case, the government needs to accommodate every speech community in its state. For instance, in the case of Kenya where the constituencies are divided along speech communities, it is only logical to let indigenous language become official for that constituency.

2.1.2.1: Language Planning

Language planning and language policy are areas that have been dealt with largely by many linguists and policy makers who also agree on the majority of issues surrounding it. Language planning is seen as a conscious and deliberate effort made to influence the function, structure or acquisition of a language or a language variety within a speech community. It is seen as a political attempt to change the status of a language in some way, or to develop new ways of using the language (Jagodic, 2011:9). It is through language planning that a particular language or dialect becomes identified and later recognised countrywide or internationally as a national, official or regional language.

Jagodic (2011:8) explains with reasons why language planning is important to a country. He says that it is important because it brings about unification in communication among the citizens. He asserts that through language planning, a country is able to deal with modernisation that has come with new technology and modern education. He also adds that linguistic rights can only be exercised when there is democracy which is achievable through language planning. He concludes his points by claiming that verbal or written communication in a country is improved through language planning. That this unification can also be done regionally so that it does not have to be a national language, but a constituent's language.

Kwame (2009: 142) and Jagodic (2011:8-9) identify four ideologies and goals of decision-making on language planning. They are motivated as follow:

- Linguistic assimilation. Citizens learn a particular prescribed language for their own survival nationally and internationally. It is the belief that regardless of the linguistic background, everyone should learn the dominant language of the society. All members should be able to communicate no matter where they come from.
- Pluralism. Different languages should be able to co-exist among the official, national and the various indigenous languages. It accords official status to more than one language and assigns other duties to other languages in the same society.
- Vernacularisation. This relates to the satisfaction that there will be translation into the various indigenous languages. This makes planners settle for one or two national or official languages. All vernacular languages can be used by the owners amongst themselves, especially when some vernaculars have been standardised. Vernacularisation will allow everyone to know what they need to know even if it is international information. It has, as its goal, the elaboration of an indigenous language and its adoption as an official language.
- Internationalisation. The world has become a global village; a common language is inevitable. During language planning, planners recognise the need for that common language that the citizens will need in order to communicate globally. It therefore emphasises the adoption of an exogenous language of wider communication either as an official language or for such specific purposes as education, bureaucracy and external trade.

Jagodic (2011:9) argues that language planning is needed because it is in response to sociopolitical needs such as where linguistic groups compete for access to the mechanisms of day-to-day life, or where a linguistic minority is denied such mechanisms. Language planning advances particular languages, and with viable reasons, for specific functions, thus reducing language diversity, and enabling different linguistic groups to live harmoniously. Jagodic (2011) adds that language planning is also needed because both the government and social institutions must effectively and equitably meet the needs of the population so that varied groups in linguistic repertoires have an equal opportunity to participate in their government and receive services from it. Language diversity in countries like Kenya gives freedom to everyone to own property anywhere in the country, and to settle or work anywhere; and that with inter-ethnic

marriages, there is bound to be a communication problem if there is no common and neutral language to unify everybody. But at the same time, it would also be an injustice to force people of the same speech community to use a different language.

Franks and Gessner (2013:8) view language planning as an activity that helps institutions to carry out revitalisation programmes in their languages. The two writers point out that this activity can take place at any level in a community and at any time. It is an activity that involves a committee or a team and a language authority. To get to planning, the language authority must have guided the team by determining the status of the language, community mobilisation and support, research and setting of the language goals. They point out that all other issues, including political, personal and historical should be set aside in order to focus on reviving the language, creating more speakers and increasing language use in the community. In the end, language planning is all about language assessment, language attitudes and language goals. To get the purpose of the activity, Franks and Gessner (2013) suggest the following issues to be looked into:

- The role of language in the community.
- The language abilities or skills one would like to see for themselves or the community.
- The role one would want for the language in the future generation.
- The value systems that are important for the language.
- The important parts of ones' linguistic way of life that one would like to see continued.
- Linguistic ways of life that one would like to see changed.

The result of this process is the development of a language plan that provides a framework for carrying out language activities with resources that are available to meet the goals of the community.

Franks and Gessner (2013) discuss vitalisation of a language. That a language should be given life, made useful, given activities to go with. The same process could be applicable to any language, especially an indigenous language that needs to be given status in any community. In Africa, such countries, including Kenya, have languages like Kikamba that need to go through such a scrutiny in order for it to achieve an official status.

Kaplan (2013:2) defines language planning as an activity undertaken by a government intended to promote systematic linguistic change in some community of speakers. This is the work of the government because a government can handle massive changes in a society. To Kaplan (2013), the reason for language planning is to maintain civil order and communication, and to move the entire society in some direction deemed good or useful by government. This exercise leads to, or is directed by, the promulgation of language policy by government or some other authoritative body or person. This means that unless the government or the people in authority see the usefulness of a language to the country or to particular institutions, there cannot be any plans towards that particular language. If considering indigenous languages among the official languages could bring chaos to the society, then the government would rather do away with that consideration.

Kiliku (2010:66) in his discussion on multilingual language planning, policy and implementation, points out that language planning is concerned with how to cope with language in a multilingual milieu. This means that if there were no multiplicity of languages in the society in the first place, there would be no need to plan for any particular language use. The society must look for a way of harmonising communication, especially when that communication is deficient because of language barriers. Kiliku (2010) argues that a language-in-context approach has to be used. If the same argument is used, then some indigenous languages are the only languages in their regions that can unify all the members of that region. In that event, they should be pronounced the official languages of the community in that region.

Mwaniki (2004:102) describes language planning in the context of language planning theory, and asserts that this is an area of scientific inquiry. He says that language planning requires some theoretical basis upon which the implementable and practical programmes are premised. To him, language planning is a domain of application. Quoting Blommaert (1996), Mwaniki (2004) explains that new insights in the non-arbitrary relationship between languages and societies could be converted into implementable, practical programmes of literacy, alphabetisation, standardisation and development of educational materials. Mwaniki (2004) looks at the systematical bond between the society and its language, and concludes that the ideas raised from that relationship could be made practical programmes. In relation to this study, a careful scrutiny

into the affairs of the people within their constituencies could bring out the language needs of these members. A dominant indigenous language is common to both the literate and the illiterate. The official language and the national language functions may need analysis alongside the actual functions of the indigenous languages. That amounts to language planning in Kenya.

2.1.2.2: Language Policy

Kaplan (2013:2) defines language policy as a body of ideas, laws, regulations, rules and practices intended to achieve the planned language change in society, group or system. He argues that if there is no policy, there can never be a plan to be adjusted because there is no serious evaluation. He claims that language policy can be realised at a number of levels such as from very formal planning documents and pronouncements, to informal statements of intent. He points out that policy statements could be symbolic, meaning that they articulate a good feeling towards change and substantive to articulate specific steps to be taken. This means that language policy is applicable to different institutions within a country. A policy on language in a school may be different from one in a court of law, a church or a family. What is important is that a language policy should offer the consumer the services that are favourable as far as language choice in any domain is concerned.

A language policy is probably the main way of bringing harmony and tranquility in a society. A language policy is therefore one of the official policies that result from language planning, which is then imposed in a deliberate attempt to influence language behaviour by means of codes (Lecture 17 accessed on 4th January, 2017 at 7am San Jose State University).

In order to have a stable diglossia, perhaps unintended, the early sociolinguists had a consensus view that a major European language (French or English) should be used for formal and specialised domains, while local languages could serve other functions (Ricento, 2006:13). The idea may have worked then, but there are detrimental results of this kind of an arrangement. There was the effect of lowering the status and relegating the domains of indigenous languages to local uses, while elevating the status and extending the domains of former colonial languages of political and elite educational sectors, helping to perpetuate the stratified, class-based structures of the colonial era (Ricento, 2006:13). With today's general development in the

economy, social standards of living, education and political status, language is no longer based on colonial structures but on the social setting. The people comprising a society are of different educational backgrounds with different political aspirations and living standards, yet sharing a dominant 'European' language and a local language.

Diglossia in developing countries was criticised as 'an ideological naturalisation of sociolinguistic arrangements' (Woolard & Schieffelin, 1994) perpetuating linguistic and related social inequalities (Ricento, 2006:13). It was the case then and still is as Ndlovu (2013: 92) argues that in cases where speakers of officially minority languages have low ethno-linguistic vitality and awareness as a result of linguistic heterogeneity and fragmentation, which foster language shifts, language accommodation and diglossia, they prefer to function mostly in the politically dominant languages. English therefore has taken this position in most countries, and specifically in Kenya. Many parents have shifted from using their indigenous languages at home to using English because English is the official language; it is used in schools as the language of instruction and examination, it is the language for trade and economic advancement and international relations (Muthwii, 2007). Although the indigenous languages are dominant in the counties, they are no match for English as they are not given substantial value. English has been accommodated, and co-exists with indigenous languages. Ndlovu (2013:95) refers to it as marked bilingualism; which is a result of being comfortable in a second language due to lack of communicative needs in the home language.

2.1.2.2.1: Language planning and policy: Summary

Education is probably a sector that receives the most attention in language planning in a country. There is a direct link between the languages of education and development (Djite, 2008:54), especially later in life in the other domains. The languages used as languages of instruction (LOI) in a classroom are favoured over the others; an indication of the supremacy accorded to these languages over others. The same languages end up becoming national or official languages of the country. Ndlovu (2013:15) argues that language-in education planning represents the public face of language planning, and that the education sector is the most potent resource to bring language change. Any language a country decides to use in school can easily develop to a higher status. Language-in-education policies inculcate established traditional values and nationalist attitudes

along with and through the medium of instruction. These policies are also seen as ways of creating order, manage and control the linguistic repertoire of the country (Ndlovu, 2013:16). The greatest achievement is that a chosen language gets to develop, but at the expense of others. The other sectors or domains such as courts, parliament, religious sectors and generally, work places use languages as they were assimilated in school.

2.1.2.3: Language management

Neustupny (1994:50) states that any act of planning should start with the consideration of language problems as they appear in discourses (use of words to exchange thoughts and ideas, could be written or spoken), and the planning process should not be considered complete until the removal of the problems is implemented in discourses. Discourses in this study will refer to the communication exchanges during court proceedings in subordinate courts. The language challenges experienced constitute language problems that have to be handled by the society as individuals on the one hand, and its leadership and institutions on the other.

Spolsky (2009:4) defines language management as the explicit and observable effort by someone or some group that has or claims authority over the participants in the domains to modify their practices or beliefs. Many people in the developing countries use the once coloniser's language, because it is the official language. Most governments in these countries did not consider indigenous languages for official status, probably because they were not bringing unity as it was supposed to be. These and many others are some of the practices and beliefs that Spolsky (2009) believes are to be addressed by either a speaker or an authority, hence, language management.

Mwaniki (2010:4-5) defines language management as a reference to a wide range of acts of attention to language problems. He brings to the forefront two stages at which language problems occur. In the early stages of language management development in the 1960's, 1970's and 1980's, language problems were viewed in the narrow sense of spellings, redressing a wrong utterance and other traditional narrow senses applicable. From the 1990's, language management has incorporated the traditional narrow sense definition, and a wide range of additional problems found in a discourse and communication in intercultural situations. Simple management is the management of individual communication while organised management is the management at

different levels involving more than one person participants, the discourse taking place, and the thoughts and ideologies intervening. The terms simple and organised management were first distinguished by Neustupny and Nekvapil (2003). Language management in courts is first done by individuals as they check their language use, and secondly, by the constitution by providing a language policy for the courts.

As mentioned earlier, language management is an attempt to solve language problems at both individual and public levels by noting and evaluating the problems, coming up with an adjustment plan of the problems and implementing it. Nekvapil (2012:1) argues that about the driving force of Language Management Theory (LMT) is the identification and solving of language problems, the linguistic, communicative and associated socio-cultural phenomena that are not only noted but also evaluated negatively. Nekvapil (2012) quotes Spolsky's definition of language management that when a person or group directs efforts to manipulate the language situation, such an intervention is known as language management. Manipulation in this case means activities geared towards adjustments of language use. Any adjustments made by the judicial sector concerning its language policy and language use during court proceedings amount to language management. This study concentrates on the evaluation at socio-cultural level and at the courts where there is more to the problem than just ungrammatical utterances and wrong choice of words.

Nekvapil and Sherman (2015:6) define language management as any sort of activity aimed at language or communication. They look at language management as a system and as a language use, and conclude that there is organised management that is defined against the background of simple management by a number of features, including social networks, interactions and the corresponding power (Nekvapil, 2012:167). An institution is a system that is supposed to work. The judicial system will have failed in a country if it has communication barriers among its citizens or between its citizens and the authority in it. The aim of language management in courts is such that the interactions among all the participants will be devoid of language barriers.

2.1.2.3.1: Courts' language management

2.1.2.3.1.1: Introduction

Globally, to date, over 200 countries in the world recognise two or more official languages. Languages like Arabic, Bengali, English, French, Hindi, Malay, Mandarin, Portuguese, Russian and Spanish are spoken as second, third, fourth or later-acquired languages or used as lingua-francas, or languages of wider communication across the globe (see Singh et al., 2012:350). De Swaan (2001, in Singh et al., 2012: 351) points out a global language system which he says at the bottom is the world's many small languages - the peripheral languages, constituting 98%. The next level is about 100 central languages such as Chinese, Hindi, Russian just to mention but a few, which are acquired as second languages by speakers of peripheral languages. These central languages become national or official languages and are used in politics, courts, education systems, television, textbooks and newspapers. Kiswahili in Kenya could fall under this category. Gatitu (2009:1) says that both English and Kiswahili are used daily in the business of the courts. English remains the language of power and elitism, while Kiswahili is ignored in the courts and other public institutions by policy makers. The indigenous languages are associated with tribalism (Gatitu 2009:1) and could fall under the world's many small languages hence not given the status they deserve in subordinate courts.

2.1.2.3.1.2: Language management at the courts in various parts of the world

In Europe, according to Mwaniki (2004:1), even small countries use their indigenous languages as languages of instruction. The argument is that it is a sound educational principle to proceed from familiar to the new, hence giving precedence to the use of indigenous languages for instruction in lower primary schools (Broke-Utne, 2008; Nabea, 2009; Kiliku 2010; Mwaniki, 2014; Batibo, 2015). Even with this, it would be interesting to discover other motivating factors that would make these small countries want to use their indigenous languages. In effect, if there are other uses of these indigenous languages beyond lower primary schools, like in the courts and media, then there is a drive to want to use indigenous languages.

In Belgium, Dutch, French and German are used as court languages. The constitution of Belgium has demarcated language areas alongside these three languages, making them obtain an official character. The constitution does not spell it out that Dutch, French and German are official

languages of the country. Through Bambust, Kruger and Kruger (2012:214), history has it that the linguistic frontier between Romance and Germanic languages was fixed at the point of maximum Roman conquest. After the fall of the west Roman Empire, Germanic languages were spoken in the Northern part of the Frankish Empire, while Roman languages dominated the southern area. Bambust et al. (2012) point out that there is no consensus among historians on the linguistic border, but Gijsseling suggests the main reason to be the Roman influence of the church. Belgium obtained its independence from the Netherlands in 1830. The southern provinces wanted independence because of the increased use of Dutch in the administration, while the main official language of the new state was French. The everyday language of the north was Flemish, and the supremacy of the French language started to cause resentment. This Flemish movement promoted the establishment of Dutch as an official language. After the first world war, the treaty of Versailles of 1920 transferred the German cantons of Eupen, Malmedy and Sankt Vith on a provisional basis to Belgium, and confirmed it in 1925 as a permanent region of the Belgium state, hence the German language.

The principle of territoriality was introduced in 1921 and confirmed in 1930 and 1962. This principle is said to be flexible with a minority thirty percent speaking their mother tongues, and expected to obtain services in their local languages. Bambust et al. (2012:216) point out that it is a constitutional right to use any language in Belgium; and that this right may be limited only by legislation and only for acts of public authority or for legal proceedings. The Belgium situation of territoriality matches the idea of constituencies in Kenya that has mostly a dominant indigenous language. If the three languages can work for Belgium territories, then the dominant language/s in each constituent in Kenya can be an official language specific to that constituency. This will result in the indigenous languages being used as court languages.

When Catholic Southern Ireland declared its independence from the United Kingdom, only 2% of the Irish still spoke Irish Gaelic, were bilingual and 98% spoke English only. The Irish government instituted a series of measures to promote the Irish language, particularly within the 1948 constitution (Singh et al., 2012). This means a country can salvage its languages through the support of the government. The moment these languages are put to use at an official language level, they become useful and valuable, and hence gain favour from the users.

The Canadian courts language policy seems to be based on language rights. The justice system is said to be unique in the world because it has two official languages, English and French, and two legal traditions, common law and civil law that co-exist (Canada department of Justice accessed 25th August, 2017). Lubbe (2008:382) brings forth the importance of language rights to the accused person in a court in Canada. Through the Supreme Court in Canada, in a case where Beaulac is accused of murder and his request to be tried in French is rejected at the magistrate Canadian courts, judge Bastarache interjects that the language choice of an accused persons is a substantive right and not a procedural one that can be interfered with. Language choice is very important to an accused person if justice is to be served. Language choice is a constitutional right. The Supreme Court pointed out that language rights in all cases must be interpreted purposively such that they are consistent with the preservation and development of official language communities in Canada. It is therefore clear that a language used in court should be an official language. Indigenous languages made official get to enjoy that preference, but it is not clear what happens to those minority languages that have not yet acquired any official status. Even though it is pointed out that in the Canadian Supreme Court the priority is the importance of language, the protection of minority languages, and the development by the government and rectification of languages neglect of the past (Lubbe 2008:383), it is still not clear what happens to those non-official languages when they are the only languages the accused person know in courts.

In Australia, language policy is based on principles such as the recognition of Australian English as a national language, the rights to use community languages other than English, including languages and language systems of the deaf. They also recognise indigenous languages and the unique status of Aboriginal languages, Torres Strait Islander languages and Australian Creoles (Lo Bianco, 1990). In essence, Australia has no official language, but it recognises Australian English as the main language, indigenous languages as mentioned above, minority languages, including Mandarin 2.5%, Arabic 1.4%, Cantonese 1.2%, Vietnamese 1.2% and Italian 1.2% and sign languages, including Auslan, Yolŋu sign language and other Aboriginal sign languages. 70% of the population speaks English at home (Sawe, 2018)

In court, Australians value their other languages other than English so much such that interpretation is highly valued and highly used. Firms have been established to offer court and legal interpreter services to courts, law firms, legal aid, police departments and to prosecutors around Australia (www.interpreter.com.au. Translationz, Court Interpreter: Legal...). The Australian Law Reform Commission reports the difficulty of comprehension, both conceptual and linguistic that the Aborigines, especially the traditionally oriented ones experience on coming to contact with the criminal justice system (www.alrc.gov.au/pub; 23:596). The provision of a competent trained interpreter seems to be a major solution to this problem. The interpreter must have understanding both of the relevant Aboriginal language and concepts, and with the nature and procedures of the trial (www.alrc.gov.au/pub; 23:498).

However, it may be interesting to note that in Australia, common law does not entitle a person to an interpreter, but the court may allow an interpreter to be used (www.alrc.gov.au/pub; 23:499). In my opinion, people do not have trust in translation; they would rather use their languages directly during court proceedings. This is all backed up in *Filos v Morland* case where Justice Brereton comments that it is all too common an experience to hear the interpreter giving the effect instead of giving the literal translation of questions and answers, and of his own accord interpreting questions and eliciting explanations (www.alrc.gov.au/pub; 23:500). To Justice Brereton, interpreting does not always achieve full, accurate and fair presentation of evidence (www.alrc.gov.au/pub; 23:597). Some judges fear that a person giving evidence through an interpreter has some advantage over other people as nothing is the truth (www.alrc.gov.au/pub; 23:501). The Commission doubts how well some courts understand the difficulties inherent in interpreting many languages.

Following this discussion, it is clear that the question of interpreters in court proceedings is necessary but not a very welcomed idea. It seems to have many questionable results. Hence the solution to this problem for the Australians, especially the 30% that do not use English as their home language could be a direct redress of the court in their languages. The problems found in interpreting during court proceedings are not unique to Australia. They may be the same in other countries, including Kenya.

Australia seems to be solving its language problems in other domains like news broadcasting. In *Al Jazeera News Hour* (August 21, 2014), it was reported that ABC TV (Australian Broadcasting Corporation) is airing songs and cultures of the indigenous communities, and has ventured into internets and videos in about 20 Australian indigenous languages. “Dubai One” TV, according to *Al Jazeera News Hour* (August 21, 2014), airs films and programmes every Wednesday night in foreign and indigenous languages, while APTN (Aboriginal Peoples Television Networks) in Canada produces and broadcasts the same programmes in a range of indigenous languages, arguing that it is not fair for communities to lose their languages and cultures to English (Djite, 2008; Kamwangamalu, 2010; Mulwa, 2013; Muaka, 2011; Mwaniki, 2014). There is so much in a culture that needs to be shared among people in a society, and passed from one generation to another. Such direction as taken by Canada and Australia helps nurture their cultures and languages and comfortably uses them any time in any domain and in official matters. These streams into their justice system just as it is expected to happen in other countries like Kenya.

Programmes have been launched by nation-states to honour their rich and diverse linguistic heritage of indigenous, minority and tribal communities, to preserve them for the future generation. SAARC (South Asian Association for Regional Cooperation) is such a programme. Its members include Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri-Lanka. They adopted the SAARC Agenda for Culture in 2005. Later in 2007 March the 25th, a major declaration by people’s SAARC came. It stated that, ‘...respect and recognise the identity of South Asian indigenous people and ensure their social, political, economic and cultural rights in the constitution’ (Singh et al., 2012:355). Therefore, the involvement of the association legalises the use of indigenous languages even before the governments in each country take charge. This enables people to be proud of their indigenous languages and to use them in different domains, including courts.

Bhatia and Sharma (2008: 366-373) discuss language use in the courts in South Asia. The modern South Asian legal system has provided a variety of labels to legislate the use of language in different functional domains and contexts, including official languages, national languages, associate languages and regional languages. The constitution provides for the use of different languages such as ancient, indigenous and universal languages in this multilingual and

multicultural setting. This implies that this can be replicated in countries such as Kenya, where certain languages are accorded particular functions. In particular, indigenous languages would function very well as regional languages in each county.

The Republic of India is diverse in its language use, cultures, religions, sociopolitical beliefs and ideologies. Bhatia and Sharma (2008:367) point out that the constitution designates Hindi as the official language of the country. It also provides for the use of English for all official purposes for the initial fifteen years since 1950. This is in an effort to bring a unifying language to the nation. The constitution also provides for all proceedings in the Supreme Court, high court and authoritative texts such as bills, amendments and acts passed, the ordinances promulgated by the president or the governor of a state, and the orders, rules, regulations and by-laws, to be in the English language. However, the governor is empowered to authorise the use of Hindi and any other language used for official purposes of the state. The Official Language Act of 1963 empowers the state governor to provide for the optional use of Hindi or any other official language in any judgement, decree, or order passed or made by the high court in that state. However, in all these cases, it is mandatory to provide a translation of these documents in English. English continues to be the official language of the Supreme Court.

Pakistan bases its legal system on English common law, combined with elements of the Islamic legal code, Sharia. Commercial law is entirely in English. Ultimate judicial power rests in the Supreme Court. The Islamic Republic of Pakistan has a high court in each of its four provinces. The Sharia court has eight Muslim Judges, including the Chief Justice. There are other courts that exercise civil and criminal jurisdiction. Special courts and tribunals deal with specific types of cases, such as drugs offences, income tax appeals and traffic offences (Bhatia & Sharma, 2008:371).

The Sri Lankan constitution recognises and specifies the languages in the country for various purposes. The official languages are Sinhala and Tamil. The national languages recognised are Sinhala, Tamil and English. The languages of the courts are legislated to be Sinhala and Tamil throughout the Republic. The language of record and court proceedings is also Sinhala in courts situated in all areas of the Republic, except in some regions where Tamil is used. Court

proceedings can be initiated and pleadings submitted in any of the national languages. However, if the judge, juror, party or applicant is not conversant with the language of the court, the state provides a translation to enable them to participate in the proceedings (Bhatia & Sharma, 2008:372). Sri Lanka seems to depend very much on English, especially to keep court records as well as during court proceedings. Like all the other Asian Republics and the rest of the countries in the world, translation is the order of the day in courts for the people that are not competent in the official or national languages of the country.

In conclusion, developed countries are taking measures to preserve their indigenous languages by recognising the existence of the languages constitutionally, and by following up the implementation of that constitution, a situation that is not the case in Kenya.

2.1.2.3.1.3: Court language management in the developing world

To introduce the linguistic state of different countries before pointing out their court languages, it is necessary to present a preview of their history. After the 2nd world war, many new independent nation-states adopted the colonisers' languages and educational policies (Shohamy, 2006; Spolsky, 2009; Singh et al., 2012). Among them are Cambodia and Vietnam in Asia, and Botswana, Burundi, Rwanda, Cameroon, Mali and Niger in Africa (Brock-Utne; 2008, Kamwangamalu, 2010) as well as Kenya. Singh et al. (2012:352) say that the perception that bilingualism and multilingualism is a disadvantage and should be avoided is fading, as many people are becoming bilingual to function at supra - and international levels.

In South Africa, linguistic separation was used as a way of protecting cultural and linguistic hegemony of the ruling elite, and was justified in order to maintain Afrikaner identity, and to preserve the intrinsic qualities of the African culture (Batibo, 2015:40). Thus, South Africa made eleven indigenous languages official. The constitution has accorded official status in section 6 to Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu (Bambust et al., 2012:215). This means that the majority of South Africans can express themselves in any language of their choice in most of their domains whether literate or not.

Lubbe (2008) discusses the historical development of court languages in South Africa. Dutch was their official and cultural language, thus the judicial language in 1652. Then English became the only language of court from 1st January 1827 after England made South Africa its colony. Section 137 of African law No. 9 of 1909 then entrenched the position of the two official languages, English and Dutch, out of which Afrikaans developed. The 1983 constitution, No. 110, granted official status to two indigenous African languages in the so called Bantustans. After the final constitution, Act No. 108 of 1996 was implemented, the endorsement of the principle of constitutional supremacy led to the replacement of the positivist outlook of South African Courts in the past to a normative approach (Lubbe, 2008:378). This means that courts do not apply the laws strictly as were laid down by parliament, but consider them in light of norms and values of the constitution.

The constitution of South Africa stipulates that granting an official status to a language implies that an individual can use the language in their interaction with the government and the court of law. The state must take practical and positive measures to elevate the status and advance the use of the nine indigenous languages. Section 6(3) determines the use of languages for the national government, the nine provincial governments and municipalities. To quote Lubbe (2008:379), the criteria to take into consideration when implementing a language policy include usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province, but the national government and each municipality must use at least two official languages. In the end, Section 6(4) states that all official languages must enjoy parity of esteem and must be treated equitably. In assuring a fair trial, section 35(3)(k) states that every accused person has the right to a fair trial, which includes the right to be tried in a language that the accused person understands or, if that is not practicable, to have the proceeding interpreted in that language. Either of the official languages, English or Afrikaans, may be used at any stage of the proceedings in any court, and the evidence shall be recorded in the language so used as stated in section 6(1) of the Magistrates Courts Act, No.32 of 1944. The South African law on language use in courts is systematically stipulated alongside all levels of governance.

In his work, Lubbe (2008) discusses the difference between language right and communication right in light of language use in a court of law. According to Lubbe (2008:380), a school teacher charged with stealing a motor vehicle requests his trial to be conducted in IsiZulu, an official language. But this request is rejected because the teacher understands English or Afrikaans. This does not go well with the communication rights of both parties. Also, in another case where the accused person is charged with failing to comply with a maintenance order, the magistrate conducts the trial in IsiXhosa, where the magistrate, the prosecutor and the accused persons speak isiXhosa. The High Court judge complained about the records being completely in isiXhosa, yet isiXhosa is an official language. The magistrate relied on the provision that practical measures must be taken to advance the use of isiXhosa, and that all official languages must enjoy parity of esteem and be treated equitably. These are cases of communication rights further termed fundamental human rights (Lubbe, 2008:382; Bambust et al., 2012:218). When an accused person's right to a legal representation with whom he could communicate in his own language, whether directly or through the services of an interpreter, is not properly explained to accused persons, this failure is a breach of his or her right to a fair trial (Lubbe, 2008:382; Bambust et al., 2012:218; Malan, 2016). It is a language right denied. Language rights can only be practised if the channels are provided.

Language policy in courts in South Africa has moved from being glued to the English language, though with challenges, to a diversity of languages across the eleven official languages. The Kenyan court's language situation still favours the English language as the main court's language and the sole language of records, and allows the use of Kiswahili and translation in the constitution. The nine indigenous languages are along municipalities in South Africa, a setting that is very similar to the Kenyan counties, and that can allow the elevation of the status of dominant indigenous languages to official status for use in court.

The Guardian (Friday 16 January, 2009) reports that the national language of Rwanda is Kinyarwanda, which also happens to be the first language of almost the entire population. Samuelson and Freedman (2010) say that Rwanda maintains a mono-linguistic situation, though Kinyarwanda has never been the primary language of cultural, social and economic capital; and that Kinyarwanda may have transgressed the ethnic borderline between Hutu, Tutsi and Twa.

But the use of French or English seems more connected with ethnic identification. The official languages of the country are French, English and Kiswahili. The Guardian (Friday 16 January, 2009) reports that the government changed the medium of instruction in education from French to English following complications that came with the period after the genocide in 1994. The Tutsi refugees from Uganda were using English. There was intervention from the United States of America, and complications with successive French governments in Rwanda. These instances contributed to English becoming popular among the Rwandan population as well as its administration (The Guardian, Friday 16 January, 2009). English is now being used in commerce and as a subject in schools. However, French is still an important language of commerce and diplomacy in West and Central Africa, a factor that has an influence in Rwanda. The Rwandan government's current language policy - that English should be the sole medium of instruction from year three of schooling - is likely to face difficulties (William, 2011), because the other languages are still in effect. Using English as a medium of instruction in schools is also an effective and sure way of ensuring its maintenance for official future use. It may eventually be the language of courts.

With this sort of background to Rwanda's language use situation, it is necessary to treat the language situation with special consideration. Rwanda has been going through a healing process from the genocide saga of 1994. The courts, especially the international tribunal for Rwanda and Human rights activists have been very much involved. Article 20 of the United Nations Human Rights on the rights of accused person states that the accused person shall be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against them (Office of the High Commissioner for Human Rights-United Nations (ONCHR), 1996). This means that there must be an effort to ensure that the accused person knows and understands everything he is accused of. ONCHR (1996-2019) continues to state that the accused person shall also have free assistance of an interpreter if they cannot understand or speak the language used in the International Tribunal for Rwanda.

Rwanda is a special case in Africa, considering that most African countries are heavily multi-lingual with indigenous languages. Rwanda has only three indigenous languages compared to Nigeria's around four hundred, Tanzania's over a hundred and twenty, and Kenya's around forty

two indigenous languages, just to mention but a few. It would be expected that Rwanda would manage its three indigenous languages better than these other countries. Nevertheless, Kinyarwanda seems to have taken over that position and would be expected to be used in courts. Much has not been written about other courts in Rwanda, but only the International Tribunal for Rwanda. The official languages are expected to be in use in all the courts.

Rwanda's court's language use situation puts this study to task as to what happens when there are no defined court structures in a country. Kenya has these structures and can easily amend them to suit the requirements of the country's language users. But one cannot fail to see how English easily finds its way into legal matters.

According to Lokulo-Sodipe, Akintola and Adebamowo (2014), Nigeria is a Federal Republic consisting of three regions namely, the Northern Region, the Eastern Region and the Western Region. This republic is made up of thirty six states and a capital territory in Abuja. It has close to four hundred linguistic groups, but the three major languages are Hausa, Igbo and Yoruba. English is the official language. The Nigerian legal system is based on English common law and legal tradition by virtue of colonisation. English law has a great influence on the Nigerian law. Section 45 (1) of the Interpretation Act provides that, the common law of England and the doctrines of equity and the statutes of general application which were in force in England on 1st January 1900, are applicable in Nigeria, only in so far as local jurisdiction and circumstances shall permit. Each state has its own legal system. Nothing much is said as far as the language of courts in Nigeria is concerned. But Dada (2010) reports that English is mainly used in official domains, which to me, includes the judiciary. Dada (2010) statistically reports that mother tongues are used regularly by 39.6% of the 11-20year olds, 84% of the 21-30 years old, 88% of the 31-40% old and 59% of the 41-50 years old. This shows that mother tongues are highly used, especially by the middle age of 21years to 40 years. This is the working class and the people that commonly get involved with the law as either court officers, the other side of accused persons and witnesses. It is therefore safe to say that courts in Nigeria may follow the English common law, but they definitely cannot ignore the three major indigenous languages and the other minor languages used by the so many citizens.

Kiswahili is becoming an internationally recognised language from the widespread use seen in African countries, including Tanzania, Kenya, Uganda, Zaire, Rwanda, Burundi, Mozambique, Zambia, Somali and Sudan. Petzell (2012) reports that the linguistic situation in Tanzania is such that English is the international language used in higher education, and Kiswahili is the widespread national language understood by nearly the entire population and a smaller African languages (reports range from 120-164 languages) is spoken at home. Petzell (2012) says that the use of the African indigenous languages is prohibited in education and discouraged at political meetings. These languages are also not used by any radio or television station like it is in Kenya. The use of these minority languages is seen as a risk to the country's unity though the government of Tanzania's 1997 Cultural policy document states that the minority languages should be seen as an asset to the country and as an important part of the Tanzanian heritage. Hanai (2015: iv) reports that the judiciary of Tanzania is five-tiered. It has Court of Appeal, High Court, Resident Magistrate Courts and Primary Courts. The language use in these courts could be challenged, especially when the language of the court is supposed to be English, a language that is not popular to the citizen.

With this information, it is only too clear how indigenous languages and English are less acceptable during court proceedings. English does not go well with the citizens unless one is a law practitioner, for they have been trained in the language. The only language that seems to go well with Tanzanians, especially in official matters is Kiswahili. Brock-Urtne and Holmarsdittir (2004) point out that the language policy in Tanzania is confusing. This is because it is not clear whether Kiswahili, the most popular of all the vernacular languages in Tanzania, or English, is the official language. They also point out that language is no longer mentioned in the constitution of Tanzania. In the new constitution of 2015, language is still not mentioned not even the language of the courts. As it is now, Kiswahili has evolved as the national and official language through a long history.

In conclusion, many countries in Africa have not said much about the language use in their courts. The little that comes out is that the colonial legal system, together with its language, is what most of these countries are still using long after independence. A few countries have made attempts to make communication in the courts easier, especially in an attempt to respond to

human rights. Many countries outside Africa have gone a long way in recapturing their grip on their indigenous languages by promoting them to official status, hence using them in courts. It is in this effort that this study looks into the legal systems of other developed and developing countries to justify the implementation of the correct language policy in subordinate courts.

2.1.2.3.1.4: Language management in Kenyan courts

Language is a vital element for national unity, but when one language is chosen above others with motives other than that of bringing citizens together, it becomes problematic. The colonial language policy in Kenya supported English at the expense of local languages. This support did not seem motivated by the interest to make Kenyans learn the language, but more in the interest of preventing Kenyan nationalism (by the colonisers), which was solidifying around African languages, especially Kiswahili. This policy bequeathed Kenya an iniquitous linguistic legacy after independence, which played the divisive role of the haves (English users) and have-nots (non-English users). If then the use of English only created an elitist group, it has been used to perpetuate the class divide in the Kenyan society, yet they were trying to create national unity (Nabea 2009:128). In fact, pure academic merit has been faulted for producing elitist professionals (Dovlo, 2004:13), aiding the growth of the elitist group.

In urban areas, indigenous languages are missing totally (Oduor 2010:94), and so they are endangered. A weakness of the policy is that what is stated was not implemented. Oduor (2010) complained that English and Kiswahili have been given five lessons and mother tongue languages three lessons per week in lower primary schools, according to the ministry of education syllabus (Ministry of Education, 2002:iv), but the mother tongue is not being taught. There is also no formal training of teachers in the teaching of indigenous languages, and books designed to teach it. There is loss of one language on the way to learning another in urban areas, especially the mother tongues. Although the new Constitution of 2010 has made both English and Kiswahili official languages, and recognised the use of indigenous languages, it is not specific how indigenous languages are to be used, including their implementation in schools. This leaves the indigenous languages without a strong base.

English has remained the official language of law since Kenya attained her independence (Ogechi 2003:290). According to Ogechi (2003), Kiswahili may be used in the lower courts. As mentioned earlier, Gatitu (2009:1) notes that English remains the language of power and elitism, while Kiswahili is associated with low prestige, and indigenous languages with tribalism in the Kenyan society. Nevertheless, the criminal procedure code directs that the language of the high court be English while that of the subordinate courts shall be English or Kiswahili (Chapter 75 Part Five). Despite this, not all persons who appear before the court are competent in both languages (Gatitu 2009:1). A typical criminal court in a subordinate court features the prosecutor (in this case the police officer) and the defence (often the accused person and rarely, the accused person's lawyer). The two parties appear before the presiding magistrate and orally present their side of the story by calling their witnesses to give their testimony. The magistrate is expected to take down in writing in the language of court all the evidence of each witness and record their demeanor. It is this hand-written account that constitutes the official court record (Gatitu, 2009:6). Some of the participants may not understand the language of the court while the interpreters may not interpret the language of the non-speakers of the court's official languages.

The power that the court interpreter wields is immense. The success or failure of communication, and the ultimate outcome of the trial in such a case where a large part of the population that attends court, especially in the rural areas, does not understand English or/and their fluency in Kiswahili is limited, is totally dependent on the accuracy of the interpreting (Gatitu, 2009:6). The question would then be, how accurate are these interpreters? Are they trained? They double as court clerks and interpreters (Ogechi, 2003; Gatitu 2009; Kavulani, Mutu & Odhiambo, 2013), so how efficiently will they carry the interpreting job without the interference of their clerical knowledge?

At the local government domain, language policy divides into three major spheres: the choice of language for internal working, for communication with citizens within the territory controlled by the government and the effort to manage the language of citizens (Spolsky, 2009:170). In the first sphere, members in the administration will be those at work place, and so shall have the language as they understand the regulation on language. But in the second sphere, since the administration will determine the development of their area of jurisdiction, they must have

everybody on board participating in this development. This therefore calls for communication to everybody in a language that they understand. This situation includes subordinate court proceedings which are mainly in the heart of the common citizen's territory. These courts have majority of its users coming from the local community and therefore using the local language primarily.

In Machakos County, Kikamba is the dominant language (Government of Machakos County, 2015). Although Machakos County has eight sub-counties, 52% of its population is urban and 48% rural. The county borders seven other counties, namely, Murang'a and Kiambu where the Kikuyu language is dominant; Nairobi which is the capital city, which is heterogeneous; Embu where Kiambu language is dominant; Kajiado where the Maasai language is dominant and Makueni and Kitui Counties where Kikamba is dominant (Machakos County, 2015). This means that Kikamba use is threatened by urbanisation and the other languages within the county. Unless the issue is addressed, Kikamba and its value among its users could be lost. Ogechi (2003:279) on the status of endangered languages points out that Kenyan languages are threatened with extinction or death amidst the quagmire of Sheng'. The use of Sheng' is increasing among the youth and adults, and is laying a serious claim to recognition. The indigenous languages are only used for intra-ethnic communication, in homes and rural areas, and so they have no chance of development.

However, the indigenous languages find their way into the courts. This is especially when one is not competent in English or Kiswahili. An example is Elizabeth v Republic case no. 13 (2015) by Judge Pauline Nyamweya in Machakos law courts. This case is an appeal to the High Court. The appellant was charged with killing an unborn child contrary to section 228 of the penal code. The judgment was a twenty-year imprisonment. The grounds of the appeal included that the language used during the plea was not understood by the Appellant. The judge was not from the same community as the Appellant and so there was need for interpreting. The Appellant's advocate was a Kamba like the Appellant. After the appeal, it followed that the sentence meted out on the accused person was not only harsh but also illegal.

The proceedings in the trial court indicated that the procedure employed at that time of taking of the plea was as follows:

‘The substance of the charge and every element thereof has been stated by the court to the accused person in the language she understands, who being asked whether she admits or denies the truth of the charge replies ‘Ni kweli’.

Court: Plea of guilty entered.

The Appellant’s reply “Ni kweli” translates to “It is true”. The record showed that the interpreting was in Kamba language during proceedings. When the facts were read to the Appellant by the prosecutor, the Appellant stated that the facts were true and correct. That is when the court convicted the accused person on her own plea of guilty.

