



Utterances Functions and the Negotiation of Power in Courtroom Interactions: A Survey of High Courts in Ota, Ogun State, Nigeria

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Abstract

This study investigated the negotiation of power and the pragmatic implication of utterances in courtroom proceedings in Ota, Ogun State, Nigeria. Teun van Dijk's approach to Critical Discourse Analysis and Jacob Mey's Pragmatic Acts theory are theoretical frameworks adopted in the study. Data was collected from five High Courts' trial cases in Ota, Ogun State, Nigeria. In the High Courts, the Judge wills the highest power in the court and controls the proceedings in the High court. The Judge dominates the Counsels, and litigants while the Counsels dominate the litigants. The litigants are observed to be at the receiving end of the discourse as they accept and legitimize this power and dominance. Certain pragmatic acts such as acknowledging, protesting, accusing, justifying were deduced from the discourses. The role played by courtroom participants in the social structure influences power relations in courtroom proceedings. Thus, power, dominance, inequality and hegemony are notable features in the language of High Court proceedings in Ota.

Keywords: Power, Dominance, Inequality, Utterance functions, Negotiation, Courtroom discourse.

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Contribution of this paper to the literature

This study contributes to existing literature by investigating the negotiation of power and the pragmatic implication of utterances in courtroom proceedings in Ota, Ogun State, Nigeria.

1. Introduction

Language is a major tool used in effective communication among humans (Olorunsogo, 2020). Hence, the talk about variations of language, and language for specific purposes; such as the language of law (legal document), the language of religion, the language of the military, the language of agriculture, the language of economics, language of journalism, and language of medicine among others. There is a difference between the language used in the courtroom and the language used for daily communications among humans (Santos, 2004). Gibbons (2003) therefore, records that the language of law connotes power and influence. This language has become a means of social control and power in given discourses.

The Nigerian courtroom employs the adversarial model whereby two opposing sides are made to confront each other and plead their cases with strong physical evidence (exhibits) and verbal testimonies (from witnesses) before a presiding judge who is vested with the capacity to settle on an ultimate conclusion. Although, these courtroom participants are expected to play specific roles to bring about law and order, the power exhibited by each of these participants differs.

Interrogative strategies are one of the key instruments for achieving the basic institutional role of the court (Richard and Nwizug, 2017; Farinde, 2008). Therefore, both the presiding judge and counsels rely on interactions based on interrogative processes and patterns to extract information and elicit facts that will form the basis of fulfilling the social functions of the court. In other words, the primary concern of this paper is to examine how direct questioning and answering are used to create unequal relationships among courtroom participants in the High court, and how this manifest through the use of language.

1.1. Courtroom Discourse

Courtroom discourse can easily be translated to the use of language in the courtroom. Maley (1994) characterizes courtroom discourse as “an interactive form of discourse”. This connotes that courtroom discourse involves interactions among certain participants who are peculiar to the courtroom settings. These participants include the presiding Judge or Magistrate (as the case may be), the lawyers, the accused, witnesses, the court clerk and security. There are some perceived dormant participants known as members of the public who sit to watch the proceedings of the court, and who could also include families of the accused/witness.

Conflict and confrontation referred to by Harris (1988) often manifest during the examination phase of legal proceedings. At this point, interrogatives are used in which the witness/accused is asked certain questions by the Counsel. Courtroom questions are indeed linguistic tools used to exercise power and control by counsel. The courtroom discourse also involves other conversational acts such as the use of command, assertive, accusatives, declarations amongst others.

Farinde (2008) also identifies three major components of dominance in the courtroom. He identified the quantitative dominance which is the amount of speech measured by an analyst in which the size of utterance as well as who says the most words is determined. In this case, the lawyers and Judge are said to use the highest number of utterances as they are said to be the parties who ask the questions and guide the utterances made by the witnesses/accused. Farinde also identifies the topic dominance which deals with the person who initiates the topic of conversation that is the Judge and the lawyers who initiate the topic and changes the topic at their will. He also refers to the interactional dominance which deals with the initiation-response patterns in which the dominant speakers ask leading questions and avoids being dominated and controlled by the other party.

