

# The Challenges of Equivalence in Language Structure in the Interpretation of Discourses of Actors in Court Proceedings in Kericho Law Courts, Kenya

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**Abstract:** This paper has explained the challenges of equivalence in language structure in the interpretation of discourses of actors in court cases in Kericho law courts, Kenya. The purpose of this paper is to compare the structure of English (SL) and Kiswahili (TL) languages and the challenges that the interpreter encounters while interpreting the discourses of the actors in the court cases. The observation method was employed where the researcher attended case proceedings to collect data for this purpose. Simple random and purposeful sampling was used to sample data of six discourses of case proceedings among many that were observed during the period of research. The interpreters, who were also court assistants, explained in the questionnaire that they did not have any pre-training in interpretation nor translation when they got employed, but some have received in-service courses pertaining to interpretation and have gained some experience in the everyday quest to interpret discourses of litigants in court proceedings. The equivalence theory of translation was used in analyzing the collected data qualitatively. It was discovered that the interpreters encountered challenges of equivalence due to the linguistic, grammatical and sociocultural rules of the structure of the source language and the target language. The interpreters had to make adaptations in their interpretation to communicate the message that was intended in the original text without having to follow the structure of the original text all the time.

**Keywords:** Discourse, Equivalence, Interpretation and Language structure.

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## 1. INTRODUCTION

This paper explains the results of data from research carried out in Kericho law courts, Kericho County, Kenya. The data that has been analysed concerns the equivalence of issue of language structure between the source language (SL-English) and the target language (TL-Kiswahili) noted in the interpretation of discourses of actors in case proceedings. The issue of language structure has been analysed in the following categories; the structure of morphemes, the structure of phrases and clauses and the structure of sentences in both languages.

The main objective of this paper is to compare the forms of the SL and the TL in communicating the same message that was intended by the speaker in the case proceedings using the equivalence theory of translation. The Law Book 1997 chapter 75 and the New Constitution of Kenya 2010 suggest that the litigants in court who do not understand the language of the court (English) have a right to an interpreter who will interpret the message to them without pay. Residents of Kericho are from different communities in and out of Kenya and they use Kiswahili and English as their Lingua-Franca. The importance of this paper is to analyse the challenges of equivalence in language form that interpreters face and if the challenges affect the original message of the source text (ST) while interpreting the message into the target text (TT).

## 2. RESEARCH METHODOLOGY

This paper explains the challenges of interpretation of the issues of language form that interpreters encounter in the interpretation of discourses of actors in case proceedings in Kericho law courts. The observation method was used to collect data that was analysed where the researcher attended case proceedings in court to record data of discourses of six cases using simple random sampling and purposive sampling to reach the purpose of the research. A questionnaire was also given out and filled by six interpreters to collect data about the academic state and feelings about their involvement in interpretation in Kericho law courts. Qualitative analysis was used in analyzing the data collected in court to explain the findings of the research. The Equivalence Theory directed the analysis that was categorized into four sections as shown below.

### Language structure:

TUKI (200) explains that language structure is the appearance of something as it was formed. It is the way something looks like, how it is, its make or type and its behavior. In language, it is the nature of words, phrases and clauses and sentences. Wamitila (2003) explains that structure or form is the relationship between each grammatical component in a sentence that is the essence of meaning in the translation of the same sentence. In this research the language forms that have been analysed are words or morphemes, phrases and clauses and sentences that were used in the SL and their form in the TL. Catford (1965) while explaining the equivalence theory in translation recommends that the issue of form should be compared so as to reproduce the form of the SL in the TL. But he further explains that translation is an exercise that is full of errors because no two languages have similar structures. Every language has its own structure that depends on the social structure of its users. In this research, it was expected that English and Kiswahili, having different social structures would therefore have different linguistic and grammatical structures. This difference in structure would pose challenges in the interpretation of discourses from the SL to the TL.

### Morphological forms:

TUKI (200) explains that morphology is the branch of linguistics that explains the rules and styles that connect morphemes to form a word with meaning in a given language. A morpheme is a word that can stand on its own and have a meaning or meanings in a language. The following are some of the examples of morphemes that had challenges of structure equivalence from the data collected from the research.

In discourses of case proceedings A, one morpheme (word) contains dependent morphemes in TL (Kiswahili) to cover four words used in the SL (English) in the first sentence of the discourse.

CP: *'You have been accused of cheating the public that you are playing cards and they will win money'*

INT: 'Mmeshtakiwa kwa kosa la kucheza karate kwa umma'

In the interpretation of the words, *'You have been accused'* the interpreter (INT) has consolidated the four words in English into one morpheme (in one word) in Kiswahili with many grammatical meanings as shown below;

M - *you* (second person plural)

-me - *have been* (past participle)

Shtakiwa – *accused of* (verb and suffix denoting the subject)

The Kiswahili language has the ability to consolidate various morphemes with different linguistic meanings into one word whereas English separates each meaning into a full word or even two words meaning one thing, apart from where a word shows some tenses or plurals.

In discourses of case proceeding B, the English word 'penis' is interpreted into Kiswahili by use of several words to refer to that part of the body that the speakers of Kiswahili find it taboo and offensive to refer to by its real name because of the cultural and social structure of the Swahili speakers and many African languages people. The interpreter thus interpreted 'penis' using three words 'sehemu ya uume' and in that case affecting the form of the the TL.