Why then would the Appellant complain that the language used was a problem? The Appellant answered in Kiswahili and the said record by the trial magistrate is the Appellant’s words. The Appellant’s argument is that the record of the court showed that she responded in Kiswahili language and so it was not clear what language the court’s language was. This only means that since the Appellant is a Kamba, she makes people believe that she can understand Kikamba better than any other language. Kiswahili may then not be good for communication for she may not be competent in it. The court noted that the requirement in law is that the court should use a language understood by the accused person during the taking of the plea, and the Appellant did not allege that she did not understand Kikamba, which was the language used when the charge was read to her. In the court’s defence for the ruling made, it was argued that the appellant was at liberty to respond in the language she was comfortable in, and the fact that she chose to respond in Kiswahili only serves to show that she understood both Kamba and Kiswahili language. Besides, the provision of section 194(8) of the Criminal Procedure Code, also noted during the appeal, that provides that the language of a subordinate court shall be English or Kiswahili, are for the purpose of the conduct and recording of proceedings and not for taking of the plea.

The fact that the court allows the use of Kikamba and Kiswahili only proves too well that these languages are very valuable to the ordinary citizen in the county. The indigenous languages are so unavoidable that even if they are not official languages in the country, they are occupying that

position in the county. In the case of Elizabeth v Republic, the proceedings were in Kikamba but during the plea, it is not clear which language was used because the Appellant does not own up to understanding what she was told. The aim of the court was to ascertain that the accused person understood the judgment.

2.1.2.3.2: Linguistic human rights in the Judiciary

A draft of a practical guide for implementation on Language Rights of Linguistic Minorities (OHCHR, 2017:26-28) suggests what should be done in the courts. That there should be free interpreting in criminal proceedings and free translation of court documents necessary for the defence of an accused member of a linguistic minority. It adds that court proceedings (civil or criminal) and other judicial or quasi-judicial hearings should be conducted in a minority language where the concentration and number of speakers make this a reasonable measure. If this is followed, the accused person is able to exercise their rights of defence, and to safeguard the fairness of proceedings as well as apply the principal of proportionality. Lack of financial resources and qualified interpreters and ignorance of this right on the part of the accused person are blamed for not implementing these linguistic rights.

2.1.2.3.3: Management networks and power levels

Power levels could be defined as the leadership body there is in a country at a certain division within the country. In a country, power levels could go to a count of three. First is administration at the national level, which could be referred to as macro level as used by many scholars like Nekvapil (2012), which takes care of the national as well as international needs. Second is the middle level, which is partly macro and partly micro because it operates for both national and bottom levels, hence meso as mentioned by Nekvapil (2012) and other scholars. This middle/meso level could include county, provincial or district levels. The third is the bottom level, the micro, which includes institutions (schools, courts, military, mass media, and religion) and the white colour jobs, families and the industrial world characterised by markets and services.

At each of the three levels, there is language management. At the national level, the language policy controls the languages to be used at the national assemblies, international forums,

including tourism and trade, and gives guidelines to the languages of instruction to be used in schools and at the middle and bottom levels. The language planning that takes place at the level of the state (national) is referred to as the macro-planning (Nekvapil, 2012:15) and is influenced by less complex social systems, which is why micro planning came into use(Nekvapil,2012). In Kenya, although the government chose English and Kiswahili as official languages and Kiswahili as the national language, the other meso and micro levels would then rely on this national language choice for their official activities.

The middle (meso) and bottom levels (micro), which are less complex than the national level need authority from the national level to have their way of language use according to their language problems. It is the highest level that needs to make language policies for the other levels to implement at the lower levels. It will be realised that, and like it was mentioned earlier, the Kenyan counties have been divided along ethnic boundaries. So each county has one, two or three dominant indigenous languages (refer to Table 1 in chapter 1). At the national level, it is expected that each county government promotes its indigenous language(s) in schools, churches, offices, administration, political rallies and media because the constitution states that the government would support and develop indigenous languages. The administration should look into the local languages used in their area of jurisdiction and promote the languages by promoting their use in schools, places of work, political forums and mass media. At the school level, the county government should implement the language use regulations as they have come down from the national quarters and produce learning resources like books and other print materials in the indigenous languages. There could be policy formulated so that the middle and bottom levels can have their own policies as far as language use is concerned. At this level, there is organised language management

At the bottom level (micro), the work of the institutions is to implement the use of the indigenous languages as stated and authorised through the educational language policy for that particular county they belong to. The families will find that the indigenous languages have been given value from both the national and middle level, and so will own and let their children use mother tongues. Mwaniki (2011:8) argues that our indigenous languages are valueless and so are looked at with suspicion. If these languages are supported from the national level, and implemented both

at middle and bottom levels in banks, companies, libraries, schools, hospitals, courts, media, religious institutions and services, then they will have value to the advantage of maintaining cultural heritage and involving the illiterate members of our societies in our social circles and job market. This in turn will allow development to take place in the counties and country at large. At this level, there is partly organised language management and simple language management.

Nekvapil (2012:16) argues that the relationship between the dimensions of micro and macro may be conceptualised in an approach characterised as the contrast of social structure (macro) vs. interaction (micro). This may be so, but macro would be power based as opposed to micro, which would encompass everybody at all levels and their interactions. Macro would specifically be governance or leadership that has power, and say over what should be done when, how and where. Social structure in the general society at national level is characterised by mainly national policy makers on one the hand, and everybody in the country, on the other. The middle level is characterised by policy makers at county level but under the national policy makers' body on one the hand, and the county society, on the other. The bottom level is characterised by the final users of the policy as passed through the middle level from the national level in a cycle. The structure moves hierarchically. Agreeable is the fact that at micro-level is where one would expect interactions. Interactions will take place at all the three levels within the capacity of each level independently. It is therefore arguable that once there has been interaction at the micro level, it feeds the middle level with what should be corrected, improved or changed, which is then pushed upwards to the national level as recommendation. Later, the feedback comes back through the same channel to the bottom level with broad objectives and aims as well as regulations that are constitutionalised as policy to be implemented at that interactional level, hence the cycle. With this complementary process, language problems occurring in particular interactions are reflected at the middle level and hence national level, resulting in a regulation being issued at the national level to the middle level, and implemented at both the middle and bottom levels.

In view of the above discussion, there is a need for the over forty Kenyan indigenous languages to be empowered by giving them legal, mass media, social, educational, religious, political and

economic value. A resurgent indigenous language discourse will greatly benefit from language management.

2.1.2.3.4: A Summary of literature review and the gap therein

Reviewed studies have shown that in the developed world, the value of the indigenous languages has been noted and exercised even in the social media and as language of instruction, and most importantly, in court proceedings (Williams, 1996, 1998; Nkamba & Kanyika, 1998; Bambust, Kruger & Kruger, 2012; Machingaidze et al., 1998; Voigts, 1998; Singh et al., 2012; *Al Jazeera News Hour* August 21, 2014). In the developing world, the colonial languages are still advocated for and greatly damage the value of the indigenous languages. Very little in-depth information is available as far as language use in courts is concerned in developing countries. But, it is evident that the colonial language is dominant in courts, and interpreting is the only solution. This proves the importance of giving official status to these indigenous languages. In Kenya, English is the main language but since Kiswahili has been given official status, it is also in use in courts. During court proceedings, interpreting is widely accepted and used. In Machakos County, Kikamba, the dominant local language, is expected to be widely used, especially in the rural areas and in Grade 1-3 in primary schools. This means that Kikamba is the only language known by everybody that was born and lived in that local community. Kikamba is therefore readily available and through interpreting, widely used in courts. Regarding language needs, use and preferences within subordinate courts, it seems that certain language policies have been recommended for wrong reasons. Certain languages are not necessarily needed and so are poorly used because they are not a preference of the user.

Performance in court proceedings in Subordinate Courts is therefore low, hence;

- The literature on the County Subordinate Courts indicates that language is indispensable.
- The language policy as prescribed by the Criminal Procedure Code 75 Part 5 appears to be wanting.
- There is no adequate empirical information on language management-related factors in Subordinate Courts that would provide a strong background for the formulation of a multilingual policy that would factor in indigenous languages alongside official languages.

2.2: THEORETICAL FRAMEWORK

2.2.1: Introduction

In this study, two theories have been used, Language Management Theory (LMT) and Linguistic Human Rights Paradigm (LHRP). LMT's first version was in the 1960's by Neustupny. Other contributors to this theory include Jernudd (1993), Neustupny and Nekvapil (2003), Mwaniki (2004), Kimura (2005), Nekvapil (2006) and Spolsky (2009), among others, as the theory developed. LHRP made its first appearance in the form of human rights in the 1940's. In the 1960's, it became specific on language in the Conventions on Discrimination, Education and Economic Rights. LHRP's major proponents include Skutnubb-Kangas (2000, 2002) and Robert Phillipson (1994, 1996, 1997, 2016). Others include Miklos Kontra (1999), Bamgbose (2001) and UNESCO. The approach to use a theory and a paradigm was to enable the inclusion of language needs, language use and language preference variables in the data. LHRP will enable the researcher to handle interventions to be recommended so as to facilitate access to justice in language use in subordinate courts.

2.2.2: Language management theory

Definition

Language management theory is a model or a framework that its features were developed by Jiri Neustupny, (1978) in his work on "Outline of a Theory of Language Problems" in Neustupny (ed) "Post-Structural Approaches to Language: Language Theory in a Japanese Context", and Jernudd, & Neustupny, (1987) in their work "Language Planning: for whom? In this theory, Neustupny bases macro language planning on the theory of language problems. Particular interactions are recognized as the source of language problems and so the language planning activity takes a process. The process begins with identification of a language problem in an individual interaction, followed by adoption of a measure by the institution, then implementation of that measure in individual interactions to correct the problem. The theory advances later with more input from Jernudd (1991), Neustupny & Nekvapil (2003), Nekvapil & Sherman (2009, 2014, and 2015) among others.

2.2.2.1: Historical development of Language Management Theory

The early works of LMT were in the 1970's by Neustupny, (1978). He looked at language problem solving recommendations as what language management is. Problems such as lack of communication due to barriers during a court proceeding would require both the individual user of the language and the court language system to come up with a solution. Neustupny (1978) asserts that without commitment to value judgements such as making a suitable policy for courts, recommendations cannot be achieved. He emphasised language management being directed to correction in discourse or towards language systems (Neustupny, 1978:244) such as is the case during court proceedings.

Neustupny's (1999:4) propositions to language management researchers shed light to this study's data collection. He proposes that researchers provide descriptive basic facts necessary to management, which the researchers collect through court proceedings, observations and interviews. He also proposes to identify and specify potential language problems, which can be identified during these observations. A researcher should confirm the type of management currently practised, which in this case is language policy applicable in courts. The researcher should also search for alternative proposals to existing ones. Such proposals may include recommendations destined to settle problems in a multilingual area. Neustupny (1978) also proposes that researchers should specify problems of interest, authority and identity. It is in the interest of the dominant ethnic group in Machakos County to use their ethnic language during court proceedings amongst other official languages. This has to be passed probably in the constitution. When Neustupny (1978) proposes that researchers should provide proposals for each different environment, the notion of different domains comes in so that language use in the courts is not necessarily the same as at school, at home or in church. But the proposition to consider the co-existence of various types of management of language in the different domains offers the researcher a chance to consider the individual management of language and that of specific domains. There is a way for all different language policies in these domains to exist harmoniously.

Jernudd & Neustupny's (1987) language management refers to a range of different sociolinguistic situations at different levels of enlargement like from a country's to a county's and then a court's language policies. The language policy that is national and official is meant to serve everyone in the country, but there are some citizens that are not able to use these national and official languages. With devolution, indigenous languages can be made official at county level to cover those people in the rural or semi-rural areas that do not know English or Kiswahili.

Webb (2002) differentiates between language planning and language management. To him, language management is the entire process involved in language policy and language planning in progress. According to Webb (2002) quoted in Mwaniki (2004:63), language management refers to the actions and strategies devised to achieve language policy objectives. He talks about a strategic analysis stage that involves:

- The identification and definition of major language problems which need to be solved;
- The decision about the language planning framework to be used;
- Analysis of the relevant external and internal environments;
- The description of the language planning vision and mission; and
- The formulation of general and specific language policy goals through the strategic planning stage.

These stages are very important to the language management theory as they give the procedure of solving language problems in a society. They are a follow-up and an elaboration of, and tend to resemble the very initial process of language management by Jernudd, Neustupny and Nekvapil (various years of publication). It is definitely a build-up on this process but this time with a wider scope of what and which language problems are being addressed, a wider relevant external and internal environment that should be analysed, an additional language planning vision and mission to be described and specific language policy goals to be put in place. The process is important in identifying and solving language problems in courts of law.

Mwaniki (2004) conceptualises language management as a complex theory and method as well as a discipline and a practice. Language Management Approach, which is defined by Mwaniki (2004:271) as a complex of theoretical precepts derives from an amalgamation of other theories,

including decision-making theory, a social and linguistic theories, modernisation theory, systems theory, critical theory, management theory, phenomenology and human development theory. Mwaniki later adds social psychology, social cultural theory and game theory. Mwaniki (2014:3) offers a further interpretation of the word ‘complex’ in the characterisation of the language management theory. He says that the interpretation that language management epistemology is open-ended has far reaching implications. Open-endedness allows inclusion of other new ideas and approaches to the issue at hand. That is how Mwaniki is able to add to the approach the three more theories. In his approach, systems theory ‘ties up’ all theoretical precepts of language management theory into a coherent network of theory (Mwaniki, 2011:253). In his attempt at this approach, Mwaniki (2004:270) aims at formulating approaches or frameworks that can be deployed to address language related challenges in society so as to harness language resources in society.

Language management as a method is unique and distinct compared to other methods because as a particular way of doing linguistic and social science, it is a complex method. Language management method is marked as a distinct method of linguistic and social science as:

- It depends on thick descriptions of linguistic and social phenomena (Mwaniki, 2011:254). Language is a key to communication and, consequently, knowledge in society. It is therefore a vital human attribute that enables people to learn, think creatively and change socially (Njoroge, 2018:4) This way, the interactive dynamics of language in society and language and society are fully understood. The idea of thick description is shared by Neustupny (1999) and is a guide to the type of data to collect when in search of solutions to language problems in courts.
- It relies on rational method development. The formulations emanating from language management must pass the test rationality, meaning that there must be justification for actions in light of the available data, the resources and the expected outcomes (Mwaniki, 2010:6, Ndlovu, 2013:139). For instance, Njoroge (2018:4) comments that there was no reason to assign indigenous languages a role for which they are ill adapted, that was in reference to the role of educational medium in critical years of schooling (Republic of Kenya, 1964). The implementation of an indigenous language policy must be valid and

supported by its vastness of use in courts. This will in turn make the authority spend on the indigenous language development and implementation.

- It relies on the participatory method so as to investigate, describe and account for and harness power relations in society as well as realise its empowerment agenda (Ndlovu, 2013:139, Mwaniki, 2010:6). The researcher has to be part of the audience and listen to the proceedings in the court so as to be in a position to describe what happens. Just like the theory, the language management method is open-ended. It allows addition of other methods as new theories emerge in the discipline.

Mwaniki (2004:271, 2010:6, and 2011:254) defines language management as a discipline, and as an organised body of knowledge that preoccupies itself with a particular set of questions with regard to language in society and language and society. These questions are not final as there is always room for more questions as knowledge grows, hence, language management is still in its formative stages. The questions include:

- Questions about what accounts for language choices at individual and /or institutional or societal level. In the case of court proceedings, why do accused persons and witnesses choose the languages they use instead of others, including the language of the court?
- Questions about language as a resource or language as a problem. This is in an effort to know the importance of the language.
- Questions about approaches or frameworks to optimise language use.
- Questions about how a language can be harnessed for holistic development of a society.

Language management is also defined as a practice; the execution of doing language policy and planning activities, especially in multilingual settings (Mwaniki, 2004:272). Once a policy has been made, it needs to be implemented and practiced appropriately. Muthwii (2002:50) asserts that language policy statement raises certain expectations in the consumers, so that when these expectations are not met, consumers feel cheated and disappointed. Mwaniki (2010: 6) further defines language management, the practice, as a critical and creative deployment of management, sociolinguistic and development oriented methodologies and strategies in addressing language-related challenges in society. Kimura (2005) feels that language management could be the solution to the dichotomy of ‘language attitudes’ and ‘language

planning’, which he integrates into language activities. Language preferences have got everything to do with language attitudes, and whichever language one prefers is a result of one’s attitude towards that language. Just like Muthwii (2002:51) puts it, it is by no means an easy thing to design a relevant language policy in a nation, especially where attitudes and preferences on language for education (for example) are concerned. According to her, it would appear that virtually all Kenyans and some Ugandans are in a way ‘volunteering to be compelled’ into using English from primary class one. Such people are said to have made their choice. Otherwise, she suggests that for a policy to be workable, there is need to carefully study the situation on the ground and if need be, modify the language policy to suit the situations and the prevailing circumstances. Preference for indigenous languages could be because one feels bad he/she is unable to communicate proficiently and efficiently in English. Preference for English or Kiswahili could be because one wants to belong to some social status . Kimura (2005) perceives language planning as artificial alteration of natural currents, and would rather have language users’ thoughts and intentions relate to interests and power relations that amount to language attitudes. It is better to have the people use language naturally like indigenous languages than to have English or Kiswahili imposed on them.

This study relies more on the tenets of Spolsky’s domain based language management. Spolsky (2009) adds to LMT the domain concept. He argues that language policy is intended to account for individual choices in a social phenomenon depending on the beliefs and consensual behaviours of members of a speech community. The speech community denotes a domain. Each domain has its own language policy. The domain in this research is courts, which has its own language policy. Legal proceedings take place and so require a language policy. Individual choices are synonymously used with preferences in this study. In court there are alternatives to language choices.

Spolsky (2009) identifies three characteristics of a domain, namely: location, participants and a topic. Machakos County is located in the rural area where there is a dominant community, the Kamba people, away from the cities. Although there are traces of other communities here and there, this location implies that Kikamba is the dominant language and English and Kiswahili are used by everybody, including members of other communities. Spolsky says that it is the meaning

and interpretation of the location that is most persistent to language choice. Kikamba will be easy and widely chosen compared to other languages like kikuyu, kimeru or English and Kiswahili because this is ukambani area.

Participants are people involved in a discourse like a court proceeding. Right from magistrates, advocates, clerks, accused persons, witnesses and spectators are all involved. Language use is the prerogative of any conceptual discourse. Such requires interlocutors, hence the participants. They make the choice of language to use according to their preferences based on their beliefs, attitudes and practices. They are also affected by the language designated for use in that particular domain, in our case courts and its language policy.

The topic means what the communication is about within the domain. Spolsky (2009:4) calls this “communication function” meaning “why speak or write”. In the courts, the complainant and accused persons are looking for justice. In order to get what they want, they must choose a language that will efficiently communicate their sentiments. This reason touches on freedom and human rights and so a necessity to want to choose a language acceptable to all participants during court proceedings for effective communication. This means there are two sides of the coin. The participant needs to be competent in their language use but at the same time, the language used needs to be acceptable in court.

Spolsky (2009) assumes that a language policy has three interrelated but independently describable components: practices, beliefs and management. Practice is what participants would do during a court proceeding, behave or say. The choices they would make would depend on their competences. Beliefs refer to the values and statuses assigned to particular languages. If a language is highly valued, a participant in court may choose to use it to identify with it or because they think that is what will appeal to the jury’s positive ruling and vice versa. The mother tongues may be avoided because they are stigmatised. Most indigenous languages have no value beyond communication among community members in social circles. A participant in court may feel inadequate in appealing to the jury’s favourable considerations using a mother tongue and vice versa. If a particular language has more value than another, then the choice of

that other language is only viable. This study investigates language use and preferences, and establishes the use of indigenous languages in subordinate courts.

In his model, Spolsky (2009) advances Neustupny and Nekvapil's (2003) idea of simple and organised management. To him, individual speakers find a need to modify language practices and beliefs to be more effective in communicating with others. Some attempt to change the way other members of a defined group speak or change the value they assign to languages to remedy what they perceive as problems in communication, or to assert or confirm their own image, status and power (Spolsky, 2009:249). During court proceedings, a participant may choose a particular language because they are competent in it. In other cases, the participants may notice that the listeners do not understand them so either switch to another language or variety or speak slowly because they do not have competence in the other languages. This is language management done by individuals. This study investigates the use of indigenous languages in subordinate courts and explores language needs among participants in those courts. Indigenous languages may become a choice of the language to use in many cases because that is the language the participants know, and as far as their cases are concerned, proper communication is a necessary language need to achieve satisfaction during case ruling.

This study also evaluates the implementation of the current language policy in subordinate courts, if any. This is organised management as it is an activity undertaken by the judiciary language policy makers to make decisions on the language to be used during court proceedings. Nekvapil and Sherman (2015:6-7) assert that language management in LMT is not merely a matter of institutions, but also an issue of the everyday linguistic behaviour accompanying the ordinary use of language in concrete interactions.

Osborn (2010) identifies six factors that affect localisation of language management, including:

- Political factors that relate to policies, decision-making and the interplay of interests that lead to the legal and licensing environment.
- Linguistic factors that focus on the linguistic situation in a country or region, aspects of each language, the number of languages spoken, their distribution and body of speakers, if there is a standard orthography for each language and whether the languages are characterised by diverse dialects.

- Economic factors that relate to standards of living, resources available for various kinds of business, the public, social and philanthropic investments as well as individual and family income levels.
- Technological factors focus on the availability of electricity and communication infrastructure, such as computers and operating systems the likes of internet connectivity as well as ways in which these factors differ across the territory of a country.
- Educational factors that relate to systems of education, whether formal or informal and school infrastructure.
- Socio-cultural factors that focus on demographics, social structure, ethnic groups, cultures as well as popular and individual attitudes.

Orsbon's PLETES model (Political, Linguistic, Economic, Technological, Educational and Socio-cultural factors) is an abbreviation of his six factors as mentioned above. His six factors are a development of Chaudenson's (1989, 2003) contribution to language management cited in Kaplan and Baldauf (1997). Chaudenson's model shows a complexity of the decision-making process of language planning, and the need to integrate all relevant factors into the decision-making process. Chaudenson's (2003) model exhibits the interrelationship between various factors in decision-making related to language management. It has five elements, including the linguistic, technical, psycholinguistic, language beliefs and attitudes and economy which (Orsbon, 2010) developed into political, linguistic, economic, technological, educational and socio-cultural factors. Ndlovu (2013:130) identifies these six categories and the connections between them as a useful tool for understanding the environment for localisation. Mwaniki (2004) considers these factors as key to the localisation feature in his language management approach in terms of language management variables, methodologies and strategies. These features contribute, and are linked to the choice of language in any domain, including the courts.

2.2.3: Linguistic human rights paradigm

2.2.3.1: Introduction

Language Rights and Linguistic Human Rights are defined as human rights which have an incidence on language preferences of or used by state authorities, individuals and other entities (www.OHCHR.ORG accessed on 20th February 2017). They involve a combination of legal

requirements based on human rights treaties and guidelines to state authorities. They are about how to address languages or minority issues, and potential impacts associated with linguistic diversity within a state. The issue around linguistic human rights is about the rights to one's own language in legal, administrative and judicial acts. The rights can be human or civil. For quite some time, linguists, activists and different bodies, including the Universal Declaration of Linguistic rights (1996), the Framework Convention for the Protection of National Minorities (1988, 1889,1994), the European Charter for Regional or Minority Languages (1992),the International Covenant on Civil and Political Rights (1966), the European protection of Human Rights and Fundamental Freedoms (1950) and the UN International Convention (E793)(1948) have fought for linguistic human rights. Other proponents of linguistic human rights and language rights include Skutnubb-Kangas and Phillipson (eds) (2017), Batibo (2009), Lubbe (2008), Skutnubb-Kangas in (2006), UNESCO (2002) and Tollefson (1991). There is always a moral attachment and considerations by the public and politicians in language use. The governments would be expected to ensure that their courts offer services to citizens in the right languages that portray that moral obligation.

Skutnubb-Kangas and Phillipson (2017:1) define linguistic human rights in relation to mother tongues as consisting of the right to identify with a mother tongue or mother tongues. To these two scholars, a person can have one or two mother tongues depending on exposure during childhood. They also define linguistic human rights in regard to other languages as consisting of the right to learn an official language in the country of residence in its standard form. With these two definitions, it would suffice to say that linguistic human rights are the rights to one's mother tongue(s) and to the official language(s) of the country. The nature of linguistic human rights then calls for the intervention of education for the purpose of using mother tongues as media of instruction and learning the official languages in school. Africa is known for its rich indigenous culture compared to the western world seen through ethnic languages and practices available, and comparing it with the South-East-Asian countries and other developed counties. It is the only continent where the majority of children start school using a foreign language (UNESCO report; Quane & Glanz, 2010 in Williams (2011:1). There has been a challenge due to western colonial languages such as English, French and German, because people value colonial languages more than their indigenous languages because of the high social mobility the colonial that these

languages have. There has been a long standing call for African governments to change their policies to favour African languages by different concerned bodies and scholars. This call runs over 100 years from the United Missionary conference in Kenya in 1909 through the African Conference on integration of African languages and cultures into education to date (Bukina Faso, 2010;Williams, 2011:6). Therefore, with the right to mother tongue(s) and the right to official language(s), subordinate courts should be in a position to accept the use of these languages during proceedings.

2.2.3.2: Development of linguistic human rights

According to Skutnubb-Kangas and Phillipson (2017:2-5), the Human Rights Universal declarations have progressed through three phases:

- The first generation is related to personal freedoms, civil and political rights.
- The second generation is related to economic, social and cultural rights.
- The third generation covers solidarity rights such as peace, development and unspoiled environment.

The linguistic human rights in international legal texts fall under five periods:

- Pre-1815, language rights were not covered in any international treaty other than in bilateral agreements.
- Final Act of the Congress of Vienna 1815 contained a clause safeguarding national minorities, and only religious minorities. It accorded no right to linguistic minorities.
- Between World War One and Two, the Peace Treaties and major multilateral and international conventions worked out under the auspices of the League of Nations that contained clauses protecting minorities, and many national constitutions stipulated the right to linguistic minorities.
- From 1945-1970's, victors of the second world war wished to prevent the abuses against human rights perpetuated by fascist regimes. The UN made a major effort to legislate for the protection of human rights internationally.
- The Capotorti Report (Commissioned by UN in 1971 and published in 1979) had renewed interest in the rights of minorities, including linguistic rights, and they began on the formulation of several multilateral declarations.

A Special Rapporteur (A/HRC/22/49) to the United Nations Human Rights Council in 2013 warned that globally, many minority languages are under threat of significant decline or disappearance. They pointed out factors that contribute to this scenario, including:

- The dominance of national and international languages.
- Processes of assimilation.
- Decline in minority language users.

Each state has at least a national and an official language that its citizens wish to assimilate, and are making efforts to do so assisted by their governments, especially in schools. In the process, their mother tongues, which have their own values to the society, are lightly used or not used at all. The values of minority languages are objected to and fail due to feasibility, cost and burden sharing. Skutnabb-Kangas in Ricento (2006:275) comments that the right to mother tongue medium in education is among the most important rights for any minority. With the changing language situation today in the world due to schooling, where English seems to have taken dominance in the domains that matter most to any human being, those that now know only their mother tongue are increasingly becoming fewer. But they still need to have all their language needs and preferences met, and they have a right to use their mother tongues. The guide for implementation of Language Rights of Linguistic Minorities in the UN presents aims to help policy makers to balance between state's official language(s) and its obligation to use or respect the language preferences of linguistic minorities.

Tollefson (1991:10) notes that the policy of requiring everyone to learn a single dominant language is widely seen as a common-sense solution to the communication problems of multilingual societies; that monolingualism is seen as a solution to linguistic inequality. Nonetheless, not everyone in the society will learn the dominant language for obvious reasons. But the various laid down guidelines and policies make it clear that minorities have to enjoy their linguistic rights. Besides, the deliberate learning of the dominant language somehow leads to the death of the mother tongues as generations go by. Skutnabb-Kangas in Ricento (2006:277) calls it subtractive language learning, where a new (dominant/majority) language is learned at the cost of the mother tongue, which is displaced, leading to a diglossic situation and often the replacement of the mother tongue. Skutnabb-Kangas in Ricento (2006:277) further says that

assimilation subtractive education is genocidal if it prohibits the use of the language of a group in daily intercourse or schools, or the printing and circulation of publication in the language of the group as stated in the UN International Convention (E793)(1948).

In consideration to the grown-ups who failed to learn the dominant language, and require public and official services in order to save their identity through their mother tongues, the trend taken may not be sufficient. Rojas and Reagan (2003:15) claim that the desire for simple solutions to complex problems such as mentioned above, and challenges is perhaps understandable but also dangerous and shortsighted. People forget to look beyond today, what will happen to the mother tongues in future if everybody wants to know only the dominant languages! Rojas and Reagan (2003:15) add that the tendency to address rights issues as pragmatic or empirical matters is both misleading and wrong. Perhaps the whole issue of dominant languages and minorities under the umbrella of human linguistic rights should be rethought and readdressed for the sake of observing identity, liberty, dignity, opportunity, equality and non-discrimination. Skutnubb-Kangas in Ricento (2006:283) highlights some dichotomies to determine which rights are necessary so that indigenous people and minorities do not have to assimilate but can participate in mutual integration.

2.2.3.2.1: Negative versus positive rights

The Alabama Policy Institute (accessed 22nd February, 2017) defines negative rights as the rights where the governments or other persons do not interfere with the exercise of language. They are restrained by limiting their actions towards the right holder. In positive rights, the right holder can claim against another person or the state for a good service or treatment. The state can therefore use public funds say in justice department to support the development of a particular language. Van de Stoel (1999, in Ricento 2006:283) defines negative rights as the right to non-discrimination in the enjoyment of human rights, and the positive rights as the right to the maintenance and development to identity through the freedom to practise and use those special and unique minority of life - typically culture, religion and language. In positive rights, the state can instruct that particular languages become court languages, or a particular language should be used in a certain institution for communication, and support its implementation through a language policy. People can claim and enjoy linguistic rights such as freedom of expression in

their indigenous languages. They can even enjoy the right in a criminal proceeding to be informed of the charge against them in a language they understand, and if necessary through an interpreter as long as it is free of charge. A mutual integration of official and indigenous languages would serve both the nation and the right holder better, for indigenous languages would serve the right holder at the public and civil level as well as at the individual and human level, and still maintain their identity.

2.2.3.2.2: Individual versus collective rights

Collective rights are rights of a group of people. The United Nations Regional Information Centre (UNRIC Brussels) (2016) considers these rights as belonging to indigenous communities; people and nations having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories. They form at present non-dominant sectors of society. They are determined to preserve, develop and transmit to future generations their ancestral territories and their ethnic identities. This is done on the basis of their continued existence as people in accordance with their own cultural patterns, social institutions and legal systems. This understanding gives county language policy makers and language users in Kenya a reason to claim audience to issues of using their indigenous languages in subordinate courts within their territories. This is made easier by the fact that the counties are bordered along ethnic groups. For proper integration, both individual and collective rights are necessary. It is not a question of either/or, but of both/and.

2.2.3.2.3: Territorial versus personal rights

The UN Declaration of the Rights Belonging to National or Ethnic, Religious and Linguistic Minorities (adopted by the general assembly in 1992) Article 1.1. states that:

States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for promotion of that identity.

This would mean that linguistic rights are focused within a territory or the status of a person's linguistic involvement. ICCLR (2011:4) recognises a language community as any human society established historically in a particular territorial space. This community has developed a common

language as a natural means of communication and cultural cohesion. This will include creoles and indigenous languages. Sections in a country speak a common indigenous language like it is the case in Kenya. There are over forty indigenous languages dominating in the regions of Kenya, now called counties. These language communities have the right to use these languages even in official matters for easy and effective communication because they are dominant. To guarantee linguistic territoriality, each language should be allowed to be ‘queen’ in some part, larger or small, thereby granting a privilege within the limits of the territory, to the identity associated with the language to which that territory has been ascribed (Parijs Online, 2017:6).

2.2.3.2.4: Rights in “hard law” versus “soft law”

Like Skutnubb-Kangas in Ricento (2006:277) says that traditional hard law and soft law rights are necessary for proper integration. Hard law gives states and international actors actual binding responsibilities as well as rights. It includes demands and obligations with which participating countries must comply. Languages such as indigenous languages are heavily discussed and placed in the forefront internationally through signed covenants and treaties as human rights that must be observed. At the same time, each country or international actor has the leeway to see how best these languages can work for them. This is a case of the soft law which Trubek, Cottrell and Nance (2005:1) describe as often used to describe governance arrangements. These arrangements operate in place of, or along with, the hard law that arises from treaties, regulations and the community method. Soft law lack features such as obligation, uniformity, justiciability, sanctions and/or an enforcement staff. In this case, individual countries will have their own laws as to how to handle ethnic languages within their countries. If a country does not take care of its ethnic languages, it is likely to lose them to the dominant and international languages such as English and French through assimilation. Kenya needs to take care of her indigenous languages so that they are not ‘swallowed’ by English and Kiswahili. The moment the Kenyan government recognises its indigenous languages and develops them, it will have given them value and raised their status such that they can be used in public institutions like courts.

2.2.3.3: Linguistic Human Rights in subordinate courts

Malan (2016:3) argues that the most appropriate policies would be those that best account for and optimally affords protection to the following interests:

- The rights of people appearing in court in whatever capacity, either as parties, witnesses or accused persons. Anybody should be free to access the services of the courts.
- The promotion of smooth and effective administration of justice. This creates faith and trust in the judiciary system.
- The protection and promotion of indigenous languages of the country. It is an effort to have an all-inclusive judicial system whether literate or illiterate.

In an attempt to seek interventions that can facilitate access to justice in language use during court proceedings, all parties in the court must purpose to observe each person's linguistic rights, especially if the use of their indigenous languages serves the purpose. A language policy must account for the fact that the average person's confrontation with the criminal justice system is a rather frightening experience (Malan, 2016:3). This is deemed so because the courtroom is an unfamiliar and intimidating place. It is the responsibility of court officers to let the person know their rights and how to behave. Malan (2016) points out that in many cases in subordinate courts, those that are accused persons or are witnesses either do not understand the language used in court or have limited knowledge. In most cases, they have limited education and do not have legal representation.

Malan continues to point out that a court language policy has to be genuinely democratic. Justice is all about democracy, and members of all communities must enjoy maximum and equal access to the courts. If the known language is denied, then it means many citizens are denied their rights. Democratic accessibility also implies that cases must be decided cheaply, speedily and in a manner best understood by the parties, witnesses and accused persons (Malan, 2016:4).

It would be wrong to have a policy of language use in court which promotes and facilitates access to one group but obstructs similar access to another (Malan, 2016:10). Such would be the case if English and Kiswahili were used by the literate while the illiterate were denied the use of their indigenous languages. To ensure that a trial is conducted in the language the accused person understands best, the relevant organs of state are supposed to respond to the language preferences of the accused person (Malan, 2016:10). This would include making the indigenous languages official within their counties.

The language of record in the courts is also another matter to consider. Malan (2016:10) points out that introducing English as the sole language of record in court would be obstructing fair trial conducted in the language of the accused person. In *S vs Matomela* (1998), the High Court judge is dissatisfied with isiXhosa as the language of record in a magistrate's court that had every participant, including court officers, proficient in the language. The magistrate replied to the complaints on difficulties in transcribing records in isiXhosa into English, that the use of an indigenous language was constitutional, and that the proceedings had been in accordance with justice. English, according to Malan (2016), has a detrimental effect on other languages. Within the context of the use of official languages as languages of record, the implication should be:

- The language used during a proceeding should be retained, especially if all the participants used the same language.
- A staff policy should be pursued to maximise the number of cases where such result (record to retain the language of the proceeding) could be achieved.
- A language that already enjoys optimal use and esteem, because of the high function use as a language of records would retain that status (Malan, 2016:8)

Once a language has attained an official status, it is only fair and just to retain records in that language. In case of language barriers, the movement of the court staff is easier than that of the accused person. A court can easily get a staff member that understands the language of the accused person. It is therefore easier to run a subordinate court in Machakos County in the Kamba language.

Malan (2016:12) disapproves and dismisses interpretation of evidence because in many cases, it leads to distortion of information. To him, this is a risky exercise which leads to unfairness and outright wrong court decisions detrimental to accused persons, complainants, witnesses and the integrity and repute of the justice systems. In all fairness, the language of the court should be determined by the accused persons and the records should be kept in his or her language.

In conclusion, language management theory (LMT) and the linguistic human rights paradigm (LHRP) direct this study into seeking answers to four questions. These include questions about

indigenous languages used and how they are selected during a case proceeding, the language needs and preferences among the participants, and how effective the implementation of the use of the current language policy of the Subordinate Courts in Machakos County is. This is better done by the language management theory. The linguistic human rights paradigm better directs the study on the question about intervening measures towards access to justice in language use from the findings of the study.

2.3: Conclusion

This chapter discusses language planning, language policy and language management as analysed by various linguists cited in this work. The development of language planning to language policy and implementation culminate in language management. This discussion is based on language management in courts and specifically in Kenya.

Language management during court proceedings is handled differently depending on the country's language policy. This chapter has discussed how language is used in courts from different countries in the world, in Africa, in Kenya and in Machakos County. There is a general outcry by the minority in the societies that are denied the use of their mother tongues. To many, the use of interpreters is not enough, and yet to others, keeping court records in a different language other than the language used during the court proceedings is offending. Most of these dissatisfactions point to infringement of people's rights.

The chapter further discussed the theories in which the study is grounded: the language management theory and the linguistic human rights paradigm. These policies and theories were discussed as a base of this research. The fact that Kenya is developing and has given some autonomy to its counties enables the leadership in these counties to make their own language policies. The language needs and language preferences of the people in these counties can be identified, and languages may be chosen, implemented and protected as official languages to this effect, and then used in courts.

CHAPTER THREE

RESEARCH DESIGN AND METHODOLOGY

3.1: Introduction

This chapter is a discussion of the research design and the methods used in the study. It provides information on the research setting, sampling and sample, methods of data collection and instruments, and data analysis and presentation.

Kothari (2004:8) defines research methodology as a way of systematically solving a research problem which in this case was “lack of a language policy that accommodates everybody during a court proceeding, leading to poor or lack of communication” . The researcher needed to know the research methods/techniques and how to apply them. She formulated her topic, “Language Management in Relation to Language Needs, Uses and Preferences in Subordinate Courts: A Case Study of Machakos County”, out of which she formed four questions to guide in data collection. She then proposed two theories, Language Management and Linguistic Human Rights to work with. She formulated other questions based on the research questions and aims and objectives of the study including:

- To establish the use of indigenous languages in subordinate courts in Machakos County
- To explore language needs among the participants in the subordinate courts in Machakos County
- To evaluate the implementation of the current language policy in subordinate courts in Machakos County.
- To recommend interventions that will facilitate access to justice in language use in subordinate courts in Machakos County based on the findings of the study,

to be used in the field to collect data, analyse, come up with findings and conclude.

Research methodology is therefore the procedures by which researchers go about their work of describing, explaining and predicting phenomena (Rajasekar, Philominathan & Chinnathambi, 2013:5).

The research purpose was to give an accurate description of a subordinate court proceedings situation. The researcher considered mixed methods for data collection. Identifying the methods

enabled the researcher to consider and design the questionnaire, interview and observational tools as instruments appropriate for the study.

3.2: Descriptive Research

This research is a descriptive survey of language management as far as language needs, language uses and language preferences are concerned. The study was undertaken to ascertain and to describe the linguistic and social phenomena in the interactive dynamics of court proceedings. The descriptive research design involved observing and describing the behaviour of the subjects without influencing them in any way. It was chosen because this study is about the natural way in which language is managed. This means that subjects were observed and interviewed in their natural setting (Orodho, 2005). The study was designed to depict the participants in an accurate way, describing people who took part in the study, the research questions, design and data analysis that was applied and finding out what is or was. Quantitative research method involved gathering data that described events and then organising, tabulating, and describing the data using visual aids such as tables to help understand the data distribution. Since the human mind cannot extract the full import of a large mass of raw data, descriptive statistics were used to reduce the data to manageable form. Qualitative research method involved in-depth, narrative descriptions of small numbers of cases. The researcher used description as a tool to organise data into patterns that aided the mind into comprehending the study and its implications (AECT, 2001). Descriptive research seeks out accurate information and adequate descriptions of activities, objects, processes and persons. Its core purpose is to gather information about prevailing conditions and interpretations (Aggaraval, 2008; Allison & Race, 2004; AECT, 2001; Polit & Hungle, 1999).