Another aspect of conversation in the courtroom is its "double frame" of listeners. For example, the trial session in the courtroom, which is examination and cross-examination of witnesses, directed to a set of listeners beyond the immediate speaker and hearer that is the Judge, Magistrate, the courtroom staff, and so on. While legal conversation is designed to serve a functional purpose for these second-level listeners, they rarely play an active role in the conversation.

2. Literature Review

A lot of studies have been carried out on courtroom discourse. For instance, Ahmadu (2014) analysed power relations in courtroom language and how this power is used between authorities in courtroom conversation. In his study, it is deduced that Courtroom conventions do not give room for the style and the form of language used by laypersons and this has an effect on their use of language and makes it difficult for understanding and comprehension of conversation.

Furthermore, Richard and Nwizug (2017) applied the use of Critical Discourse Analysis to legal discourse to expose how the question-answer sequences of a direct and cross-examination, turn-taking, objections, and other legal proceedings create unequal relationship among participants in high court proceedings and Supreme court quarterly report 1990. The study concluded that there is an unequivocally legitimized inequality in the courtroom which manifests through language and that language is the most powerful natural weapon used to effectuate justice in societies.

Aina, Anowu, and Opeibi (2018) studied the nature of power and control in the interrogative patterns of selected Nigerian courtroom discourse. The study examined power relations in two different but interrelated courtroom trials within the Nigerian socio-judicial space. The findings of the study support the interplay between socio-cultural circumstances and legal considerations in some typical courtroom trials in Nigeria.

Kiguru (2008) undertook a critical analysis of power asymmetry among discourse participants in sampled Kenyan courts. the study explored the scrutinizing and pragmatics strategies utilized by lawyers, police investigators and unrepresented accused people during direct examination and cross-examination phases of trials. From the research, it is established that evidentiary rules empower those who assume the examiner role by placing them in control of topic choice and change and giving them the means to constrain the contributions of others.

However, lay litigants are not always able to exploit the language and pragmatic resources available to the examiner.

While these studies have investigated power relations in courtroom interactions in and outside Nigeria, none has explicitly considered the pragmatic functions of the utterances of participants in courtrooms, with special consideration given to state High Courts.

3. Methodology

The study focused on courtroom discourse in High Courts in Ota, Ogun State, Nigeria. The data was collected from five trial cases in high courts in Ota, Ogun State. Proceedings of issues on theft, assault, land matters and destruction of public property were selected. The Judges of each court gave their consents, however, the identity of participants were made anonymous in the study. The study employed (Van Dijk, 1993) Principles of Critical Discourse Analysis to investigate how power is enacted in the courtrooms. The study also made use of Mey (2001) Pragmatic Acts theory to identify the various functions courtroom participants perform with their utterances. The courtroom proceedings were audio-recorded; the audio recordings were transcribed accurately and analysed using the two theories.

4. Participants and Social Structure in State High Courts in Ota, Ogun State

The participants in the state high courts include the Judge, Counsels, Litigants, Court clerks and members of the public who are passive participants in the courtroom.

4.1. Judge

The social structure of the courtroom setting has the judge as the highest-ranked participant. Judges play several roles in courtroom proceedings, they interpret the law, assess the evidence presented to them during proceedings and control how hearings and trials unfold in the courtroom. The Judge is referred to as the 'Trier of fact' as he decides whether the evidence is credible or not. He also determines whether a case is to be heard or dismissed or adjourned.

More so the Judge decides whether the accused is guilty or not guilty at the end of the trial session. If the defendant is convicted of a crime, the judge passes sentence, imposing a penalty that can range from a fine to a prison sentence depending on the severity of the offence.

4.2. Counsel

The counsels are the Barristers in the courtroom. The counsels are next to the Judges in terms of their social structure. They are divided into the defence counsel and claimant counsel in civil cases. The defence counsel is one who represents the defendant that is the accused while the claimant counsel represents the claimant that is the person who filed the case. While during criminal cases we have Prosecutor or the State counsel who is also a barrister representing the claimant. The counsels represent clients who include individuals, corporations and organizations. They present arguments in forms of Examination-in-Chief, Cross-Examination and Re-Examination before the Judge while they may negotiate on their clients' behalf as in the case of hegemony during hearings. They make use of skills such as analytical skills, persuasion, negotiation, communicative skills and so on to have the judgement in their favour.