The word 'June' in the ST in the discourses of case proceedings C, three words 'mwezi wa sita' have been used and 'July' has been interpreted as 'mwezi wa saba' in place of one word. In these cases the interpreter has used many words in the TL to explain the concept because he did not want to use the borrowed words 'Juni' and 'Julai' thus affecting the structure

of the TL text. This shows that the form of the ST and that of the TT cannot be equivalent in interpretation not because of lack of words with similar meaning but because the interpreter uses the words that come into his mind in the process of interpreting. The most important issue in the mind of the interpreter is not the form of the ST and TT but the message in both.

The same happened here in discourse C,

CP: *The accused person was arrested.*

INT: 'Wewe ulishikwa, mshtakiwa.'

The interpreter in interpreting the text in the TL, used the word for word sense where the words '*arrested the accused*' became 'wewe ulishikwa mshtakiwa' instead of following and using the word and sentence structure of the TL (Kiswahili). Instead, the interpreter should have said 'wewe mshtakiwa, ulishikwa'. In this case, it shows that the SL and TL have different grammatical rules on the structures of words and word order in sentences and the word for word type of translation cannot work in transferring the message from the ST to the TT. In the same discourse, the court prosecutor used many words but the interpreter used only one word because the Kiswahili language has the ability to consolidate the morphemes with different meanings to form one word with mean grammatical meanings. The words '*members of the public*' became 'watu'.

In the discourses of case proceedings D,

CP: *The AP officers who were on their normal routine duty at Fort Tenan area at the shopping centre, found the accused person who appeared suspicious.*

INT: 'Maafisa wa utawala ambao walikuwa wakifanya kazi yao ya kawaida, area ya Fortenan. Walikupata mshtakiwa ukionekana mshuku.'

The interpreter interpreted the words '*he looked suspicious*' as 'ulionekana mshuku' instead of 'walikushuku' because she was confused with the derivations of the word in in Kiswahili in order to derive a noun that was intended in the ST because the interpreter wanted to interpret word for word instead of following the grammatical structure of the TL. The lack of unfaithfulness to the TL resulted in the lack of transfer of the correct message intended in the SL. This shows that although both the SL and the TL can add affixes and suffixes to words to form different meanings from the root of the word, the rules governing both languages are different therefore the rules of one cannot be used in the other. In English the derivation is done at the end but in Kiswahili the derivation is done at the beginning and the end of the root of the word to give it many different grammatical meanings.

Still in discourses of case proceedings D, the message of the court prosecutor and interpreter have different forms as shown herein:

CP: *On inquiring and doing a search they discovered twenty two rolls of bhang.*

INT: 'walikushikashika waliendelea kupata...'

The court prosecutor used eight words but the interpreter consolidated the message into three words in the TL because in Kiswahili, the morphemes have been consolidated into one word to take up the meaning of several morphemes of English that were used in the SL.

In discourses of case proceedings E, the interpreter used different forms from those of the ST. Whereas in the ST the court prosecutor says '*her husband*' thus using two words, the interpreter uses one word 'bwanako' instead of 'bwana yako' because the grammatical rules in Kiswahili allow the consolidation of the noun and its possessive pronoun. This shows that it is not easy for the interpreter to be faithful to the forms of the SL when interpreting a text into the TL. This is because the SL and the TL have different word structures and word orders in the formation of sentences.

In discourses of the case proceedings F, the words of the court prosecutor '*Tanzanian national*' in the TL have taken a different order altogether as 'mwananchi wa Tanzania' where the noun Tanzania has been suffixed in English but in Kiswahili the same noun cannot take morphemes at its end. The word order has also changed where the last word in the SL came in first in the TL and the first word in the SL came in last in the TL. This was occasioned by the different

grammatical rules that govern the word order in the two languages as shown in the phrasal and clausal category below. It is also clear that the SL used two words and the TL used three words to convey the same message.

### Phrasal and Clausal Structures:

TUKI (2000) explains that a phrase is a word or a set of words which have a certain meaning but does not have a noun-verb relationship. Matei (2008) also explains that a phrase is a set of words which serve the same purpose as if it were one word or expresses one meaning but it is not a full sentence because a phrase does not have a verb to complete the meaning. TUKI (2000) explains that a clause is a set of words in a sentence with a noun-verb relationship. Matei (2008) also explains that a clause is a set of words within a sentence that have a noun-verb relationship. Each sentence in any language has one clause. Where a sentence has two or more clauses, one might be independent and the other dependent on the other to express its meaning.

In the discourses of case proceedings A, the arrangement of words of the noun phrase in the SL 'Kericho town' has been inverted in the TL as 'Mji wa Kericho' instead of 'Kericho Mji'. This is because the word order in noun phrases is Noun Adjective whereas in Kiswahili the order changes to Noun Adjective Noun.

In the same discourse the clause in the SL, '*You have been accused of...*' has been interpreted in two words in the TL, 'Mmeshtakiwa kwa...' because in the clause the word 'mmeshtakiwa' has many dependant morphemes that have the same grammatical meaning as the words that have been used in the SL as shown below. This confirms that English and Kiswahili are two languages with different grammatical rules and therefore there cannot be total equivalence in form in interpretation from the ST to the TT.