With the main purpose of research being to describe, explain and validate findings, description is a result of creative exploration. The findings are organised in order to fit them with explanations and then to test or validate those explanations. The descriptions are of natural or man-made phenomena such as their form, structure, activity, change overtime, relation to other phenomena and so on. In the case of this study, it is a description of the language use patterns during a court proceeding. Eventually, the description illuminates knowledge that we may not otherwise notice or encounter (AECT, 2001).

Three aims of this descriptive study and that were achieved are:

- to provide a knowledge base which can be a springboard for other research methods;
- to contribute to the formation of principles and generalisations in behavioural sciences and in the establishment of standard norms of conduct, behaviour or performance; and
- to reveal problems or abnormal conditions that if the data are correctly interpreted can provide useful insight leading to hypothesis formation (AECT, 2001).

This study is geared towards unraveling what goes on in a court proceeding as far as language is concerned. The information gathered would help even other studies to base their arguments and to further direct their investigations and explorations.

Van der Voord (2014:53) characterises descriptive research as restricted to facts and there being no quest for an explanation why reality is showing itself this way. He recognises its objectivity and neutrality in describing how reality is.

Descriptive research gives the researchers an opportunity to use both qualitative and quantitative data. It provides a multifaceted approach as the data can include:

- Case study, which is defined as an in- depth study of an individual or group of individuals;
- Observation, which is defined as a method of viewing and recording the participants; and
- Survey, which is defined as a brief interview or discussion with an individual about a specific topic, giving several angles on the information,

all of which were used in this study.

3.3: Case study

This study is an empirical investigation of a contemporary phenomenon, in this case, proceedings in Subordinate Courts, within its real-life context and with the use of multiple sources of evidence. It is an analysis of persons, groups, events, decisions, periods, policies, institutions or other systems that are studied holistically by one method or more (Press Academia, 2017).

This kind of a study is said to be suitable for minority groups (Ndlovu, 2013), in this case the few that are unable to use English and/or Kiswahili during court proceedings. Usually, the majority have no issues with what affects them commonly because it is no longer a problem. The minority are overlooked in the midst of the majority. It is an intensive and in-depth exploration and description of people's experiences and practices that brings out a true picture of problems that ail a society. The few people in a society that cannot speak national and /or official languages, especially in public domains, are such a minority group that a case study research would produce better results of.

Though some scholars argue that the case study method is ideal for generalisation (Nieuwenhuis, 2007), it is also criticised for its dependence on that single case (Leedy & Ormrod, 2005). Flyvbjerg (2006:7) argues that intense observation has brought out more discoveries than statistics applied to large groups. Observation in this study was done repeatedly in different cases, different chambers for three days to add validity to the data collected through the questionnaires and interviews. A case study can 'close in' on real life situations and test views directly in relation to phenomena as they unfold in practice.

Case studies are also criticised for their difficulty in summarising and developing general propositions and theories based on specific case studies. It is true that it is difficult or impossible to summarise narratives on complexities and contradictions of real life into neat scientific formulae, general propositions and theories. But this thick and hard to summarise narrative is not a problem, but a sign that the study has uncovered a particularly rich problem (Flyvbjerg, 2006:21).

3.4: Research methods: Mixed methods

Mixed methods were employed in this study. This relates to the use of concurrent procedures in which the researcher converges qualitative and quantitative research methods in order to provide a comprehensive analysis of the research problem (Creswell, 2009).

The researcher collected both quantitative and qualitative data at roughly the same time. The time of non-participant observation enabled the researcher to identify other participants for the

interviews and the questionnaires. Some participants offered to take the interviews there, while others were booked for a later date. Others agreed to fill in the questionnaires immediately after the cases while others carried them and were collected later.

The weight or priority given to quantitative or qualitative research methods depend on the interests of the researcher, the audience for the study and what the investigator seeks to emphasise in the study (Creswell, 2009). In this study quantitative and qualitative data were derived from parts of the questionnaires, interviews and observations. Since the researcher was interested in the participants' opinions about the language used in court proceedings, both qualitative and quantitative data were necessary. This meant that the views of the participants, which comprise the qualitative data and the number of those participants that responded, were noted. This study targeted language policy users, especially at the judiciary and the general citizenry. To get the magnitude of the linguistic situation during court proceedings would be evidenced from the comments made and by how many. The researcher investigated how language is managed during court proceedings, especially for those people involved and whose language of communication does not agree with the language policy of the court. From this investigation, the quantitative data support the extent to which the effect and impact of those that use the language is. Qualitative data describe the kind of information associated with which category of investigation the researcher is dealing with. Hence, the weight given to the qualitative or the quantitative data depended on the researcher, the audience and what was sought in the study.

In mixing data, either the qualitative and quantitative data are merged on one end of the continuum, kept separate on the other end, or combined in some way between these extremes. In this study, mixed methods approach was done through integration, where both the qualitative and quantitative databases were merged by transforming qualitative themes into counts and comparing these counts with descriptive quantitative data.

A theoretical perspective guided the entire design. The theory was made explicit because in this study, language management theory and linguistic human paradigm were considered at the initial stages of designing this study's methodology as orienting lens that would shape the type of

questions asked, who participated in the study, how data were collected and the implications made from the study.

3.4.1: Qualitative and Quantitative research

Qualitative research is defined by Ndlovu (2013) and Creswell (2009) as an inquiry process of understanding in which a researcher develops a complex, holistic account of the multiple perceptions, analysis of words and reports, detailed views, feelings, values, understanding, knowledge, and experiences of informants. The researcher builds patterns, categories and themes by organising the data into more abstract units of information (Creswell, 2009). Generally, qualitative research is a form of interpretive inquiry of what is seen, heard and understood about the problem or issue, based on backgrounds, history contexts and prior understanding of the informants, the researcher and the readers.

This study was conducted in a natural setting, Machakos law courts, where the researcher had face-to-face interaction, acting as the key instrument in the collection of the multiple forms of data using questionnaires, interviews and observation. The researcher focused on learning the meaning that the participants hold about the problem and the issue on language needs, use and preferences during court proceedings. Once the researcher entered the field to collect data, the process did not remain as planned but changed to accommodate the situation on the ground. Some parts of the process came earlier while others came later. This is acceptable and is the norm in qualitative studies as explained by Creswell (2009). For instance, the questions during the interviews were modified as both the interviewer and the interviewee sought details. The researcher needed to understand better and so asked more questions as the interviews developed. The sites visited kept on changing as the researcher went where the action took her, such as offices for interviews and different rooms for observation of court proceedings. Even the phases of the process kept on changing as the researcher and the research assistants had to tackle the phase that availed itself first. For instance, it was expected that respondents came from the rooms where observation took place, but whenever an opportunity availed itself, it was taken to interview those willing and administer the questionnaires. The questionnaire had to be translated into Kikamba and Kiswahili to accommodate those lacking English proficiency. For the illiterate,

the researchers read through translating and filling the questionnaires for them. The researcher focused on exploring details in depth.

A content analysis was then done inductively and deductively by examining words and phrases during interviews, and by observing data that relate to language management variables during the court proceedings. The researcher had to pay keen attention to what each of these participants said in order to gain in-depth information and be able to interpret the data correctly. These interpretations lead to multiple views about the issue. The researcher sought believability and trustworthiness through the process of verification. This was achieved by means of repetitions of data collection processes with other participants, rather than through traditional validity and reliability.

Quantitative research assumed the survey design which provided numeric descriptions of trends, attitudes and opinions of the sample of the population of study. The survey data collection methods included interviews and questionnaires. Personal interviews were carried out with the help of a semi-structured interview schedule. The interviews were audio recorded and field notes were taken. Questionnaires were administered to the respondents, the majority of whom were at court premises. The questionnaires had both open-ended and closed-ended questions. It is a shortcoming of survey methods when respondents may give information that is not accurate or truthful. Sometimes there could be mistakes when recording, coding the responses or one may miss responses. There could also be sampling errors such that the data obtained from the sample and the data that would have been obtained from the complete population are different (Creswell, 2009). These shortcomings were controlled and minimised by the employment of the qualitative methods, especially observation.

Data were therefore gathered through a triangulation of semi-structured interviews, non-participant court proceeding observations and questionnaires. The interviews and some court proceedings were audio-recorded. There were also field notes for both the interviews and the observations taken by the researcher. The use of these data gathering techniques complemented data gathered through the questionnaire. The use of different methods and from different respondents for each method ensured that the researcher obtained rich data impossible to obtain

through one method. The magistrates and clerks/interpreters were interviewed while the members of the public (including witnesses, spectators, and the accused persons) were given questionnaires. Interviews were preferred for the magistrates and the clerks because the researcher would collect more in-depth information, and questionnaires for the public so as to meet a larger population as well as manage their accessibility.

The weaknesses of one or the other of the collected qualitative or quantitative data were offset by the strengths of the other. This was achieved because mixing was done by integrating both the qualitative and quantitative databases. These databases were merged by transforming the qualitative themes into counts and comparing these counts with descriptive quantitative data. In this case, the researcher identified experiences in language management as described by the participants. The different participants in the Subordinate Court domain were involved to gain a deeper and balanced understanding of the language needs, language uses and language preferences during court proceedings.

3.5: Research setting

This study was carried out in Machakos County which is one of the forty seven counties in the country (Government of Kenya, 2007). It has eight sub-counties, including Machakos Town, Yatta, Kangundo, Matungulu, Mwala, Masinga, Kathiiani and Mavoko. Its people are mainly multilingual; that is, they use their different indigenous languages or first languages such as Kikamba, Kiswahili and English. Machakos is therefore highly heterogeneous with the majority of the population being Kamba. Kikamba is therefore a common language, especially to the people living in the rural areas (Machakos County, 2015) which is mainly homogeneous. There are six Subordinate Courts in Machakos County: Athiriver Law Courts, Machakos Law Courts, Kangundo Law Courts, Kithimani Law Courts, Matungulu Law Courts and a mobile law court at Wamunyu (Machakos County, 2015). The study was based in Machakos Law Courts.

The Subordinate Courts have jurisdiction over ordinary or summary civil and criminal cases as well as small civil claim cases as courts of the first instance, including:

- civil and criminal appeals or interlocutory appeals from decisions rendered by the summary divisions

- juvenile cases
- family cases
- traffic cases
- civil compulsory execution cases
- non-contentious matters
- civil protection writs
- rehabilitation of delinquents
- labour-management disputes
- elections and recalls
- Violation of the statute of maintenance of social order, and other cases as prescribed by law (<http://www.judicial.gov.tw>).

The researcher concentrated on the Law Courts of Machakos because it is in the central place where you will find people from all walks of life with a variety of languages, who reported court incidents of the types mentioned above.

3.6: Sampling and participants

Machakos Law Courts have Subordinate Courts, a High Court and a Council Court. The Subordinate Courts are of interest in this study and are divided into three chambers, each headed by a magistrate. In any one sitting during a court proceeding in the Subordinate Courts, there are about fifty people, including magistrates, defendants and defence counsels, witnesses, clerks and interpreters, and the public. They form the target population of the study. Due to the heterogeneous nature of the population, the researcher had varied counts of the study sample in five categories. Three magistrates, thirteen defendants or defence counsels, thirteen witnesses, five clerks or interpreters and eighteen members of the public (listeners/spectators) making a total of fifty two. Since the exercise was spontaneous, those that were requested to respond did so making it a hundred percent return rate. Table 3 below shows the number of participants that were interviewed and answered the questionnaires.

Table 3: Study Respondents

The number of respondents					
<i>Interviewed</i>		<i>Filled questionnaires</i>			
Magistrates	Clerks/ Interpreters	Members of the Public	Defendants and defence counsel	Witnesses	Total
3	5	18	13	13	52

This count of the sample has been made based on the members of the categories mentioned above that are usually available in court. The study employed purposive selection of the court proceedings, magistrates and interpreters/clerks that were interviewed, as well as defendants/defence counsels and witnesses that filled the questionnaire. The researcher engaged members of the public who were willing and able to participate on each particular day; hence convenience sampling. The researcher had no control over the court calendar but observed the long court proceedings as prescribed for the day by the court in a chamber for three days. Purposive sampling was employed so that the individuals selected had experiences of the central court phenomenon.

3.7: Methods of data collection and instruments

Data were collected about the participants' perceptions and opinions of the languages they need, use and prefer for particular purposes and in certain situations, especially during court proceedings. The data gave information on the status of different languages in Machakos County, including the official languages, English and Kiswahili, indigenous languages and others such as sign language, Sheng and foreign languages, in relation to what the participants actually use or wish to use. The researcher checked the consistency of findings generated by the different data collection methods.

The methodology used for language management studies enabled the researcher to capture processes such as noting and evaluation of language deviations (Neustupney, 2003) made during court proceedings. In the management process, the study captured issues on:

- language expectations which were considered positive or negative evaluations, such as the socio-cultural competence, non-grammatical communication, grammatical competence and language competence;
- the adjustment design such as a language switch or silences to avoid problems; and
- the adjustment implementation which could be immediate, like pronunciation correction or switching to a more comfortable language, or a long term implementation such as that of language policies.

These issues were recorded by use of field notes or/and an audio recorder.

3.7.1: Non-participant structured observation

The researcher observed court proceedings for three days, each chamber a day and audio recorded them to transcribe later. She also recorded findings in the observation schedule. There were different cases of different duration, but the researcher unified this by spending a day in each chamber. Each of the three court chambers was observed to get data on a variety of proceedings, and enabled the researcher to get enough information for analysis. The variety even allowed validation of information derived and inferred from the proceedings, especially when there was repetition. These records helped form, shape and add interview questions to the participants.

The advantages of observation are that the researcher decides what is important and what to observe, unlike in the other techniques where the researcher is at the mercy of the subject. The pre-categorising and structuring of one's observation can help the researcher to focus on the very issues that she wants to observe. Also, observation is one of the best feasible techniques on account of the situation, the time and the characteristics of the court proceedings. However, structured observations are criticised for risking losing both detail and flexibility (Ndlovu, 2013). Observation can be used to study only the present and not any other time. Some situations and behaviours cannot be observed directly, such as opinions, feelings and attitudes; they can only be deduced from what is observed. Finally, studies based on observation are bulkier because they tend to collect a lot of information.

The researcher addressed these limitations with data collected from interviews and questionnaires. After every court proceeding, the research assistants followed the defendants/defence counsels, the witnesses and the clerks or interpreters to book them for interviews and administer the questionnaires. The researcher sought audience with the magistrates and booked them for interviews.

3.7.2: Interview

An interview guide that is semi-structured was used in this study. The interviews were conducted after the observation sessions, at each participant's convenience. Three magistrates and seven interpreters or clerks were interviewed. Interviews had been selected for this category because they take a shorter time, yet gather more information compared to questionnaires. The mode of recording by the researcher depended on the response of the participants on it. Some did not want to be audio-recorded; so the researcher opted for note taking. The number of participants was manageable and allowed for in-depth scrutiny. The participants determined when and where the interview would take place, but within the shortest time possible so that it would be possible to link the particular court proceeding and the interview details.

3.7.3: Questionnaire

Questionnaires were administered to ten witnesses and ten defendants/defence counsels, as well as fourteen members of the public. The questionnaire was chosen because it was easily usable with literate people, and since most of the illiterate were accompanied, they were also able to fill them. For others, the researcher asked them questions orally, and wrote down their responses in the questionnaires. This meant that the researcher could capture a larger population sample within the short time the respondents were on the court grounds. It was hoped that enough information would be captured by getting them within the court grounds. The questionnaires were both structured and unstructured. Structured because they had some closed-ended questions such as yes/no questions, multiple choice questions, as well as scaled questions using Likert, semantic differential and rank order scales. The unstructured questions were open-ended for they did not have a list of choices. The respondents wrote their opinions. Two trained assistant researchers administered the questionnaires to the respondents and helped those that needed assistance to fill them. The

questionnaire was divided into four sections namely: Personal information and background, Language usage, Language needs and Language preference and judiciary language policy.

3.8: Data analysis and presentation

This study used multiple sources of data. The multiple data collection used ensured comprehensiveness and triangulation of information. Quantitative data collection involved structured questionnaires that were analysed using descriptive and inferential statistical procedures. Qualitative data consisted of semi-structured interviews and some open ended questions in the questionnaires, as well as field observations that were analysed using coding to develop themes and categories. The qualitative data were transformed by assigning codes using predetermined templates, and then grouped into themes and categories. The integration of both quantitative and qualitative data occurred between data analysis from data collected concurrently, while analysing the data and reporting the results.

According to Cohen et al. (2011: 15), coding is the ascription of a category or label to a piece of data, that is either decided in advance or in response to the data that have been collected. The researcher read the transcripts over quite a number of times in order to be familiar with the data as well as to gain understanding of the same. The researcher then inductively coded the data. Coding helps reduce the data without losing important information as well as making it easier and possible to draw conclusions (Dornyei, 2007). Before integrating the results, the researcher sorted through the data collected. The data were then presented in categories and according to the research questions and objectives of the study.

Qualitative analysis was done by examining how the language provisions of the data recorded contributed to the identification and evaluation of language needs, use and preferences during the court proceedings. Since the data were numerous and varied, they were analysed in an orderly and structured way in order to come up with accurate and precise results.

The researcher sorted through the audio record and field notes of the interviews and observations and reported in a narrative form. The statements that described the experiences of the participants in accordance with the language needs, uses and preferences in the interview

transcriptions and field notes were highlighted and categorised into major themes (Creswell, 2007:156-7), for a qualitative analysis of the content.

Questionnaires were sorted, coded and for some of the qualitative data, converted to numerical form, then entered into Statistical Package for Social Sciences (SPSS) computer package software programme. Simple descriptive and inferential statistics were used to analyse the quantitative data. The data were then categorised and displayed in tables. The rest of the qualitative data went through qualitative analysis.

3.9: Validity

The researcher established that she could draw meaningful and useful inferences from the score on the instruments. She ensured that they measured the content they were intended to, checked whether the scores predicted a criterion measure, whether the results correlated with other results and whether items measured hypothetical constructs or concepts, and she was satisfied. She established content validity by checking clarity of items to avoid ambiguity and established that the research objectives were adequately addressed. She also established that the instruments would provide the anticipated data, and identified problems likely to be experienced by respondents while using the instrument by piloting the study. The real meaning of the concept under consideration, in this case language management should adequately reflect that credibility, transferability, dependability and confirmation were adhered to (Guba & Lincoln, 1988). Credibility was attained due to the repeated field experience, transferability because of the thick rich description of data, dependability and confirmation due to neutrality.

3.10: Reliability

Instruments such as non-participant observation schedule, interview guide and a questionnaire were used before by other scholars and proven to be reliable. The reliability of instruments has further been ensured by the use of multiple methods of data collection, analysis and interpretation (Mouton & Marais 1988:91). This is attained when the results are repeatedly similar.

3.11: Ethical considerations

Ethical considerations were observed by seeking ethical approval from the university and the law courts. The approval to collect data obtained enabled the researcher to seek permission from the judicial offices of the country and Machakos County before administering the research tools. The researcher then familiarised herself with the Subordinate Courts in Machakos County, explaining the essence of the study to the participants and booking appointments for data collection. The researcher explained to the respondents about the research, that the study was for academic purposes only and assured them that confidentiality would be maintained with regard to their identity. A letter of consent was given to respondents. It was made clear that the participation was voluntary and that they were free to decline or withdraw any time during the research period. Respondents were therefore not coerced into participating in the study.

3.12: Conclusion

This chapter has discussed the research design and methodology. It has shown how other scholars think about, and treat data collection, presentation and analysis. The study is a descriptive research that handled matters in the most natural way using a case study of the Machakos County Law Court proceedings. Mixed methods triangulation of the qualitative and quantitative research was the most appropriate to use considering the tools used, which included questionnaires, interviews and non-participant observation. The validity and reliability of the data collected was ensured through the use of different instruments to collect the same kind of data. Ethical matters were also observed by following protocol from different authorities in processing permission to carry out the research.

CHAPTER FOUR DATA PRESENTATION

4.1: Introduction

This chapter will focus on the presentation of the data collected using written questionnaires, personal observations and interviews with different stakeholders at Machakos Subordinate Courts. The order is that the quantitative analysis is firstly presented with reference to the research questions. Qualitative data is presented thereafter. Therefore, this chapter presents both the descriptive and analytic results of the study. The descriptive results avail information on social economic and demographic characteristics of the population such as gender, educational level, their mother tongue and their age. Presented also in this chapter are variables on language needs, language uses, language preferences and language policy in subordinate courts.

On the quantitative analysis, the IBM Statistical Package for Social Science (SPSS version 24) was used. The correlation analysis used was for two major purposes, first to identify the presence of co-linearity which is a condition for using parametric techniques, and secondly, to explore relationships between independent and dependent variables. Qualitative analysis used mainly narration form. Magistrates and court clerks were subjected to interviews. Their views according to what they see, hear, perceive and feel about language use, language needs and language preferences during court proceedings were collected. The researcher's audio-recorded data and the field notes made were presented in narration form with excerpts from conversations.

4.2: Data Presentation

4.2.1: Responses from the Questionnaire

Table 4: Survey responses rate

Respondents	Number of Questionnaires	Number Returned	Response Rate (%)
Civil servants	22	22	100
Non-Civil servants	9	9	100
Students	13	13	100
Total	44	44	100

Source: Researcher (2017)

A total of 44 out of 44 respondents from three categories in Machakos County within Machakos Law Courts completed and returned the questionnaires. This represented an overall of 100% return rate from civil servants, non-civil servants and students. These categories are a reconstruction of the main categories of defendants and defence counsels, witnesses, and members of the public. The reconstruction was done to enable the analysis of their language use patterns against their demographic profile. They were all subjected to the same questionnaire. The 100% return rate was because the questionnaires were given to people that had come to the premises for a case, and once they were gone, they were not easily traceable. They therefore promised to fill in the questionnaires before leaving. This information in the data collection process is summarised in Table 1. The responses received are likely to have been affected by several factors, among them literacy, time availability, the format and length of instrument, the type of questions, the mood of recipients, among many others.

4.2.1.1: Section A: Demographic characteristics of respondents

The findings in Table 2 indicated that 50% of the respondents were civil servants, while 20.5 % were non-civil servants and 29.5% were students. Demographic characteristics of respondents relating to gender, age, level of education, where they were brought up, and their mother tongue are reported below.

Table 5: Demographic profile of the respondents

Factors	Descriptors	Respondents							
		Civil servants		Non-civil servants		Students		Total	
		N	%	N	%	n	%	N	%
Gender	Male	19	43.2	8	18.2	6	13.6	33	75.0
	Female	3	6.8	1	2.3	7	15.9	11	25.0
Age group	19 – 27 years	4	9.1	4	9.1	13	29.5	21	47.7
	28 – 36 years	6	13.6	4	9.1	-	-	10	22.7
	37 – 45 years	6	13.6	1	2.3	-	-	7	15.9
	46 – 54 years	3	6.8	-	-	-	-	3	6.8
	55 – 63 years	2	4.5	-	-	-	-	2	4.5
	64 and more	1	2.3	-	-	-	-	1	2.3
Education level	Never went to school	-	-	-	-	-	-	-	-
	Primary school drop-out	1	2.3	2	4.5	-	-	3	6.8
	Completed primary school	1	2.3	-	-	4	9.1	5	11.4
	Secondary school drop-out	-	-	1	2.3	-	-	1	2.3
	Completed secondary school	7	15.9	2	4.5	7	15.9	16	36.4
	Tertiary level	13	29.5	4	9.1	2	4.5	19	43.2
Brought up	In town – urban	4	9.1	1	2.3	5	11.4	10	22.7
	In village – rural	18	40.9	8	18.2	8	18.2	34	77.3
Mother tongue	Kikamba	14	31.8	7	15.9	10	22.7	31	70.5
	Abaluhya	5	11.4	-	-	1	2.3	6	13.6
	Gusii	1	2.3	1	2.3	-	-	2	4.5
	Kalenjin	1	2.3	-	-	1	2.3	2	4.5
	Kikuyu	-	-	1	2.3	1	2.3	2	4.5
	Maasai	1	2.3	-	-	-	-	1	2.3
Overall		22	50.0	9	20.5	13	29.5	44	100.0

Source: Field data, 2017.

In terms of gender of the participating respondents, 75% of the survey sample comprised of males (n =33), while females made up 25 % of the sample (n =11).

The largest percentage of respondents in the present sample was in the 19-27-year-old range, making 47.7 % (n =21) of the survey sample. 9.1 % (n = 4) were civil servants working in the court or elsewhere, and the other four 9.1% (n = 4) were not in civil employment (employed and paid by the government). 29.5% were students. This category may have had challenges in the use

of the official languages as well as their mother tongues despite being young. Some could not express themselves in English or Kiswahili, but Sheng' and code-mixing. Others did not have proficiency and competence in their mother tongues because they could not respond when the researcher switched to mother tongues. The researcher had to keep explaining the questions, and in different languages. The next two categories, 28-36, 37-45 years ranges were the working class. 13.6% in each category were in civil employment while 9.1% and 2.3% respectively were non-civil servants. 6.8% of the 46-54years, 4.5% of the 55-63 years and 2.3% of the 64 years and above were civil servants. The majority of those in civil employment worked in the court, and were therefore complacent with the language of the court and competent in all the three languages: their mother tongue, English and Kiswahili.

The table on the percentages of respondents at each level of education shows that the majority of them, nineteen (43.2 %) hold tertiary level certification. Thirteen (29.5%) are civil servants, most of them working in court, and so they are conversant with the language used in courts. Four (9.1%) non-civil servants use language to their discretion, while the rest, two (4.5%) are still students and likely to use language to their discretion during a court proceeding. Sixteen (36.4%) of the respondents reported that they had completed secondary school. Seven of them (15.9%) were civil servants working in courts, while two (4.5%) worked elsewhere. Seven (15.9%) of these were college students. Five (11.4%) had completed primary school, one (2.3%) had been employed by the court as a court cleaner, while four (9.1%) were still secondary school students who were in court premises as accused persons, witnesses, or accompanied their relatives. Only three (6.8%) had dropped out in primary school and one (2.3%) had dropped out in secondary school. One (2.3%) among those that dropped out in primary school was employed by the court as a messenger, while two (4.5%) worked elsewhere. The secondary school drop-out worked elsewhere as well. The school drop-outs were competent in their mother tongues and attempted speaking Kiswahili.

Most of the participants, thirty four (77.3%) reported that they were brought up in a rural, village setup, while ten (22.7%) reported that they were brought up in urban, town setup. Out of those that were brought up in the rural setup, eighteen (40.9%) were civil servants, eight (18.2%) were non-civil servants, while another eight (18.2%) were students. These represents the majority of

those participants that have been brought up in the village. Those from the township were fewer, just four (9.1%) and were civil servants, one (2.3%) was a non-civil servant, while five (4.5%) were students. The rural areas contributed more members to subordinate courts in towns than the town people themselves; 77.3% compared to 22.7%, rural and urban areas, respectively.

The majority of participants, thirty one (70.5%) reported that their mother tongue was Kikamba. Those that spoke Luhya were six (13.6%). Gusii, Kalenjin and Kikuyu had equal number, two (4.5%). One participant (2.3%) reported that their mother tongue was Maasai. Most of the Kamba respondents fourteen (31.8%) worked as civil servants in the court, seven (15.9%) worked elsewhere, while ten of them (22.7%) were students. Five (11.4%) of the luyiahs worked in the court, and one (2.3%) was a student. One (2.3%) of the Kisii worked in the court and the other elsewhere. One (2.3%) of the Kalenjins and the Maasai worked in the court, while the other Kalenjin and a Kikuyu were students. The other Kikuyu was a non-civil servant.

4.2.1.2: Section B: Language use in Subordinate Courts

Question 2.1: *How do you speak the language(s) you know? (You do not speak it at all, you speak it with great difficulty, you speak it with some difficulty or you speak it easily).*

How participants speak the languages they know determine which language they are likely to choose during court proceedings. Besides the influence of other factors such as prestige, social status and age, among others, the language chosen could be spoken alone if well known. But there could also be mixing of various languages for communication purposes. The participants' response will paint a picture of which language, or how languages are used during court proceedings.

Table 6: How do you speak the languages you know?

Rating	How do you speak the following languages					
	Language	Not at all	With great difficulty	With some difficulty	Easily	Total
Overall language use	E alone		1 (2.3%)	7 (15.9%)	36 (81.8%)	44 (100%)
	K alone		1 (2.3%)	5 (11.4%)	38 (86.4%)	44 (100%)
	Mix K – E	1 (2.3%)		10 (22.7%)	33 (75.0%)	44 (100%)
	Mix MT – E	8 (18.2%)	3 (6.8%)	15 (34.1%)	18 (40.9%)	44 (100%)
	Mix MT – K	6 (13.6%)	4 (9.1%)	16 (36.4%)	18 (40.9%)	44 (100%)
	Mix MT-K – E	7 (16.7%)	5 (11.9%)	12 (28.6%)	18 (42.9%)	42 (100%)
	MT alone		1 (2.3%)	11 (25.0%)	32 (72.7%)	44 (100%)
	Sheng	13 (68.4%)	2 (10.5%)		4 (21.1%)	19 (100%)
SL	35 (83.3%)	3 (7.1%)	1 (2.4%)	3 (7.1%)	42 (100%)	
Defendant/Defence Counsel	E alone		1 (10.0%)	3 (30%)	6 (60%)	10 (100%)
	K alone			3 (30%)	7 (70%)	10 (100%)
	Mix K – E			4 (40%)	6 (60%)	10 (100%)
	Mix MT – E	1 (10.0%)		4 (40%)	5 (50%)	10 (100%)
	Mix MT – K			4 (40%)	6 (60%)	10 (100%)
	Mix MT-K – E		1 (10.0%)	6 (60%)	3 (30%)	10 (100%)
	MT alone				10 (100%)	10 (100%)
	Sheng	2 (100%)				2 (100%)
SL	10 (100%)				10 (100%)	
Member of Public	E alone			1 (10%)	9 (90%)	10 (100%)
	K alone		1 (10.0%)	1 (10%)	8 (80%)	10 (100%)
	Mix K – E			4 (40%)	6 (60%)	10 (100%)
	Mix MT – E			4 (40%)	6 (60%)	10 (100%)
	Mix MT – K		1 (10.0%)	3 (30%)	6 (60%)	10 (100%)
	Mix MT-K – E		1 (12.5%)	4 (50%)	3 (37.5%)	8 (100%)
	MT alone			3 (30%)	7 (70%)	10 (100%)
	Sheng	3 (100%)				3 (100%)
SL	6 (75%)	2 (25%)			8 (100%)	
Witnesses	E alone			3 (12.5%)	21 (87.5%)	24 (100%)
	K alone			1 (4.2%)	23 (85.8%)	24 (100%)
	Mix K – E	1 (4.2%)		2 (8.3%)	21 (87.5%)	24 (100%)
	Mix MT – E	7 (29.2%)	3 (12.5%)	7 (29.2%)	7 (29.2%)	24 (100%)
	Mix MT – K	6 (25.0%)	3 (12.5%)	9 (37.5%)	6 (25%)	24 (100%)
	Mix MT-K – E	7 (29.2%)	3 (12.5%)	2 (8.3%)	12 (50%)	24 (100%)
	MT alone		1 (4.2%)	8 (33.3%)	15 (62.5%)	24 (100%)
	Sheng	8 (57.1%)	2 (14.3%)		4 (28.6%)	14 (100%)
SL	19 (79.2%)	1 (4.2%)	1 (4.2%)	3 (12.5%)	24 (100%)	

The study showed that when respondents use languages without mixing them, they use them with ease than when they mix them. All the respondents can speak in Kiswahili alone but at

different ratings. 86.4% of the respondents, the highest representation, are those that speak Kiswahili alone easily. Those that speak it with some difficulty formed 11.4% with the least at 2.3%, almost unable to speak the language. The highest percentage of those that speak English without mixing it with any other language was of those that speak it easily at 81.8%. Those that speak English alone with some difficulty were at 15.9%, while those that speak it with great difficulty were at 2.3%. Those that speak their mother tongue without mixing it with any other language and with ease constituted 72.7%. 25% speak it with some difficulty, while 2.3% speak it with great difficulty. This means that Kiswahili is the easiest to speak for the majority of the participants, followed by English and then mother tongue. Also, the fact that nobody responded to not speaking their mother tongue, Kiswahili or English at all, meant that everybody can speak at least a word in the three languages.

The researcher identified four types of mixed languages, namely; mother tongue and Kiswahili (MT-K), mother tongue and English (MT-E), Kiswahili and English (K-E) and mother tongue, Kiswahili and English (MT-K-E). Out of all the respondents, eighteen (40.9%) speak MT-K and another eighteen (40.9%) speak MT-E easily. Thirty three (75%) speak K-E easily while eighteen (42.9%) respondents speak MT-K-E easily as well. Some respondents do not mix the three languages at all. Six (13.6%) of them do not mix mother tongue and Kiswahili, eight (18.2%) do not mix mother tongue and English, one (2.3%) does not mix Kiswahili and English, while seven (16.7%) do not mix mother tongue, Kiswahili and English. The rest if they do not mix easily, then they mix with either great or some difficulty, as shown in Table 3. From this presentation, it is easier to speak a mixture of official languages, Kiswahili and English than speak a mixture of either official languages with the mother tongue. In fact, it is easier to speak a mixture of all the three languages, mother tongue, Kiswahili and English than mix either of them with the mother tongue. Nobody at all finds it a great difficulty to speak a mixture of Kiswahili and English, and that one respondent that did not speak the mixture, probably did not at all have the competence or fluency in the two official languages (Kiswahili and English). Though this is what the respondents claimed about their language use, the researcher needed to hear them actually speak during the court proceedings, which was achieved for a number of the respondents.

Forty two respondents of the overall rating responded on the question of using sign language (SL). Thirty five (83.3%) of the forty two respondents admitted that they do not use sign language at all. Three (7.1%) use it with great difficulty, one (2.4%) uses it with some difficulty, while another three (7.1%) use it easily. The use of sign language is determined by the presence of a deaf and dumb person among the participants. Most of these participants only know that there is sign language but have never been subjected to a situation that required them to use it. Those that could easily use the sign language do so because they have a deaf and dumb person at home. During the days the researcher carried out the study, only one respondent was deaf and dumb among the spectators, but had her spouse that helped out. The court did not recognise her presence. Very few respondents have been exposed to the deaf and dumb people, hence the negative responses. The courts do not always have sign language interpreters unless there is a need to.

Sheng', a language used by the youth, is spoken by a minority. Thirteen (68.4%) of the total nineteen respondents that responded to this language, indicated that they do not speak the language at all. Two (10.5%) speak it with great difficulty while four (21.1%), probably the youth, speak it with ease. The courts have no control over whether to accept Sheng' or not because they do not know when one will switch to it and why. Considering that the majority of the 19-27 year-old are students from the rural set-up, this may have contributed to the low response to the question on the use of Sheng'. Consequently, it means the adults from the age of 27 years may not be using Sheng'.

To summarise the respondents' language use rating, the researcher categorised them into the defendants and defence counsels, members of the public and witnesses, so as to get a clear picture of who uses which language. Most of the defendants and defence counsels are able to use the three languages alone easily: mother tongue, Kiswahili and English. Three (30%) use Kiswahili and English alone with some difficulty, and one (10%) uses English alone with great difficulty. None of the defendants and defence counsels has difficulty using mother tongue alone. The rest of the defendants and defence counsels use the languages alone with ease. They also mix the languages in the four categories, but with one (10%) mixing MT-K-E with great difficulty. 40% mix K - E, and another 40% mix MT - E, while 60% use MT- K- E, all with

some difficulty in each case. However, the majority, 60% for K-E, 50% for MT-E, 60% for MT-K and 30% for MT-K-E use it easily. All the defendants and defence counsels that responded to this section do not use Sheng' and sign language at all.

All members of the public that responded speak all the three languages except that, one (10%) of those that speak English, and another one (10%) of those that speak Kiswahili, as well as three (30%) of those that speak mother tongue speak them with some difficulty. 10% of those that speak Kiswahili speak with great difficulty, but 90% of those that speak English, 80% of those that speak Kiswahili, and 70% of those that speak mother tongue speak them with ease. They as well mix them although six (60%) for MT-K, the same for MT-E and again the same for K-E and another three (37.5%) for MT-K-E speak them with ease. 10% for MT-K and 12.5% for MT-K-E speak it with great difficulty and the rest speak it with some difficulty. All the respondents to the use of Sheng' said they do not speak it at all. Few, 25% speak a sign language with great difficulty and the remaining 75% do not use it at all.

All the witnesses use the three languages, with English used by 87.5% with ease, Kiswahili used by 85.8% with ease and mother tongue used by 62.5% with ease. Nobody responded to not speaking the three languages at all. The rest said that they speak them with some difficulty and with great difficulty. 12.5% of the witnesses also mix their mother tongue and Kiswahili (MT-K) with great difficulty, 37.5% with some difficulty, and 25% with ease. The remaining 25% do not use the mixture at all. 12.5% of the respondents mix their mother tongue and English (MT-E) with great difficulty, 29.2% with some difficulty, another 29.2% with ease and another 29.2% does not mix them at all. Kiswahili and English (K-E) are used with some difficulty by 8.3%, easily by 87.5% but the rest, 4.2% do not use them at all. The witnesses also mix mother tongue, Kiswahili and English (MT-K-E) with ease for 50% of the respondents, with some difficulty for 8.3% and with great difficulty for 12.5%. 29.2% do not at all use a mixture of the three languages. 57.1% of the witnesses do not use Sheng' and 79.2% do not at all use sign language. 14.3% use Sheng' with great difficulty as well as 4.2% that use sign language. Only a 28.6% use Sheng' and 12.5% use sign language easily. The rest use Sheng' and sign language with a little difficulty.

To sum up this question on how the respondents speak the various languages given, it is evident that many respondents know all the languages at least a little bit, but more so if they do not mix them. Kiswahili is the most popular (86.4%), followed by English (81.8%), then a mixture of Kiswahili and English (75%), then mother tongue (72.7%), all these with a high magnitude. Most of the defendants and defence counsels use Kiswahili with more ease (70%). Most of the members of the public use English with more ease (90%) and most of the witnesses use English and a mixture of Kiswahili and English with more ease (87.5%).

Question 2.2, 2.3: *You are ashamed of using your mother tongue, and You are shy about using your mother tongue? (Very much, Much, About the same, Not very much, Not at all).*

These questions sought to find out if the respondents were ashamed or shy of using their mother tongue. The responses were meant to elicit their perceptions and attitude about mother tongues. No respondent chose “much” or “about the same”. All members of the public are not ashamed or shy at all about using their mother tongues. A greater percentage of the defendants and defence counsels do not feel any shame or shy in using their mother tongues. The witnesses’ greater percentage is not at all ashamed or shy of using their mother tongues. Table 7 shows these ratings according to the categories of defendants/defence counsels, members of the public and witnesses; their age groups; education level and where they were brought up.

Table 7: Are you ashamed / shy of using your mother tongue?

Factors	Feeling ashamed				Feeling shy			
	Very much	Not very much	Not at all	Total	Very much	Not very much	Not at all	Total
Category								
Defendant/Defence counsel	1 (10%)		9 (90%)	10 (100%)	1 (10%)	1 (10%)	8 (80%)	10 (100%)
Member of Public			5 (100%)	5 (100%)			5 (100%)	5 (100%)
Witnesses		1 (5%)	19 (95%)	20 (100%)	1 (5.6%)	2 (11.1%)	15 (83.3%)	18 (100%)
Total	1 (2.9%)	1 (2.9%)	33 (94.3%)	35 (100%)	2 (6.1%)	3 (9.1%)	28 (84.8%)	33 (100%)
Age groups								
19 - 27 years			15 (100%)	15 (100%)	1 (7.1%)	2 (14.3%)	11 (78.6%)	14 (100%)
28 - 36 years		1 (8.3%)	11 (91.7%)	12 (100%)		1 (9.1%)	10 (90.9%)	11 (100%)
37 - 45 years	1 (20%)		4 (80%)	5 (100%)	1 (20%)		4 (80%)	5 (100%)
46 - 54 years			1 (100%)	1 (100%)			1 (100%)	1 (100%)
55 - 63 years			2 (100%)	2 (100%)			2 (100%)	2 (100%)
Total	1 (2.9%)	1 (2.9%)	33 (94.3%)	35 (100%)	2 (6.1%)	3 (9.1%)	28 (84.8%)	33 (100%)
Education level								
Primary school drop-out			3 (100%)	3 (100%)		1 (33.3%)	2 (66.7%)	3 (100%)
Completed primary school			2 (100%)	2 (100%)	1 (100%)			1 (100%)
Completed secondary school			13 (100%)	13 (100%)		1 (8.3%)	11 (91.7%)	12 (100%)
Tertiary level	1 (5.9%)	1 (5.9%)	15 (88.2%)	17 (100%)	1 (5.9%)	1 (5.9%)	15 (88.2%)	17 (100%)
Total	1 (2.9%)	1 (2.9%)	33 (94.3%)	35 (100%)	2 (6.1%)	3 (9.1%)	28 (84.8%)	33 (100%)
Brought up								
In Town –urban			8 (100%)	8 (100%)	1 (14.3%)		6 (85.7%)	7 (100%)
In Village-rural	1 (3.8%)	1 (3.8%)	25 (92.6%)	27 (100%)	1 (3.8%)	3 (11.5%)	22 (84.6%)	26 (100%)
Total	1 (2.9%)	1 (2.9%)	33 (94.3%)	35 (100%)	2 (6.1%)	3 (9.1%)	28 (84.8%)	33 (100%)

In general, the majority of the respondents that responded to these questions (94.3% and 84.9%) are not ashamed and are not shy (respectively) of using their mother tongues. If these respondents are unable to use their mother tongues, it could be because of other factors such as age and level of education. Very few acknowledged that they are not comfortable, feel ashamed (very much and not very much) 2.9% in each case for both categories, respectively and are shy, 6.1% and 9.1% respectively of using their mother tongues.