4.3. Litigants

The litigants are ranked the lowest in the social structure. The litigants are those involved in a lawsuit. The person who sues and the accused who got sued are both litigants, this implies that the accused or defendant that is the one who got sued, the claimant that is the one who sued and the witness that is the one who testifies in a case trial are all known as litigants. The litigants are involved in Examinations, Cross Examinations and re-examinations in which they are not permitted to ask questions instead they are required to answer every question directed at them.

4.4. Court Clerks

Court clerks are administrative workers in the courtroom who manage secretarial duties including maintaining court records, distributing orders of the court and preparing meeting agendas. The court clerks maintain order in the courtroom, and they announce the arrival of the judge, announces the case and the charges in the case of criminal cases and engage in the swearing of oath by the litigants.

Figure 1 is the hierarchical representation of the relationship among participants in the High-Courts in Ota, Ogun state. The schema is derived from the observation of the courtroom proceedings and the data that were gathered for this study.

4.5. Negotiation of Power and Dominance among Participants

Power and dominance are negotiated by various participants within the social structure of the courtroom. Power and dominance are evident among Judge and Counsels, defense Counsel and claimant counsel, counsels and litigants.

4.5.1. Judge versus Counsels

The Judge who is the highest-ranked participant exhibits power and dominance over the counsels during the courtroom proceedings. The Court clerk announces the case and the Judge signals to the Lawyers who are expected to mention their names and mention the party they are representing in the case. The Excerpt below shows this.

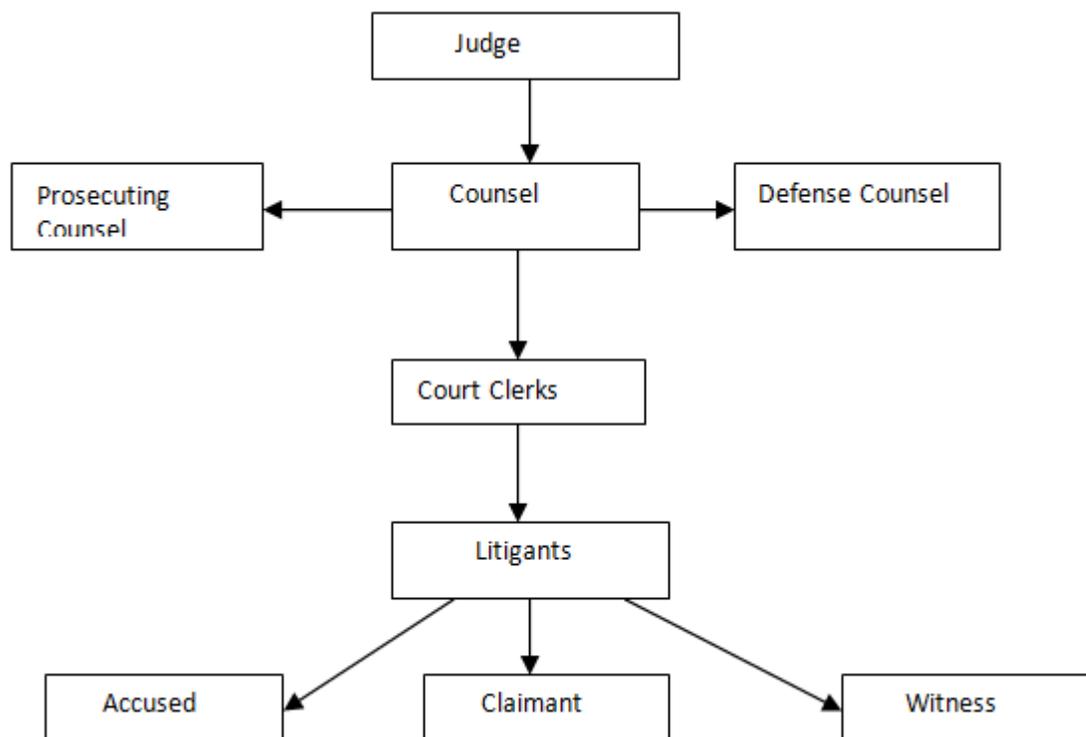


Figure-1. Hierarchical representation of the State High Courts social structure.