English-Kiswahili

*You* – M-

*Have been* – me-

*accused* - shtakiwa

*Of* - kwa

Also in the same discourse, the court prosecutor used one clause but the interpreter used two clauses to convey the same message when they said,

CP: '*You have been convicted on your own plea*'

INT: 'Korti inakutolea hukumu, mmekubali mashtaka.'

The interpreter has broken the independent clause into two so that he can explain the law jargon in the clause which he felt might not be understood by the litigant. He has also changed the word order in the Kiswahili text because he felt that he needed to explain the concept in a simpler form.

In discourse B, the the interpreter has used a clause with one word but the one word is a clause with a full message that has been communicated in the English clause using four words; '*You are accused of ...*' to be '*unashtakiwa...*' because the morphemes have the same meaning as the full words in English as shown;

Third person singular **u** (Kiswahili)-**you** (English),

Time in the present tense –**na** (Kiswahili)-**are** (English)

Verb –**shtakiwa** (Kiswahili)-**accused** (English).

The interpreter in the discourse used two clauses in place of the ST phrase '*No other prior records*' as '*Hakuna rekodi, hajawahi kufanya makosa mbeleni*' instead of saying '*Hakuna rekodi za awali kuwa umefanya makosa mengine*' which still is two clauses in the TT because the interpreter wanted to explain the law jargon 'prior records' to the litigant.

In discourse C, a one word clause in Kiswahili '*ukamchukua*' took the place of the English clause '*you took the complainant*' and also Kiswahili- '*akusafirishie*' but in English- '*to transport for her*'. The clause '*to work for you*' has become '*akufanyie kazi*' and '*she gave him*' became '*ulimpatia*'. This shows that it is difficult to reach form equivalence because the two languages have different structures and grammatical rules that govern their structures as shown below.

Kiswahili	-	English
U –		you,
-ka –		- (took)
-m –		the complainant,
-chukua –		took (past tense and verb)

In discourse C, the interpreter used more words to interpret the phrase ‘*On twenty ninth June*’ when he said ‘Tarehe ishirini na tisa mwezi wa sita mwaka huu’. This is because the interpreter explained the date instead of borrowing the English word ‘Juni’ because he wanted to stress and be understood on the adjective about the time when the incident took place.

The phrase ‘*twenty shillings*’ with a word order of adjective+noun, the order has been inverted to noun+adjective in Kiswahili ‘shilingi ishirini’. The phrase ‘*the said person*’ has become one word ‘wewe’ and the clause ‘*called him*’ has become ‘ulimuita’. The phrases clause cited above show that it is difficult for the interpreter in his quest to transfer the message from the ST to the TT because of the different grammatical rules of each language. In the noun-phrase ‘*his mother*’ the interpreter inverted the order of the words to suit the Kiswahili structure of the phrase as ‘mama yake’. Whereas in English the phrase order is possessive+noun in Kiswahili it is noun+possessive.

The clause ‘*working for the said person*’ has been interpreted as ‘*akikufanyia wewe kazi*’, ‘*to track him*’ as ‘*kumtafuta*’, ‘*he ran away*’ as ‘*alitoroka*’, ‘*she caught him*’ as ‘*alimshika*’, and ‘*took him*’ became ‘*alimpeleka*’. In all these clauses the number of words differ and the form of the words in the ST and TT are different because in the TT the morphemes have been consolidated to form one word with more than one grammatical meaning.

In discourse D, the clause;

CP: ‘*found the accused person who appeared suspicious*’

INT: ‘*walikupata mshtakiwa ukionekana mshuku*’.

In this case the interpreter applied the word for word type of interpretation but still the number of words is different because the Kiswahili language has the ability to consolidate morphemes to form one grammatically correct and meaningful words. In the following clauses, the English language has many words but the Kiswahili clauses have fewer words because of the ability of the language to consolidate the morphemes.

CP: ‘*On approaching him, he started running away*’

INT: ‘*Walipokukaribia ulianza kukimbia*’,

CP: ‘*as they followed him*’

INT: ‘*Walikufuata*’,

CP: ‘*They caught him*’

INT: ‘*Walikushika*.’

In discourse E, the clause ‘*You are accused of assault*’ was interpreted as ‘*Umeshtakiwa kwa kumshambulia*’, ‘*and was rescued by members of the public*’ as ‘*raia waliweza kuja na kumsaidia*’. These shows that the structure of clauses in English and Kiswahili languages are different although they express the same message.

In conclusion, although both languages (English and Kiswahili) use the same orthography, the structures of the phrases and clauses is different because each of the languages has a different set of rules that govern and control the word order in their grammar.

### Syntactical Structures:

TUKI (2000) explains that syntax is a branch of linguistics that analyses the structure of sentences and the order and relationship between the words in the sentence. In this case the structure of the sentences and word order in the SL and TL have been analysed to show that it is difficult to reach equivalence in the structure of sentences in interpretation of discourses in court proceedings.

In discourses of case A, the number of words and their order in the first two sentences show that the structures of sentences in the SL are different from those of the TL.

CP: *You have been accused of cheating the public that you are playing cards and they will win money.*

INT: Mmeshtakiwa kwa kosa la kucheza 'karate' kwa umma.

CP: *together, you were found by the officers, playing cards to the public without a licence.'*

INT: mlikuwa pamoja mlipatikana mkicheza mchezo wa 'karate' kwa umma na hamna leseni.