The respondents' age group also determined how they perceive the use of their mother tongues. All young respondents of the age of 19-27 years are not at all ashamed of using their mother tongues, while a greater percentage, 78.6%, is not shy of using it either. 7.1% was very much shy while 14.3% were a little bit shy. The majority, 91.7% and 90.9% of the participants in the age 28-36 years are not ashamed and shy, respectively of using their mother tongues. The 28-36 year age group is mainly the young working class. 8.3% and 9.1% in this age group respectively are not very much ashamed and shy of their mother tongues. As mentioned earlier, most of the participants come from the rural areas hence are used to using their mother tongues. The other age groups from age 37 years to 63 years are not at all ashamed or shy of using their mother tongues, except for just 20% of the respondents in both cases in age group 37-45 years that are very much ashamed and shy, respectively.

Most of the respondents even after going through the three levels of education are not ashamed or shy of using their mother tongues. Only 5.9% of respondents with tertiary level education are very much ashamed, and an equal percentage not very much ashamed. An equal percentage of 5.9% are very much shy and not very much shy. 8.3% of those that have completed secondary school are very much shy of using their mother tongue but the rest are neither ashamed nor shy. 33.3% of the primary school drop-outs are not very much shy but the rest are neither ashamed nor shy of using their mother tongues. Only one respondent that completed primary school was very much shy of using their mother tongue.

All the respondents brought up in towns do not at all feel ashamed of using their mother tongues. But 14.3% are "very much shy" while the rest 85.7% are "not at all shy". This indicates how the town dwellers do not have negative attitude towards their mother tongues. However, 3.8% of the respondents brought up in the rural setting are "very much ashamed", and another 3.8% "a little bit ashamed", while 3.8% are "very much shy" and 11.5% "a little bit shy" of their mother tongues. The greater percentage of those brought up in the rural areas are "not at all ashamed" (92.6%) of using their mother tongues or shy (84.6%). In essence, those brought up in towns seem to appreciate their mother tongues more than those brought up in the rural areas.

From this presentation, it seems that the respondent that was ‘very much ashamed’ of using the mother tongue is the same, that is, ‘very much shy’ and is of the 37-45 year-age group at the tertiary level and brought up in rural set-up. This individual may have developed a negative attitude towards his/her mother tongue during his/her schooling time, probably through peer pressure. Another respondent that was ‘not very much ashamed’ was also ‘not very much shy’ and was a witness of the age group 28-36 years, and was either a primary school dropout or had just completed high school. The bigger percentage of the respondents that are ‘very much’ and ‘not very much’ are of those feeling shy than those feeling ashamed. This may mean that most people are shyer of their mother tongues than being ashamed of them. Probably they mind much about what others will say when they hear them use their mother tongues. The group of respondents that is not ashamed or shy of their mother tongues is greater than that which is. Mother tongues are favourable to most of the respondents, despite schooling and acquiring English and Kiswahili. Hence, the social-linguistic meanings of languages in Kenya and their use, coupled with the context of use, might be major contributors to what people say about the languages within their repertoires.

Question 2.3.1: *How much do you understand when spoken to in your mother tongue while in the Subordinate Court? (None, Some, quite a bit, about all, everything).*

The argument that the court’s language is very complex and is better expressed in English elicited this question. As much as people feel they need to use only the official languages in court, it was clear that even then, the mother tongues were well understood by the majority of the respondents and wanted to use them.

Table 8: How much do you understand when spoken to in your mother tongue?

Category	How much you understand when spoken to in mother tongue				Total
	None	Quite a bit	About all	Everything	
Defendant/Defence Counsel		1 (12.5%)	1 (12.5%)	6 (75%)	8 (100%)
Member of Public			1 (20%)	4 (80%)	5 (100%)
Witnesses	1 (6.3%)	2 (12.5%)	2 (12.5%)	11 (68.8%)	16 (100%)
Total	1 (3.4%)	3 (10.3%)	4 (13.8%)	21 (72.4%)	29 (100%)
Age group					
19 - 27 years		2 (15.4%)	4 (30.8%)	7 (53.8%)	13 (100%)
28 - 36 years	1 (11.1%)			8 (88.9%)	9 (100%)
37 - 45 years				4 (100%)	4 (100%)
46 - 54 years		1 (100%)			1 (100%)
55 - 63 years				2 (100%)	2 (100%)
Total	1 (3.4%)	3 (10.3%)	4 (13.8%)	21 (72.4%)	29 (100%)
Education level					
Primary School drop-out			1 (50%)	1 (50%)	2 (100%)
Completed primary school		1 (100%)			1 (100%)
Completed secondary school		1 (9.1%)	1 (9.1%)	9 (81.8%)	11 (100%)
Tertiary level	1 (6.7%)	1 (6.7%)	2 (13.3%)	11 (73.3%)	15 (100%)
Total	1 (3.4%)	3 (10.3%)	4 (13.8%)	21 (72.4%)	29 (100%)
Brought up					
In Town –urban	1 (16.7%)	1 (16.7%)	1 (16.7%)	3 (50.0%)	6 (100%)
In Village-rural		2 (8.7%)	3 (13.0%)	18 (78.3%)	23 (100%)
Total	1 (3.4%)	3 (10.3%)	4 (13.8%)	21 (72.4%)	29 (100%)

All the members of the public understood about all or everything (20% and 80%), respectively. A 12.5% of the defendants and defence counsels said they understood a bit but the rest understood about all and everything (12.5% and 75%), respectively. Only 6.3% of the witnesses understood nothing when spoken to in mother tongue and another 12.5% understood just a bit. The rest understood about all and everything (12.5% and 68.8%).

Looking further at the age-group, the majority of every age-group responded to understanding everything in their mother tongue. Only 11.1% of the age 28-36 said they understood nothing, the rest understood everything. A few in ages 19-27 years (15.4%) and all in ages 46-54 years understood quite a bit of their mother tongue. All those of age 37-45 and 55-63 years understood everything.

Again looking at the level of education, at tertiary level, 6.7% understood nothing in their mother tongues, yet it is among the levels with the highest percentage, 73.3%, that understood

everything. All those that had completed primary school, together with 9.1% of those that completed secondary school and 6.7% of those at tertiary level understood quite a bit of their mother tongues. Half of the primary school dropouts and 9.1% of those that completed secondary school, together with 13.3% of those at tertiary level understood about all. The greatest percentage (81.8%) of those that completed secondary school understood everything. 73.3% of tertiary level and the remaining half of the primary school dropouts understood everything in their mother tongues as well.

50% of those respondents who were brought up in towns and 78.3% of those brought up in the villages understand everything in their mother tongue. 16.7% of those brought up in towns and 13% of those brought up in rural areas understand about all. Only 16.7% of those brought up in towns understood nothing in their mother tongue. The rest understood just a bit. Altogether, most of the respondents understood everything in their mother tongue. In fact, 13.8% understood about all, making a total of 86.4% that are actually comfortable using their mother tongues. Only 3.4% of the respondents did not understand anything in their mother tongues.

This presentation shows that the particular witness that could not understand the mother tongue could be belonging to the 28-36 year-age group and gone through tertiary level of education and brought up in town. Thus, there is a relationship between understanding a mother tongue on the one hand, and age group, level of education and where one was brought up, on the other. 3.4% of all the respondents did not understand their indigenous languages. 10.3% understood a bit, while 13.8% understood about all and the highest, 72.4%, understood everything. Table 8 above summarises the details of this situation.

Question 2.3.2: *How often do you use your mother tongue?*
(Never, Rarely, Sometimes, Often, Always)

How often one uses a language determines how proficient and fluent they are. Being removed from one's speech community may hinder the use or frequency of a language, but it does not mean they do not know their language. For this reason, the researcher intended to know how often the respondents use their mother tongues so as to understand their responses.

Table 9: How often do you use your mother tongue?

How often mother tongue usage	Response rating				Total
	Rarely	Sometimes	Often	Always	
Category					
Defendant/Defence Counsel		5 (62.5%)	2 (25%)	1 (12.5%)	8 (100%)
Member of Public		2 (40%)	3 (60%)		5 (100%)
Witnesses	2 (11.8%)	8 (47.1%)	6 (35.3%)	1 (5.9%)	17 (100%)
Total	2 (6.7%)	15 (50%)	11(36.7%)	2 (6.7%)	30 (100%)
Age groups					
19 - 27 years	1 (7.1%)	8 (57.1%)	5 (35.7%)		14 (100%)
28 - 36 years	1 (11.1%)	3 (33.3%)	5 (55.6%)		9 (100%)
37 - 45 years		3 (75%)		1 (25%)	4 (100%)
46 - 54 years			1 (100%)		1 (100%)
55 - 63 years		1 (50%)		1 (50%)	2 (100%)
Total	2 (6.7%)	15 (50%)	11 (36.7%)	2 (6.7%)	30 (100)
Education level					
Primary School drop-out			2 (100%)		2 (100%)
Completed primary school	1 (100%)				1 (100%)
Completed secondary school		6 (50%)	5 (41.7%)	1 (8.3%)	12 (100%)
Tertiary level	1 (6.7%)	9 (60%)	4 (26.7%)	1 (6.7%)	15 (100%)
Total	2 (6.7%)	15 (50%)	11 (36.7%)	2 (6.7%)	30 (100%)
Brought up					
In Town –urban	2 (33.3%)	2 (33.3%)	2 (33.3%)		6 (100%)
In Village-rural		13 (54.2%)	9 (37.5%)	2 (8.3%)	24 (100%)
Total	2 (6.7%)	15 (50.0%)	11 (36.7%)	2 (6.7%)	30 (100%)

12.5% of the defendants and defence counsel, as well as 5.9% of the witnesses always use their mother tongues. All the three categories often use their mother tongues, with more of the members of the public with (60%) than witnesses (35.3%) and defendants and defence counsels (25%). Only about 11.8% of the witnesses rarely use their mother tongue. The rest use mother tongues sometimes, defendants and defence counsels (62.5%), witnesses (47.1%) and members of public (40%).

When the frequency of mother tongue use is checked against the age-groups, unlike the level of education, the frequency of mother tongue use is highly affected by age. The younger ones are the less frequent group in the use of their mother tongues. Age groups 19-27 years and 28-36 years rarely use their mothers, at 7.1% and 11.1%, respectively. In contrast, ages 55-63 years as well as age-group 37-45 years sometimes and always (50%, 75% and 50%,25%), respectively use their mother tongues. All the 46-54 years age-group use mother tongues often as well as 35.7% of 19-27years and 55.6% of 28-36 years age-groups. The young ones 19-27 and 28-36 years age-group sometimes use their mother tongues (57.1% and 33.3% respectively).

Looking at the frequency with which the respondents use their mother tongues, it is probably interesting to note that the level of education does not in any specific way determine how often one uses their mother tongues. For instance, those at the tertiary level, 6.7% rarely use it, 60% sometimes use it, 26.7% often use it and 6.7% always use it. This means that even when more educated, learning does not stop individuals from using their mother tongues. Those that completed secondary school sometimes, 50%, often, 41.7% and always, 8.3% use their mother tongues. None rarely uses mother tongues. But all those who had completed primary school rarely use their mother tongues. Most likely they were not properly or often exposed to their mother tongues. All the primary school drop-outs often use their mother tongues. It could be that they are now living away from their family members that they are unable to always use their mother tongues.

Respondents who were brought up in town, do not always use mother tongues, but 33.3% often use them, 33.3% sometimes use them and another 33.3% rarely use them. This means a minimal use of mother tongues by those brought up in town. Those brought up in the villages have the highest percentage, 54.2% sometimes use their mother tongues, 37.5% often use them and 8.3% always use mother tongues. For those that always use mother tongue, it means that they never use any other language, including official and national languages.

Generally, 50% of the respondents sometimes use their mother tongues, and only 6.7% of all the respondents always use them. 36.7% of the respondents often use mother tongues and only 6.7% rarely use their mother tongues. This means mother tongue is in use in subordinate courts whichever way. Those that rarely use their mother tongues are young people of between ages 19-36 years, who have just completed primary school and/or are in tertiary level and have been brought up in town. All factors may have influenced the use of their mother tongues, but certainly there are other young people in the same age and education levels as well as those brought up in towns that use their mother tongue more often than these few. Those that always use their mother tongue are a bit elderly, 37-63 years and have completed high school, and were brought up in the rural areas.

Question 2.3.3: How much do you like it when people speak to you in your mother tongue?
(Very much, Much, About the same, Not very much).

This question was meant to gauge the respondents' attitude towards their mother tongues. Together with the question on whether they are ashamed or shy of using their mother tongues, this question helps create a clear picture of how much individuals value their mother tongues.

Table 10: How much do you like it when people speak to you in your mother tongue?

Category	How much you like it when people speak to you in your mother tongue				Total
	Very much	Much	About the same	Not very much	
Defendant/Defence Counsel	8 (80%)		2 (20%)		10 (100%)
Member of Public	5 (100%)				5 (100%)
Witnesses	13 (68.4%)	1 (5.3%)	3 (15.8%)	2 (10.5%)	19 (100%)
Total	26 (76.5%)	1 (2.9%)	5 (14.7%)	2 (5.9%)	34 (100%)
Age group					
19 - 27 years	10 (66.7%)		3 (20%)	2 (13.3%)	15 (100%)
28 - 36 years	8 (80%)	1 (10%)	1 (10%)		10 (100%)
37 - 45 years	5 (100%)				5 (100%)
46 - 54 years	2 (100%)				2 (100%)
55 - 63 years	1 (50%)		1 (50%)		2 (100%)
Total	26 (76.5%)	1 (2.9%)	5 (14.7%)	2 (5.9%)	34 (100%)
Education level					
Primary School drop-out	2 (66.7%)		1 (33.3%)		3 (100%)
Completed primary school				1 (100%)	1 (100%)
Secondary school drop-out	1 (100%)				1 (100%)
Completed secondary school	9 (75%)	1 (8.3%)	1 (8.3%)	1 (8.3%)	12 (100%)
Tertiary level	14 (82.4%)		3 (17.6%)		17 (100%)
Total	26 (76.5%)	1 (2.9%)	5 (14.7%)	2 (5.9%)	34 (100%)
Brought up					
In Town –urban	7 (87.5%)			1 (12.5%)	8 (100%)
In Village-rural	19 (73.1%)	1 (3.8%)	5 (19.2%)	1 (3.8%)	26 (100%)
Total	26 (76.5%)	1 (2.9%)	5 (14.7%)	2 (5.9%)	34 (100%)

As confirmed in Table 7, the majority (76.5%) of the respondents like it very much when spoken to in their mother tongues. In fact, all the members of the public that responded, like it very much; it is only a small percentage (10.5%) of the witnesses that do not like it very much and few defendants and defence counsels (20%) and witnesses (15.8%) that do not mind it. 80% of the defendants and defense counsels as well as 68.4% of the witnesses like very much when people speak to them in mother tongue.

When the respondents' attitudes were gauged against their age-group, it turned out that all the age-groups like being spoken to in their mother tongues. Interesting to note was that the younger they were, the more they liked it. However, a small percentage (13.3%) of the youngest age-group, 19-27 years do not like it very much. As mentioned in the interviews, this could be because they do not want to be associated with mother tongues because these languages are deemed backward. According to the younger ones, these languages take people backwards in terms of development and are only useful in communication and not in education. All the respondents of ages 37-54 like it very much when spoken to in their mother tongues. And half of the respondent in age group 55-63 years just does not mind if spoken to in their mother tongue and the other half likes it very much. 20% and 10% of age groups 19-27 years and 28-36years respectively do not mind it but 10% of the 20-36years like it much.

When people speak to those at the tertiary level in their mother tongues, 82.4% said they liked it very much, while 17.6% did not mind it. 75 % of those that completed secondary school liked it very much, while 8.3% liked it much, and another 8.3% did not mind it, and again another 8.3% did not like it very much. All those who completed primary school did not like it very much. 66.7% of primary school dropouts very much liked it when spoken to in the mother tongue, while 33.3% did not mind it at all and the remaining 33.3% did not mind it. The highest percentage of those that liked being spoken to in the mother tongue, belong to the tertiary level. And the highest percentages of those that did not like it very much belong to the group that completed primary school.

Out of the respondents brought up in the urban areas, 87.5% like people speaking to them in the mother tongue very much and only a 12.5% do not like it very much. From those brought up in the rural area, (village) 73.1% like it very much and only 3.8% do not like it very much. Those that did not like it very much were the least in both categories, to mean that whether brought up in the towns or the village, a majority still liked it when spoken to in the mother tongue.

To sum up, regardless of who a person is in the court, what age group they belong to, how far they have gone in education or where they were brought up, the majority of the respondents like it very much when spoken to in the mother tongue. That is to say that their attitudes are not at all

negative. This proves what was said in question 2.2 and 2.3 that they are not ashamed or shy of their mother tongues. Those that do not like it are the same ones that responded that they are ashamed and shy of using their mother tongues.

Question 2.4: *Tick the language(s) you would like to use while in the Subordinate Court*

This question was meant to elicit information on which language the respondent would like to use. The response would mean that the respondent is able to communicate in that language irrespective of whether it is the right language to use in court or not. It is their preference.

A multiple response option procedure was used. This created a single summary of a table of counts and percentages based on several variables that contain responses to one question. <http://surveyresearch.weebly.com/33-multiple-response-mult-response.html>. A single table was created based on responses to the eight variables (Language 1 to Language 8). The count and the percentages indicate how many respondents mentioned each variable. The Responses column indicates a count of the total number of respondents that ticked the languages without the multiple factor (a respondent ticking several languages instead of just one). There are percentages of cases that indicate what percentage of respondents and their count ticked a language of each given type. The reason that it is possible to have over 100% is because each respondent can select more than one category. Theoretically, if everyone selected all categories, this percentage would be equal to 800% because people would repeat themselves in each category, therefore going beyond the normal 100%.

Table 11: Tick the language(s) you would like to use while in the Subordinate Court

	The language(s) you would like to use in the Subordinate Court								Respondent count
	MT	K	E	MT-K	MT-E	K-E	MT-K-E	SL	
Category									
Defendant/Defence Counsel	3 (30.0%)	5 (50%)	3 (30%)	5 (50%)		3 (30.0%)	3 (30.0%)	2 (20.0%)	10
Member of Public		1 (20%)	1 (20%)	1 (20%)		3 (60.0%)	3 (60.0%)	1 (20.0%)	5
Witnesses	1 (5.3%)	4 (21.1%)	4 (21.1%)	1 (5.3%)	1 (5.3%)	6 (31.6%)	12 (63.2%)	1 (5.3%)	19
Age group									
19 - 27 years		2 (13.3%)	3 (20%)	2 (13.3%)		7 (46.7%)	9 (60.0%)		15
28 - 36 years	2 (20%)	5 (50%)	5 (50%)	2 (20%)		3 (30.0%)	6 (60.0%)	3 (30.0%)	10
37 - 45 years		1 (20%)		1 (20%)	1 (20%)	1 (20.0%)	2 (40.0%)		5
46 - 54 years	1 (50%)	1 (50%)		1 (50%)		1 (50.0%)		1 (50.0%)	2
55 - 63 years	1 (50%)	1 (50%)		1 (50%)			1 (50.0%)		2
Education level									
Primary School drop-out		1 (33.3%)	2 (66.7%)	3 (66.7%)		2 (66.7%)	2 (66.7%)	1 (33.3%)	3
Completed primary school		1 (100%)	1 (100%)			1 (100%)			1
Secondary school drop-out		1 (100%)	1 (100%)			1 (100%)		1 (100%)	1
Completed secondary school	1 (8.3%)	2 (16.7%)	1 (8.3%)	1 (8.3%)		5 (41.7%)	7 (58.3%)		12
Tertiary level	3 (17.6%)	5 (29.4%)	3 (17.6%)	3 (17.6%)	1 (5.9%)	3 (17.6%)	9 (52.9%)	2 (11.8%)	17
Brought up									
In Town - urban		4 (50.0%)	4 (50.0%)	2 (25.0%)		5 (62.5%)	4 (50.0%)	2 (25.0%)	8
In Village-rural	4 (15.4%)	6 (23.1%)	4 (15.4%)	5 (19.2%)	1 (3.8%)	7 (26.9%)	14 (53.8%)	2 (7.7%)	26
Overall Total	4 (6.3%)	10 (15.6%)	8 (12.5%)	7 (10.9%)	1 (1.6%)	12 (18.8%)	18 (28.1%)	4 (6.3%)	64 (100%)

A mixture of MT-K-E (28.1%) is the most commonly mentioned languages they would like used in the Subordinate Court. Mixing Kiswahili and English (K-E, 18.8%) has been preferred next. Kiswahili (15.6%) seems an easier language to use by many respondents than English (12.5%). Mother tongue and Kiswahili (MT-K, 10.9%) would serve better than mother tongue and English (MT-E, 1.6%) for many of the respondents. The order of preference is therefore as follows. Mixed MT-K-E (Mother tongue, Kiswahili and English), mixed K-E (Kiswahili and English), K

(Kiswahili), E (English), mixed MT-K (Mother tongue and Kiswahili), MT (Mother tongue) and SL (Sign language).

In fact, 50% of the defendants chose mixing mother tongue and Kiswahili, and another 50% chose Kiswahili. These being that accused persons have half of them preferring to mix mother tongue and Kiswahili while 30% for each prefer mother tongue; English; mixing Kiswahili and English and mixing mother tongue, Kiswahili and English. Only a very small percentage in each case (5.3%) of the witnesses would like to use mother tongues and English mixed, or mother tongue and Kiswahili mixed, or mother tongues. Most of them (63.2%) want to mix mother tongues, Kiswahili and English. This is followed by Kiswahili and English each with a 21.1%. 60% of the members of the public preferred mixing mother tongues with Kiswahili and English, and an equal percentage chose mixing Kiswahili with English. None of the members of the public chose mother tongues, and only 20% chose Kiswahili, English or a mixture of mother tongue and Kiswahili. Representatives from each category also felt that the sign language needed to be used so as to cater for those that are deaf. Hence, the defendants and defence counsels felt that Kiswahili and both mother tongue and Kiswahili (MT-K) would be better languages to use. This could be because they are known to the majority; it is not like English that is mainly for the elite. Apart from sign language, English seems to be the least favoured even when mixed with the other languages. The witnesses seem to favour mother tongue, Kiswahili and English mixed. The members of the public favoured mother tongue, Kiswahili and English mixed (MT-K-E) and/or Kiswahili and English (K-E).

Young people aged 19-27 years would not like to use mother tongues alone or mother tongues and English mixed (MT-E) at all while in court. They also seemed not to have any idea about sign language. The majority of these young people favoured mother tongue, Kiswahili and English mixed (MT-K-E) at 60%, and Kiswahili and English mixed (K-E) at 46.7% over Kiswahili alone (13.3%), English alone (20%) and mother tongue and Kiswahili mixed (MT-K, 13.3%). The aged, 55-63 years, did not like Kiswahili and English mixed (K-E) at all, or English alone or mother tongue and English mixed (MT-E). They also seem not to realise the importance of sign language. They chose mother tongue alone, Kiswahili alone, mother tongue and Kiswahili mixed and mixing mother tongue, Kiswahili and English, each at 50%. The middle

ages, 46-54 years did not support the use of the three languages mixed (MT-K-E) at all, neither did they support English alone or mother tongue and English mixed (MT-E). They like the official languages, Kiswahili and English mixed (K-E), mother tongue alone, Kiswahili alone, mother tongue and Kiswahili mixed (MT-K) and the sign language each at 50%. The other middle ages, 28-36 years and 37-45 years preferred the three languages: mother tongue, Kiswahili and English mixed (MT-K-E) 60% and 40% respectively the most, 50% chose Kiswahili alone as well as English alone. 20% chose MT-K and 30% chose K-E. 20% of the 28-36 year-age group chose mother tongues and 30% chose sign language. 20% of the 37-45 years chose Kiswahili alone, the same percentage chose MT-K, MT-E and K-E.

The respondents at tertiary level and those that have completed secondary school would highly like to use mother tongues, Kiswahili and English mixed (MT-K-E), 52.9% and 58.3% respectively. Kiswahili follows for tertiary levels at 29.4%, then mother tongue, English, mother tongue and Kiswahili mixed (MT-K) and Kiswahili and English mixed (K-E), all at 17.6%. Mixing mother tongue and English is the least (5.9%) they would recommend. Those that have completed primary school and those secondary school drop-outs would not like to use all the three languages (MT-K-E). Neither do they accept mixing mother tongue with Kiswahili (MT-K) or with English (MT-E). To them it is either the official languages mixed (K-E) or each alone for all those respondents. They do not accept mother tongues at all. The less educated, including primary school drop-outs, those that completed primary school and the secondary school drop-outs are opposed to the use of mother tongues alone or mixing with English. The primary school drop-outs however support the use of the three languages; mother tongue, Kiswahili and English mixed (MT-K-E), as well as the official languages mixed (K-E). Kiswahili and English alone are also supported as well as mother tongue and Kiswahili mixed (MT-K) and sign language.

Out of the 26 respondents from rural areas, 53.8% chose a mixture of mother tongue, Kiswahili and English. The second highest chosen language was a mixture of Kiswahili and English (26.9%). These respondents chose Kiswahili next (23.1%) then a mixture of mother tongue and Kiswahili (19.2%). While the respondents favoured a mixture of mother tongue, Kiswahili and English, followed by a mixture of Kiswahili and English, then Kiswahili those from urban areas favoured a mixture of Kiswahili and English (62.5%) first, then all the others equally (50%)

except for mother tongue and a combination of mother tongue and English with no support at all, and a combination of mother tongue and Kiswahili at 25%. This is highlighted in Table 11

Question 2.5: *Which language(s) do you think is/are the most suitable to use in the Subordinate courts?*

This question was meant to bring out the most suitable language to use in subordinate court irrespective of one's favoured one like it is in the previous question. Respondents needed to look at the best language for the good of everybody in subordinate courts. They therefore selected one and many languages therefore making the scores multiple. The percent of cases indicates what percentage of respondents identified a language of each given type. This question therefore is treated like the previous one on the scores multiplicity.

Table12: Which language(s) do you think is/are the most suitable to use in the courts?

Overall language thought most suitable to use in Subordinate Court	Responses					
	N	Percent				Percent of Cases
Mother Tongues	23	16.3%				42.6%
Kiswahili	35	24.8%				64.8%
English	28	19.9%				51.9%
Mixed Languages	32	22.7%				59.3%
Sign Language	23	16.3%				42.6%
Total	141	100.0%				261.2%
Category	MT	K	E	ML	SL	Total respondents
Defendant/Defence Counsel	13 (65.0%)	17 (85.0%)	9 (45.0%)	15 (75.0%)	12 (60.0%)	20
Member of Public	2 (25.0%)	5 (62.5%)	5 (62.5%)	6 (75.0%)	3 (37.5%)	8
Witnesses	8 (30.8%)	13 (50.0%)	14 (53.8%)	11 (42.3%)	8 (30.8%)	26
Age group						
19 - 27 years	3 (17.6%)	7 (41.2%)	8 (47.1%)	9 (52.9%)		17
28 - 36 years	10 (41.7%)	18 (75.0%)	18 (75.0%)	17 (70.8%)	20 (83.3%)	24
37 - 45 years	4 (80.0%)	4 (80.0%)	2 (40.0%)	1 (20.0%)		5
46 - 54 years	3 (75.0%)	3 (75.0%)		1 (25.0%)	3 (75.0%)	4
55 - 63 years	3 (75.0%)	3 (75.0%)		4 (100%)		4
Education level						
Primary School drop-out		3 (100%)	3 (100%)	3 (100%)	3 (100%)	3
Completed primary school		2 (100%)	2 (100%)			2
Secondary school drop-out		4 (100%)	4 (100%)	4 (100%)	4 (100%)	4
Completed secondary school	8 (44.4%)	10 (55.6%)	8 (44.4%)	10 (55.6%)		18
Tertiary level	15 (55.6%)	16 (59.3%)	11 (40.7%)	15 (55.6%)	16 (59.3%)	27
Brought-up						
In Town –urban	3 (17.6%)	14 (82.4%)	14 (82.4%)	10 (58.8%)	9 (52.9%)	17
In Village-rural	20 (54.1%)	21 (56.8%)	14 (37.8%)	22 (59.5%)	14 (37.8%)	37
Total respondents	23	35	28	32	23	54

Since the respondents were repeating themselves in choosing the language they thought was the most suitable to use in subordinate courts, the counts went beyond the number of the respondents that responded for each language. Thus the ‘percent’, which gets up to 100, and the ‘percent of cases’, which has gone to a total of 261.2% is the result. It turned out that according to the respondents, Kiswahili was the best language to use with 35 counts (64.8%) of the responses, followed by mixed languages of the mother tongue, Kiswahili and English (32 counts, 59.3%), and then English (28 counts, 51.9%). Mother tongues and sign languages had 23 counts (42.6%).

It is worth noting that these respondents value their mother tongue as well as the sign language, hence proposing their use in courts.

When the question of the language the respondents think are the most suitable to use in subordinate courts was asked, the defendants and defence counsels supported Kiswahili at 85%, followed by a mixture of mother tongue, Kiswahili and English (MT-K-E) at 75%, then mother tongue (65%), sign language (60%), and the lowest choice was English at 45%. Members of the public supported mixed languages at the top (75%), followed by the official languages, Kiswahili and English equally (62.5%), then sign language (37.5%) and the lowest choice was mother tongue at 25%. The witnesses supported English at the highest rate (53.8%), followed by Kiswahili (50%), mixed languages (42.3%), then mother tongues and sign language at the lowest equal percentage of 30.8%.

Young people of age 19-27 years thought that the most suitable languages to use in courts is mixed languages at 52.9%, followed by English language at 47.1%, Kiswahili (41.2%) and the least chosen is the mother tongue (17.6%). None chose sign language. The respondents of ages 28-36 years had sign language with the majority (83.3%), followed by Kiswahili and English at the same rate of 75% each, mixed languages (70.8%) and then mother tongue, 41.7%. Respondents of ages 37-45 years thought the mother tongue and Kiswahili are the most suitable (80%) each. English followed with 40% then mixed languages (20%). None chose sign language. The age 46-54 years rated mother tongue, Kiswahili and Sign Language the same (75%) and at the top followed by mixed languages (25%). All elderly respondents, 55-63 years responded that mixed languages are the most suitable (100%) followed by the mother tongue and Kiswahili at 75% each. It is also of importance to note that the people in the ages 46 years and above did not at all choose English, yet this is the group that mostly frequents the courts, where English is the most commonly used language. Some could actually not answer the questionnaires on their own, but others interestingly knew English but did not want it for court proceedings

The most educated group of the respondents, tertiary level, selected Kiswahili and sign language at the highest, 59.3%, followed by mother tongue and mixed languages at the same percentage of 55.6%. Notice that English was the least selected (40.7%). The next group, those that have

completed secondary school, selected mixed languages and Kiswahili at 55.6%, followed by English and mother tongue at the same percentage (44.4%). This category did not select sign language at all. All the respondents that dropped out of secondary school selected the four language categories except mother tongue. They selected Kiswahili, English and mixed languages and sign language (100%). All those that have completed primary school selected only English and Kiswahili each alone (100%). This they said it was because these are common languages that everyone can use. They also could fill the questionnaires on their own. All the primary school drop-outs selected just like the secondary school drop-outs; the four language categories except mother tongue. They chose Kiswahili, English, mixed languages and sign language at the same percentage (100%).

Those respondents who were brought up in the urban areas chose Kiswahili and English as the most suitable languages to use in court at 82.4%. Mixed languages were their next choice at 58.8%, followed by sign language at 52.9%, and the least chosen was mother tongue at 17.6%. Those brought up in the villages chose mixed languages as the most suitable languages (59.5%), followed by Kiswahili (56.8%), mother tongue (54.1), English and sign language at the lowest percentage (37.8%). Table 12 summarises this information.

Question 2.6: Provide a brief explanation why the choice of language(s) you have made in 2.5 is the most suitable to use in Subordinate Courts

Question 2.5 required the respondents to select a language they thought was the most suitable to use in court, while question 2.6 sought to understand why the respondents made that choice. The choices indicate preference for a language(s) to use in court.

Table 13: Provide a brief explanation why the choice of language(s) you have made in 2.5 is the most suitable to use in Subordinate Courts

Brief explanation why the choice of language(s)	Languages					Total respondents
	MT	K	E	ML	SL	
We have different communities, so national and official languages are appropriate		6 (54.5%)	6 (54.5%)	7 (63.6%)		11
It is easily understood	19 (57.6%)	26 (78.8%)	18 (54.5%)	14 (42.4%)		33
Helps get better choice of words with more weight and accurate meaning				3 (100%)		3
To cater for people with special needs		1 (50.0%)	1 (50.0%)	2 (100%)	2 (100%)	2
It is easy to use	1 (16.7%)			5 (83.3%)		6
Comfortable to use	7 (100%)	6 (86.7%)	6 (86.7%)	5 (71.4%)	6 (86.7%)	7
Widely known		2 (66.7%)	3 (100%)			3
Widely used	4 (50.0%)	6 (75.0%)	4 (50.0%)	5 (62.5%)		8
To cater for everyone				1 (100%)		1
Court is in Kikamba speaking area				1 (100%)		1
Total	31 (16.8%)	47 (25.4%)	38 (20.5%)	43 (23.2%)	8 (10.7%)	75

The responses presented in this table varied for each category. It is not all the respondents that picked out a language and gave an explanation for their choice. The respondents chose various languages with various reasons. The respondent that chose say English with the reason that it is easily understood may be the same that chose mother tongue with the reason that it is easy to use or the same reason for choosing English that it is easily understood. Therefore, the percentages and counts per languages are based on the total respondents. But since these are multiple responses, the total percentages are supposed to go beyond 100%. This has not been presented in the table, but there is the total respondents and not multiple respondents.

54.5% of the 11 respondents chose Kiswahili with the reason that it is a national and official language that caters for different communities in the county. This means that the county is dominated by a Kikamba speaking community; but there are other people from other communities that live among them. The same reason was given by another 54.5% of the same 11 respondents that chose English, and 63.6% that chose mixed languages. Mother tongues were chosen by 57.6% of the 33 respondents that chose languages because they are easily understood. Other languages were chosen because they are easily understood include Kiswahili by 78.8%, English by 54.5% and mixed languages by 42.4%. Other respondents chose mixed languages

because they help get better choice of words with more weight and accurate meaning. Only three respondents gave this reason for choosing mixed languages. The reason that a language caters for people with special needs was given by 50% of those respondents that chose Kiswahili, 50% that chose English, 100% that chose mixed languages and 100% that chose sign language. Special needs included being deaf and dumb, being an immigrant, or married to a different community, or working in a different community, so that one does not understand the language of the area. The reason that a language is easy to use was given by 6 respondents. 16.7% chose mother tongues and 83.3% of those 6 respondents chose mixed languages because they are easy to use.

Seven (7) respondents felt a language used in a subordinate court should be comfortable to use. It probably should not be one that makes them feel ashamed, shy, be looked down upon, and lower their social status among other such discomforts. Of these respondents, all of them chose mother tongue for that reason. 86.7% chose Kiswahili, another 86.7% chose English, 71.4% chose mixed languages and yet another 86.7% chose sign language. All the given languages were chosen by a high percentage of the respondents, meaning that comfort in a language that one is expected to use in court is a priority.

The respondents also felt that the best language to use in court is one that is widely known. Three respondents gave this reason. 66.7% of these respondents chose Kiswahili while 100%, all of them chose English. As a researcher, this response did not feel right or sincere because there has been other responses before that did not consider English a popular or common language. It is only for the elite. But Kiswahili is definitely widely known.

Besides a language being widely known, 8 respondents also considered languages that are widely used. 50% chose mother tongues, 75% chose Kiswahili, 50% chose English and 62.5% chose mixed languages. As the respondents said their choices were widely used, it was in relation to where they were and their perceptions of certain languages. This may not be the actual situation in reality because an individual's perception of things is often unique in relation to others. For instance, it is not expected that English will be widely used in the village, but an individual that uses English in the family and with people within that village will conclude that English is widely used.

One respondent chose mixed languages because they cater for everyone, while another respondent chose the same mixed languages because the court is within a Kikamba speaking area. This meant that the respondent wanted Kikamba included among the languages used in court, that is English and Kiswahili.

To sum up, some chose mother tongues because

- they are easily understood,
- easy to use,
- comfortable to use and
- widely used, meaning they are dominant in the area.

Others chose Kiswahili because

- it is a national language and can be used where there are different communities,
- it would cater for people with special needs,
- it is comfortable to use,
- it is widely known and
- it is widely used.

English was chosen because

- it is the official language and can be used where there are different communities.
- To some people, it is easily understood,
- it caters for people with special needs,
- it is comfortable to use,
- it is widely known and
- widely used.

Mixed languages were chosen for many reasons.

- That where there are different communities, they can be used because they include mother tongues and the official and national languages;
- they are easily understood;
- they help get better choice of words with more weight and accurate meaning;
- they cater for people with special needs;

- they are easy to use;
- comfortable to use;
- they are widely used;
- they cater for everyone; and
- are appropriate since the court is in a Kikamba speaking area.

Finally, others chose sign language because

- it caters for people with special needs and
- it is a comfortable language to use for those that know it.

Thus, the order of choice was Kiswahili (25.4%), mixed languages (23.2%), English (20.5%), mother tongues (16.8%) and sign language (10.7%) which was a special case because it is meant for a particular category of people with special needs.

4.2.1.3: Section C: Language Needs

Question 3.1: *How well do you understand when instructed to do something or have a conversation in the following languages: mother tongue, Kiswahili, English, Mixed languages and Sign Language?*

The first question in this section sought to find out how well the respondent understands when instructed to do something or have a conversation in the mother tongue, Kiswahili, English, mixed languages and sign languages. How they understand determine their language needs in order to communicate effectively and efficiently. Their needs are influenced very much by the situation they find themselves in and their backgrounds. Where they were brought up may be a main influence, but their education and age may also be included. Table 14 presents their choices in terms of where the respondents were brought up.

Most respondents were brought up in the rural area (16 of them) and the rest were brought up in towns (7). The total responses of those brought up in rural areas were 82, while of those brought up in towns were 35. This represented 100% in each case. From those brought up in town, English and Kiswahili had the highest number of respondents who understood the two languages the most at 71.4% (extremely well) for each. But 72.2% of the rural respondents was the highest that understood mother tongues extremely well. Those brought up in the urban areas had English

and Kiswahili, followed by mother tongues (42.9%) spoken extremely well. Of the respondents from the rural areas 50% understood Kiswahili 43.8% understood English while 6.3% understood mixed languages extremely well. 57.1% of those brought up in towns did not at all understand sign language, 68.8% of those brought up in rural areas did not also understand sign language and 12.5% did also not at all understand English.

42.9% of those brought up in towns and 43.8% of those brought up in rural areas understood mixed languages well. This makes almost half of the total respondents. Included among those that understood mixed languages are 14.3% that understood them extremely well, 28.6% very well and 14.3% fairly well by respondents brought up in town, making 100%. Only 6.3% of those brought up in rural areas understood mixed languages extremely well. 18.8% understood it very well while 31.3% understand it fairly well. Compared with the respondents brought up in town, those brought up in the rural areas have a low capability of understanding mixed languages.

Sign language is understood extremely well by 14.3% of those brought up in towns and none of those brought up in the rural areas. 28.6% of those brought up in towns and 31.3% of those brought up in rural areas understood it fairly well. 57.1% of those brought up in towns and 68.8% of those brought up in rural areas did not at all understand sign language. The implication is that the majority of the respondents do not understand sign language. In fact, only very few of those brought up in towns understood it.