Excerpt 1:

Court Clerk: Suit number FCT/HC/CV/7361/2019 between Mr Taiwo Orimolade versus Mr Idris Buba.

Judge: (nods in approval)

Plaintiff Counsel: Respectfully my Lord, I appear for the Claimant. I am Oluwasegun Olaseinde

Judge: (Jots down) yes

Defense Counsel: My Lord, I am Alao Adesanya, representing the accused.

Judge: (Jots down) yes

Plaintiff counsel: My Lord.....

In the excerpt above, it can be deduced that the Judge wills the ultimate power and control in the legal institution. He also influences decisions made in the courtroom as his approval is sought after by other participants in the courtroom all through the court proceedings. The judge decides when and if the proceedings should continue and nothing can be done without the approval of the judge. This implies that the Presiding Judge dominates the Prosecuting Counsel and the Defence Counsel who in return accept this dominance. The judge and the counsels both have a personal and social cognition as the counsel can detect that a nod or a 'yes' means a go-ahead from the judge. In this excerpt, the pragmatic function of acquainting is being achieved. The Counsel introduces themselves to court and states who they are representing in the trial. There also exists a shared knowledge (SSK) among the counsels who can infer (INF) that the Judge's physical act of nodding and the use of 'yes' implies that the counsels can go ahead with their introduction.

More so, the Judge has the power to negotiate dates with the counsels before adjourning a case. Hegemony occurs between the counsels and the Judge who decide on a favourable date for the next trial or hearing of the case, The Judge then uses his institutional power to adjourn the case to the agreed date.

Excerpt 2:

Defence Counsel: My Lord, I refer to the motion dated 6/6/19 it is for amendment of our statement of defence.

Claimant Counsel: We are served. We are not opposing it.

Defence Counsel: I move the motion dated 6/6/19 in terms as it is not opposed.

Judge: Order as prayed

Defence Counsel: I refer to motion dated 19/8/19. It was filled and served this morning.

Claimant Counsel: I seek to oppose the motion. We agree 5/9/19

Judge: Does the defence counsel find this date favourable?

Defence Counsel: Yes your honour

Judge: Case is adjourned to 5/9/19 for hearing of the pending application

All: As the court pleases.

In this conversation, the judge wills his power by adjourning the case. The counsels, thereafter, acknowledge this power by saying 'as the court pleases'. In this case, the will of the Judge is all that is accepted by the counsels who have legitimized his/her power over them.

To achieve the pract of negotiating in this excerpt, the Judge seeks the approval of both counsels before adjourning the hearing. The judge, therefore, makes use of his institutional voice (VCE) in declaring the adjournment of the case.

4.5.2. Defence Counsel versus Claimant Counsel

There exists a form of power between the learned colleagues that is the defence counsel and the claimant counsel. They both state their claims and state their arguments before the Judge during the legal proceedings. They have the power to cross-examine witnesses presented by each other and ask question aiming to discredit the

witness. In addition to this, the counsels have the power to object to certain questions or claims made by the opposing party.

Excerpt 3:

Defence Counsel: I refer to motion dated 19/8/19. It was filled and served this morning.

Claimant Counsel: I seek to oppose the motion. We agree 5/9/19

Judge: Does the defence counsel find this date favourable?

Defence Counsel: Yes your honour

The excerpt above shows that counsels have the power to oppose claims and questionings which might be at the detriment of his/her clients. The opposing party accepts or resists this power through the verdict of the Judge who either approves or disapproves the objection. The pragmatic act of opposing is used by the claimant counsel in both instances who refers (REF) to the claims made by the defence counsel which he disapproves of. The defence counsel in the second instance above exhibits the pragmatic act of justifying. He justifies his claims by referring (REF) to the rules of conduct. While the claimant counsel exhibits the practice of accepting as he is forced to accept the decision of the judge.