When the interpreter tried to interpret word for word the sentences in the SL to the TL the result is that the sentences in the TL lost the grammatical order and thus the meaning that was intended in the first place. Even as the interpreter tried to follow the order of the words in the SL in the interpretation to the TL, the number of words did not match. This is because the Kiswahili language has word-roots that can affix and suffix morphemes and therefore consolidate many grammatical meanings in one word.

The discourses of case C, show the difference in the formation of the sentence in the SL and the TL as shown below.

CP: *The accused person was arrested.*

INT: Wewe ulishikwa, mshtakiwa.

CP: *I will enter for you a plea of not guilty because you have denied the charges. You will be given another date.*

INT: Umekataa maelezo, kwa hivyo korti itaandika kuwa umekataa mashtaka na utapewa tarehe.

The interpreter used the word for word method of interpretation thereby causing a discord in the grammar of the sentences of the TL. Even then the number of words in the TL are fewer because of the ability of the TL to affix and suffix morphemes to the root of the word to create many grammatical meanings unlike the SL that can only allow a few affixes and suffixes. Therefore it is difficult to reach the equivalence that is expected in interpretation of the ST and the TT because each language has its linguistic and grammatical rules that must be followed in the formation of grammatically correct sentences.

In the discourse of case D, the sentences of the court prosecutor and the court interpreter show that sentence structures cannot be equal taking into account the word order and the number of words in both the ST and the TT. This is because each language has its set of grammatical rules and sometimes some word might miss an equivalent vocabulary in the other language therefore prompting the interpreter to explain the concept in order to be understood.

CP: *They arrested him and took possession of the recovered bhang.*

INT: Walikushika na wakachukua hiyo bangi ambayo walikuwa wamekushika nayo.

CP: *No other prior records.*

INT: Hakuna makosa hujawahi kufanya makosa huko mbeleni.

CP: *and the case is before this court*

INT: na kesi ndio hii mbele ya hii korti na kushtakiwa na hii mashtaka.

In the above sentences the interpreter could not find an equivalent vocabulary to express the same meaning as 'prior' and was forced to explain using several words 'Hakuna makosa hujawahi kufanya makosa mbeleni' to convey the meaning that was expressed in the ST by one word. The same case applies in the following sentences;

Judge: *Is that true?*

INT: Hayo maelezo ni ya ukweli?

In this case the interpreter had to explain the word 'that' using two words 'hayo maelezo' thus changing the form of the ST sentence that had three words to five words in the TT.

In case discourses of case F, the following sentence shows the inequality in the structure of sentences in the ST and TT brought about by the use of word for word type of interpretation.

CP: *The officers arrested him and charged him with the present charges.*

INT: Maafisa walikushika na kukushtaki na mashtaka ambayo yako mbele ya korti.

In this case the interpreter repeated himself in order to be understood by the litigant when he said that 'kukushtaki na mashtaka ambayo yako mbele ya korti' to represent the words 'charged him with the present charges'.

### 3. SUMMARY

The data of six discourses in case proceedings were collected and analysed in the following categories in order to verify the challenges of equivalence of the structure issues in the SL and the TL: the morphological structure (structure of words), the phrasal and clausal structure (structure of phrases and clauses) and also the syntactical structure (structure of sentences). The interpreters used the word for word type of interpretation, semantic interpretation and sometimes pragmatic interpretation. Apparently, the interpreters had challenges in interpretation of the words in its original form because in the SL the root of the word can accommodate affixes, infixes and suffixes whereas the TL can only accommodate affixes and suffixes. In the case of phrasal and clausal structures the interpreters had a challenge in word order and relationships between the words while interpreting from the SL to the TL. In the TL in most cases the word order was inverted to accommodate the grammatical rules of the TL but where the interpreter rendered the word for word interpretation, there were grammatical errors because the phrases and clauses did not have the right word order and relationship between them. In the syntactical level, the challenges of equivalence were caused by the rendering of the interpretation of the ST in the TL on the basis of word for word. This ensued into many grammatical errors and repetitions in order for the interpreter to make himself clear to the litigant. The challenge of equivalence in the sentence level was occasioned by the interpreters' lack of a similar vocabulary in the TL, a fact that forced the interpreter to explain the concept and therefore used many words to explain one word that was used in the ST.

### 4. CONCLUSION

The interpreters of the discourses encountered challenges in the interpretation because of the structures of morphemes, phrases, clauses and sentences because the linguistic, grammatical and sociocultural structure of the SL and the TL are quite different. When the interpreters resorted to the word order of the ST in the TL, the result was grammatical errors and a lot of repetition in order to be understood by the litigants. The outcome of the research shows that it is difficult to reach a state of equivalence of structures of the forms in the ST and TT because the interpretation of discourses concerning law have many challenges (Hale na Gibson (1999) and Olsen (2009)). The challenges in this case include grammatical rules in the consolidation of morphemes to form words, derivations of new words from the root of a word and the word order in phrases, clauses and sentences.

I therefore recommend that the interpreters of discourses in court proceedings should undergo thorough training in order to render the correct meaning of the message as required in the Law Book and the Constitution of Kenya. This will occur only if the interpreters understand the linguistic, grammatical and sociocultural rules that govern the two languages involved in case proceedings.