When we compare understanding of these languages by respondents who were brought up in rural areas and those brought up in town, the majority of those from the rural areas understand mother tongues better than those brought up in urban areas. Although most of the respondents in this study were from rural areas, it is also clear that most of those that understood all the languages extremely well except for mother tongues were those brought up in town. It seems that there is no respondent who was brought up in towns that claimed not to understand English, Kiswahili, mixed languages or mother tongues at all. From those brought up in rural areas, 12.5% claimed not to understand English at all. This means that English may not be the best language for people in the rural areas. It may not meet their needs.

Table 14: How well do you understand when instructed to do something or have a conversation in the following languages: mother tongue, Kiswahili, English, Mixed languages and Sign Language?

Factors	Language	<i>How well do you understand when instructed to do something or have a conversation in the given languages?</i>					Total
		Extremely well	Very well	Well	Fairly well	Not at all	
Brought up							
In Town –urban	E	5 (71.4%)	1 (14,3%)	1 (14,3%)			7 (100%)
	K	5 (71.4%)	1 (14,3%)	1 (14,3%)			7 (100%)
	ML	1 (14,3%)	2 (28.6%)	3 (42.9%)	1 (14,3%)		7 (100%)
	MT	3 (42.9%)	1 (14,3%)	1 (14,3%)	2 (28.6%)		7 (100%)
	SL	1 (14,3%)			2 (28.6%)	4 (57.1%)	7 (100%)
Total		15 (42.9%)	5 (14.3%)	6 (17.1%)	5 (14.3%)	4 (11.4%)	35 (100%)
In Village-rural	E	7 (43.8%)	4 (25%)	2 (12.5%)	1 (6.3%)	2 (12.5%)	16 (100%)
	K	8 (50%)	5 (31.3%)	3 (18.8%)			16 (100%)
	ML	1 (6.3%)	3 (18.8%)	7 (43.8%)	5 (31.3%)		16 (100%)
	MT	13 (72.2%)	2 (11.1%)	2 (11.1%)	1 (5.6%)		18 (100%)
	SL				5 (31.3%)	11 (68.8%)	16 (100%)
Total		29 (35.4%)	14 (17.1%)	14 (17.1%)	12 (14.6%)	13 (15.9%)	82 (100%)

Question 3.2: How often do you use the following languages while in Subordinate Courts: English, Kiswahili, mixed languages, mother tongue and sign languages? (Always, Quite often, Often, Less often and Not at all)

Answering this question will show how respondents have used or failed to use these languages, hence pointing to the frequency with which they are used. Since courts are supposed to allow the use of mother tongues but with interpretation, as well as the use of the official languages, mixing them all would also be possible. This means whichever language is used at will is also expected to serve their needs.

Table 15: How often do you use the following languages while in Subordinate Courts: English, Kiswahili, mixed languages, mother tongue and sign languages?

CATEGORY	How often you use these languages in subordinate court					Total
	Always	Quite often	Often	Less often	Not at all	
ENGLISH						
Defendant/Defence Counsel	1 (14.3%)	2 (28.6%)	3 (42.9%)		1 (14.3%)	7 (100%)
Member of Public	1 (25.0%)	2 (50.0%)	1 (25.0%)			4 (100%)
Witnesses	6 (50.0%)	3 (25.0%)	2 (16.7%)	1 (8.3%)		12 (100%)
Total	8 (34.8%)	7 (30.4%)	6 (26.1%)	1 (4.3%)	1 (4.3%)	23 (100%)
KISWAHILI						
Defendant/Defence Counsel	3 (42.9%)	2 (28.6%)	1 (14.3%)	1 (14.3%)		7 (100%)
Member of Public	1 (25.0%)	1 (25.0%)	1 (25.0%)	1 (25.0%)		4 (100%)
Witnesses	6 (50.0%)	3 (25.0%)	3 (25.0%)			12 (100%)
Total	10 (43.5%)	6 (26.1%)	5 (21.7%)	2 (8.7%)		23 (100%)
MIXED LANGUAGE						
Defendant/Defence Counsel			5 (62.5%)	2 (12.5%)	1 (12.5%)	8 (100%)
Member of Public		1 (25.0%)	1 (25.0%)	2 (50.0%)		4 (100%)
Witnesses	1 (8.3%)	5 (41.7%)	1 (8.3%)	3 (25.0%)	2 (16.7%)	12 (100%)
Total	1 (4.2%)	6 (25.0%)	7 (29.2%)	7 (29.2%)	3 (12.5%)	24 (100%)
MOTHER TONGUE						
Defendant/Defence Counsel	1 (14.3%)	1 (14.3%)	1 (14.3%)	1 (14.3%)	3 (42.9%)	7 (100%)
Member of Public			1 (25.0%)	2 (50.0%)	1 (25.0%)	4 (100%)
Witnesses	1 (8.3%)	1 (8.3%)	1 (8.3%)	7 (58.3%)	2 (16.7%)	12 (100%)
Total	2 (8.7%)	2 (8.7%)	3 (13.0%)	10 (43.5%)	6 (26.1%)	23 (100%)
SIGN LANGUAGE						
Defendant/Defence Counsel			1 (14.3%)	1 (14.3%)	5 (71.4%)	7 (100%)
Member of Public	1 (25.0%)			2 (50.0%)	1 (25.0%)	4 (100%)
Witnesses		1 (9.1%)		1 (9.1%)	9 (81.8%)	11 (100%)
Total	1 (4.5%)	1 (4.5%)	1 (4.5%)	4 (18.2%)	15 (68.2%)	22 (100%)

34.8% of the respondents use English always, 30.4% uses it quite often, 26.1% use it often, 4.3% use it less often and another 4.3% do not use it at all. Half of the witnesses always use it and only 8.3 % use it less often. A quarter of the members of the public always use it while a half uses it quite often and another quarter uses it often. This means that all the members of the public are constantly in use of the English language. However, 14.3% of the defendants and defence counsels do not at all use English, and only another 14.3% use English always. The majority (42.9%) of the defendants and defence counsels use English often. This is a pointer to the fact that since this is the most important category in court, English may not be a comfortable

language for them to use. Though English is a favourite language in courts because it is always and quite often used as the language of court, a small percentage does not at all use it.

43.5% of the respondents use Kiswahili always, 26.1% uses it quite often, 21.7% use it often and 8.7% use it less often. Nobody responded to not using it at all. Kiswahili is therefore highly used. Only 14.3% of the defendants and defence counsels and 25% of the members of the public use it less often. Kiswahili, being both a national and official language, seems to have the highest advantage over all the other languages.

4.2% of the respondents always use mixed languages in court, 25% quite often use mixed languages, 29.2%, which is the highest percentage, often use mixed languages, and another 29.2% use them less often. 12.5% do not mix languages at all in court. It is only 8.3% of the witnesses that use mixed languages always. Notably, again is the fact that defendants and defence counsels do not always or quite often use mixed languages. The highest percentage (62.5%) of the defendants and defence counsels just use mixed languages often and 12.5% do not use them at all. Except for the 12.5%, all the other respondents mix languages in an attempt to make themselves understood, and this is done often.

8.7% of the respondents always use mother tongues in subordinate courts, another 8.7% use them quite often, 13% often, making a total of 30.4% that used them with a reasonably high magnitude. A bigger percent of 43.5% use it less often in court and 26.1% do not use it at all. This shows that a good number of users of the courts actually do use the mother tongue, a non-official language. It is only the members of the public that do not always or quite often use mother tongues in court. The most significant persons, defendants and defence counsels (14.3%) and another 14.3% as well as witnesses (8.3%) and another (8.3%) always and quite often, respectively for each category, use mother tongues. The highest percentage, 42.9% of the defendants and defence counsels, 25% of the members of the public and 16.7% of the witnesses do not at all use mother tongues in court.

Sign language is not a language for everybody, but 4.5% always use it, another 4.5% quite often use it, yet another 4.5% often use it. 18.2% use it less often and the majority, 68.2%, does not at

all use it. The members of the public had the highest percentage, at 25% who always use sign language, while 9.1% of the witnesses quite often use it. Those that always use sign language may be the deaf and dumb and quite often use it may be because they are in constant contact with other deaf and dumb people. This being a language of the deaf and dumb may not be considered the main challenge until the courts receive a person with such disability to serve. Nevertheless, although they are a minority group, these people have the right to be considered. Otherwise the majority of the respondents do not at all use sign language. Table 15 gives details of the results.

Question 3.3: *How often would you wish mother tongue to be used for better communication and understanding in the Subordinate Courts?*

(always, very often, often, less often or not at all)

The third question of this section sought to find out how often one would wish mother tongue to be used for better communication and understanding. Better communication and understanding are the core reasons for speech in the first place. A mother tongue is expected to be the easiest language to use, especially for people from the rural areas and the aged.

Table 16: How often do you wish mother tongue to be used in Subordinate courts?

Category	How often you wish Mother tongue to be used in Subordinate courts					Total
	Always	Very often	Often	Less often	Not at all	
Defendant/Defence Counsel	2 (25.0%)	2 (25.0%)	3 (37.5%)	1 (12.5%)		8 (100%)
Member of Public		2 (25.0%)	2 (25.0%)	2 (50.0%)		4 (100%)
Witnesses	1 (7.7%)	4 (30.8%)	5 (36.5%)	2 (15.4%)	1 (7.7%)	13 (100%)
Total	3 (12.0%)	7 (28.0%)	9 (36.0%)	5 (20.0%)	1 (4.0%)	25 (100%)
Age group						
19 - 27 years		3 (27.3%)	3 (27.3%)	4 (36.4%)	1 (9.1%)	11 (100%)
28 - 36 years	1 (16.7%)	1 (16.7%)	4 (66.7%)			6 (100%)
37 - 45 years	1 (25.0%)	2 (50%)	1 (25.0%)			4 (100%)
46 - 54 years	1 (50.0%)		1 (50.0%)			2 (100%)
55 - 63 years		1 (50.0%)		1 (50.0%)		2 (100%)
Total	3 (12.0%)	7 (28.0%)	9 (36.0%)	5 (20.0%)	1 (4.0%)	25 (100%)
Education level						
Primary School drop-out			3 (100%)			3 (100%)
Completed primary school			1 (100%)			1 (100%)
Completed secondary school	1 (11.1%)	4 (44.4%)		3 (33.3%)	1 (11.1%)	9 (100%)
Tertiary level	2 (16.7%)	3 (25.0%)	5 (41.7%)	2 (16.7%)		12 (100%)
Total	3 (12.0%)	7 (28.0%)	9 (36.0%)	5 (20.0%)	1 (4.0%)	25 (100%)
Brought up						
In Town –urban	1 (14.3%)	2 (28.6%)	4 (57.1%)			7 (100)
In Village-rural	2 (11.1%)	5 (27.8%)	5 (27.8%)	5 (27.8%)	1 (5.6%)	18 (100%)
Total	3 (12.0%)	7 (28.0%)	9 (36.0)	5 (20.0%)	1 (4.0%)	25 (100%)

12% of the respondents wished the mother tongue could be used always, 28% wished it could be used very often, 36% wished it could be used often, while 20% wished it could be used less often and 4% wished it could not at all be used. Out of all defendants and defence counsels, 25% wished mother tongue could be used always, another 25% wished very often and 37% often, while 12.5% wished it used less often. Members of the public do not wish for mother tongue to be used always but 25% wish it used very often, and another 25% often, making a positive response of 50%. The remaining 50% wish it used less often. This is an equally split response where half responded positively and the other half negatively. 7.7% of the witnesses wish mother tongues could be used always, 30.8% very often and 36.5% often. This makes a total of 76.9%

that responded positively to the question. 15.4% wished mother tongue used less often and 7.7% wished it not used at all, making 23.1% of negative responses.

The youngest group 19-27 years, did not have anyone wish mother tongue be used always, but had 27.3% wish mother tongue be used quite often and another 27.3% often, while 36.4% wished mother tongue be used less often and 9.1% wished mother tongue not be used at all. The positive wish was 54.6% and the negative wish was 45.4%. This means that young people see the importance of understanding and better communication aligned much with the use of mother tongues. From the 28-36 year-age group, 16.7% wished mother tongues to be used always, another 16.7% wished it used very often, and the highest percentage of this age group, 66.7% wished it used often. Nobody responded to mother tongue used less often or not at all. From the 37-45 year-age group, 25% wished mother tongues could be used always, 50% very often and 25% often. Nobody responded to less often and not at all. From the 46-54 year-age group, 50% wished mother tongues could be used always and the other 50% wished it could be used often. Nobody responded to less often and not at all. From the three age groups, 28-36 year-old, 37-45 year-old and 46-54 year-old, was a positive response only, their wish was mother tongue to be used in court. From the 55-63 year-age group, 50% wished mother tongue could be used very often and the other 50% wished mother tongue to be used less often.

From the education levels, 100% of the primary school drop-outs wished mother tongues to be used often in court. 100% of those that completed primary school wished mother tongues could be used in courts often as well. 11.1% of those that have completed secondary school wished mother tongues could be used always and 44.4% very often, 33.3% less often and 11.1% not to be used at all. From those at the tertiary level, 16.7% wish mother tongues could be used always, 25% very often, 41.7% often and 16.7% less often. None at tertiary level wished mother not to be used at all in court.

Where one was brought up also mattered in terms of the responses. From those brought up in town, 14.3% wished mother tongues could be used always, 28.6% very often and 57.1% often, making a 100% positive response to the question. None responded to the wish for mother tongues to be used less often or not at all. From those brought up in the village, 11.1% wished mother tongues would be used always, 27.8% very often and 27.8% often, representing 66.7% of

those that answered positively. 27.8% of the respondents wished mother tongues would be used less often and 5.6% wished they would not be used at all. 33.3% therefore give a representation of those who answered negatively. Table 16 shows this representation.

4.2.2: Responses from the Interviews

Responses from eight interviewees were sampled. The first three were magistrates. The rest were clerks from the subordinate court.

4.2.2.1: Language Use

To answer the same research question as done by the questionnaire respondents, in terms of which languages are used and how they are selected during a Subordinate Court case proceeding in Machakos County, the respondents were asked various questions, including:-

- Which languages are used in subordinate courts?
- What do you do about those who do not know English or Kiswahili?
- Do you know your mother tongue?
- How did you learn/know your mother tongue?
- Why do you use the languages you use in court?
- How do you choose which language to use?
- Would you like your kids to know and use their mother tongues?

Magistrates reported that the languages they encounter during court proceedings include the official and national languages: English and Kiswahili and various indigenous languages, including Kikamba, Arabic and Somali from truck drivers along Mombasa-Nairobi Highway. Those brought to court use any language they understand but if it is not English or Kiswahili, interpreting is provided, even for sign language. There is also the use of Sheng' by the majority of the youth. The clerks added that among the indigenous languages used in courts are Kikuyu, Luyha, Kalenjin and Maasai.

All the magistrates interviewed agreed that for any proceeding, accused persons and witnesses have the upper hand in the choice of the language to be used. The court must ask accused persons and witnesses the language they are comfortable in. However, in the knowledge that one

must be asked the language they would like to use, because of time limitation, the court assumes that people know Kiswahili and so dismisses interpreting. In addition, clerks confirmed that courts assume that the respondents understand Kiswahili, but they need to use a language that accused persons and witnesses understand.

“...if it’s an accused person, before reading the charges, you should be able to ask this person the language they would like to use. This person could be speaking ‘swa’,but because of time we don’t even do these things. *Mtu anamsomea haraka haraka* you assume *lazima anajua Kiswahili, anasema ndio ama hapana*, but ideally you are supposed to ask them which language they are comfortable in. *Akisema anataka kusomewa na Kikamba*, it is the duty of the court to ensure that *amesomewa kwa kikamba*. It is supposed to be a language they understand, even as the trial goes on. They have a right to have interpretation whether he has an advocate or not, the case is not about the advocate. The accused must be comfortable with the language and must understand what is going on.”

(If it’s an accused person, before reading the charges, you should be able to ask this person the language they would like to use, this person could be speaking Kiswahili but because of time we do not even do these things. They read the charges and verdicts very fast you assume they definitely know Kiswahili, they only say yes or no. But ideally you are supposed to ask them which language they are comfortable in. If they say it is Kikamba, it is the duty of the court to ensure that they are read to in Kikamba. It is supposed to be a language they understand, even as the trial goes on. They have a right to have interpretation whether he has an advocate or not, the case is not about the advocate. The accused must be comfortable with the language and must understand what is going on).

However, when accused persons or witnesses are represented, they do not have to talk and the court can use English, a language that they may not understand.

The magistrates reported that children would rather use their indigenous languages than use English or Kiswahili. According to the magistrates, their choice of indigenous languages is based on the fact that they are quite fluent in them, but they stammer a lot if and when they have to use

English or Kiswahili. The magistrates said that the evidence and information flows well when a child is expressing himself/herself in their mother tongues. However, some children fail to respond in the presence of the offender out of non-linguistic reasons such as fear. But generally, those that respond use their vernaculars and so require interpreting.

“It may be a challenge when you are writing a judgment, especially when dealing with those small children, you have to write exactly what they are saying. Like last week, I had an incest case, the accused person is a minor, 16yrs, and the nieces and nephews are five, four years. I strangled with those children like half of the day, and they ended up not speaking much. They were just crying one after another, because they didn’t want to see the accused person and you see we don’t have a witness protection box. So there is no way we will hide this person because he also has to hear what is going on. And all of them are at the Rescue Centre so they had to be taken back.”

The magistrates are supposed to record in English, but there are words that cannot be expressed clearly in English, so they would rather use indigenous languages. The magistrates end up writing verbatim what the witness and the accused person have said.

“... but you know there are some words you cannot express clearly in English especially the sexual offences. There are some words you just have to write verbatim what the witness states.”

Some magistrates were excited about how some participants are spoken to in Kiswahili but respond in their mother tongues.

“...Certainly Kambas enjoy their language so much, they feel that they can express themselves better, yet some of them can speak Kiswahili so well, but they insist on speaking in Kikamba.”

Some clerks ironically claimed not to be conversant in their mother tongues, irrespective of them having been employed on that strength. An elderly lady clerk and their boss dismissed it as

pretence. On reporting to her that some of her clerks said that sometimes the mother tongue is deep, they are unable to interpret or they just avoid such terms and make out possible meanings of what they heard, she replied:

“...they should know, before we employ them. That is pretending, in fact, that is what I’m telling them, they are pretending. When they came for the interview, they said they are Kambas and there were questions on interpreting. So they must interpret their mother tongue. Saying that they ‘go round’, that’s a mistake and if known, they can be sacked.”

Nevertheless, the majority of clerks and magistrates seem to want their children to know their mother tongues and use them in future. Some clerks when interviewed on whether they know their mother tongues in the first place, replied that they learnt their mother tongues in the villages and not in town, and they use them with their children, parents and others that know them (the mother tongues) in town. For those who do not know English or Kiswahili, it was felt that they needed interpreting.

4.2.2.2: Language Needs

Interview questions commonly asked on language needs included the following:-

- What do you think about children and their use of their mother tongues?
- Why do participants in courts use the languages they choose to use?
- Is there a need to know the indigenous languages, are they necessary?
- If the official languages are a challenge to participants in court, what is the better option of achieving communication?

During the interview, interviewee one expressed the view that many respondents want to express themselves in the language they know best. This was supported by interviewee 3 that they want to use a language that is not challenging. The respondents would express themselves better in their mother tongues. Interviewee three added that they enjoy their mother tongues very much, especially the Kambas and that the mother tongues are rich in meaning.

“Yes, and I find that very genuine. Kiswahili *naijua, lakini nitawezakujiexpress* better in Kikamba. Because there are those words that come out better in the vernacular. They feel that is what they wanted to say”

(Yes, and I find that very genuine. I know Kiswahili, but I can express myself better in Kikamba. Because there are those words that come out better in the vernacular. They feel that is what they wanted to say).

Interviewee one pointed out that some other participants want to express themselves in a language they may not be proficient in, English and Kiswahili.

“... you want to be somebody, you don't want to be ashamed of yourself because you don't know English, you feel inferior but you can communicate because your purpose is to communicate.”

Interviewee one expresses that the vernaculars have been so demonised that children cannot identify with them. The children are embracing Sheng' and it seems to be developing very fast because the majority of the children are using it fluently to communicate their needs. Interviewee two's experience is that children would rather speak Kikamba in court than English or Kiswahili. She argued that they are proud of their mother tongues that they stammer when they speak in Kiswahili, but in their mother tongues, the information flows and evidence is acquired. Most of the clerks said that children like English and Kiswahili languages for reading. They would not wish mother tongues read in books, but should be used purely for verbal communication. The reasons given for their wish to keep mother tongues away from books are that, according to them, mother tongues are difficult to use because of difficult words, they are out of fashion and out-dated. They prefer Sheng' and English for all forms of communication.

Some participants would rather do with direct communication in mother tongues than have interpreting. Interviewee 2 dismissed interpreting because its effects include loss of a lot of important details, poor interpreting methods and many mistakes made during the process. She concluded that the purpose of a language is to communicate, but this is not what is entirely achieved once there is interpreting.

“... and you know in a way you are a witness and you are speaking Kikamba as the interpreter. If you say in Kikamba I went to hospital after the incident the interpreter is not supposed to say ‘*anasema*’ they are supposed to say the exact words, the way one has said it but you know they make mistakes *anasema hivi*. They also tend to seek clarification on behalf of the magistrates which is wrong. They are supposed to say just what the witness has said, even if the witness is giving a wrong answer. You say it first, then the court will know what to say, but not for the clerk to start clarifying.”

(And you know in a way you are a witness and you are speaking Kikamba as the interpreter. If you say in Kikamba I went to hospital after the incident, the interpreter is not supposed to say ‘she says that...’ they are supposed to say the exact words, the way one has said it but you know they make mistakes ‘she says this’. They also tend to seek clarification on behalf of the magistrates which is wrong. They are supposed to say just what the witness has said, even if the witness is giving a wrong answer. You say it first, then the court will know what to say, but not for the clerk to start clarifying).

Interviewee three responded just like interviewee one that they want to use a language that is not challenging. They would express themselves better in their mother tongues, and that they enjoy their mother tongues very much, for the mother tongues are rich in meaning.

Interviewee four felt that there are some words that a complainant or the accused person will use so as to pass information that they want, but the challenge will be that the interpreter may not want to pronounce such words and thus opts for euphemism. There will not be the intended communication. Magistrates sometimes will insist that clerks call a spade a spade and not a big spoon.

“..., *kuwa kuna* words *zingine kuzitoa kwako itakua*.... so you don’t exactly say that word. *Kuna* words *zingine hata wewe utasikia ugumu kuzisema Lakini kuna* magistrate *atakuambia* call a spade a spade.”

(There are some words to pronounce them will be...shameful... so you don't exactly say that word. There are other words you will find it difficult coming from your mouth. But a magistrate will tell you to call a spade a spade).

But this only puts pressure on the clerks who cannot bring themselves to pronounce some of those taboo words.

Interviewee five felt that she is challenged by choice of words in mother tongue. Most of the times, clients challenge her that what she has interpreted into is not what they meant. She bases her challenge on the mother tongue dialects. But even then, her own dialect is equally a challenge to her.

“Especially in mother tongue, you see we have mother tongues from Kitui, Makueni, you know, the mother tongue is different from that one of Machakos. So me I'm from Makueni , kikamba ya Machakos ni difficult...”

Especially in mother tongue, you see we have mother tongues from Kitui, Makueni, (Kikamba dialects) you know the mother tongue is different from that one of Machakos. So I'm from Makueni, and kikamba dialect of Machakos is difficult)

Interviewee six felt that those people growing up in towns cannot use mother tongues both to communicate and interpret because they cannot really understand it. The problem is that the mother tongues are not available, and so one will not have anyone to practice it with in town.

“The problem is that the kids are growing up in the town and you cannot use the mother tongues in town, so for a person growing up in town they cannot really understand the language, they are not in a situation, *mtu anaeza elewa coz* really they are not using the language, but when you grow up in *shaggs* you need to learn it.”

(The problem is that the kids are growing up in the town and you cannot use the mother tongues in town, so for a person growing up in town they cannot really understand the language, they are not in a situation, one can understand because really they are not using the language, but when you grow up in shaggs (village), you need to learn it).

Interviewee seven felt that there is a need to know indigenous languages in order to get jobs such as being interpreters. To be employed, clerks only need grade C and above in their Kenya Certificate of Secondary Examination (KCSE). But the proficiency in mother tongue use and other official languages is a major factor of consideration.

Interviewee eight supported others that if the complainant, the accused person or witnesses cannot speak English or/and Kiswahili, there has to be interpreting so that they are understood. The most important thing is the need to communicate.

4.2.2.3: The Implementation of the Language Policy

To answer the question on how effective the implementation of the use of the current language policy is in subordinate courts, interviewees were asked the following:

- How effective and efficient is interpreting during court proceedings?
- How then would you rate interpreting in courts?
- How reliable are interpreters in courts?
- Are interpreters trained?
- What do you think about mother tongue use in courts?
- What is the future of indigenous languages?
- How well do people in courts use English and Kiswahili?

As much as mother tongue use is allowed in courts, Interviewee one said that “it is a major challenge and a hindrance, especially if you are looking for justice”. He reported that there is no satisfaction in interpreting, and the use of the official languages is mismanaged. This is especially with the assumption that everybody knows the languages, and so courts impose these languages on ignorant court users. The interviewee found fault with interpreting as he believed it brought a lot of confusion in court because some interpreters interpret totally different things from what has been said. They make mistakes such as not getting the correct words and generally giving wrong interpreting. There are words that cannot be expressed clearly in English.

“This people are trying but in real sense something happens during interpretation. Things like feelings, those things you cannot bring out with words, like that lady that was amputated. She tried to explain how much pain she was feeling so she was using *kulalakwa na kwiw’a woo*”.

(These people are trying but in real sense something happens during interpreting. Things like feelings, those things you cannot bring out with words, like that lady that was amputated. She tried to explain how much pain she was feeling so she was using ‘to have that severe burning sensation’ and ‘to be in pain’).

Interviewee one complained that the way interpreters are appointed is inappropriate. This is because these appointments are based on if the appointees belong to those communities that an interpreter is required from, which is certified by one’s name. By the time interpreters are appointed, they are not skilled on the kind of work to do. Most of them leave out a lot of information. The interpreters make the judges make poor judgements because either they are not audible enough, or go in with a lot of attitudes such as getting angry with clients, getting over excited and questioning the clients for clarification, a job that is not theirs. The interpreter is supposed to say exactly what the client has said so that the magistrate can follow and ask questions where necessary. It is a challenge when all the information does not get to the magistrates. The magistrates expressed how they rely entirely on interpreters, so that, whatever the interpreter says is what they record and use to judge.

Interviewee two sounded like there was no help or solution to these problems when he said:

“So those are the problems that we encounter and I don’t know how best to curb that, but these are some problems we have to live with”.

Clerks added that the indigenous languages have developed in such a way that the language of elderly people is not like a language nowadays. In some cases a young person today cannot understand because some words are too deep, while other words are said with an attitude you

cannot express as an interpreter. A lot is therefore lost during interpreting. A magistrate, interviewee one, says:

“I will not understand them the way a person who understands it would say it... there is that in-language that cannot come out in interpretation”.

Interviewee two complained that some people working as interpreters are neither interpreters nor workers in courts. These people are untrained workers that end up translating instead of interpreting. Unfortunately for the magistrates, advocates are supposed to correct errors of interpreting but they do not do this for their own selfish gains. This is worsened by the way interpreters are appointed.

Interviewee three gives examples of such words in sexual offences. This was supported by the clerks.

Interviewee three also complained that interpreting is a long, but a very necessary process, but time-consuming. This is because the exchange between the interpreter and the speaker take some time as compared to when it is a direct address.

Interviewee four and seven said that some words are not easy to pronounce in the mother tongue because they are either obscene or unfamiliar. The clerks therefore just paraphrase and end up not giving the court the correct information.

Clerks reported that language in courts is mainly English, especially for records. Interviewee five reported that some words are simply lost during interpreting, probably because it is a long sentence and the clerk is not able to recall everything. Interviewee five also reported that mother tongues have different dialects, so it becomes difficult if the clerk has a different dialect to interpret although they may understand what is being expressed. Most of the clerks reported that interpreting is poorly done.

On the question of use of English and Kiswahili in court, Interviewee five reported that a good number of people do not know how to use English or Kiswahili but insist on using it. They either

end up not giving their intended information or switching back to their indigenous languages in order to communicate. This clerk feels that justice is served when English and Kiswahili are used, especially because the youth and the children today use them. Besides, everybody is asked which language they would wish used during the proceeding. So, to her, English and Kiswahili are the most appropriate languages to use in court, and not interpreting because it is not 100% done. Again Interviewee five thinks that most people want to use English and Kiswahili because they have simply been made to believe that these are the most appropriate languages to use in public places for prestige. Most of them do not even know the languages well, yet they insist on using them.

On the question of the future of indigenous languages, Interviewee five feels that mother tongues are going to die because nowadays parents do not want their kids to use them, even kids in the villages with their grandparents. She also does not see why we need to know the mother tongues anyway. Nevertheless, this clerk (Interviewee five) and others wish their kids to know their indigenous languages.

On the question of how effective and efficiency interpreting is, interviewee six said that she is unable to interpret correctly. She cannot be 100% correct. There are challenges due to age gap, language development and the intended meaning as manifested in the choice of a language.

“Not really 100%, may be some English words, as in you cannot get a direct interpretation, you cannot translate directly an English word to the mother tongue. So you kinda need to paraphrase.”

That,

“Yah! There are some words said, you know the language is kind of grown, there is the kind of mother tongue used by the old people that we really cannot understand some of the words.”

“In some cases you cannot understand. There are some specific words that an old person can use, that are really deep mother tongue”

“We just get what she is saying. The meaning, But even then getting that meaning, there is still something you cannot get from the mother tongue. May be the attitude orthere is that thing you say in a particular language but you actually mean the way you say it

Interviewee seven, just like interviewee four said that some words are not easy to pronounce in the mother tongue because they are either obscene or unfamiliar. The clerks therefore just paraphrase and end up not giving the court the correct information. Interviewee seven adds that some words are problematic to interpret, especially if they are closely related in meaning.

Interviewee eight sums up the issue of interpreting by saying that most people do not trust interpreting. The clerks may interpret the exact thing but later the accused person or the complainant disowns what they had said and appeal on that ground. After all, most young people are not proficient in their mother tongues.

Interviewee eight believes it is because of modernisation and urbanisation that many people, including children, do not know their mother tongues, but feel they know English and Kiswahili, even in the rural areas.

4.2.2.4: Recommending Intervening Measures

Interview questions commonly asked included:

- Which languages should be used in court?
- What would you say about promoting our indigenous languages to official status?
- Suggest other ways of promoting our indigenous languages?
- Would you wish your children to know their mother tongues?

The intervening measures towards access to justice are the ways or solutions that the respondents felt could be applied to solve language barriers and the breakdown in communication. The magistrates felt that interpreting is not a hundred percent solution because in many cases, it is poorly done.

Interviewee one suggested that there should be at least one Kamba judge, or a magistrate, and a Kamba prosecutor in the court, among others, so that they can listen directly to the proceedings. In order to achieve this, then indigenous languages should be made official in the counties where they are dominant. This will enable officers to use them the same way Kiswahili is used. The magistrates will be able to listen in their language and to record the proceedings in English. Once the indigenous languages have been made official, then the government will re-introduce mother tongue use for instruction in schools. The magistrates felt that rather than have the indigenous languages used for instructions only, they should also be educated just as the students do French, Chinese, German and Kiswahili. The students should have an opportunity to specialise in the indigenous languages even at higher levels of learning so that these languages are given value. In turn, the young generation will not feel shy or be ashamed to use their mother tongues, because it would have been given value by elevating their status.

However, in cases where interpreting is unavoidable, the magistrates suggested that interpreters should be trained and have interpreting in the job market as competitive as any other job. In the past, a qualification to become an interpreter, especially in larger ethnic groups, was based on one's maiden name or surname, and completion of high school education with above a C grade in the Kenya Certificate of Secondary Examination. Anybody could also be called upon to interpret as long as they know the languages involved. This practice, according to interviewees, is not correct because it leads to poor, wrong and unjust judgment, as the magistrate depends fully on the interpreting given. Lawyers and clerks should as well be trained and take an interpreting course. There should be dictionaries to aid in getting appropriate meanings of difficult terms, especially in cases where interpreters are challenged by synonyms and antonyms. Interviewee two, who is a Luhya by tribe working in Ukambani, understands the meaning of the word "kukwata" as used in sexual offences. He says

“...because you will find that, what people do, they translate instead of interpret, that is when we have such problems. Like there is this word in Kikamba '*kukwata*', others say '*alinishika*' to mean he touched me. You know, the meaning is different, especially in sexual offences, when they interpret to '*alinishika*' when you use the kamba word, they actually mean that act eeh! But now the interpretation that you get, that '*alinishika*', then

you write ‘he touched me’ you see that it brings a totally different meaning. So those are the problems that we encounter and I don’t know how best to curb that, but these are some problems we are living with. ”

(...because you will find that, what people do, they translate instead of interpret, that is when we have such problems. Like there is this word in Kikamba ‘kukwata’, others say ‘alinishika (in Kiswahili) to mean he touched me. You know, the meaning is different especially in sexual offences, when they interpret to ‘alinishika’(in Kiswahili) when you use the kamba word, they actually mean that act eeh! {to rape}. But now the interpretation that you get, that ‘alinishika’, then you write ‘he touched me’ you see that it brings a totally different meaning. So those are the problems that we encounter and I don’t know how best to curb that, but these are some problems we are living with).

This only proves that a course in interpreting is necessary, and so are dictionaries. In turn the people appointed should be specially and specifically trained in interpreting.

The magistrates also felt that if the use of these indigenous languages is extended to other sectors such as public offices like the county assembly, hospitals, Huduma Centres, just to mention, but a few, it would give indigenous languages more value and so officers in various sectors will be able to offer better services to everybody in the county. Interviewee one felt that there should be civic education for children to learn to be proud of their languages and culture, especially as shown by their wish to use English/Baptismal names other than their indigenous names. The magistrates felt that there is a need to support their identity.

“We are Africans are losing our identity. Actually we are losing it. We want to be so westernized so that a child is so comfortable using French, another person’s mother tongue. We are supporting other people’s identity and not ours.”

To preserve our identity, the government needs to support indigenous languages, especially in school curricula, and to elevate their status to regional official languages.

Interviewee two felt that the use of vernaculars should be extended to police stations where statements of offences are made. The argument is that there are some police officers who are Kambas here though not necessarily from Machakos, so if a person wants to record a statement, they can do it in the language they understand best.

“So if in that area can be allowed to use their languages in an official way, I think it can help us a lot and it is not just for justice, it is for even proper expressions and communication.”

The magistrate may also not see some aspects of communication like expressions that are not verbatim because usually, the magistrates write what is said all through and so have no time to look at the speakers. It is worse when the magistrate has to listen to interpreting. It would be better for the magistrates to hear these witnesses themselves to compensate for not being able to see because they are recording the proceedings. Interviewee two says:

“...the problem is that you are the judge, you have constantly been writing. So you cannot be writing and at the same time be observing the speakers during the proceedings. You can make comments and this will assist you in making the decision. You are allowed to do that but now you are busy writing. You have no time to look at the person speaking, so it becomes a problem...there are people who are comfortable speaking their own language so that if they are allowed to speak Kikamba, they will give all the necessary details, but if limited to Kiswahili, they might miss out on some important evidence. If they say it in Kikamba, they will say everything and I will get the information myself.”

The judiciary, according to the magistrates, should re-organise its language management during court proceedings. Interviewee three said that the judiciary is still adversarial, and so we are expected to sit and listen except for the vulnerable witnesses where they can interject. Interviewee three felt that it is wrong to listen to wrong interpreting and not correct it. The argument that magistrates will be considered partisan is only one-sided. They solve a problem by creating an equally bad or worse one. Interviewee two says:

“...they are looking at one aspect of justice and ignoring the likelihood of bias, but you know that if they look at the wider aspect of justice, we need to in co-operate these things.”

This was in reference to having a judge/magistrate who belongs to the community so that they can speak their mother tongues, and allowing them to intervene where the language becomes a problem.

“If you know the language you should be allowed to correct. You are the one in-charge, at the end of the day, it is your proceedings. You are the one hearing the case, you are the one making the decision, and so if something is wrong, you correct it.”

Other mistakes made during court proceedings were pointed out. Interviewee3 said:

“There is the beauty of being represented. But the advocate would not be for the accused person, if anything he is very happy when the right language does not reach the court. They would not point out that this interpreter is not pointing out what the witness is saying.”

This means that it is difficult to achieve justice if the people expected to help the accused person or the accuser and the witnesses are not willing to let there be proper communication. Interviewee three proposes all participants to use a language they all understand. She also proposed that interpreters be audible enough so that whatever they say may be understood by everyone in the court.

Interviewee four complained that in some court proceedings, complainants are even barred from speaking, especially by their advocates. The advocates take all the responsibility and assume that their clients would not need to speak because the advocates know all there is to be known and so can fully represent their clients. It is worse when clients do not know English because since they are not speaking, there is no interpreting. They are therefore excluded from hearing the proceedings. Some people insist on hearing what transpires in court. If the language is common,

then justice would be better served. Because of this, Interviewee four felt that mother tongues should be given an official status so as to accommodate everyone involved.

Interviewee four said that it would be better for the accused person and the witnesses to speak directly without the interpreter, but the recordings be in English. Interviewee eight sympathised with the accused person and said that through interpreting, the magistrate's decision on the case at hand is at the mercy of the interpreter. It is better for the magistrate to hear for themselves. He comments that:

“And even when this complainant is explaining or giving a version of the experience that he or she went through in that mother tongue, and the magistrate understands that language, and are saying some very deep things there which ideally are supposed to inform the decision of the magistrate to make, it is better than when the magistrate sits there, this complainant is speaking a lot of deep things and because there is someone interpreting the magistrate is at the mercy of what this interpreter will tell them.”

Interviewee five justified why using Kikamba like we do Kiswahili is possible. She said:

“... you know with mother tongue, the proceeding takes a long time. You see this interpreting, may be the magistrate may not be a Kikamba and this complainant is a Kikamba, you see they have to speak Kikamba, then I interpret, so that the magistrate can record. But when they speak directly in Kiswahili he is able to record directly in English.”

She further said that it seems that it is unofficial to use mother tongues in court. Mother tongues are being spoken but must be interpreted for other people in the court to understand. This is why it is an open court; people who are not Kambas also want to know what is happening. She made this comment to support that it is acceptable to use mother tongues in court, but it is treated as if this is not the case. She adds that the other people in the court that are unable to understand the language being used, (mother tongue) need to hear, hence an interpreter. To this interviewee, speaking in mother tongues during court proceeding is official and should be treated as such.

The court system may be pure British system but Interviewee five felt that English is poorly used and many do not even know what they are saying. The youth have reverted more to using Sheng'. It is only fair if they use their mother tongues if they do not know English and Kiswahili. But even then, if Sheng' is the best language that they can express themselves in, then they should be allowed to use it in courts. In fact, Interviewee six added that people should be motivated to use mother tongues even if it means grading them for employment.

The question on which language should be used by those who do not understand English and Kiswahili had varied responses. But majority of the clerks felt that for there to be justice, the magistrates should hear for themselves. Interpreting should be avoided. There should be a magistrate that knows the local language of that area as well as some other court officials. Interviewee six felt that if the magistrate was from the tribe, it would be easy for everyone to run the court proceedings.

Interviewee six also felt that the advocate could read in English to the court but speak to the clients in mother tongues, especially when those involved know the mother tongue. English is for purposes of recording. She reiterated that lawyers and advocates could be allowed to use Kikamba if it is made official.

“I think in that case, they would be allowed, if you can use Kiswahili as an example, I do not need to interpret Kiswahili, the lawyer uses Kiswahili and the magistrate too. It depends on the accused person. Actually in most cases the simple legal things, or when the conversation is not long, they can address the accused person in Kiswahili, but when reading something long, maybe like a judgment, that is when I need to interpret. But the normal words like ‘how are you’ may be ‘what do you want to tell the court’ examples like those, you can use Kiswahili. So I am thinking if the magistrate can understand there is no need for interpretation. They will just note down in English”.

Interviewee six felt that mother tongues should be made official too because a lot is lost in interpreting. So they would rather use mother tongues directly.

Together with the languages being used in schools, interpreters need more training, especially specialisation in their languages. Only those people that really know and understand the languages and have been trained in interpreting should be involved. Interviewee six felt that learning mother tongues should be accompanied by a promise of mother tongue use in future to acquire jobs such as interpreting; news casting etc. Calling an elderly clerk to interpret when they find the language too deep to interpret is only a temporary solution

On the question of whether clerks would wish their children to know their mother tongues, they all responded positively. They said they are not shy or ashamed of using their mother tongues, only sometimes it gets uncomfortable for some of them, especially the young clerks. Interviewee six felt that the future of mother tongues is bleak in that the current youth do not want to talk to each other in their mother tongues, so they would not wish to use it with their kids. He felt that in the next ten years, the language will be dead. But the elderly clerks, like Interviewee seven felt that mother tongues will stay for a longer time because there is poverty and three generations behind her are not educated as such.