4.5.3. Counsel versus Litigants

Due to the social structure of the counsels which puts them above the litigants due to their institutional knowledge, the counsels exercise power and dominance over the litigants during trial sessions. For Example, In the courtroom setting especially during cross-examinations, the counsel is believed to control the topic of the conversation. The lawyer asks required questions which he thinks will assist in solving the case and he does this with the use of questions such as 'Wh' questions, polar questions, indirect questions and so on. The witness is required to give adequate responses to the questions asked by the lawyer. An example of this is seen in the excerpt below.

Excerpt 4:

Counsel: What is your name?

Witness: My names are HRH Oba Alani Adufai Matanmi

Counsel: Where do you live

Witness: I live at No 22

Counsel: When did you make this statement of oath?

Witness: I made a statement of oath on 8/04/2018

Counsel: Do you adopt it as an evidence in this case

Witness: Yes, I adopt as an evidence in this case

Counsel: Did you make any other statement?

Witness: Yes, I made an additional statement.

Counsel: Do you adopt it as evidence?

Witness: I adopt it as my evidence also

It can be deduced from this excerpt, that control over a topic of conversation is a major form of power, and from the excerpt above, it is evident that the Counsel who is equipped with legal knowledge and legitimized power, dictates the topic, and directs the flow of the discourse during a cross-examination. The witness is required to answer questions not as he wants to but to satisfy the counsel. Here the witness is presented as a passive participant in the discourse, open to various influences and control while the lawyer is said to be an active participant in the conversation.

The Excerpt also reflects the practice of investigating. The counsel asks leading questions which he thinks are relevant to the solving of the case. Investigation, therefore, requires questioning and answering and the witness exhibit practice of accepting by accepting the topic dominance by the counsel. He also gives relevant (REL) answers to questions directed at him by the counsel.

4.5.4. Judge versus Litigants

The judge exercises his dominance over accused by pronouncing him/her guilty or not guilty and as well stating out the penalties for the crime committed. The judge's verdicts are final and are not to be contended with due to his role in the social structure.

Excerpt

Judge: After a review of the evidence tendered before me and after a consideration of the defences open to the accused along with the applicable laws, I have come to the conclusion that, the prosecution had proved beyond reasonable doubt that the accused on the 16th day of February, 2019 with intent to harm the deceased unlawfully killed the deceased. You are hereby found guilty of murdering the deceased contrary to section 316(2) of the Criminal Code Law. An offence punishable under section 319 (1) of the same law. You are hereby, sentenced to death by hanging”

Court: As the court pleases

There is the pronouncement of a judgement by the Judge. He specifically spells out the crime of the accused and finds the accused either guilty or not guilty and states the punishment to be served by the accused if found guilty. The Judge is the only participant in the courtroom that is given the right to pronounce judgement due to the power invested in him by the social structure.

The pragmatic act of declaring is used by the judge in this instance. He does this by using his institutional voice (VCE) in pronouncing the punishment to be served by the accused.

5. Conclusion

It is observed from the social structure that the High court social structure consists of the Judge who wields the highest power, the Counsels which include the defence Counsel and the claimant Counsel, the court clerk, then the lay litigants who include the accused, witness and the claimant. It is also observed that the language use and the social relation that exist between the participants in the courtroom are determined by the role each participant occupies and plays. For instance, the Judge wields the highest power and control the text and talk in courtroom proceedings due to his position in the social structure. The Counsels defend, interrogate and aim to discredit or support the testimonies of the witnesses in their linguistic usage. Their Linguistic usage could be argumentative, imperative, descriptive or intimidating depending on what the Counsel aims to achieve. The Accused, Claimant and witnesses known as the litigants who wields the lowest power in the courtroom discourse structure are at the receiving end of the power interplay in the courtroom due to their institution role. Their speech is dependent on what they are asked as they do not have the power to ask questions but are expected to answer questions directed to them. In addition to these, various practs were deduced from the in the courtroom conversation analysed pract of interrogating, pract of approving, pract of declaring, pract of objecting, pract of negotiation and so on. Legal discourse is different from everyday discourse. It solely makes use of the concept of hegemony. It is highly structured and strictly follows dogmas of power relations; dominance, inequality and mind control which are manifested through discourse structures.

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