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# Changamoto Zinazohusu Usawa Wa Kipengele Cha Ujumbe Katika Ukalimani Wa Diskosi Za Wahusika Katika Uendeshaji Wa Kesi Katika Mahakama Ya Kericho, Kenya

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CHUO KIKUU CHA KABIANGA-IDARA YA ISIMU, FASIHI NA MAWASILIANO: KITIVO CHA SANAA NA SAYANSI ZA JAMII

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*Ikisiri:* Makala haya yamechanganua changamoto zinazohusu usawa wa kipengele cha ujumbe katika ukalimani wa diskosi za wahusika katika uendeshaji wa kesi katika mahakama ya Kericho, Kenya. Madhumuni kuu ya Makala haya yalikuwa kubainisha changamoto za usawa wa kipengele cha ujumbe baina ya lugha ya Kiingereza na Kiswahili katika ukalimani wa diskosi za wahusika katika mahakama. Uchunguzi shirikishi ulitumiwa katika kukusanya data za utafiti huu. Diskosi za wahusika wa kesi katika vikao vya kesi sita ziliteuliwa kwa uchunguzi huu. Uteuzi wa diskosi hizi ulifanywa kwa kutumia sampuli nasibu horomo na sampuli makusudi. Wakalimani, ambao pia walikuwa makarani, hawakuwa na mafunzo maalum kuhusu ukalimani wala tafsiri kabla ya kuajiriwa kuwa makarani katika mahakama lakini baadhi yao wamepokea mafunzo ya muda mfupi kuhusu taaluma hii na wamepata tajriba ya kazi yao kutokana na muda waliofanya kazi hii. Nadharia ya usawa katika taaluma ya tafsiri ilitumiwa katika kuchanganua data zilizokusanywa. Iligunduliwa kuwa wakalimani walikumbwa na changamoto zinazohusu usawa wa kipengele cha ujumbe ingawa walijaribu kadiri ya uwezo wao kukalimani ujumbe wa diskosi husika.

*Istilahi muhimu:* diskosi, ujumbe, ukalimani na usawa.

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## 1. UTANGULIZI

Makala haya yamebainisha matokeo ya utafiti uliotokana na data zilizokusanywa kutoka mahakama ya Kericho. Makala haya yameshughulikia sehemu mbalimbali kuhusu usawa wa kipengele cha ujumbe katika ukalimani wa diskosi katika uendeshaji kesi katika mahakama. Kipengele cha ujumbe kimegawanywa katika sehemu zifuatazo; ujumbe uliokalimaniwa vilivyo, ujumbe uliokalimaniwa visivyo, ujumbe uliokosa kukalimaniwa, ujumbe uliochopekwa na ujumbe uliodondoshwa. Lengo la makala haya ni kufafanua kipengele cha ujumbe uliokusudiwa katika lugha chanzi na ulivyokalimaniwa katika lugha lengwa kwa kuzingatia nadharia. Hii ni kwa sababu katika uendeshaji wa kesi katika mahakama, wahusika wa kesi wasioelewa lugha ya Kiingereza (lugha ya mahakama) wana haki ya kukalimani ujumbe wao katika lugha wanayoifahamu (katika muktadha huu lugha ya Kiswahili) vile inavyopendekezwa katika Kitabu cha Kisheria 1997 sura ya 75 na Katiba Mpya ya Kenya 2010. Umuhimu wa makala haya ni kuchanganua changamoto zinazowakabili wakalimani wanapokalimani diskosi za wahusika na iwapo changamoto hizi zimeathiri ujumbe uliokusudiwa. Utafiti ulifanywa katika mahakama ya Kericho katika mji mkuu wa Kaunti ya Kericho. Wakazi wa kaunti hii wanatoka maeneo yote kote nchini na hivyo lugha-franka katika mji huu huwa ni Kiingereza na Kiswahili.

## 2. MBINU NA VIFAA

Makala haya yanahusu changamoto zilizowakumba wakalimani katika ukalimani wa ujumbe wa wahusika wa kesi katika uendeshaji wa kesi katika vikao vya mahakama katika mahakama ya Kericho. Utafiti shirikishi ulitumiwa ambapo mtafiti alihudhuria vikao kadhaa vya uendeshaji kesi ili kuteua data za kesi sita kumakusudi ili kuafiki lengo la utafiti huu. Mtafiti alitumia hojaji kwa wakalimani ili kuchunguza kiwango cha elimu na hisia za wakalimani kuhusu ukalimani walioushughulikia.

Katika uchanganuzi wa data mbinu stabilifu ilitumiwa ili kutoa maelezo ya matokeo ya data iliyoteuliwa. Nadharia ya usawa katika ukalimani ilitumiwa ili kuchunguza changamoto zilizowakumba wakalimani katika shughuli nzima ya ukalimani. Matokeo yalielezwa katika mada ndogo nne inavyoelezwa hapa

### **Changamoto za Usawa wa Ujumbe Katika Ukalimani wa Diskosi za Wahusika:**

Sehemu hii imegawanywa katika mada ndogo ndogo muhimu zikiwemo mada kuhusu dhana ya ujumbe, ujumbe uliokalimaniwa, ujumbe uliokalimaniwa visivyo, ujumbe uliochopekwa na ujumbe uliodondoshwa katika ukalimani wa diskosi teule. Kipengee hiki cha ujumbe kimechanganuliwa na kubainishwa kwa kuzingatia muhimu muhimu wa nadharia ya usawa. Muhimili huu katika nadharia ya usawa unabainisha kuwa kipengele muhimu ambacho kinafaa kuzingatiwa katika ukalimani ni ujumbe wa msemaji katika diskosi yake. Ujumbe unaweza kuwa wa kisemantiki na kipragmatiki kutokana na msamiati uliotumika kutegemea kiwango cha lugha ya msemaji. Mkalimani basi anafaa kuelewa ujumbe katika LC na kuukalimani kisemantiki na kipragmatiki katika LP.