Interviewee seven felt that when the magistrate is from the tribe and interpreting must be done, when the magistrate knows the mother tongue being used, interpreters cannot make mistakes and if they do, the magistrate will have heard the correct information. The magistrate may not speak in the complainant's language for fear of being deemed partisan. But certainly, they will have heard and understood the correct information. This applies even in cases where different ethnic groups are involved.

“...because now let us say I am a Mkamba and I accuse a Kikuyu, then how do you start talking to me as a magistrate in Kikamba, they will complain, say that the magistrate was talking to the client in his own mother tongue, somebody must interpret.”

On the question of promoting mother tongues to official status within their counties, in order to improve communication in subordinate courts, Interviewee seven felt that the media has already shown the way, so Kikamba should be promoted to the official status so that it can also be comfortably used in courts. Otherwise, she was opposed to the idea of using mother tongues,

saying that there are some abusive and offensive words in mother tongues, especially in the Sex Offense Cases (SO) that can only be said in another language. She further reiterated that promoting mother tongues is good because we still have the elderly and the illiterate that need to use it in court. However, she pointed out that the coming generation may not have anyone that does not know Kiswahili. Besides, there are many indigenous languages in Kenya (at least 42 tribes) and you cannot just use Kiswahili because law is very difficult in any other language other than English. There are things you cannot say in Kiswahili or Kikamba. It is easier to quote them in English. Interviewee eight felt that there is a need to make mother tongues official languages so as to avoid interpreting in which apparently some originality and some details are lost. If local languages are used, it will help solve a big deal with the services offered, the relations with the public, accommodating other languages, and the cognitive development of children. He felt that it is possible to have all court officials use the language of the accused person and the witnesses.

Other ways of promoting mother tongues in the counties include using them as languages of instruction in schools, and teaching them as subjects, especially in the lower primary. Interviewee eight complained that nowadays we have complicated the education system for our children because before they start proper schooling, they have stayed in the nursery schools for about four years, where they are told that the right language is English and Kiswahili. He calls it a time-bomb, probably because it will lead to the death of indigenous languages.

Interviewee eight felt that mother tongue use should be extended to churches, especially in the rural areas unlike what people are doing nowadays, interpreting.

4.2.3: Responses from the Observations

Respondents in this section include ‘CL’ who is a clerk and an interpreter, ‘EA’ who is an advocate of the plaintiff, ‘E’ who is a plaintiff and ‘M’ who is a magistrate. The clerk (CL) oscillates between the plaintiff and the advocate and sometimes the magistrate. When interpreting from the plaintiff, it is in Kikamba to Kiswahili, and Kiswahili to Kikamba when from the advocate (EA) to the plaintiff. The magistrate has to listen in Kiswahili and record in English.

Observation one

The researcher was able to observe court proceedings and noticed that in interpreting, it may not be easy to give the precise wordings for the information given. A plaintiff explains how she has a burning feeling and a lot of pain on her amputated leg. The clerk is not able to differentiate the burning sensation and the pain, and so important information is left out. The conversation below is an example of such misunderstanding.

CL *Na vau watililwe niwiw'aa woo* (**And that place you were amputated, does it pain?**)

E *Niniw'aa woo! Kondewaa vailalaka na saa ingi vaimbalya uu, uyithia niw'a kuma kwoko kuu kuimbalya na ngilalakwa muno.* (**I experience pain! The stump has a burning feeling and sometimes it is too painful, such that from the hand it's too painful with that burning sensation**)

M *She can sit, keti mum* (*Let her sit, Sit mum*)

CL *Ikala nthi. Anasema kwamba ana maumivu hadi kwa mkono wake* (**Sit down, she says that it hurts up to the hand**)

Observation two

The clerk seems to be carried away by what is happening, or maybe he sympathises with the lady that he forgets to tell the magistrate what the plaintiff has said. The magistrate had to intervene to have the interpreting, which was also poorly done.

CL *Watwawa sivitali ndakitali niwausyaisye?*[MT] (**When you were taken to the hospital, did the doctor examine you?**)

EA *Na akatoa report ya P3?* [K] (**And did he give a report, the p3?**)

CL *P3 isu, isu yausuiw'e niyo isu?*[MT] (**Is that the p3 that was filled?**)

E *Ii* (**yes**)

EA *Na ulipopelekwa hospitali ulipewa dawa za maumivu?*[K] (**And when you were taken to the hospital, were you given medication for the pain?**)

E *Mmmh* (**yes**)

- EA** *Na ulilipa risiti, uko na risiti ile ulilipa za hizo dawa?* [K] **(And did you pay, were you given a receipt for the payment of the medicines?)**
- CL** *Na ve risiti ila waivie ndawa? Ila wanengiwe sivitali?* [MT] **(And are there receipts for The payment of the medicines, ones that you were given at the hospital)**
- E** *Ndyaanewa risiti lakini ndawa natumiaa vu sivitali nesa utina kuuwa na mbesa.* [MT] **(I wasn't given but I was getting medication from there, until I started buying with money)**
- EA** *Nataka kumpatia hizi risiti.* [K] **(I want to give you these receipts)**
- CL** *Risiti nisyo isu syikwonanwa vu ila waivie sivitali.* [MT] **(Those are the receipts being presented there, the ones you paid at the hospital)**
- E** *Mmmm* **(yes)**
- M** *I need you to tell me what she says don't ignore what she says, ameongea mengi na sijasikia ukiniambia amesema nini* **(She has said so much and have not heard you tell me what she is saying!)**
- CL** *Amesema alienda hosipitali na akapewa dawa na risiti ndizo hizi. Alianza kuulizwa kama hiyo exhibit alitaka kuitumia* **(She said that she went to the hospital and was given medicine and the receipts have been presented. They started by asking her if she wanted to use the receipts as exhibits)**

Observation three

The plaintiff may find it difficult to comprehend what they are being asked even when interpreted. They answer to questions not asked or take long to understand what the jury requires to know.

- EA** *Mwenye gari?* **(The owner of the vehicle?)**
- CL** *Mwene ngali isu yaukongie niwe usikatite kotini* **(Is the person you have sued the**

Owner of the vehicle that knocked you down?)

- E* *Ii ndookie ulea asya niwangongie na ndaambona , na nininaeie...*(confusion as she answers and gives more information than what was asked) **(Yes he came to deny that he knocked me down and he didn't see me, and)**
- CL* *Wikulwa ii mwene ngali isu yaukongie niwe usikatite?* **(You are being asked if the person you sued is the owner of the vehicle that knocked you down?)**
- E* *Ya? (what?)*
- CL* *Mwene ngali isu yaukongie niwe uetete kotini ukasikata?* **(Is the person you've brought to court and sued the owner of the vehicle that knocked you down?)**
- E* *Yii tiwe nisikatite* **(Yes it is he that I have sued)**
- CL* *Mwenye gari ndiye nimemshtaki (K* **(I have sued the owner of the vehicle)**

Observation four

Some plaintiffs or accused persons are so old that they may not comprehend court proceedings. This is worsened if the language is not the same between the parties. This lady seemed to be lost in her answering until the judge noticed she really did not understand what was going on. The magistrate therefore corrected the advocate when she realised the problem was that the plaintiff was too old.

- CL* *Wakili waku niwaandikie andu aa eene ngali valua, utambite kuete kesi kotini* **(Did your advocate write to the owners of the vehicle a letter before suing him?)**
- M,* *How old is your client*
- EA* *She is actually 94*
- M* *94?*
- EA* *Yes*
- M* *It is actually important to determine age it's not good to assume some things, with her level of understanding, Is that one her statement; because*

there are questions that, she may not understand and she will attest in the court. Let's have the age on record. ?

EA But it's not eeh, that eeh, there are key people. At her age, in fact she was 87 when the accident happened

M It's important, (am recording nothing)(the magistrate said this to make the advocate at ease) , but it's important where you have elderly witnesses, it's important to have it in record how old they are.

EA Thank you your honour for correction of that mistake

M Ok

Observation five

Interpreting has a shortcoming in that a lot of information is left out due to ignorance or assumptions. When the plaintiff was asked what she wants the court to do for her, the reply she gave was not fully interpreted. The clerk seems to assume a lot of the information given. He seems to assume that what has been said is not important, or maybe people have understood and so there is no need to interpret. The plaintiff said that she is starving, suffering and needed treatment, but this was not relayed.

EA Sasa unaomba koti ikufanyie nini kwa hii kesi? (Now, how do you want this court to help you?)

CL Wenda kwia koti ata, wenda koti ikutethye ata?(what do you want to tell the court, how Do you want the court to help you?)

E Ndienda koti imanthie ilovia sya kitulu kii kya kuu, ndikwiw'a thina, ndikwiw'a nzaa na ngiitya niniw'aa woo. (I wish the court to help me get money for this stump of a leg, I am suffering, I am starving, and I need treatment for this leg)

CL Nataka koti inisaidie kwenye gharama za...(I want the court to help me with the expenses of...)

E ii mwa nimanthiwe ilovia ni... (Yes, please get me money...)

CL sawa (o.k)

E iiiii (yes)

CL Nataka koti inisaidie kwenye gharama zimeingia nikitibu mguu..... (I want the court to help me with the expenses that I have incurred while treating this leg)

4.3: Conclusion

A total of forty four questionnaires were distributed among the defendants and defence counsels, witnesses and members of the public present in Machakos law courts at the time of collection of these data. Although not all questions were answered in each questionnaire, a hundred percent return rate was received. Eight interviews were carried out and court proceedings observed and recorded for three days.

Various interesting views came out of the responses. It is clear that interpreting is not the only solution to communication barriers in subordinate courts. Rather, officialising indigenous languages within the regions in which they are dominant may be a solution. These responses will be analysed in chapter five.

In conclusion, this chapter presented data in graphic form and narration. It has shown how often mother tongue is used in courts, and the impact it has on its users. The language choice, preference and language use of the respondents is brought out by the responses from the three instruments used: questionnaires, interviews and observations. The country's language policy is a key factor and influences the language use in subordinate courts regardless of the court's language policy, if any. Kiswahili and English languages may be the country's official languages and widely used, but the indigenous languages are also very much required and used. Interpreting therefore takes the centre stage when there is use of indigenous languages. According to the respondents, it is not a satisfactory practice to have interpreting when one is not competent in the court's language. They would rather speak directly in their own languages to a judge that understands what they are saying.

The data presented in this chapter are analysed and discussed in chapter five.

CHAPTER FIVE

ANALYSIS OF DATA AND DISCUSSION

5.0: Introduction

5.1: Analysis of Data

Chapter four presented the data collected using questionnaires, interviews and observations graphically, statistically and narratively. This chapter will discuss findings from the data collected. It will demonstrate how language in subordinate courts for the same individual is managed. The indigenous languages find their way into the official settings even when the language is designated for family relations communication, socialisation and instruction in lower primary schools.

Chapter five recalls the research questions and the questions that were raised in the research instruments, and discusses the respondents' perceptions of language uses, language needs, and language preferences when they seek services and justice in subordinate courts. The responses presented in chapter four demonstrated how people feel about their indigenous languages compared to other languages such as English, Kiswahili, mixed languages and sign language in official contexts. This chapter comments on patterns of responses captured. It discusses the actual situation caused by lack of a language policy that accommodates everybody during a court proceeding. The discussion gives more information on ways and ideas about the solution to the problem of communication during court proceedings.

In order to understand the respondents' language use, language needs, and language preferences, a demographic analysis was carried out. The analysis established why the respondents responded the way they did for most of the questions posed. This is an indication of the kind of people you find in a subordinate court. These include those that know and understand language use in the court because they are civil servants and so already in the system; those that are non-civil servants that may not feel compelled or understand the need for a common language; and the students that may not want to use their mother tongues but sometimes Sheng', English and Kiswahili. This analysis also profiles the respondents in terms of gender, age, level of education, where they were brought up and their mother tongues. This profile enabled the researcher to again understand why the respondents answered the way they did. The fact that 75% of the

respondents were male, while 25% were female may not imply that men are the ones commonly found in courts. They were the ones who were more willing to fill in the questionnaires. This can be attributed to the fact that they were more aggressively willing to face the challenge of communication, probably due to the language choice. Women may be good in language use, but the male respondents were not brave enough to read and answer the questionnaires in English or speak in English during the interviews. This is not to say they do not know English, but they just did not feel comfortable enough to use it. Most of the female respondents wanted assistance in filling in the questionnaires.

In terms of age, the 19-27 year-old range was the largest. This category comprised of thirteen (13) students who were there for various reasons such as being witnesses, accused persons or to support their relatives. Their languages of use in courts were determined by their backgrounds and the language of the court. This being the youngest category, they are expected to use more Sheng' and to avoid using mother tongues because their era disparages mother tongues and exalts English and Kiswahili. Ages 28-36 years and 37-45 years comprised the working class, and their use of languages was determined by their exposure to the languages, where they were brought up and their levels of education. This being a middle aged group, most of the members have been in contact with all the languages (official, national, mother tongue and Sheng', even sign language) through schooling. The aged, 55-63 years were court employees and knew all the languages, that is, their mother tongues, English and Kiswahili. This implied that age was not the main factor that determined the languages one was able to use in courts.

With regard to the educational level of the respondents, it was clear that courts serve all levels. Education alone was not a factor to determine a respondent's competence in any of the languages used in courts. Generally, the researcher needed this specification to help find out the calibre of people to expect in a courtroom and the place of particular languages in relation to the people in there.

The aim of investigating where participants were brought up was to determine if they knew their mother tongue. Most of those that were brought up in towns understand their mother tongues if the parents use them in the house, but generally, they do not use them because they do not find

them fashionable or prestigious enough. This is the category that uses more of Sheng' in their youth, Kiswahili and English later on. Those brought up in the rural areas know and use their mother tongues as well as English and Kiswahili if they went to school. It is important to note that the civil servants are mainly brought up in the rural areas (40.9%), meaning that those working in towns know their mother tongues, and so are able to serve those that will come from villages using their mother tongues.

The report on the respondents' mother tongue shows that the dominant language in Machakos County is Kikamba. Of course, there are other indigenous languages in the county, including Luhya, Gusii, Kalenjin and Kikuyu. Since there are civil servants and students, it implies that the national and official languages are used so as to take care of the non-Kamba people in the Kikamba dominated county.

5.1.1: Language Use

The question about which languages are used and how they are selected during subordinate court case proceedings elicited mixed reactions. Several questions were asked to answer this research question.

5.1.1.1: Analysis of the questionnaire

Question 2.1: How do you speak the language(s) you know?

The data elicited from question 2.1 on how they speak the language(s) they know implied that it is easier to speak each language alone. Out of a count of 44 respondents, only one claimed that he or she is unable to use any of the three languages without mixing them. This was indicated by the respondents' reply that they do not speak it at all, they speak it with great difficulty, or they speak it with some difficulty. Kiswahili is the most easily spoken language followed by English and the mother tongue, when spoken alone. Apart from the factors mentioned above contributing to this representation, it is important to note that Kiswahili, being a national language, is known by many citizens. The terms used in court are better expressed in English than any other language; hence a challenge in choosing the most appropriate language in court because there are also those that know only their mother tongues.

Following the difficulties encountered in the language choices made, the responses showed that the respondents end up mixing languages in their speech. Mixing mother tongue and Kiswahili or mother tongue and English meant that mother tongue is commonly used provided that they replace challenging words with their Kiswahili or English counterparts.

Sign language is not used by many respondents because they have not been exposed to it. This means that sign language is a recognised language among other languages but people do not know how to use it. Sheng' is easily spoken by the youth. Both sign language and Sheng' are not common languages, but they are in use, more so in subordinate courts only when there is a deaf and dumb person as a witness or accused.

From this analysis, the respondents said that when they speak each language alone, it is easier than when they mix them in an attempt to express themselves. Kiswahili is the easiest followed by English and then mother tongues. However, a relatively big number of people represented by the respondents are competent and proficient in their mother tongues alongside the official languages. When they speak to those that do not know the official languages, they tend to mix the mother tongues with Kiswahili and English as was shown in their responses by their ability to mix them. Other times they find themselves speaking more Kiswahili or English than the mother tongues, and therefore losing their fellow interlocutors. It is at this point that people do not get to understand what has been said in court, and end up getting a misguided judgment. The reason for using a language not known by all the parties involved is first and foremost, the language policy. The policy elevates some languages while leaving others behind. This gives the users of the particular languages attitudes that determine how and whether to use those languages. Hence they may use them because they are the languages they know well, or because the languages will put them in certain social class or they use them because they have to.

When a language policy is decided upon, it is intended to account for an individual's choice of languages within a societal setup (Spolsky, 2009; Mwaniki, 2004). The fact that a party does not know English or Kiswahili, yet they are in court where these are the main languages makes the party want to use them. They are, however, disadvantaged because they think they will be better understood. Yet, it is not always so because they are not competent in the languages. The other party, for instance, will choose to use their mother tongues irrespective of whether they

understand Kiswahili and English or not. The bottom line is that these people do not want to embarrass themselves with a language that they are not competent in. Others simply feel that they express themselves better when they use their mother tongues.

People find it necessary to modify their language practices in order to fit in the society. They hold certain beliefs that make them have a drive to use the languages in order to fit in the societal status. They will therefore end up using languages they may not be competent in or force languages on people that may otherwise be better using other languages. Such are the parties that will use English or Kiswahili when they are not appropriate for everyone involved. Code-mixing is also another disturbing practice that affects those that are not competent in the languages involved. One or two words code switched may be the most important words for the meaning of the whole statement given. Yet, when switched to those other languages, they may disrupt and change the intended meaning of the statement for the recipient. Code mixing therefore may not always be the solution to language barriers.

In chapter four, the respondents chose the languages they did in answering the question on why they preferred those particular languages to be used during court proceedings because:

- They are easily understood and comfortable to use.
- They are the dominant languages in the area, widely known and widely used, therefore catering for everyone.
- There is a need to consider people with special needs such as the deaf, those in mixed marriages, the immigrants, including the illiterate.
- The language has a better choice of words with more weight and accuracy in meaning.

These points attest to the fact that people want to optimise language use in courts. They have no reason to refrain from the use of their mother tongues, especially not when the court is not located in the cities where there are mixed tribes. Not when they understand the languages better than the official languages, and certainly, not when they are very comfortable in them. In many cases, official languages could be intimidating, for they suggest a lot about the user hence the reason why some people would feel shy or ashamed to use certain languages. For instance, that the user has not schooled well, or that he/she belongs to a certain social class. A reference to the

presence of other community members among this major community is excusable, for they can use the national and official languages. This is to say that although there is a dominant ethnic group, there are people from other ethnic groups among them. They therefore use Kiswahili and English, and some learn Kikamba and therefore fit well among the Kamba people. After all, any Kenyan can live anywhere in the country and own property, but even then, their numbers within these communities are usually very small, hence cannot warrant the rest of the indigenous community to use a language that they are not competent in.

Questions 2.2: and 2.3: You are ashamed and shy to use your mother tongue.

From questions 2.2 and 2.3, the researcher wanted to find out if the respondents were ashamed of or shy about using their mother tongue. From the data elicited, 94.3% and 84.9% of the respondents that are not ashamed or shy respectively of using their mother tongue was a very high representation. This means that given the opportunity, people can use their mother tongues anywhere any time, especially in official contexts. The small percentage that is ashamed and shy of using their mother tongue could be so because they have grown and lived in towns, or just have a negative attitude towards their mother tongues although they were brought up in the rural areas, and so do not show any affiliation to any mother tongue. They also fear being deemed backward. But generally, from the data collected, it has also been established that the age bracket or the education level of the respondents or where they were brought up does not influence how they feel about their mother tongues. Certainly, age, education and where they were brought up may not be the reason why one may or may not feel ashamed or shy about their mother tongue. The data results meant that even with the young age, good education or having been brought up in towns, many people know their mother tongues and have no negative attitude towards them, so they can use them comfortably in courts.

The researcher sought to understand how much they understand when spoken to in their mother tongue while in subordinate courts as a follow up of whether the respondents were ashamed or shy of their mother tongues. Since the majority of the respondents understood everything and about all, 72.4% and 13.8% respectively, it means that most people in court understood the indigenous language common in the region. It has been shown that age and level of education do not interfere with their understanding of their mother tongues. In fact, they understood it just the

same as they do English and Kiswahili. But those brought up in towns understood their mother tongues less compared to those brought up in the village, probably due to inadequate exposure. But still the majority of them, 50% that understand everything and 16.7% that understand about everything show that even in towns, parents have exposed their children to their indigenous languages. It therefore follows that though the language of the court is traditionally English, mother tongue can be used comfortably.

The researcher further sought to know how often the respondents use their mother tongue. It could be frequent because they are within the mother tongue speech community; so they use it always. If they use it often it means that these people are in constant contact with speakers of their mother tongue. The same applies to those that sometimes use their mother tongues, only for them, their fellow interlocutors may not be as near as for the earlier category. But those that rarely use their mother tongues are probably far removed from their speech community and family. For the younger ones that rarely use mother tongues, it could be because there is a lot of movement away from their mother tongue speech community mainly due to schooling factors. The older ones always use their mother tongues as they may have retired back to their villages or are working there. Those that use it often and always could be because the younger age group could be working in their mother tongue speech communities while the older group could also be working, or no longer at work but within their speech community. The middle ages sometimes or often use their mother tongues because of work or school-related factors in relation to the speech community they find themselves in. The education level one reached does not affect the frequency of one's use of their mother tongue, probably what affects is where they are because of their work and employment. Their backgrounds also influence their use of an indigenous language. If one was brought up in the village, they definitely use them a lot because they know them. Those brought up in towns may find it a challenge to use an indigenous language because they may not have been exposed to any. If they have, they may not have had enough practice to have internalised the language. This explains why no respondent uses them always, but rarely (33.3%), sometimes (33.3%) and often (33.3%).

The researcher sought to understand how much the respondents like it when people speak to them in their mother tongue. This again brought out their attitudes towards their mother tongues.

The majority of them said that they like it very much. This implies how well people value their mother tongues. However, the small percentage of young respondents (probably brought up in town, just completed primary school or secondary school and are witnesses) said that they did not like it very much due to their associations with school and work, as well as lack of exposure to the language. They are ashamed and shy about using their mother tongues. All levels of education except those that completed primary school responded to liking very much when people spoke to them in the mother tongue. This implies that being highly educated does not mean hating being spoken to in the mother tongue, neither does being raised in towns. This is an indication that people like their mother tongues, and given an opportunity, they would use it in all domains, particularly in the judiciary.

5.1.1.2: Analysis of the interview responses

When the magistrates and clerks were asked about the languages they encounter in court, they named various mother tongues, Kiswahili and English. This only proved that in courts, many people use their mother tongues. Interpreting has been the only way to communicate. It is also clear that there is multilingualism in this area because there are other mother tongues apart from Kikamba. There are also monolinguals who only know their mother tongues.

The magistrates agreed that although they are supposed to ask the accused person and witnesses to choose a language to use in court, they are often caught up by time, and so they use Kiswahili. They feel the process of interpreting takes a long time, and so opt not to engage an interpreter and so force Kiswahili on the accused person or the witness. This is a linguistic right that is denied. Not all people can communicate in the official languages. The court is supposed to provide interpreters for those using their indigenous languages. The clerks confirmed that the court needs to use a language that accused persons and the witnesses understand. But the use of a representative that uses only English again infringes on the clients' linguistic rights because they do not get to understand what is being said in the court.

The magistrates said that children would rather use their mother tongues because they are fluent in them. This agrees with the responses from the young category of 19-27 years who supported the use of mother tongues in the questionnaire. Children learn their mother tongues at home in

their early days, and it is only at school where they are denied their use and then they switch to English and Kiswahili. They are comfortable using their mother tongues even in the most sensitive moments like during cases of child abuse.

The magistrates report that they sometimes write verbatim when the accused persons and witnesses use their mother tongues. This only shows that some words and meanings are irreplaceable. The only way to get to the truth clearly is the use of the language their clients know well. The magistrates write exactly what is said, and by so doing, they do not distort the meaning. This only means that mother tongues should eventually be used in official capacity, and can be used much more, a fact that seems not to be noticed by policy makers and language handlers. This will enable the magistrates to serve justly.

Some magistrates said that some clients' responses in their mother tongues when spoken to in Kiswahili during court proceedings only prove how important and widely used mother tongues are. The researcher as well observed a middle-aged woman that was answering everything in her mother tongue although she was spoken to in Kiswahili. Despite the magistrate's plea, she responded in Kikamba, which she knew better. The fact that these people can understand the official languages but would not express themselves in the same language clearly only shows how forcefully mother tongues find their way into the official contexts. Since the magistrate must record in English, this calls for interpreting, which is mainly in Kiswahili. The magistrates have to interpret for themselves and translate into English for records. Interpreting is a long chain, and can result in the distortion of the original meaning.

The development on clerks not knowing their mother tongues and being accused of pretence only tells a lot on how poorly the work of interpreting is done. If clerks do not know their mother tongues well, which the researcher found to be an honest response, and yet they need their jobs so much, then they lie about their proficiency in these mother tongues. This only means that courts are failing when it comes to interpreting. If their boss forces them to do what they were employed to do, then the work is poorly done, leading to poor judgment and hence injustice.

Most of the clerks' and magistrates' wish for their children to know their mother tongues is clearly a contradiction because they themselves seem not well conversant with their mother tongues. But they do not mind their children knowing them. The realisation that mother tongues are also used long after school is the reason for this change of opinion. Mother tongues are widely used and many parents would love their children to know them. But parents really do not see the importance of these mother tongues in their children's lives. They need this enlightenment so that as parents and teachers, they should stop misguiding their children and learners to hate their mother tongues.

5.1.1.3: Analysis of Data from the Observations

The observation that clerks are unable to interpret correctly by finding the exact meaning of the words proves that interpreting is not working and may lead to injustice. Just as the questionnaire respondents commended, when you know a language, you are able to get a better word with an accurate meaning. The interpreting given on the plaintiff that was amputated (observation 1) missed a lot of vital information, such as the two types of pain expressed. For instance, the plaintiff said:

“Niniw’aa woo! Kondewaa vailalaka na saa ingi vaimbalya uu, uyithia niw’a kuma kwoko kuu kuimbalya na ngilalakwa muno.”(in Kikamba)

[I experience pain! The amputated place has a burning feeling and sometimes it is too painful, such that from the hand it’s too painful with that burning sensation].

This was interpreted as:

“Anasema kwamba ana maumivu hadi kwa mkono wake” (in Kiswahili)

[she says that it hurts up to the hand]

This interpreting given by the clerk is obviously lacking in the intensity of the pain that this plaintiff was feeling. He summarises her agony in a very dismissive way. If the magistrate was a Kamba like the plaintiff, the understanding and hence the judgment would probably have been

different. Because the magistrate was not a Kamba, she understood that the complainant's pain goes up to the hand and did not get the fact that the pain was intense.

Observation two points out a common mistake made by interpreters. Some of them go to the extent of empathising, and not just sympathising with the speaker, they get carried away forgetting to respond to the court. This effect could have been utilised by the magistrate in his judgement. Again, the fact that the magistrate never got to know what the complainant said is detrimental to the case.

Although it is normal for people not to understand what they are being told, it is worse when they have to be told repeatedly and still fail to understand because initially, they were told in a different language or there is a word they do not understand. Observation three relates to a case where the clerk kept on restructuring the question in order for the complainant to understand. Although they were using Kikamba language, it was difficult for the plaintiff to understand 'the owner of the vehicle' '*mwene ngali*' (in Kikamba). Probably it was because of her age as seen in observation 4, but still, this confusion should have been noted by the magistrate, but it is not the place of the interpreter to keep trying to clarify. If they were all using the same language, the case would have taken a different direction.

There are some common cases that affect the elderly, such as land cases, family disputes and sicknesses, including accidents like the one at hand. These cases also require a language well known to all, especially the plaintiff. They may not comprehend even if they knew some Kiswahili and English. So their mother tongues may be the right languages if only to avoid getting lost or misled during the trials.

In observation five, although the plaintiff understood what she was asked and answered it, when the interpreter began to interpret, the plaintiff kept on cutting the interpreter short; and so the answer never got to the magistrate as the plaintiff had said it. The interpreter generalised the plaintiff's statements. This means that a lot is lost in interpreting due to forgetfulness and distractors.

5.2: Discussion

Constitutions and policies determine the languages to be used in an institution. However, these policies are not implemented in many cases. When the respondents were asked whether they are shy or ashamed of using their mother tongues (question 2.2 and 2.3 of the questionnaire), the common response was negative, with few young people feeling uncomfortable using them in public. This discomfort may have been brought about by the fact that it has not been made a policy to use mother tongues in such domains. Arguably, people do not seem to shy away from using Kiswahili in court because Kiswahili has been elevated to official and national language status, yet it is an indigenous language in Kenya. So if the same were to be done to Kikamba, then no one would feel any shame or shy away from using it. As it is today, one would only be seen as backward or illiterate for using an indigenous language because they are seen not to have learned the languages in school. From a personal observation, it is in the universities where people group themselves into their tribes for welfare purposes and always speak in their mother tongues, yet the university is the highest level of literacy. It is therefore not a matter of being literate or backward but policy. If Kikamba was the official regional language, everybody, including the younger generation, would be comfortable using it.

Spolsky (2009) looks at the beliefs and consensual behaviours of members of a speech community, and concludes that stigma, lack of value for a language and inadequacy of the members to appeal to the others when they use a language are some of the negative results from language policies. Stigmatisation is common among the rural area dwellers, especially because even if they know the official languages, they do not practise them. They therefore have no command of the English or Kiswahili language. When they present themselves in public places like courts, they are often alienated because they know they could use the official languages, but have no confidence in themselves that they can competently use them. They are also aware that they could use their mother tongues but their conscience appeals to them to use a common language because that is a public place. All these feelings lead to discomfort. Their mother tongues become valueless because the language of the court seems specified and the people serving in the court are using the official languages. When the parties in court do not share a language, the involvement of an interpreter is often the solution. This again belittles the parties concerned, because without the involvement of a third party, they cannot possibly communicate

what they want to. This third party involvement intimidates the parties and makes their language inadequate in court. If the indigenous languages were made official in their regions of dominance, then no one would feel shy or ashamed or inadequate or be stigmatised for using Kikamba, their indigenous language.

5.2.1: Language dominance

Language dominance is associated with bilingualism, and can be defined as “the relationship between the competencies in the two languages” (Treffers-Daller, 2011: 148). Most scholars have further associated language dominance with children and their bilingualism (see Cokely, 2012; Treffers-Daller, 2011; Genesee & Nicoladis, 2007; Bernardini & Schlyter, 2004; Pennebaker, Mehl, Niederhoffer, 2003). In this study language dominance is the language fluency by a majority in a bilingual community. Language ability is determined by the lexical knowledge and the variation within an individuals’ lexical knowledge. According to Treffers-Daller (2011), oral fluency can be used to determine bilingual dominance. It is this oral fluency that is the key to identifying the main language of a community. The most common language should be the one used by the people in the area where it dominates.

The indigenous languages are common to the people living outside major cities. In the family set-up, and as proven by the respondents’ reaction, these indigenous languages are spoken by parents, children, neighbours and even in offices. The respondents said that they speak the languages they know well even during court proceedings. Although there may be other common languages like Kiswahili and English, it has come out clearly from the respondents that they may not be as ‘common’ as expected because people may overlook English and Kiswahili and instead use their mother tongues. Oral fluency in mother tongue makes the mother tongues to be used more often and comfortably than international and official languages. An educated person with the knowledge of all the official languages of a country may not communicate with those that matter at that hour of need because of language barriers. An illiterate person in court seeking justice may as well not be able to communicate because of language barriers. Although interpreters may be used, challenges that come with interpreting become another hindrance to smooth and correct communication. The magistrates and clerks pointed out that interpreting in courts is not professionally done and so cannot be trusted. The members of the public in court

following the proceedings could be heard complaining and correcting what was being interpreted until the magistrate ordered them to be quiet. This is dissatisfaction in the system of justice for those that cannot communicate in English or Kiswahili. Lawyers, judges and prosecutors must therefore review the language policy during court proceedings in order to accommodate everybody.

Language use in court is one proof of how indigenous languages have dominated in such areas as in Machakos County. The use of interpreters is so wide and the magistrates agree that interpreters do a shoddy job of interpreting. As pointed out earlier, interpreters are picked on the basis of their knowledge of their mother tongues and not their professionalism. They therefore do not do correct interpreting because most of them are not trained. Multilingualism in an area does not mean everybody can be addressed in the official or national languages. Just to re-quote a magistrate:

“...Certainly Kambas enjoy their language so much, they feel that they can express themselves better, yet some of them can speak Kiswahili so well, but they insist on speaking in Kikamba.”

Oral fluency matters a lot if anyone is going to communicate well. People want to use languages they know will express what they want to say. Otherwise people who know Kiswahili, the national language, but do not want to use it are not doing so without a motive. It is because they do not have confidence in themselves to say the correct thing in the language. They prove that oral fluency is very important if one is to communicate clearly. A common language for all makes life easier, especially in uncomfortable situations such as court proceedings, addressing multitudes and so on. The researcher agrees with Pennebaker et.al (2003:1) that the words that people use are diagnostic of their mental, social and even physical state, and that they give a great deal of information about themselves, their audience and the situation they find themselves in. For people to choose a word to use, they will have already chosen the language. And to get this language choice correct, they will have considered the situation and the people listening. Paradis and Nicoladis (2007) call it interlocutor sensitivity, which people show in language choice within their linguistic recourses. This is where language dominance shows a case of

balanced verses unbalanced bilingualism for at least one language will take the lead in proficiency and competency.

The issue of code-mixing came up in the questionnaire responses. In bilingual set-ups, some utterances may prove to be difficult to make because of reasons ranging from incompetence in the languages, fright, wish to assert oneself within some social parameters and so on, as pointed out by the respondents. In such cases, people tend to mix languages. But even then, in this situation, Kikamba the indigenous language took prominence. Although some respondents would understand the official and national languages, when spoken to in courts, they responded in their mother tongues. This only means that when governments and policy makers insist on the use of national and official languages in official public forums, they are only punishing their own citizens.

5.2.2 Language use for justice

Every country relies on their courts to accord justice. Those that require court settlements come from all walks of life, ranging from children to adults, the rich to the poor, the literate to the illiterate, the villagers to the town dwellers, the citizens to the immigrants, and the list is long. Language use in subordinate courts is not an easy topic of contention because the language of the court is traditionally English. But does it mean that all courts in the world use English? Definitely not. There is French, German, Italian and so on. Just because Kenya was colonised by Europeans does not mean that it must remain colonised even in their own places of justice. And because it is not possible to have only those with proficiency and competence in English in courts, the courts have employed the use of interpreters. The use of interpreters has been proven disastrous, by court users, to the attainment of justice. This is because the interpreters are not professionals for they have not gone through any training. They were employed as clerks that can double as interpreters on the merit of completion of high school with a grade above a C and competence in their mother tongues. Because of this, they have poor performance in interpreting, and hence disastrous in the attainment of justice. As the respondents pointed out, there is no professionalism in interpreting. It is not easy to interpret accurately what a witness or an accused person has said. It is therefore better for the judge and lawyers to hear for themselves what the witnesses and the accused persons have to say.

In Table 6, it is clear that the majority, 75%, of the defendants and defence counsels understand mother tongues very well. Bearing in mind that these people face tough challenges, including life imprisonment or death sentence, it is only fair to use the language they know well. 68.8% of the witness respondents expressed the same argument that if mother tongues were used, they would understand everything. 80% of the members of the public respondents understood everything as well, considering that the area served by this particular court is rural. The bottom line is that the people being served by these subordinate courts in this area are mostly the inhabitants of the area, who are mainly one speech community. Some of the workers are employed from other regions just because of the policy of having people work anywhere in the country. The language that seems convenient for everyone being served is the mother tongue.

The magistrates recommended that there be at least a speaker of the dominant language of the area among the magistrates and the prosecutors.

Interviewee 1 “And I want to imagine that eeh, if we looked around, like now that we have the Constituencies which have been divided along our ethnic groups, if it is Machakos constituency, it is mainly the Kamba, so it is possible to have one or two Kamba magistrates, kamba lawyers, and prosecutors amongst the other tribes because the community is mixed. We don’t want to dismiss that. So that we...where there is need eeh ... interpretation, that officer can just come in, and do it with a lot of understanding and appreciating what the person is saying.”

The assumption has always been that there is going to be favouritism towards the people of the magistrate’s community. But that thinking may not hold water because the magistrates meet people from their tribes even in other areas. The idea of having a magistrate and a prosecutor who understands many of the members is more valid than basing our dissatisfaction on corruption and denying the majority people justice. In fact, a further recommendation by the magistrates was to have indigenous languages made official in their areas of dominance so that people may feel comfortable using them. The same way Kiswahili is used in courts, where everybody feels comfortable using it, indigenous languages can serve likewise. These

recommendations will accord everyone justice. A further recommendation suggests that the use of indigenous languages be extended to other public offices such as police stations so that everybody may be served appropriately.

There is some amount of negligence during court proceedings. The magistrates said that although they are supposed to ask the defendants and witnesses for their language of preference, often they find themselves caught up by time and decide to use Kiswahili. Kiswahili is not any better because the assumption is that everybody knows it, which is not the case. They may understand it when spoken to as shown earlier in this chapter and in chapter four, but they may all not be able to express themselves in it.

The adversarial approach used in court does not allow the magistrates to talk much as they have to listen to prosecutors, defendants and witnesses as they debate issues in court. If there has to be interpreting, a lot is distorted because as pointed out earlier, it may not be professionally done and the process of interpreting comes with many challenges. The process is also long because besides interpreting from mother tongue to Kiswahili by the interpreters, there is also interpreting from Kiswahili to English by the magistrates as they record the proceedings. The magistrate respondents recommended that the court reorganises its language management during court proceedings so that they can hear for themselves what is being said, and properly ask or respond where necessary. This can only happen if the language of communication is common and probably official.

5.2.3: The language of the interpreter

According to the respondents, the qualification to become a court clerk needs one to complete form four (Secondary School) and is competent in their mother tongue. The court clerks double as interpreters. However, most of the current generation has not learned their mother tongues in the lower primary school as it is the requirement in Kenya. Most parents have taken their children to academies and schools that do not teach in mother tongues in the lower primary. This denies them the chance to develop their indigenous languages. Educationists have decided that mother tongue is not good enough for it will lead to poor performance in exams. There seems not to be support for learning mother tongues, yet interpreting is a skill and a career that requires

training. The European Commission (2009:7) asserts that ‘interpreting is a profession.’ One needs to learn special skills that cannot be improvised in order to be effective. The Commission further specifies that you can only interpret into a language you know perfectly, ideally, a mother tongue and be able to do it clearly, eloquently and without many ums and ahs. The magistrate respondents in this research felt that their interpreters are not efficient in their work. They do not know their mother tongues, they do not know how to interpret and ethics and etiquette involved in interpreting because they are not trained and did not develop their mother tongues. It is therefore a sorry state when a magistrate has to judge unfairly because the interpreter said the wrong thing, or failed to say what was communicated.

It is not just the wording that is involved in meaning derivation but the non-verbal cues as well. Interpreters are expected to hold a face-to-face communication during court proceedings in which all shades of meaning should be perceived. They are expected to assume the voice of accused persons or witnesses, speak in the first person with their ideas and convictions in the same intensity as the source speaker. When the process of interpreting is proceeding, most of the time, the magistrates are writing. In Machakos law courts, there are no scribes or recording machines to record, and most importantly, there has to be interpreting and translation into English for record-keeping. They therefore do not have enough time to observe these cues. They are entirely depended on what they hear from the interpreter. This gives the researcher a reason to argue that the magistrate should directly hear for himself from the party involved. There are more reasons why the magistrate, the judge, the defence counsels and all the parties involved should have a common language, especially the language of the accused persons and/or the defendant. They need to see and perceive the meanings as they are presented, from the accused person’s and the witness’ point of view.

Children are also affected by interpreting. Most of the cases that find their way into courts for children are about abuse. Interpreting poses a possibility of intimidation on the children. Just as reported by a magistrate, Interviewee one, children could fear to speak in certain languages because of the meanings of certain words and their societal implications of identifying them. They fear saying what they must lest they are attacked later. Even when the magistrates speak to them in their chambers away from the accused persons, children do not trust the magistrates as

long as there is an interpreter. This is the reason why it took a magistrate about half a day to convince a child to respond to his questions. Most likely had it been a magistrate alone, they could understand each other better, and the child would probably have said everything comfortably, easily and fast. A third party trying to interpret for them may not be helpful at all. Children should be allowed to speak to a magistrate who understands them.