### **Dhana ya Ujumbe:**

Kwa mujibu wa TUKI (2000), ujumbe ni 'habari, taarifa au salamu katika matini mahususi.' 'Habari, taarifa au salamu' hizo zinaweza kuwa wazi au fiche kutegemea msuko wa msamiati na muktadha wa matumizi yake kutokana na aina ya matini husika. Ujumbe unaokusudiwa hapa ni ule unaojitokeza katika diskosi za wahusika katika LC na zilizokalimaniwa hadi LL katika uendeshaji wa kesi zilizoteuliwa ili kuchanganuliwa. Ujumbe huo unaweza kuwa wa kipragmatiki (fiche) au kisemantiki (wazi) kutegemea mwonoulimwengu wa mkalimani na umilisi wake wa lugha azitumiazo katika shughuli hiyo ya ukalimani.

Wamitila (2003) anaeleza kuwa ujumbe ni dhana inayotumika kueleza taarifa ambazo msanii au mtunzi hutoa kwa wasomaji au hadhira yake kama njia ya kuhakikisha kuwa dhamira yake imetimia. Katika utafiti huu, ujumbe uliojitokeza katika LC ulikalimaniwa katika LL huku mkalimani akitarajiwa kuzingatia dhamira ya ujumbe huo katika uendeshaji wa kesi husika. Dhamira ya ujumbe ni muhimu katika kufanikisha ujumbe wenyewe ili wahusika wapate haki au hukumu inayowafaa. Dhamira ya ujumbe hujikita katika kiimbo cha sentensi na uteuzi wa msamiati.

TUKI (2000) inaeleza kuwa ujumbe ni habari, taarifa, agizo au risala. Kulingana na utafiti huu, neno ujumbe linamaanisha wazo kuu linalowasilishwa katika matini ambayo ni diskosi ya mhusika katika uendeshaji wa kesi katika mahakama. Wazo hilo linaweza kuwa la kisemantiki au la kipragmatiki kutegemea muktadha na utamaduni wa mkalimani.

Ujumbe wa kisemantiki ni ujumbe ulio wazi kutokana na maana ya msamiati uliotumiwa. Maana husika hutokana na kamusi ya lugha husika. Kinyume na ujumbe wa kisemantiki, ujumbe wa kipragmatiki hupita mipaka ya maana ya msamiati katika kamusi ya lugha husika. Maana ya msamiati hutegemea muktadha wa matumizi na mtumizi mwenyewe. Kwa vile ujumbe wa msamiati uliotumiwa katika diskosi teule ulikalimaniwa kutoka lugha chanzi hadi lugha pokezi kutegemea umilisi wa lugha ya mkalimani, huenda ujumbe huo ukakosa kulandana katika LC na LL.

### **Ujumbe Uliokalimaniwa Vilivyo Katika Diskosi za Wahusika wa Kesi:**

Katika ukalimani wa diskosi za wahusika, ujumbe wa kipragmatiki uliokusudiwa katika MC uliweza kukalimaniwa katika ML ingawa kulikuwa na changamoto tele za usawa wa vipengele vya lugha mbili husika. Ujumbe wa kipragmatiki uliweza kufikiwa kwa sababu wahusika wa kesi walielewa ujumbe uliokusudiwa kabla ya kesi kuanza. Baadhi ya ujumbe uliokalimaniwa ni kama ufuatao:

Katika kesi A, ujumbe ufuatao ulikalimaniwa vyema na kuleta maana iliyokusudiwa na mhusika wa diskosi katika LC:

*Km: without a licence, against the laws of Kenya.*

Mk: bila leseni, kinyume na sheria za Kenya.

*Km: at Nyagacho, Kericho town*

Mk: mkiwa Nyagacho mji wa Kericho

Katika LL ilieleweka kuwa washtakiwa walipatikana mjini Kericho katika mtaa wa Nyagacho wakifanya uhalifu huo kwa sababu hawakuwa na leseni ya kuendesha shughuli waliyokuwa wakiendesha (kucheza kamari).

Katika diskosi za kesi B, ujumbe huu ulikalimaniwa vyema na kuleta usawa wa ujumbe uliokusudiwa;

*Km: You are accused of raping (name). Against the laws of Kenya.*

Mk: Unashtakiwa kwa kumnajisi (jina). Kinyume na sheria za Kenya.

Inaeleweka kuwa mshtakiwa alishtakiwa kwa kumnajisi mtoto huyo wa kike jambo ambalo ni kinyume na sheria za nchi ya Kenya.

Katika diskosi za kesi C, ujumbe ufuatao umekalimaniwa vyema. Katika diskosi hii inaeleweka kuwa mvulana huyo wa umri wa miaka minane alitayarishwa na mamake kuenda shule na mamake kuenda kazini mwake lakini huyo mtoto alienda kusomba mchanga kwa siku kadhaa kutokana na ushawishi wa mshtakiwa. Mamake mlalamishi alipopata ujumbe kutoka shule kuwa mwanawe hakuwa anaenda shule ndipo alipoenda kumtafuta.

*Km: who is a minor of eight years. He was prepared by his mother to go to school*

Mk: ambaye ni mtoto wa miaka minane, aliweza kutayarishwa na mamake ili aende shule.

*Km: then she left for work.*

Mk: na mamake akaenda kazini.

*Km: He was ferrying sand to the roadside,*

Mk: Alikuwa anapeleka mchanga kando ya barabara,

*Km: The complainant was prepared by his mother to go to school,*

Mk: Huyo mlalamishi alitayarishwa na mamake aende shule

*Km: but the said person called him and told him to work for her.*

Mk: wewe ulimwita tena ukamwambia akufanyie kazi

*Km: as his mother had received information from the school, that he had not been attending school.*

Mk: na mamake alikuwa amepata habari kutoka shuleni, kwamba hakuwa akienda shule.

*Km: that is when she decided to track him*

Mk: ndipo alikuja kumtafuta.

Katika diskosi za kesi D, ujumbe uliokalimaniwa na ulieleweka kuwa mshtakiwa alipatikana na bangi kisha askari wakamtia mbaroni na kumpeleka kwenye kituo cha polisi cha Fort Tenan. Siku hiyo alifikishwa mahakamani na hiyo bangi ilikuwa mbele ya korti kama ushahidi kuwa alipatikana nayo.

*Km: They arrested him and took possession of the recovered bhang,*

Mk: Walikushika na wakachukua hiyo bangi ambayo walikuwa wamekushika nayo,

*Km: and escorted him to Fort Tenan where he was charged with the present charges.*

Mk: Walikushindikisha mpaka kituo cha police cha Fort Tenan na kukushtaki na makosa ambayo yako mbele ya korti hii.

*Km: The cannabis sativa is before court and I wish to produce it as exhibit.*

Mk: Hiyo bangi ambayo ilipatikana iko mbele ya korti na kiongozi wa mashtaka angependa kuitoa kama thibitisho.

Katika diskosi za kesi E, ujumbe uliokalmianiwa vyema ni kuwa mlalamishi alikuwa kazini kwake kule mshtakiwa alipomvamia kwa madai kwamba mlalamishi alikuwa akimsengenya. Mshtakiwa alimkwaruza kisha akamuumiza sehemu ya kushoto ya pua yake.

*Km: The complainant was at her place of work,*

Mk: Mlalamishi alikuwa mahali pake pa kazi,

*KM: when you the accused*

MK: wakati wewe mshtakiwa,

*KM: where she attacked her by scratching her, and injured her on her left side of the nose.*

MK: uliweza kumshambulia kwa kumkwaruza, ulimjeruhi upande wake wa kushoto wa pua.

*Km: She was alleging that the complainant was backbiting her*

MK: Alikuwa analalamika kuwa mlalamishi alikuwa akimsengenya

Katika diskosi za kesi F, ujumbe uliokalmianiwa vyema ni kwamba mshtakiwa aliyekuwa raia wa Tanzania alipatikana nchini Kenya bila kibali cha kumwezesha kuwepo nchini na alikamatwa kwa sababu alikuwa nchini Kenya kinyume cha sheria.

*Km: who was suspected to be of foreign national,*

Mk: kwamba ulishukiwa kuwa wewe si mtu wa Kenya, ni wa nchi ingine,

*Km: the officers approached this person and on interrogation they actually established that he is a Tanzanian national.*

Mk: Maaskari walipokuja na kukuuliza maswali walijua kuwa ulikuwa mwananchi wa Tanzania.

*Km: The officers arrested him and charged him with the present charges.*

Mk: Maafisa walikushika na kukushtaki na mashtaka ambayo yako mbele ya korti.

Ujumbe uliokusudiwa ni kwamba mshtakiwa alipatikana nchini Kenya bila kibali na askari walipomdadisi na kubainika kuwa alikuwa mwananchi wa Tanzania na alikuwa hana kibali cha kuwa nchini Kenya, askari hao walimtia mbaroni.

Ujumbe ulioeleweka ulisaidia kuendesha kesi hizi na ungetegemewa katika kutoa hukumu ingawa sehemu nyinginezo za diskosi hizi zilikalimianiwa visivyo. Ujumbe muhimu ulieleweka ni hiki ndicho kiini cha uendeshaji wa kesi katika mahakama. Ujumbe huu mwafaka uliwasababisha washtakiwa wakubali au wakatae mashtaka hayo yaliyowakabili mbele ya mahakama.

### **Ujumbe Uliokalmianiwa Visivyo Katika Diskosi za Wahusika wa Kesi:**

Ujumbe ufuatao ulikalimianiwa visivyo na huenda uliathiri mawasiliano katika uelewaji wa mashtaka yaliyowakabili wahusika wa kesi hii.

Diskosi A

*KM: You have been accused of cheating the public that you are playing cards and they will win money.*

MK: Mmeshtakiwa kwa kosa la kucheza 'karate' kwa umma.

*Km: Without a licence against the laws of Kenya.*

Mk: Bila leseni kinyume na sheria za Kenya.