It is therefore established that indigenous languages are used in subordinate courts by many of the parties involved. The accused persons, the witnesses, children, clerks and interpreters should all use indigenous languages. It is only because of the language policy in these courts that prosecutors, judges and other court officials do not use the indigenous languages even when some of them belong to the dominant community of the area. Interpreting is definitely not the solution to this situation at the county level.

5.3: Language Needs

The second research question sought to find out what the language needs among the respondents during subordinate courts' proceedings were. According to scholars, language needs is a term that has been used to refer to language resources and activities required by second language learners and adults in order to cope with different forms of communication (Council of Europe, 2018; Hall & Cook, (2015); Akyel, 2010; Richterich & Chancerel, 1980; Richterich, 1972). In this study, language needs is the uses that are actually required or made in order to communicate in court. People will want mother tongues to argue their case and to be able to express themselves clearly. Others will require English, arguing that they are able to fit in the high social class. The communication situation is key in directing the choice of the language. Situations such as greeting, welcoming, arguing a case, thanking and saying goodbyes, refusal, general terms and conversations or specific careers are done in specific languages in order to achieve particular goals. It is for this reason that people in courts want to use their mother tongues or Kiswahili instead of other languages such as English.

Franks and Gessner (2013) pointed out that the language planning process should state the role of a language in the community. The process should as well state the language abilities one would like to see for themselves or the community. The courts have continued with the British

system in the judiciary and so maintained the English language. The role played by the English language in this particular community is probably that of selective bias. It is very discriminative of the people that have not schooled much, the aged and those that have not been practising its use. Gatitu (2009:1) says that English remains the language of power and elitism. It is therefore not a language for all. There is a need for a language that is inclusive in court.

5.3.1: Analysis of the questionnaire

Question 3.1: *How well do you understand when instructed to do something or have a conversation in the following languages: mother tongue, Kiswahili, English, mixed languages and Sign Language?*

Question 3.1 together with others in this section were meant to elicit information leading to revelation of the language needs of the respondents. Those that responded to understanding extremely well were less than 50% in all the languages. For those respondents brought up in towns, mother tongues fulfill their needs better than the other languages. English, which is the court's language, is understood extremely well by only 43.8% of the respondents from villages and 71.4% of respondents from towns. This means that when the court insists on using English, they do not meet all the people's needs. Although most of the study respondents were from rural areas, it is also clear that most of those that understood all the languages extremely well except mother tongues were brought up in towns. This could be because of constant practice in the language use since in towns the national and official languages are commonly used for unity purposes. From those brought up in rural areas, there was at least 12.5% that claimed not to understand English at all. These percentages are not even half way the total percentages. These are probably those people that did not attend school since primary school education in Kenya was not free and compulsory like it is today. Others have lost their competence due to lack of practice and probably old age. We cannot therefore say that most people can communicate proficiently in any of the languages. If anything, one language is not sufficient for an individual. 5.9% of the respondents do not understand English at all. The fact that this is an official language which is highly used in court means that a big number of participants are negatively affected when instruction is given in English in court. Their linguistic needs are compromised whenever English is used. 44.1% of the respondents do not understand at all when instructed in sign

language. This means that the hearing-impaired are very disadvantaged when they need to use their sign language, for very few can communicate with them.

The defendants and defence counsels understand mother tongues the most. This is followed by Kiswahili, English and mixed languages. The least understood language is sign language. This shows how important mother tongues are to the defendants and defence counsels as they defend themselves. English is least understood, meaning that although it is the language of court, it is not useful to them at all. The same applies to sign language, which is not understood by the majority. Mixed languages are better to use than English because many defendants and defence counsels understand them well.

Members of public understood the mother tongue extremely well probably because it is the dominant language in the area. This was followed by Kiswahili and English, the national and official languages which are taught at school. Mixed languages are understood by most of those that already know the three languages: mother tongue, Kiswahili and English but are not proficient enough in English and Kiswahili alone. The least is sign language which is not common and so people do not get to practise it. None of the members of the public claimed not to understand mother tongue, Kiswahili and mixed languages at all, like it is with English and sign language. Again, this means that they have an idea about what is expressed in each language. Members of the public are mainly spectators and interested parties of the accused persons or witnesses. The language used in court, if it is English, excludes most of them.

The purpose of witnesses for being in court is to confirm that the accused persons did or did not do what they are accused of. If this is done in mother tongues, it means they will understand the proceedings very clearly. If it is done in Kiswahili, it means at least all will understand. All the witnesses understand English well and the courts use it widely, therefore the witnesses' submissions are well communicated. Mixed languages are also well understood and so they get to communicate through the languages that they know. Most of the witnesses do not understand sign language and so cannot participate when there is a person with a hearing impaired. Since hearing impaired people are few, the few witnesses that understand sign language imply that there are a few people in the community that can communicate with them.

Question 3.2: *How often do you use the following languages while in Subordinate Courts - English, Kiswahili, mixed languages, mother tongue and sign languages? (Always, Quite often, Often, Less often and Not at all)*

The more a language is used shows how people's needs are better expressible in that particular language. Although the majority of respondents use mother tongues less often (44%), they still use them and the number increases to 73.9% when those who use them quite often and always are included. Everybody uses Kiswahili one way or the other. So it is a very popular language; only it is not the language of the court. The reason why a high percentage of participants use English could be because the majority of them are defendants, probably counsels, so they have to use it. In many cases, a word here or there has to be understood the way the speaker wants it if it is expressed in a particular language, and hence the high percentage of mixing the languages. Those who do not mix probably know only one language. Sign languages are not understood by many therefore not used; hence the high percentage of those who do not use them.

From this presentation, big numbers of court users will use English, Kiswahili, mother tongue and mixed languages quite often to express their needs. They are multilingual and hence the mixing of the languages.

Question 3.3: *How often would you wish mother tongue to be used for better communication and understanding in Subordinate Courts? (Always, very often, often, less often or not at all)*

A bigger percentage responded positively to this question. That is, those that wished that mother tongues should be used always, very often and often, made a total of 76%, while the rest 24% responded negatively. They wished it used less often and not at all. This response means that mother tongues are understood better than the other languages by many people; and if they use them in court, they would be better served because there will be better communication.

Only 4% of the respondents and from the youngest age group wish mother tongues not to be used in court. This could be because the young generation is generally not in favour of their

mother tongues. All the others even if they wish it less often used, still acknowledge and wish that it be used.

The group that has completed secondary school is the only one that has 4% wishing that mother tongues not used at all, and 20% wishing negatively that they be used less often. Otherwise, the majority of the members of this group wished for mother tongues to be used. Those that are more educated are more encouraged to use mother tongues than the less educated. As it is, those that completed secondary school and those at tertiary level wish to always and very often use mother tongues in court. Even with their knowledge of the other languages, they still wish for mother tongues. This shows that the age or the level of education do not matter much but more whether there is understanding and communication in seeking for justice.

From where one was brought up, an attitude could have developed. Those wishing not to use their mother tongue are from the rural areas; yet those brought up in urban areas all wish to use their mother tongues in court. In a nutshell, those that did not at all wish mother tongues used in subordinate courts constituted 4%, and were witnesses aged 19-27 years that had completed secondary school and had been brought up in villages. This is probably the group of people that have low opinion and negative attitude towards their mother tongues, hence this reaction.

In analysing the three questions, there is less than 50% of the respondents that understand any of the languages extremely well, meaning that a bigger percentage need not just one language, but at least that language and another for better understanding. Most of the respondents wished mother tongues would be used for better communication and understanding in subordinate courts. This way, language would meet people's needs. With this summary, it is clear that mother tongues meet people's needs better than English, while Kiswahili is a language people try to use to survive the ordeals of courts.

5.3.2: Analysis of interviews

Interviews also revealed that respondents express themselves better in their mother tongues because that is the language they know well. Those that want to use English and Kiswahili even though they do not know them well prefer these languages because they want to belong to some

status. This means that such people are shy about, and ashamed of their mother tongues. They may have a negative attitude towards their mother tongue, or are less educated; hence, they have a need to belong to some social status. Although children express themselves better in mother tongues, their preference to use English and Kiswahili in their education is only natural. Spoken mother tongues are easy but most of the children today have not been taught their mother tongues in school. Unfortunately, lower courts tackle so many cases involving children where they (children) are either victims or witnesses. Naturally, children innocently say what they have to say as long as there is no manipulation. It is easy to believe what children say than adults. But now they express themselves better in their mother tongues. But if their statements are interpreted, they are distorted. The children would rather express themselves in the language they know well without interpreting.

In cases where English or Kiswahili is not mutual, interpreting comes into the picture. But there is enthusiasm by clerks and magistrates in protest against interpreting because there are a lot of omissions, additions and lies. The final message in most cases is distorted and the meaning is lost. There is no professionalism in interpreting; even magistrates and clerks themselves do not believe in it. There is, in most cases, injustice where a wrong language, a language not understood by the accused persons or the witness is used. The same applies when interpreters shy away from uttering some tabooed words or words difficult to pronounce. All this attests to the fact that with interpreting, language needs are not attained, and in most cases there is no room for correction or debates on whether what had been interpreted is correct or wrong.

The interviews also revealed the reason why most clerks do poor interpreting. They said that they lack people to practise the mother tongues with, especially now that they are young and the youth are no longer being taught in it in lower primary, so they do not want to use their mother tongues. This lack of practice has contributed to poor interpreting fluency and proficiency during court proceedings. Nevertheless, they need jobs and so with little practice that they make in their mother tongues, they seek interpreting jobs but do a lot of harm. When in search of justice, it is in most cases a matter of life and death. Accused persons and witnesses desperately want justice, but when the only place that can grant that justice is messed up through interpreting (which

according to the magistrates happens often), then there is no need for interpreting in the first place. It does not meet its purpose.

5.3.3: Discussion

The fact that a good number of people cannot understand English necessitates the use of mother tongues or Kiswahili instead. How often participants use English determines the intensity of the language practice. The longer one stays without practising a language, the more they lose their confidence in it. It therefore follows that those not practising English language use are limited in its use during court proceedings. The use of English in the rural areas is not going to happen any time soon as long as one community dominates the area. This therefore affects a lot of those that are living away from towns and those living with people that do not use or know English at all. Muaka (2015) says that the standard of English among many urban residents is, on the basis of informal evidence, fairly high among those who interact regularly in the language. Those living in the rural areas and have no chance to interact in English have a very low standard of the language.

The magistrates keep their records in English, and most of the court jargon is only usable in English. The language policy of the court, if it is to use English, may not always be easy to achieve. The accused persons and witnesses may not want the litigations to be in English and if otherwise, they are often wrong in the choice of words and expressions. The use of English therefore ends up not serving the purpose for which it was intended. It is difficult to argue out a case in a language you do not know well or are not comfortable in. There will be tension if those who do not use English are forced to do so. This then questions the validity of the language policy in Subordinate Courts in Kenya if any. Do the courts really serve the purpose for which they were meant?

Very few people in the country use English with ease. In fact, according to Muaka (2015), only 25% use it with ease. In Nairobi, the capital city of Kenya, 49% of mothers were unable to read a class 2 story book even when 95% of them had gone to school; a number of police officers could not speak English fluently. Hence, although English is the medium of instruction in school and

almost every person that went through school used it, it is not an easy language, especially in court.

Mother tongues fulfill the respondents' language needs better than the other languages. The responses in chapter four showed that:

- The defendant and defence counsel respondents understood the mother tongues the most.
- 73.9% of all the respondents use mother tongues in courts, one way or the other (always, very often, often and less often).
- The wish for mother tongues to be used in courts is overwhelmingly high as 76% wish it used (always, very often and often).

Although the respondents may be bilinguals, they still opt for mother tongues. This shows that there is a better choice of words to say what one wants to say in mother tongues. Most people learn simple words in any second language such as greetings, goodbyes and sometimes abusive terms. One cannot be expected to argue successfully in court with such knowledge. They therefore end up using mother tongues even when they know English and Kiswahili. Their wish extends to their children and the future use of the mother tongues in court. Youngsters and some urban dwellers also wish that the mother tongues should be used in court. The problem may be on recording in the mother tongue because people pride themselves in oral fluency in mother tongue and not the written language.

It is important for the county government to utilise its linguistic resources in order to achieve justice. With the indigenous languages, one is able to view the world and its reality correctly. Trudgill (1986:19) and Magwa (2003:175) say that the system of concepts with which we think in everyday life is that expressed by the vocabulary of our mother tongues because every word translates a concept. It is easier to think and speak in mother tongues. Pierre Bourdieu (1982, in Smith 2018) describes language as a means of power. Besides being a means of communication, one cannot have command of a language if they do not know it well. Accused persons and witnesses in court will have sound knowledge of the statements they utter in court if they use the language they know well. It is important to consider that the gravity and magnitude of the idea of being accused persons weighs on one's shoulders, without even adding the problem of language barriers, which may cause a trauma on the accused persons. Smith (2018) says that when adults

are forced to use English at work or other public situations, it can result into intergenerational trauma, and in itself, it is a denial of one's culture and identity. Those unable to use English feel much challenged in front of those that know it well, especially if they are younger.

Almost everyone has some oral competence in Kiswahili. But it is still not the participants' choice to argue in court. Muaka (2015) says that although it is widely spoken, it is not well spoken, especially outside the coastal area. He adds that it has inclusionary significance, and that it is a lingua franca both in the country and in East Africa. But even with these responsibilities bestowed upon Kiswahili language, it is still not the best choice to use in court. They would rather mix Kiswahili, English and Kikamba. Young people want Kiswahili and English only in books, but usually express themselves in Kikamba or mix the languages elsewhere. The mixture is more popular because respondents said one can pick a word from the other language if the main language they are using does not offer an equivalent. In other words, the ability of a language to express what they want to say determines the user's choice.

Although very few know the language, the study revealed that sign language use is crucial in court. The courts seem to neglect the dumb and deaf because unless a deaf person is on the stand for questioning, they do not provide an interpreter. This means that if one of the deaf persons was among the spectators (like it was during the study), they will have to come with their personal interpreters to help them. The United Nation's Convention on Rights of Persons with Disabilities (CRPD) that was adopted and ratified in Kenya on 19th May 2008, and became law by virtue of Article 2(6) of the Constitution of Kenya 2010, states that people with disabilities have access to information through the provision of alternative means of communication, including Braille, sign language and plain language, among others (CRPD, 2006). Section 54 of the Constitution of Kenya 2010 on the rights of persons with disabilities states that all persons with disability shall be entitled to reasonable access to all places, public transport and information as well as the use of sign language, Braille and other appropriate means of communication (CoK, 2010). Since sign language is not universal, especially between countries, only Kenyan interpreters can be used in court for fellow Kenyans that are deaf. The Kenya Sign Language (KSL) is the official national sign language. Unfortunately for the deaf people, not many Kenyans know the sign language, but as Nyaboke (2016) says, it is the responsibility of all institutions to ensure that they make accessible their services to the people with disability on an

equal basis as any other Kenyan citizen. The deaf and hard of hearing are able to communicate using sign language or lip reading with hearing people only if the hearing can understand the signs or the communication methods the deaf use (Bouvet,1990 in Nyaboke, 2016).

In conclusion, the participants in court, especially accused persons and witnesses want to use mother tongues to argue their cases. The few that want to argue in English is because they do not have indigenous languages as they were not exposed to any in the family set-up and/or have been brought up in towns with the official languages. They however want to argue their cases in the language they know well, English or Kiswahili, and most of the times mix the languages with mother tongues. Those that are not competent enough in English and Kiswahili languages but still want to use them have other reasons other than linguistic, such as to belong to a certain social class. The most important argument is what Ndlovu (2013) calls marked bilingualism, which is using the second language because people are comfortable in it, for there is no need for communication in their home languages.

5.4: Implementation of the Court's Language Policy

The third research question sought to find out how effective the implementation of the current language policy in subordinate courts is. Perhaps it is important to note that Kenya has never really had any specific language policy for law and the courts. What seems to be the policy is based on the nation's language policy. Since the abolition of the customary courts in 1967, Kenyan courts traditionally operated in English (Ghai, 2017). Even today, the Constitution of Kenya 2010 says very little about courts. The closest is mentioned in Subsection 159(2) Part 1 of Chapter 10 on Judiciary Authority and Legal System and states that:

In exercising judiciary authority, the courts and tribunals shall be guided by the following principles-

- a) Justice shall be done to all, irrespective of status
 - b) Justice shall not be delayed
 - d) Justice shall not be administered without undue regard to procedural technicalities
- (3) Traditional dispute resolution mechanisms shall not be used in a way that-
- a) Contravenes the Bill of Rights

These principles relate to justice not in any specific way. The reference to justice for all and justice not being delayed are and could be only inclusive in theory but does not state how 'all' will be included when 'all' have other prevailing circumstances such as language barriers. Perhaps (d) attempts to answer the researcher's problem that there shall be procedural technicalities in pursuing justice. Could these be allowing court participants to use their mother tongues and the provision for interpreters? It is not clear whether the issue of language is covered in this statement. Maybe the mention of Bill of Rights answers the question if:

A Bill of Rights is particularly important to protect the rights of religious, ethnic, linguistic and other minorities, whose interests can be easily ignored by the numerical majority and overruled by democratically elected governments (Occasional Report, Kenya National Commission on Human Rights, 2011).

The concern here is the 'linguistic' protection. Rights are not clearly stated. In fact, the Final Draft of the Constitution of Kenya Review Commission (CKRC)(2005) reports that among the limitations of the current Bill of Rights include the fact that some of the rights are rather narrowly defined and would be clearer and perhaps more effective if they were more detailed. The rights spelled out for language communities; that their languages should be used in all official contexts (like law and courts) in the relevant geographical areas; and that these rights relate to officialdom in their own language are said to be some of those constitutional rights that are meant to bring unity rather than division by making people feel that their cultures are being respected (Ghai, 2015). In essence, they are only theoretical, or if they are used, they do not impact appropriately. This is because there is still division along ethnic lines even when these statements say otherwise.

Article 50(2) (m) states that the accused person has the right to the assistance of an interpreter without payment if they cannot understand the language used at the trial. Which is the language of trial in the first place, English or Kiswahili? Both these languages are official and have the right to be used in court. Are foreign languages such as French and German, or Chinese (which are represented in Kenya) part of these 'languages used at the trial'? Is the interpreter to be present a Kenyan because of Kenyans that are using indigenous languages? How about if the Kenyans can understand one another using the indigenous languages, both the court officials and the rest of the participants, is there still a need for an interpreter?

Since the new constitution, Subsection 33 (1) of the Court of Appeal (Organisation and Administration) Act, 2015, provides that the official language of the court shall be English and Kiswahili; and (2) that the court shall, in appropriate cases, facilitate the use of other languages by parties, including the Kenyan sign language, Braille and other communication formats and technologies accessible to persons with disabilities. One wonders if other languages include indigenous languages. If so, then the next wonder is if it is necessary to have an interpreter in subordinate courts. The interviews questioned the effectiveness and efficiency of interpreters now that they may or may not know their mother tongues well. They all agreed that interpreting was indeed a bad idea because it has not been giving a replica of what was to be interpreted. It therefore cannot be relied upon to give justice. Interpreters are rarely trained if at all there is any judicial interpreters' training. This was attested by the magistrates. Most of the employees of the court agreed that mother tongues are very important in court because the majority people at the level of the county know them better than official languages. In fact, these employees agreed that they are also not very good in using English and Kiswahili because of the sensitivity of some of the matters. Interpreting therefore fails in such instances. This proves that some of these constitutional provisions have failed in one way or the other. Not forgetting the fact that neither the Magistrates Court Act nor the Supreme Court Act both of 2015 makes any reference to language. As Ghai (2017) says, it is in Magistrates Court that presumably most people would likely want to use languages other than English.

If Kiswahili as an official language should be used, the next challenge would be a course on Kiswahili and law which is not there in Kenya. In other countries like Tanzania, Kiswahili is used in lower primary schools and District Courts, with some pressure to extend this to higher courts and local land tribunals (Omar, 2015). But it is still not clear if it is sufficient enough to run court proceedings. At least English is said to be the language of the court, and mother tongues easily express any phenomena. Kiswahili has been an official language in Tanzania for quite some time, and so it may have infiltrated into law and the courts, unlike in Kenya. Even in Zanzibar, Brock-Urtne (2009) says that proceedings may be in Kiswahili even in the High Court, but judgment is delivered in English, implying the difficulty of using Kiswahili. As much as Kiswahili is a lingua franca in Kenya, it may not be the solution in terms of interpreting for the

people that know and prefer their mother tongues. Ghai (2017) adds that in the counties, neither the Draft Languages of Kenya Bill nor the National Assembly Motions about law in Kiswahili is clear about whether it is intended to affect counties. However, the draft says all government structures (National and County) are bound by the provisions of the Kenyan policy on language.

The National Policy on Culture and Heritage has a statement that Kenya's indigenous languages have the capacity to awaken people's imagination. The loss of these languages would result in total loss of knowledge of the bio-diversity and its interaction with the environment as well as the culture (Ghai, 2017). If then this is in the knowledge of the policy makers, it is not clear what the point of interpreting is in sensitive issues like justice when direct communication can do. It may not be everyone but certainly the minority group deserves to be heard in a language they know well. Studies carried out by other scholars show the importance of using mother tongues. Mutasa (2004) and Magwa (2008) point out that the use of the mother tongue;

- ensures creativity and interaction with our environment;
- facilitates learning as children do not have to battle with the language as well as the subject matter;
- ensures the languages do not die; and that
- their use may lead to promotion or better status for the indigenous languages.

The respondents in this study commented that they wished their children to know mother tongues because it would enable them to be proud of their culture and to hold on to it, and to know their roots because it will give them a sense of belonging. The respondents are proud of who they are, and would wish their children to be likewise. Others felt that their children's knowledge of their mother tongues would prevent the extinction of these languages. Some respondents considered the elderly and felt that knowledge of the mother tongues would help the children to communicate with them. Yet others felt that the children need to know a variety of languages to use, including their mother tongues. When at home in the rural areas, mother tongues are good for sociolising, they include even folks that are not educated. When in towns, they can use the official languages. They believe mother tongues are basic languages and can be used to understand the other languages. These are significant issues that together with other non-linguistic issues make mother tongues useful in judiciary matters and even for children in future.

As presented in chapter four, almost all the respondents wish for their children to know their mother tongues, but only when asked. The same society, including the government, is not keen in making sure that these children learn their mother tongues. Policies such as the education policy are made but not effectively implemented. Why is this the case? Why does the government not enforce this? Why are the parents not complaining? Does anyone in this society even know that the use of their mother tongues is their linguistic human right? These questions have remained unanswered and will continue being so until that time when authorities take control of language policies. It is not clear why anyone would be interested in knowing and using their mother tongues. Probably this is what the society needs to do if they are going to find any use for mother tongues.

When asked to comment on current mother tongue use, the respondents said that there could be a problem in their use because nowadays small children speak Kiswahili fluently, therefore replacing mother tongues. They also said that people prefer national languages and teachers focus on the two national languages. This focus has been necessitated by advanced technology and hence preference for foreign languages. Other respondents felt that people are uncivilised if they use their mother tongues. They actually believe that most people are brought up in urban areas and there is mass of rural urban migration. So there is no need for mother tongues. Some find mother tongues useless while others argue against them because the country is composed of many tribes. Other respondents felt that it is necessary to know mother tongues in order to preserve and retain their culture and heritage. This can only be done through the indigenous language of the community. They add that there is a need to communicate with the elderly and the uneducated. Some respondents commented that communication is easier in mother tongues.

To further explore the issue of implementation of a language policy in the courts, the researcher interviewed respondents on:

- Indication whether they got exposed to their mother tongues.
- Their language preference patterns.
- Inclination toward English in court proceedings.
- Prosperity of the mother tongues.

- Standardisation and vernacularisation of the mother tongues in a bid to becoming official languages.

The magistrates reported that the effectiveness of implementation of the courts' language policy is wanting. The court preserves English language as its main language but has also allowed the use of Kiswahili because it is both a national and an official language in the country. Mother tongues are used with the assistance of interpreting, especially for the illiterate. However, the magistrates expressed their disappointment with the way interpreting is done. This means that one cannot say the provision of interpreters is working well for the court. Neither can one say Kiswahili solves the problem of language barriers through interpreting. The language that seems to be recommended in the courts has therefore failed.

It is only understandable that some words have to be clothed, that is, through the use of euphemisms. But it is not good enough when you must say something the way it was said by the accused persons or the witness. It would not be correct if said otherwise. The result is injustice because the magistrate did not get to hear or know exactly what transpired. The provision for interpreting has many loopholes, including inability to express exactly what has been said.

Some clients do not know the official languages well enough to express themselves clearly. But at the same time, they loath their mother tongues, they do not want to be associated with the use of their mother tongues. This posed a question of the importance of language in society. These people would rather use English or Kiswahili and end up messing themselves because they ultimately do not say what they should have said.

With the situation in courts being that they keep records in the English language, Kiswahili which is an official and a national language is also used in the court but only for communication. It is used for interpreting when the indigenous languages have to be used. Nevertheless, the implementation of this policy seems not to be working well, especially for accused persons and the complainant, because interpreting takes a number of stages before the court records in English: from the lawyer or defence counsel in English or Kiswahili to the interpreter who uses mother tongue with the plaintiff and back to the lawyer or defence counsel in English or

Kiswahili, and finally recorded by the magistrate in English. The long process may distort the original and exact meaning.

The importance of mother tongues is being questioned. Most young people do not see why they should know indigenous languages because there are official and national languages. After all, the world is becoming global, and according to the young people, in future, these indigenous languages will die. With challenges like these by the young generation, the idea of allowing mother tongue use in court may be difficult to accept. It is possible that there will not be enough young interpreters in future because most of them have shied away from mother tongues; and Kiswahili may end up being the closest solution for those not knowing any other language apart from their mother tongues.

Language planning in any country responds to the sociopolitical needs that Jagodic (2011) sees as important to linguistic minorities (including the rural dwellers, the poor, the illiterate) as well as where linguistic groups compete for access to the mechanisms of everyday activities (such as court cases that require a choice of language). Bearing this in mind, language policy makers in Kenya decided to use English as an official language. So it found its way to becoming the language of court following the British law. Kiswahili was later made an official language and a national language so as to unite Kenyans. It can be used in court to enable interpreting from mother tongues and English. Mother tongues were recognised as languages to be used for socialisation in the family and society. They too are used in courts and are interpreted into Kiswahili.

From the data analysis, 77.3% of the respondents were brought up in rural areas, while only 22.7% were brought up in towns. Access to mother tongues for those in rural areas, and a few from towns was guaranteed. This knowledge formed the basis for most of the users of mother tongues. It is in essence what enabled interpreters get the jobs. In addition to the mother tongues, whether in the rural or urban areas, they all get exposed to English and Kiswahili. That is why the percentage went up to 82.8% for both languages. These languages enable users to participate comfortably in court proceedings, but there are those who did not go to school, and therefore not competent in these languages. Although they may understand a bit of these languages, they may

not be able to express themselves in them. This takes them back to using their mother tongues in court.

There is confusion for the citizens because without guidance, they may not know what is good for them or their children. Because the government feels that mother tongues are important at primary level, many parents do not want to think beyond other possibilities of mother tongue uses until they come face to face with the reality that they cannot do without them in some sectors like courts.

At tertiary level, for instance, as a linguistics student, mother tongues are used as points of reference in learning. On 11th May 2018, students at the University of Nairobi felt that it was time universities started teaching local languages besides Kiswahili. A year later, Tom Odhiambo, journalist (Daily Nation, May 11, 2019), complained that 50 years after independence, the country cannot use its local languages even after the colonialists had ironically encouraged the teaching and use of these languages. This was an effort to show that local languages are a requirement to citizens countrywide to be treated as such. Without them, there are citizens that would be locked out of the country's affairs completely.

Indigenous languages are also useful during adventures like tourism and in the police force, especially when they arrest people. This presents other avenues that mother tongues are required just as much as they are necessary in courts. The implementation of a language policy on indigenous languages as official languages would be pegged on other uses and needs for these mother tongues. The use and need gives mother tongues status and hence value, making them acceptable even in official matters.

Kaplan (2013) says that when there is no policy, there can never be a plan to be adjusted because there is no serious evaluation. There is already a plan for the judicial system but it has failed in many instances. Interpreters must be trained to understand the tenets of their job. They must know the three languages well: English, the language of the court, Kiswahili the national language that everybody should have an idea about and the mother tongues that the interpreters will be mediating in. More needs to be done about the mother tongues because if the trend

continues as it is, there will be a very big division between the elite and the rest of the citizens. People have decided that English and Kiswahili are the only languages to use. They have forgotten that there are still those that have not been practising those languages because they are in the villages. The need to use these languages has not arisen. There are also elderly people and school drop-outs that may not be competent in the official languages. Kaplan (2013) adds that a policy is meant to bring harmony and tranquility. If the policy does not just favour the elite, then it becomes all inclusive and hence there is peace and justice.

A number of processes need to be considered: linguistic assimilation, pluralism and vernacularisation. Linguistic assimilation entails everyone learning the dominant language of a society (Kwame, 2009; Jagodic, 2011). The questions here could be which society and which is its dominant language. Machakos County, for instance, is a society of mainly the Akamba people, and is dominated by Kikamba language. Nairobi metropolitan is a society of mixed tribes, almost or about 42 tribes, and its dominant language is Kiswahili. With the official language being Kiswahili or English, those in Nairobi are more advantaged than those in Machakos. Subordinate Courts were designed to serve those less sensitive cases, probably cases common to the common man and placed at county level. They then receive a lot of indigenous language speakers. If people need to fit in Machakos County society, it may not be necessary to assimilate English and Kiswahili in order to survive like it would be in Nairobi Metropolitan. If anything, those that come to Machakos try and learn Kikamba so as to be able to communicate at least the very basics.

Pluralism is important in a community with different languages (multilingual) and should be allowed to flourish. Different languages should be able to co-exist, especially official languages and indigenous languages. Subordinate courts allow that if the accused person or the witness is not competent in English and Kiswahili, they may have their mother tongues interpreted. This already shows that the languages co-exist. But when interpreting is not properly done, then its credibility is faulted. It is therefore important to have people that can directly hear what the others are saying in the place of the magistrates and the prosecutors. Translations into some of the indigenous languages may be done for some languages that have been standardised. This, together with magistrates who belong to the communities of accused persons and witnesses in

the court, form a true record of the proceedings. Vernacularisation (satisfaction that there will be translation into various indigenous languages), therefore may be very essential in courts for record keeping and carrying out a court proceeding for those using the indigenous languages (Jagodic, 2011).

There may not have been any language planning as such in the judiciary because they simply inherited the colonialists' language. It is then important for the judiciary to consider the problems of its clients and to plan a suitable language. Neustupny (1994:50) argues that any act of planning should start with the consideration of language problems as they appear in discourse. This would ensure that the correct words are used to exchange clients' thoughts and ideas. The judiciary would have a better language management than what is there today. However, this cannot succeed without the involvement of local governments in the case of counties. As the judiciary manages languages in courts, it is clear that there is the choice of language for internal working (that is the language for court employees), for communication with the citizens in the territory and efforts to manage that of the citizens (probably through national and official languages) (Spolsky, 2009). The correct language for users of the court must be observed. The involvement of the authorities is the only way to achieve any success in the implementation of whichever process. It is therefore important for language policy planners to have the support of the government if they are to achieve this.

In conclusion, the Kenya judiciary system has not really had a clear judicial language policy, but has tried to implement the British law language and the Kenya language policy through different articles, drafts, the constitution and some bill of rights. English being the language of law is well known and practised by the elite. The common Kenyan is somehow conversant with some Kiswahili. The non-elite and those that have not been practising English and Kiswahili are more comfortable using their mother tongues. There is provision for free interpreting, but interpreters are not proficient and competent in the languages. In fact, there is a threat to sustainable interpreting because the youth do not value their mother tongues. Hence, the implementation of the language policy that seems to be in effect happening in courts has, to some extent, failed.

5.5: Intervening measures towards access to justice through language use

Having looked at the language use and language needs of the participants in courts as well as the effectiveness of the implementation of the language policy in subordinate courts, the fourth research question was to find out intervening measures that the respondents could propose towards access to justice through language use. The idea was to come up with ways in which the courts could adjust in order to reach a justifiable decision on language policy. This is with the knowledge that when minority linguistic rights are acknowledged, the full participation of minority groups in all national activities such as judicial and administrative proceedings, civil service examinations, voting and public employment is guaranteed (Mutasa, 2004:31).

The respondents recommended the following intervening measures:

- The magistrates recommended that there be at least a speaker of the dominant language among magistrates and prosecutors.
- That indigenous languages should be promoted to official status in the counties where they are dominant. This will enable officers to use them the same way in which Kiswahili is used.
- That interpreters should be trained so that they become competitive as any other job.
- That there should be dictionaries to use as reference materials, especially in cases where interpreters are challenged by synonyms and antonyms.
- That the use of these indigenous languages should be extended to other sectors such as public offices, including police stations and schools.
- That the judiciary should re-organise its language management during court proceedings and revise the adversarial mode of communication to one that allows direct communication.
- For there to be justice, the magistrates should hear by themselves and avoid interpreters in lower courts at the county level.

The magistrates recommended that there be at least a speaker of the dominant language of that community among magistrates and prosecutors. (This language would become useful when a person who speaks it comes to court. Otherwise, this speaker would carry on their responsibilities in the court as usual and in the official languages). This was done to avoid the use

of interpreters in lower courts where the cases handled involve mainly local people because interpreters are not reliable. Although interpreting is a world profession and is acknowledged as such, Malan (2016:12) also disapproves and dismisses it because in many cases, it leads to distortion of information. The observations made by the researcher show that in interpreting:

- the right words are not always available in the other language.
- the intensity of meaning is not availed.
- some interpreters are emotionally influenced by speakers.
- recalling what has been said is not always easy.
- sometimes the age-gap as well as the age of the speaker may be counterproductive to the interpreter.

This happens in special circumstances such as lower courts in remote areas with the indigenous people and their languages. As long as interpreting is not being done professionally, it is not good. In fact, it is not ethical to subject any court proceeding to it. It is true that people could become tribalistic and favour their own people. But in the researcher's opinion, people have gone beyond blood, family, clan and tribe ties, and have stronger bonds with people that they are not even related to. Besides, as mentioned earlier in chapter four, even in the metropolitan areas, judges sit in cases where the parties concerned are from their tribes. Other factors could lead to favouritism. There are more advanced advantages to judging from what one has heard for themselves than through another person's interpreting, especially when the accused person and the witness belong to the same community. And as it is policy in Kenya, accused persons should be judged in a language that they understand. Malan (2016) sees the idea of interpreting as a risky exercise which leads to unfairness and outright wrong court decisions. According to Malan (2016), the judgment ends up being detrimental not only to the accused persons, complainants, witnesses, but also to the integrity and reputation of the justice system.

The respondents felt that the indigenous languages should be made official in the counties where they are dominant. This would enable officers to use them the same way in which they use Kiswahili. Considering that there has been a call for Africans to promote their indigenous languages(see OHCHR.ORG) , it is a good idea to do it in the counties of the country. There is indeed a collective right of these groups of people that dominate regions to use their indigenous language even in official matters. In an effort to make sure that justice is rendered, there must be

a common language, which cannot be English or Kiswahili. Many literate people know their mother tongues but the illiterate do not know English and Kiswahili or have limited knowledge of it. It is therefore better for the literate to use their mother tongues with the illiterate. This will allow an all-inclusive judicial system as suggested by Malan (2016:3). The rights of people appearing in court in whatever capacity, either as parties, witnesses or accused persons will be observed because they will be free to use the language they know well: their mother tongues. Anybody should be free to access the services of the courts, for it is their human rights. The right to one's language in legal, administrative and judicial acts is a world-wide practice (see OHCHR.ORG). The minorities in different capacities have been seen to suffer quietly, and talking about their suffering and correcting it is only fair. It is therefore a linguistic human right to promote mother tongues to official status within their counties in order to make communication better. This promotion will enable a smooth and effective administration of justice and create faith and trust in the judiciary system, an argument the researcher shares with Malan (2016).

Mother tongues should be elevated to higher status so that interpreting can be considered as a career along with other careers. The current youth do not know their mother tongue because their parents and teachers tend to think that mother tongues are retrogressive. They force them to speak in English; teachers even punish them for using their mother tongues in school. The language policy in Kenya demands the use of mother tongues as languages of instruction in lower primary school, a call that has been declined. The respondents felt that mother tongues should even be used in secondary schools and at tertiary levels as well. This follows the realisation that mother tongues are very useful elsewhere like in the judiciary, police force, tourism, health sector and community service, among others, not just for examination purposes. It is also scary for the parents to realise that there is a big gap between their children and their grandparents that was not there before. When this elderly group needs assistance of the younger group, it becomes a challenge because of the language barrier. The identity and links with the community are fast fading because of the schooling system, a thing that was not there during their time. The school system is the only way generations can maintain their culture and hence their identity. Skuttnubb-Kangas in Ricento (2006) talks about assimilation subtractive education that is genocidal, especially if it prohibits the use of the language of the group in daily

intercourse or schools. Mother tongues are very much affected by the use of English, which has taken a centre stage in the lives of children whether in school or at home. It is therefore efforts by the national and local governments together with language policy makers that can enforce the use of the indigenous languages in order to promote them to be used in important sectors.

The issue about people being shy, ashamed and uncomfortable with the use of their indigenous languages during court proceedings was quite pronounced in the participants' responses in chapter four. They felt that indigenous languages need to be given a special treatment by being let into the education system up to the higher levels. There should be civic education for children to learn to be proud of their languages and culture. Sensitising the future generation will go a long way in promoting and maintaining indigenous languages. It would mark the ultimate value for the indigenous languages, and comfort in their use would be instilled. It would encourage many to want to be associated with their mother tongues. It would even encourage many to take interpreting as a career because they will have been properly introduced and assimilated into all the required languages.

Interpreting is recognised world-wide. In Kenya, there seems not to be much seriousness accorded that profession. In fact, it is lightly considered as a profession because anyone can be used from anywhere as a court interpreter. Situations may arise where the services of an interpreter are required. The respondents suggested that interpreters must be trained if they must be there and have interpreting as competitive as any other job in the job market. This would enable interpreters to take their responsibilities seriously. A high school certificate is not enough to qualify one as an interpreter. Neither is the knowledge of the indigenous language in question. The magistrates complained that interpreters are not professional in their work. These are issues that need to be considered in training interpreters.

The respondents also suggested that there be dictionaries to aid in appropriate references to terms, especially in cases where interpreters are challenged by synonyms and antonyms. It will not pass without notice that the elderly people have more advanced terminologies in the indigenous languages that the young generation cannot understand. In court, all ages are served whether old or young and so the language must be used to communicate. The introduction of

dictionaries in the indigenous language would be an advanced way of promoting these languages and the courts and any other sector that may require such assistance will be a welcomed idea.

As suggested earlier, when the use of indigenous languages has been given value, it is likely to be used elsewhere. The respondents suggested the use of these indigenous languages to be extended to other sectors such as public offices, including police stations. The magistrates especially felt that at the time of apprehension, the police make the victims write statements in languages they do not know. A translation is done and as mentioned earlier, most of them are distorted because the idea of translation, as with interpreting, is not professionally done and seriously taken. Peoples' words should be recorded as said without translating or interpreting. Other sectors that may require the use of mother tongues include tourism, local or international, for these people, and those found in the interior do not always know the language of those visiting. Interpreters may therefore be required.

The respondents also felt that the judiciary should re-organise its language management during court proceedings and revise the adversarial mode of communication. The fact that magistrates must listen to the lawyers' arguments and judge from that is probably the reason why nothing much can be done about the language choice in proceedings except through interpreters. It is postulated in the UN Declaration of the Rights Belonging to National or Ethnic, Religious and Linguistic Minorities (adopted by the general assembly in 1992) Article 1.1. that:

“States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for promotion of that identity.”

The judiciary system should re-visit the idea of English language as the language of the court, and embrace the use of the language well known by the accused persons. This will have considered their rights as accused persons and will reduce the tension that builds in legal confrontations. Malan (2016:3) argues, “...a language policy must account for the fact that the average person's confrontation with the criminal justice system is a rather frightening experience.” This can be lightened by allowing the use of the language they know well. Besides,

there is a need to observe identity, liberty, dignity, opportunity and above all, equality and non-discrimination in the administration of justice. The parties involved, especially in a subordinate court, are mainly people who do not understand the language used in there, or have limited knowledge, limited education and may not have legal representation (Malan, 2016), and so fall under the minority category. They are therefore a category within a region that has a government that can manage the languages of that particular region, the county.

These recommendations by the respondents, which are indeed realistic, can be helpful in facilitating access to justice in subordinate courts. These courts have relied so much on the use of English and Kiswahili at the detriment of the minority in the society dominated by the same language community. As stated in chapter two, English in particular, according to Malan (2016), has a detrimental effect on other languages. Within the context of the use of official languages as languages of record, the implication should be:

- The language used during a proceeding should be retained, especially if all the participants used the same language.
- A staff policy should be pursued so that records retain the language of the proceeding.
- A language that already enjoys optimal use and esteem because of its high functional use as a language of records should retain that status (Malan, 2016:8).

The arguments by Malan (2016) agree with what the respondents in this research propose as interventions.

5.6: Conclusion

This chapter has analysed and discussed the data presented in chapter four. The researcher has revisited the four research questions and discussed them along the questions in the questionnaire and the interviews as well as the observations made. The first question elicited details about language use in the courts: that mother tongues are more favourable to people in Machakos County than Kiswahili and English; and that although English is the language of the court, it is not easy to use. Kiswahili can be used by almost everybody, but it is certainly not the best in expressing everything. The second question expressed the fact that language needs are best expressed in mother tongues. It cannot be explicitly said that there is a judicial language policy, and a national language policy which states that English and Kiswahili shall be the official

languages, Kiswahili shall be the national language and indigenous languages shall be used as languages of instruction in lower primary and for socialisation, and that they shall be protected and developed (Constitution of Kenya, 2010). The national policy used in courts has not been appropriately utilised. Question four provides several suggestions that the respondents felt are appropriate in order to develop or improve the language policy in the judiciary. Chapter six will present the summary, conclusion and recommendations of the study.

CHAPTER 6

SUMMARY, CONCLUSION AND RECOMMENDATIONS

6.1: Introduction

This chapter summarises the whole research study. It covers the aim of the study, the objectives and statement of the problem and the research methods used to collect data. It further gives a collation of the findings from the questionnaires, interviews and observations alongside the research questions. Recommendations and suggestions from these findings to improve language management in subordinate courts are also made.

6.2: The aim of study

This study set out to investigate poor or lack of communication during court proceedings resulting from lack of a language policy that accommodates everybody. Its aim was to advance scientific information that would inform the formulation of a more accommodating language policy in Subordinate Courts in Machakos County. This will improve inclusivity of all citizens irrespective of whether or not they are educated, poor, living in the rural areas or otherwise.

The aim of the study was also to establish the use of indigenous languages in subordinate courts. These languages are dominant in most of the rural areas. It also aimed to explore language needs among the participants in courts. Language needs dictate what language to use in order to communicate what one wants to. It further aimed to evaluate the implementation of the current language policy in courts, whereby the court is supposed to have a language policy not necessarily according to the national language policy. Finally, the aim of the study was to recommend interventions that would facilitate access to justice in language use in subordinate courts in Machakos County based on the findings of the study.

Due to modernisation and multilingualism, indigenous languages have been put aside in official matters, and in the process, excluding the less educated and those not conversant with English and Kiswahili, especially in the rural areas. This amounts to the infringement of human rights of those who cannot use these official languages.

The background of the study showed issues surrounding language needs language use and language preferences in court proceedings in various countries around the world. Kenya has over forty two dominant indigenous languages shared among the forty seven counties. Its language history leaves her with the colonial language, English, as the national language, and hence the language of courts. Kikamba is the dominant language in Machakos County, but there is high literacy and it is so heavily multilingual in the urban centres of the county. This study was motivated by the realisation that indigenous languages are widely used, particularly in courts, but they are not given any prominence. The study was also motivated by the need to minimise injustice in the judicial system arising from linguistic issues.

6.3: Methodology

Mixed methods research was used to gather information. This involved qualitative and quantitative methods, hence triangulation. Literature review comprised views by other researchers and theories upon which the study is grounded, namely the language management approach and the linguistic human rights paradigm. Subordinate courts in Machakos County are situated in an urban area, and serve a great deal of people from the rural areas. The research involved attending court proceedings in three different chambers in subordinate courts of Machakos County. During these visits, the researcher observed and audio recorded the proceedings. She later, with the assistance of assistant researchers, administered questionnaires to those that were present in the courts and were willing to answer them. She also booked the magistrates and the clerks/ interpreters for interviews, which she later followed up and carried out.

6.4: Analysis and observation

It has been observed that there is no specific language policy for law and courts in Kenya. What is there is the country's national and official languages. From colonialism, Kenya adopted the British laws and so English became the language of the courts. However, since Kiswahili is a national language, it is sometimes used during court proceedings to mediate between accused persons and witnesses who, besides Kiswahili, use indigenous languages and magistrates who use English to record proceedings. The courts rely on the nation's bill of rights (such as the right

to fair hearing in a language accused persons understand, among other rights), the constitution, international conventions, treaties and agreements, to carry out the proceedings.

It was observed that accused persons, witnesses and plaintiffs served by subordinate courts from rural areas are more than those in towns, especially because of where the courts are situated. They handle cases that are more local community based, and so attract the locals more than the people in higher ranks and social status. Issues to do with theft, land disputes, child abuses and so on are first tried in subordinate courts before they are taken to the High Court, the Court of Appeal or the Supreme Court, if necessary. Due to this, indigenous languages are widely used and interpreters seriously required.

Although interpreters are crucial entities during court proceedings, the analysis in this study has found that they poorly do their job because they are not professionally trained. The fact that they are not well conversant with their indigenous languages affects their interpreting. It was observed from the analysis that some of the interpreters do not know their mother tongues, either because of where they were brought up, or family composition. Mother tongues are supposed to have been used in schools, but again schools shun away from them. The younger generation has therefore been highly affected by this situation and so do not know their mother tongues well.

It has been observed from the analysis that English is widely used in courts, but it is not the appropriate language to use. Accused persons and witnesses use English not because they know it, but because it is a prestige-laden language that enjoys high status. Besides being a means of communication, English is also a means of power. Being a national language, Kiswahili is known and used by the majority. But the study revealed that even then, accused persons and witnesses may not be comfortable in Kiswahili. Certainly, they may know Kiswahili, but when spoken to in an informal setting, they will understand it very well, but may not want to respond in it in a formal setting because they lack confidence in using it.

This study found that accused persons and witnesses, including children, use indigenous languages more comfortably than the official or national languages. However, the interpreter is mostly required not because there is no one who understands the accused person and the witness in their mother tongue, but because it seems the language to be used must be an official or

national language. It is a requirement that an interpreter be used to interpret into the national or official languages. But they make mistakes as they interpret because they jumble up Kikamba, Kiswahili and English in an effort to use official languages, and they keep records in English. In this case, therefore, using “official languages” is more important than “the client being understood better”.

It has been observed that when participants in court are challenged by a language, they turn to code-mixing and code-switching. This challenge then makes them to oscillate around the three languages: English, Kiswahili and mother tongue. It was found that it is better if the three languages were made official to enable everybody to make their pick without feeling inadequate. This would mean allowing societal and individual multilingualism, which has a likely consequence of broadening opportunities for more citizens to participate in the national affairs and in this case, in the courts.

The study found that sign language use is crucial in court, but very few know the language. Courts seem to neglect the dumb and deaf, for unless a deaf person is on the stand for questioning, they do not provide an interpreter. Other foreign languages also find their way into the courts. The interpreter again is very useful here, provided they know the language.

Statistics indicate that the highest easily spoken language in court is Kiswahili, followed by English, mother tongues and mixed languages. In court, the majority of the participants sometimes use their mother tongues. This is supported by the fact that the majority of the participants in court are neither ashamed nor shy of their mother tongues. However, most of the participants would like to use the three languages, mother tongues, Kiswahili and English in court.

From the analysis, it was observed that for the respondents to get their needs attended to, they have to have understood when instructed in a particular language. The majority understood extremely well when English or Kiswahili was used, followed by when mother tongue was used, then when mixed languages were used for respondents brought up in towns. It was different for those that were brought up in the rural areas. The majority understood extremely well when mother tongues were used, followed by when Kiswahili was used, then when English was used,

and very few understood when mixed languages were used. The highest number did not understand English at all. Some wished to always use their mother tongues in subordinate courts.

It can be concluded that one's language needs in court will be fulfilled if they use a language they understand, of which the majority who were brought up in towns preferred Kiswahili and English, while the majority brought up in the villages preferred the mother tongue. The middle ground would be to allow the three languages. They would cater for everyone's needs whether they were from towns or villages. This is supported by the fact that people use these languages in their day today activities and wish to continue using them even in court.

The study also found that some people simply want to belong to some social status. They therefore avoid the language their mother tongues, which is a language that they know very well, and opt for English or Kiswahili. Children would rather use English and Kiswahili, and not the mother tongues in schools. At the same time, they are more comfortable expressing themselves in their mother tongues in the absence of the interpreter because they get nervous and intimidated. This then means that mother tongues are best for verbal communication.

From the analysis, it was also observed that there are several barriers the magistrates encounter due to interpreting including:

- Some interpreters do not know their indigenous languages.
- Some interpreters do not have skills of interpreting.
- Some interpreters often allow long utterances from accused persons or witnesses. They end up forgetting them, resulting in poor reporting.
- Some interpreters also get carried away by emotions, depending on the kind of a case or person at hand.
- Generally, some interpreters do not report exactly how and what the speaker has said. These reasons render the use of interpreters who lack skills of interpreting in the courts useless.

6.5: Suggestions and/or recommendations

The following recommendations from the study findings were made.

- There is a need to have some members of staff from the dominant community in a county as magistrates and prosecutors to enable more meaningful communication. This can only be accomplished if other recommendations are effected, including:
 - ❖ That the judiciary should re-organise its language management during court proceedings, and revise the adversarial mode of communication in order to allow freedom of speech and to avoid infringing on linguistic human rights.
 - ❖ Making dominant indigenous languages in each county official. The government should invest financial resources to enable the standardisation, orthography and publishing of indigenous languages in each county in Kenya. This can help establish how best these languages can function not only in law and courts, but also in various areas of social-economic and political lives of the people in the county. There is a need for a new language policy model different from the earlier model, that considers indigenous languages. The researcher agrees with Magwa (2013) that indigenous languages will have at least three significantly essential functions that will eventually be necessary in the future of young people, including:
 - ~ To allow the transmission of knowledge and the cultural heritage of the community.
 - ~ To contribute to the formation of a symbolic identity in the child.
 - ~ To ensure a basic knowledge that is culturally integrated (p.180).

There is a need to change people's negative attitudes towards indigenous languages. As Magwa (2010:185) said, 'it is important to help Africans know that African languages are not sub-languages since they can perfectly be modernised to fulfill roles of prestige with a view to develop the nation.'

- ❖ In an effort to have explicit written policies, there is a need for a law and court language policy. This policy needs to embrace a culture of constitutionalism, and should domesticate international conventions, treaties and agreements. Linguistic

human rights should be guaranteed so that they are accessible and beneficial to everyone.

- ❖ Indigenous languages should be used in other sectors, including police force and the school curriculum. This will give the language value and enable its users to use them without embarrassment. The indigenous languages should be used in teaching so as to encourage practitioners to develop new vocabulary and new law and court terminologies alongside scientific and technological terminologies to represent new ideas expressed in the indigenous languages.
 - ❖ Defining status of indigenous languages and foreign languages is necessary. The government should enact an indigenous language act that caters for various aspects of creation and implementation of a language policy. Policy makers need to clarify the place of official, national and official minority/indigenous language at a county level. It will also, through the constitution that promotes multilingualism, empower languages and guarantee linguistic human rights.
 - ❖ There is a need to have dictionaries in indigenous languages to help harmonise understanding of these languages. Indigenous languages should also be made languages of record. This is possible if there are harmonised vocabularies and points of reference.
 - ❖ A national and county language committee is necessary to supervise the implementation of the language policy in compliance with the envisaged language act.
 - ❖ It is important for the government to encourage many hearing people to learn the sign language to enable the hearing impaired to be on the same level in terms of the dissemination of information.
- There is a need to have training for interpreters, and interpreting to be professionalised as a job opportunity on its own. Clerks should be trained as clerks and not double up as interpreters.
 - Further research should be conducted in other domains to determine how language is used and to establish the need to promote indigenous languages in order to allow easy communication.

6.6: Conclusion

The aim of the study was to explore the right language to use in subordinate courts in Machakos County, that accommodates everybody and that solves the problem of communication barriers. The hypothesis was that language management in courts is problematic. The indigenous languages have been put away due to the fast changing society in terms of language choices and use patterns as a result of education, modernisation and technology. This has also affected the people in the society that do not know English and Kiswahili but only their mother tongues. They are affected when the courts use English and sometimes Kiswahili as their official languages and ignore mother tongues, hence infringing on accused persons' and witnesses' human rights in the judiciary.

The study findings provided evidence that there is a linguistic discrepancy in Machakos Law Courts because the language of the court is not the language of accused persons and witnesses. Although the indigenous languages allowed in courts have not been properly utilised, the findings revealed that interpreting of these indigenous languages is poorly done by people who are not professionals, and who do not know their mother tongues, including ethics and tenets that go with interpreting. The results from the questionnaires, interviews and observations were an affirmation that there can never be any justice when the court proceedings are carried in a language barrier-stricken court.

The majority of the respondents agreed that justice may not be achieved without the use of indigenous languages in the official capacity. The accused person and the witness' language should be the first consideration in any court proceeding. The study results were clear that Kiswahili is highly used because it is easily spoken. This is followed by English, mixed languages and then mother tongues. This proves that a minority group of people is left out when assumptions to use Kiswahili or English at the expense of mother tongues are made. There are people that always use their mother tongues, those that understand everything when spoken to in their mother tongues and those that simply like using their mother tongues. The low status that the indigenous languages have in the society is the only limitation to their use even by the elite.

As it is from this study findings, language use, language needs and language preferences are major indicators of the most suitable language to use when in search of justice.

It is therefore imperative to consider three languages in courts and to value them equally. These mother tongues (indigenous languages) were proposed by many respondents for use during court proceedings. Mixed languages had the highest weight in terms of choice. This means that all three languages, mother tongue, Kiswahili and English need to be used in courts and given the same status. Those who do not know the official languages will be free to use their mother tongues because they will have the same status as Kiswahili.

Most African countries seem to be stuck with the language of the coloniser with little room for change. In Kenya, the British law was adopted and English has continued to enjoy dominance in the courts. Although the elite and especially the young generation consider indigenous languages retrogressive, they are probably the best languages we can use to express ourselves in order to get things done. Although Kiswahili is meant to unite all language communities, indigenous languages are in essence the only languages that are all-inclusive in a society,

In light of the above arguments, it is necessary to consider the findings, conclusions and recommendations of the study. It has been proposed that mother tongues be promoted to official status so that they may be used at the same level as Kiswahili, and that all the three languages, Kiswahili, English and mother tongues can be given equal chance in court proceedings. This proposal should be considered as a significant contribution in the definition of a language policy of subordinate courts within a county in Kenya.

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APPENDICES

APPENDIX A. CONSENT FORMS FOR PARTICIPATION IN THE STUDY

Emma Mwende M.

P.o Box 1724 Machakos

Cellphone 0722591889

Email: mwendemulwa@yahoo.com

Dear Respondent

I am a student in the Department of Linguistics at the University of South Africa (UNISA). I am conducting a study on **Language Management in relation to Language needs, Uses and Preferences in Subordinate Courts. A case study of Machakos County in Kenya.** The main aims of this study are;

- To investigate the use of indigenous languages in the Subordinate Courts in Machakos County
- To explore language needs among the participants in the Subordinate Courts in Machakos County
- To evaluate the implementation of the current language policy in the Subordinate Courts in Machakos County.
- To recommend interventions that will facilitate access to justice in language use in the Subordinate Courts in Machakos County based on the study findings.

Through your participation, I hope to bring out important information that can guide language policy makers in making decisions best suited for every Kenyan. Your responses will not be identified with you personally. Nothing you say in the interview will influence your life negatively. There will be no cost for participating in this study neither will there be any penalty. The information collected may be of great benefit to you, and what I learn from this study should provide general benefit to the Kenyan citizens, language planners and myself as a researcher. Please do not hesitate to contact me for any questions or further information.

Please indicate if you agree or not to participate in the survey by a tick in the space provided

I agree _____ I don't agree _____

Signature of the respondent

Name of the respondent

Date

APPENDIX B: OBSERVATION SCHEDULE

Survey	Date of survey
of Language needs, uses and preferences	Surveyor

Conversation No. and Description	Language of conversation			Observation							
				Young people 19-24 yrs.		Adults 25-59yrs		Elderly 60 & above			
	A	B	C	F	M	F	M	F	M		
1.											
2.											
3.											
4.											

Adapted from Altuna & Basurto (2013:59) - *with minor adjustments to suit this study*

KEY.

- A- English
- B- Kiswahili
- C- Indigenous Language (specify)
- F- Female
- M- Male

APPENDIX C: INTERVIEW GUIDE

- Do you know your mother tongue?
- How did you learn/know your mother tongue?
- Which languages are used in the subordinate courts?
- What do you do about those who do not know English or Kiswahili?
- Are the interpreters trained?
- Why do you use the languages you use in court?
- How do you choose which language to use?
- Would you like your kids to know and use their mother tongues?
- What do you think about children and their use of their mother tongues?
- Why do participants in the court use the languages they choose to use?
- Is there need to know the indigenous languages, are they necessary?
- If the official languages are a challenge to participants in court, which is the better option to achieve communication?
- How then would you rate interpretation in the courts?
- How reliable are interpreters in the court?
- What then do you think about mother tongue use in the courts?
- What is the future of indigenous languages?
- How well do people in the court use English and Kiswahili?
- How effective and efficient is interpretation during court proceedings?
- Which languages should be used in court?
- What would you say about promoting our indigenous languages to official status?
- Suggest other ways of promoting our indigenous languages?
- Would you wish your children to know their mother tongues?
- The policy in Kenya states that indigenous languages be used as medium of instruction up to class three, and that it recognises indigenous languages. Do you think that the use of a court interpreter meets the requirements of this policy?
- Are indigenous languages spoken in schools? When, how, why and by whom?
- What is the perception of your children on the use of indigenous languages?

- What are your views on teachers' deliberate ban on the indigenous languages in schools in order to improve academic performance?

APPENDIX D: QUESTIONNAIRE

Section A.

(Fill in the spaces provided and tick where appropriate)

Date of Investigation (DD/MM/YYYY)

____ / ____ / ____

A.1. Gender (Tick) Male Female

A.2. Tick your age as given in years

1=19 – 27

2=28 – 36

3=37 – 45

4=46 – 54

5=55 – 63

6=64 and more

A.3. Tick your highest Level of Education

1. Never went to school

2. Primary School drop-out

3. Completed primary school

4. Secondary school drop-out

5. Completed secondary school

6. Tertiary level

7. Other (specify in cell)

A.4. Where were you brought up? Tick

1=In Town -urban

2=In Village-rural

A.5. Tick your Primary Activity

1. Employed – domestic

2. Civil servant

3. Farming- self employed

4. Farming- employed

5. Business- self employed

6. Business- employed

7. Student/Pupil

8. Retired/ pensioner

9. Disabled

10. Other (specify in cell)

A.6. Specify your mother tongue.....

2. Section B - Language use

2.1 How do you speak the language(s) you know?

Please rate yourself on each language(s) factor. Please tick one box only (✓) and provide comments that will help us understand your ratings, if ANY.

ID	Language	Not at all	With great difficulty	With difficulty	some	Easily	Comments
1	Mother tongue alone						
2	Kiswahili alone						
3	English alone						
4	Mix mother tongue & Kiswahili						
5	Mix mother tongue & English						
6	Mix Kiswahili & English						
7	Mix mother tongue, Kiswahili and English						
8	Sign Language						
9	Others (specify)						
	Statement	Very much	Much	About the same	Not very much	Not at all	Comments
2.2	You are ashamed of using your mother						

tongue.

You are shy about using your mother tongue.

2.3.	Statement	None	Some	Quite a bit	About all	Everything	Comments
2.3.1	How much do you understand when spoken to in your mother tongue while in the Subordinate Court?						
	Statement	Never	Rarely	Sometimes	Often	Always	Comments
2.3.2	How often do you use your mother tongue?						
	Statement	Very much	Much	About the same	Not very much	Always	Comments
2.3.3	How much do you like it when people speak to you in your mother tongue?						

2.4 Tick the language(s) you would like to use while in the Subordinate Court

ID	Language	The Subordinate Courts
1	Mother tongue alone	
2	Kiswahili alone	
3	English alone	
4	Mix mother tongue & Kiswahili	

5	Mix mother tongue & English
6	Mix Kiswahili & English
7	Mix mother tongue, Kiswahili and English
8	Sign Language
9	Others (specify)

2.5 Which language(s) do you think is/are the most suitable to use in the subordinate courts ;

Mother Tongue(MT)	Kiswahili (K)	English (E)	Mixed languages (specify)	Sign language (SL)	Any other (specify)

2.6. Provide a brief explanation why the choice of language(s) you have made in 2.5 is the most suitable to use in Subordinate Courts

Language	Why the choice of language(s) is the most suitable to use

3 Section C Language Needs

3.1 How well do you understand when instructed to do something or have a conversation in the following languages;

Language	Extremely well	Very well	Well	Fairly well	Not at all
Mother Tongue					
Kiswahili					

English
Mixed Languages
Sign Language

3.2 How often do you use the following languages while in the Subordinate Courts? Use the numerals of your choice in the relevant box.

(1=Always; 2=Quite often; 3= Often; 4= Less often; 5=Not at all)

Domain	Mother Tongue	Kiswahili	English	Mixed languages	Sign language
Subordinate Court					

3.3 How often would you wish mother tongue to be used for better communication and understanding in the Subordinate Courts?

Domain	Always	Very often	Often	Less often	Not at all
Subordinate Court					

4 Section D - Language Preference and Education Language Policy

4.1. Where did you learn standard 1 to 3? 1= Rural [] 2= Urban []

4.2 While in primary standard 1 to 3, were you taught in the following language? Tick appropriately.

Language	Yes	No
Mother Tongue		
English		
Kiswahili		
Mixed languages		

Sign language

Appendix E: Interview Sample

Date of interview: 19-06-2017
Location of interview: Machakos Law Courts
Sub- Site: Chief Magistrate Office
Type of Interview: Language Management
Name of Researcher: EmmahMwende

Duration: 30min
Time Start: 2.30 pm
Stop: 3.00 pm

KEY: Int- Interviewer

Resp- Respondent

An interview with the Chief Magistrate, Machakos Law Courts

Int: Good afternoon Sir,

Resp: After noon to you. I see you've finally managed to come.

Int: Yes Sir. I serious needed to hear from you about the languages you use during court Proceedings.

Resp: Oh! Yeah! And am so curious to know what you might possibly want to hear.

Int: What do you think about mother tongue use in the courts?

Resp: I tend to think it's a major challenge and a hindrance especially if you are looking for justice.

Int: I was arguing that the language needs of the people at the county level, especially at the mashinani (rural areas)...at the county level, Yes, they would prefer to use a particular language,

Resp: Ya! Ya! Ya!, that is where the people are...

Int: ...but then what the government or the language policy offers is different, so there is no satisfaction in that. What do you have to say about that?

Resp: It is a big challenge. Sometimes I wonder... do you train people, but then, how do you start training people on their vernaculars. You know, it is not a trainable language in our systems.

Int: If we take Kiswahili which is also a local language, but it has reached some level where it Has become an official language, don't you think the same can happen to our mother Tongues, or what is your take about that?

Resp: Would that mean that the people who handle them in these situations, also will now have To require to belong to that community.....because the mother tongue is used in the court, the challenge is proper interpretation.

Int: Yes, because I have just witnessed in one of the courts, there was a document that was produced by an old mzee, and there could not be any communication or understanding between the prosecutors and the lawyers and the person giving the document, the mzee (Old men) such that even the judge could not make a proper judgement of the situation, so eventually it was dismissed. Yes, because completely there was no communication. So as a spectator, I just had to let

it be. I couldn't judge, I couldn't say this person should have thought this way or that way. So how would you be sure that you are just to either side?

Resp: It becomes a challenge.

Int: It is a challenge.

Resp: It becomes a serious challenge.

Int: I was of the opinion that if this languages are taught, like it's supposed to be by the policy, you remember from class 1-3...

Resp: Yes, yes the vernacular should be taught. I think that it should be taught, but you know that the whole day you speak your language in the house, but you know we are clogged, we have become so clogged into tribalism, you don't want to be associated with the use of your mother tongue, you don't even want to hear it, but you belong, you cannot change that.

Int: You are a kamba, you use it in your house.

Resp: Yes, you need to communicate in your language, you use it everywhere, but when it comes to the official things, we can't use it.

Int: We dismiss it

Resp: Yes we dismiss it. We want to express ourselves in a language we don't know. Some people come in the courts and say, yes I know Kiswahili but I would express myself better in kikamba.

Int: Yes!

Resp: Yes, and I find that very genuine. Kiswahili naijua, lakini nitawezakujiexpress(I know Kiswahili, but I can express myself) better in kikamba. Because there are those words that come out better in the vernacular. They feel that is what they wanted to say

Int: Yes, that has been a great challenge in our country. In some countries like South Africa,

they have allowed the use of eleven official languages

Resp: And they are vernaculars?

Int: Yes, do you think our country, there is a way we can make our vernaculars useful, even in

the courts?

Resp: Yes, why do we study Germany? Or French? I think those are their vernaculars. Isn't it?

Int: Yes, that it is.

Resp: Why can't we study our languages, to be experts in them if it is Maasai, I study that language. If there is a course in the university that studies languages, then the use of the language can become meaningful.

Int: Is it possible to use our mother tongue in courts?

Resp: Yes it is. So that our lawyers and clerks can be trained in these languages.

Int: Once I talked to one of your clerks and I asked them in their trying to translate, if there is a dictionary they refer to, and they...

Resp: I don't think so, I have never seen one.

Int: So how can they justify that what they have said is correct.

Resp: There is no reference, I don't know, it is just how they understand, it is very unfortunate where the person giving the evidence is not represented well, she doesn't know whether what that person is interpreting is correct. I think that person is interpreting to a person who also doesn't know that language, he may not know whether the interpretation is the correct statement that the witness has said. So there is all that confusion.

Int: A lot of confusion eeh!

Resp: A lot of confusion. There have been cases where court interpreters interpret their own things.

Int: And I want to imagine that eeh, if we looked around, like now that we have the constituencies which have been divided along our ethnic groups, if it is Machakos constituency, it is mainly the Kamba, so is it possible to have one or two Kamba magistrates, kamba lawyers, and prosecutors amongst the other tribes because the community is mixed. We don't want to dismiss that.

Resp. Yes, So that we...where there is need eeh ... interpretation, that officer can just come in, and do it with a lot of understanding and appreciating what the person is saying.

Int: With understanding and justice-yes, they will say things me... I will not understand them the way a person who understands it would say it, you know, there is that in-language that cannot come out in interpretation.

Resp: It can't come out, you try to look for a word to fit, it can't. It is a good idea to have mother tongue learning.

Int. So in the future, if it can be allowed that our mother tongues are given an official use...

Resp. Communication

Int. Yes maybe they can become useful and then we stop looking down upon them...

Resp. Stop looking down upon them, now that we are shy about using them in an office. What's wrong with using them!

Int. And it begins even with our kids

Resp. We are demonising our own Mother tongues.Why? We are known to be a tribe, so why not speak our language!

Int: you know in Kenya, we are known to be tribalistic such that anytime you speak your mother tongue, you wonder what the other person will say.

Resp: What will other people say! It is wrong. Naye huyu atasema nini (what will this one say), which I think is wrong.

Int: It is wrong. It is even happening along the corridors of our schools. I have a teacher friend who will always ask me why we use mother tongues in the staffroom, and I will ask her what's wrong with mother tongues because now I'm wiser, I will challenge them.

Resp: It is wrong. Even in class, if you find a student that cannot understand you, you are supposed to translate into the mother tongue.

Int: Yes the language they understand best, exactly, I thought that was the case, so you have young ones! Do they know their mother tongue?

Resp: one word here, another one there...

Int: what tribe are you, if I may ask

Resp: A Kikuyu

Int: So they don't know their mother tongue

Resp: No, but I would have liked it so

Int: you would have wished

Resp: yes, we speak it at home and they hear it well, only they can't respond in the mother tongue. You see them respond well. But I would like them to communicate in them.

Int: How about in the primary school, would you like them to be taught?

Resp: has it been provided now in the new curriculum?

Int: I wish it works, I don't know what they have said yet, but the policy states clearly that, standard 1-3, let's have our mother tongues, instructions done in mother tongue, but there is a challenge, because of the examinations.

Resp: How about where there is cosmopolitan

Int: Yes, where it is a cosmopolitan, they have accepted Kiswahili, but I think there is still no harm in bringing in mother tongues especially to those kids who have just been brought into the towns, because there is...

Resp: always a first time

Int: yes, always a first time. So there is a, when we think about bringing the mother tongue to the upper classes...

Resp: We can do them the way we do in other languages like French, and specialise in Our languages, so that we do them and become experts like dholuo experts, luyha experts.

Int: and by extension, where else do you think mother tongues can be used, other than the courts?

Resp: Public offices. If I go to Huduma Centre and I want a birth certificate, there should be somebody who will explain to me in my mother tongue.

Int: it should be like that! I thought so.

Resp: we have discarded our culture so much that I think it is wrong.

Int: Mmm. And which way do you suggest that we use to promote our mother tongues

Resp: Of course, through civic education, let our kids be proud of who they are, because even some of them are now changing their names, Joan John!

Int: Joan John, they don't want to bring in their mother tongues

Resp: they should be proud like the people that were there in the 60's, they were proud of their

Africans names, but now we insist on English names. We are Africans, that are losing our identity. Actually we are losing it we want to be so western, so that a child is so comfortable using French, another person's mother tongue, we are supporting other peoples identity and not ours. I feel like I should beat them when they do that.

Int: And so what do you think is the future of our indigenous languages, our mother tongues?

Resp: we are likely to lose them. Actually we are losing it, sometimes I listen to our old people when they speak in our own language, Kikuyu, it is so sweet you know! It is so rich in meaning and all that. We are losing it!

Int: it is so nice

Resp: we could have scholars like you do us a dictionary

Int: and actually it is there, it is there somebody did it

Resp: is it there? Now somebody should come up, and scholars, with dictionaries and curriculum in mother tongues, so that we enrich it and the government supports, because there is always the monies involved.

Int: Now to take you back to the issue of the constituencies, Now that each constituency is around those tribes, communities, mother tongues. If you can have a part from just the judges and what, what if we can have even the parliament, people accepting to have their mother tongues as official languages!

Resp: yes, like why should we have the county assembly transact in English , they are all Kambas, why can't they transact in kikamba, their mother tongue, which everybody understands, and yet some of them even don't know it, they are even struggling with this thing Bwana!why can't they use the language they know!

Int: and everybody is listening

Resp: you want to be somebody, you don't want to be ashamed of yourself because you don't know English, you feel inferior but you can communicate because your purpose is to communicate.

Int: you should. In fact I looked at different areas like religion, I don't know if you have Realised that people in the village will struggle to preach in English and somebody else Will interpret in Kiswahili and wrongly do it,

Resp: yet everybody in the village speaks mother tongue which is well known by all the parties

Int: And the preachers are themselves from the community. Even the English and Kiswahili they will use is so poorly used, yet nobody doesn't know their mother tongues there.

Resp: they don't want to be identified with the local language and it's a major challenge

Int: so, eventually if we gave importance to our mother tongues, don't you think it will kill our misuse of our language, and forgetting our own languages? So that if you come to a place like this, you are free, you know your language is very valuable

Resp: I like the people from Western, like the Luos, most of the Luos are proud of their mother tongues

Int: and the Kikuyus, I like the way they use their mother tongues even in the markets. The women in the markets don't care, they will speak to you in Kikuyu, whether you are a Kamba or What, I am very proud of that.

Resp: Yes, they will always use it

Int: Good. Generally that's what I wanted to hear, to know what you people feel about language. We need to work on our mother tongues use and also work on our identity in the area

Resp: why, should we recruit interpreters if they don't go through training in the language, just because somebody is called a Kyalo(a Kamba name) should be employed here, we have some Kyalos here who cannot even understand the language yet they are interpreters

Int: they don't know anything

Resp: it's very sad

Int: it's sad

Resp: I think that's an area you can even think of. Why can't the judiciary think of training in the local languages. There should be a provision here training local languages. Before you go to a court room to be an interpreter you should go through an induction even for three months or so

Int: that's a nice idea

Resp: instead of saying, your name is a Kikuyu you can be an interpreter in Kikuyu land

Int: that's how it works

Resp: that's how they do it

Int: because people want the job, so they rush there and say they want to be interpreters. They come to the station here as interpreters

Resp: ooh! That's something I hadn't thought about. So for you to become an interpreter you must apply

Resp: as an interpreter

Int: so you don't have to be a lawyer cum a linguist

Resp: no you don't, you see, to be a court clerk you just have to have completed your form four and done one or two courses here and there

Int: ooh! Ok! I get you. You don't have to have gone through the degrees and what and what to get the job?

Resp: Yeah it's just a clerical job

Int: that means the clerks should be trained in a language

Resp: yes, yes clerks should be trained in a language not just English and Kiswahili

Int: and, what's your take on sheng?

Resp: sheng

Int: now that the young ones are using it

Resp: language grows, because they are communicating. Because I believe the purpose of a language is to communicate

Int: Yes. Do they come to your courts?

Resp: yes they do, because you find they come but even when they come, you find that they have to avoid those languages eeh! I listen to this Radio station they call ghetto, they speak sheng kabisa, it's a language, they are communicating

Int: it's a language, now we are recognising it as one of our languages

Resp: unfortunately, I can't understand what they are saying , but they are communicating and they have an audience, that's why they use it and it needs to be developed.

Int: our children are actually using it so fluently

Resp: they have got a lot of words in sheng, but, they understand it

Int: if some of them are accused persons or come to the court for defence, they cannot avoid using it,because that is what they know

Resp: yes

Int: so what does the court do about that

Resp: they have to explain to us what they mean

Int: ooh!

Resp: because you don't know

Int: you don't know what they are saying. You have to keep on asking what they mean

Resp: yes! What is that!

Int: ok, I think in future it should be recognised as a new language

Resp: yes, because... even Kiswahili began like that. You know. Where did it come from?

Int: it began like that, with the Arabs and the coastal people, it developed. Even with being an African language, we are now calling it Kiswahili, an official language

Resp: majority are speaking it fluently. In years to come majority will allow communication in sheng or even as a national language. We have no choice, it is growing, so it should be developed

Int: Do you have sign language?

Resp: we don't have but we seek them when it's necessary

Int: but there are offenders?

Resp: yes there are offenders

Int: So I think I have gotten most of the things I needed to find out and I am so grateful. Thank you so much. I will bring a copy of the responses so that you can see what people think.

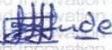
Resp: Thank you I'll appreciate.

Appendix F: Research Permits

THIS IS TO CERTIFY THAT:
MS. EMMA MWENDE MULWA
OF UNIVERSITY OF SOUTH AFRICA
(UNISA), 1724-90100 Machakos, has
been permitted to conduct research in
Machakos County

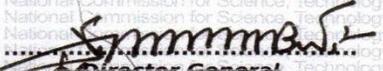
on the topic: LANGUAGE MANAGEMENT
IN RELATION TO LANGUAGE NEEDS,
USES AND PREFERENCES IN KENYAN
COUNTIES: A CASE STUDY OF
MACHAKOS COUNTY

for the period ending:
11th February, 2018


.....
Applicant's
Signature

Permit No : NACOSTI/P/17/83230/15280
Date Of Issue : 14th February, 2017
Fee Received :Ksh 2000




.....
Director General
National Commission for Science,
Technology & Innovation

CONDITIONS

- 1. You must report to the County Commissioner and the County Education Officer of the area before embarking on your research. Failure to do that may lead to the cancellation of your permit.**
- 2. Government Officer will not be interviewed without prior appointment.**
- 3. No questionnaire will be used unless it has been approved.**
- 4. Excavation, filming and collection of biological specimens are subject to further permission from the relevant Government Ministries.**
- 5. You are required to submit at least two(2) hard copies and one (1) soft copy of your final report.**
- 6. The Government of Kenya reserves the right to modify the conditions of this permit including its cancellation without notice.**



REPUBLIC OF KENYA



National Commission for Science,
Technology and Innovation
RESEACH CLEARANCE
PERMIT

Serial No. A/1838

CONDITIONS: see back page



**NATIONAL COMMISSION FOR SCIENCE,
TECHNOLOGY AND INNOVATION**

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Website: www.nacosti.go.ke
when replying please quote

9th Floor, Utalii House
Uhuru Highway
P.O. Box 30623-00100
NAIROBI-KENYA

Ref. No.

Date:

NACOSTI/P/17/83230/15280

14th February, 2017

Emma Mwende Mulwa
University of South Africa
SOUTH AFRICA.

RE: RESEARCH AUTHORIZATION

Following your application for authority to carry out research on "*Language management in relation to language needs, uses and preferences in Kenyan Counties: A case study of Machakos County,*" I am pleased to inform you that you have been authorized to undertake research in **Machakos County** for the period ending **11th February, 2018.**

You are advised to report to **the County Commissioner and the County Director of Education, Machakos County** before embarking on the research project.

On completion of the research, you are expected to submit **two hard copies and one soft copy in pdf** of the research report/thesis to our office.


BONIFACE WANYAMA
FOR: DIRECTOR-GENERAL/CEO

Copy to:

The County Commissioner
Machakos County.

The County Director of Education
Machakos County.

MINISTRY OF EDUCATION, SCIENCE & TECHNOLOGY

STATE DEPARTMENT OF EDUCATION

Telegrams: "SCHOOLING" Machakos
Telephone: Machakos (
Fax: Machakos
Email [-cdemachakos@yahoo.com](mailto:cdemachakos@yahoo.com)
When replying please quote



OFFICE OF THE
COUNTY DIRECTOR OF
EDUCATION
P.O. BOX 2666-90100,
MACHAKOS

REF. MKS/ED/CDE/U/1/VOL2/109

21/2/2017

Emma Mwende Mulwa
University of South Africa
SOUTH AFRICA.

RE: RESEARCH AUTHORIZATION

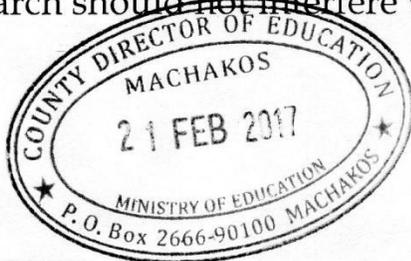
Reference is made to the letter from National Commission for Science, Technology and Innovation Ref: NACOSTI/P/17/83230/15280 Dated 14th February, 2017.

The above officer has been authorized to carry out research on "Language management in relation to language needs, uses and preferences in Kenyan Counties: A case study of Machakos County," for a period ending 3rd October, 2017.

The research should ~~not~~ interfere with the school programme.

A handwritten signature in black ink, appearing to read 'SAB'.

SAMWEL BOTO
COUNTY DIRECTOR OF EDUCATION
MACHAKOS





THE PRESIDENCY
MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

Telephone: 21009 and 21983 – 90100
Email Address: countycommasaku@gmail.com.
Fax No. 044-21999

OFFICE OF THE
County Commissioner
P.O. Box 1 - 90100
MACHAKOS.

When replying please quote

REF NO: CC/ST/ADM 5/9 VOL II/94

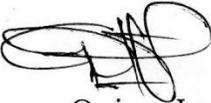
21st February, 2017

TO: WHOM IT MAY CONCERN

RE: RESEARCH AUTHORIZATION – EMMA MWENDE MULWA

The National Commission for Science, Technology and Innovation has authorized the above named to carry out a research on “***Language management in relation to language needs, uses and preferences in Kenyan Counties: A case study of Machakos County***” in Machakos County for the period ending **11th February, 2018.**

Please be notified and accord her necessary assistance.


George Opiyo Juma
For: County Commissioner
MACHAKOS

COUNTY COMMISSIONER
MACHAKOS
P.O. Box 1 MACHAKOS

Telegrams: "COURT", Machakos
Telephone: 20089
When replying please quote



MACHAKOS LAW COURTS
P.O. Box 145 - 90100
MACHAKOS

Ref. Research

REPUBLIC OF KENYA
THE JUDICIARY

5th April, 2017

Ms Emma Mwende Mulwa
P.O. BOX 1724,
MACHAKOS

RE:REQUEST TO UNDERTAKE RESEARCH

Please refer to your letter of 23rd February 2017 on the above subject matter.

This is to inform you that the same has been approved.

Make the necessary arrangement to start your research work.


W. KUGWA
FOR:CHIEF MAGISTRATE

CC:1.The Deputy Registrar
High Court of Kenya
Machakos.