Katika matini hii mkalimani alikosa kukalimani ujumbe wa kuwatapeli watu pesa katika ukalimani wa sentensi ya kwanza. Anautaja mchezo wa 'karata' ambao ni mchezo wa kamari kuwa mchezo wa 'karate' ambao ni mchezo wa wahusika kurushiana makonde na mateke. Ujumbe uliokusudiwa umekanganya kwa kutajwa mchezo wa 'karate' na kadi hamsini na mbili. Zaidi ya hayo, suala la kuwatapeli watu pesa halikujitokeza katika ukalimani badala yake ujumbe ulieleweka ni kuwa washtakiwa walikuwa wakiwaburudisha watu alipokalimani kuwa 'walicheza karate kwa umma'. Basi kwa mtu ambaye si mkazi wa Kericho, ukalimani ulikuwa na maana kwamba 'watu walipigwa mateke na makonde

na kunyang'anywa pesa au washtakiwa walikuwa wanawatumbuiza watu ili kupata kiinua mgongo' alipokalimani kuwa walikuwa wakicheza 'karate kwa umma kwa nia ya kupata pesa'. Mkalimani alipoteua msamiati ambao ulikuwa na maana tofauti na msamiati uliotarajiwa, ujumbe uliokusudiwa ulikosa usawa uliotarajiwa katika ukalimani.

Katika diskosi ya kesi hii, kiongozi wa mashtaka anarejelea 'kadi' za mchezo wa bahati nasibu unaojulikana kama mchezo wa 'karata'. Mkalimani anapokalimani mchezo huo wa kadi, anatumia msamiati au leksimu 'karate' ambao hauna uhusiano kabisa na neno kadi. Mkalimani alifahamu neno hilo 'karate' kuwa sawa na 'karata' ambalo linakaribiana kimatamshi au ni kitate. Ujumbe wa diskosi hii ulieleweka kwa wahusika wa kesi kwa sababu neno 'karate' linatumika katika muktadha wa matumizi ya lugha ya kila siku ya wakazi wa mji wa Kericho. Kwa wakazi wengi wa Kericho, mchezo huu wa bahati nasibu kwa kutumia kadi unaitwa 'karate' wala si 'karata' inavyostahili. Basi, ujumbe wa kipragmatiki ulieleweka kwa wahusika wa kesi wakati huo ingawa baadaye msamiati huu huenda ukazua mtafaruku na kubadili au kuchangia pakubwa uamuzi wa hakimu. Kama washtakiwa wangepata mashtaka hayo kwa sababu walicheza 'karata' wala si 'karate', huenda kesi ingeamuliwa visivyo.

Pia katika diskosi ya kesi A,

*Hakimu: What do you say in mitigation?*

Mk: Malilio yako mbele ya korti kabla ya hukumu?

Mkalimani katika diskosi za kesi hii alikalimani msamiati wa Kiingereza '*mitigation*' (ambao una maana ya 'jambo linaloweza kumfanya hakimu kufikiria kupunguza hukumu yake') kuwa 'malilio'. Ukalimani huu huenda ndio sababu baadhi ya washtakiwa walifanya kitendo cha kulia wazi badala ya kujitetea kutokana na matukio ya kesi husika ili jaji aweze kuwa na sababu ya kuwahurumia na kuwasamehe makosa yao au kuwatolea hukumu nyepesi. Ujumbe wa kipragmatiki kulingana na sajili ya mahakama pengine ulieleweka kwa jaji na kiongozi wa mashtaka lakini kwa wahusika walioshtakiwa katika kesi hizo, hali ilikuwa tofauti. Washtakiwa walielewa ujumbe wa kisemantiki pekee. Hii ndio sababu wengi wao walilia na kuomba msamaha kwa makosa yao ili jaji awahurumie na kuwaachilia huru. Basi haki yao ya kujitetea ili kupata kueleweka vyema ilikosekana kwa sababu ya ukosefu wa usawa wa kipengele cha ujumbe. Hali hii huenda ilizua utata katika uamuzi wa haki.

Zaidi ya hayo, katika kesi A,

*Km: You were asking for money...*

Mk: Hapo mlikuwa mkitafuta pesa...

Mkalimani alikalimani '*asking for money*' kuwa 'mkitafuta pesa' badala ya 'mliwadai pesa'. Hili linatokea kwa sababu ya ukosefu wa msamiati mwafaka kwani mkalimani husika hana umilisi wa lugha na msamiati maalumu anaostahili kuwa nao katika ukalimani wa diskosi za kesi katika mahakama. Mkalimani huyu hajapokea mafunzo kuhusu ukalimani na alikuwa akikalimani kutokana na ujuzi binafsi alio nao kuhusu lugha ya Kiswahili na Kiingereza. Ujumbe wa kisemantiki uliojitokeza katika ukalimani huu ni kuwa washtakiwa hawa walikuwa wakisaka pesa kana kwamba walikuwa wamezipoteza au walikuwa wakifanya kazi ili kupata ujira uliowafaa kutokana na kazi waliyoifanya. Ujumbe wa kipragmatiki wa kuwalaghai raia haukujitokeza na hali hii huenda ikasababisha washtakiwa kutolewa hukumu nyepesi.

Isitoshe, katika kesi A, jaji anawaambia washtakiwa kuwa '*I will call you shortly...*' ambapo mkalimani anakalimani kuwa '*mtaitwa baadaye...*' ambapo ujumbe kwamba '*wangeitwa baada ya muda mfupi ...*' umebadilika na kuwa '*wataitwa baada ya muda usiojulikana kwani neno 'baadaye' laweza kumaamisha baada ya muda mfupi, siku hiyo au hata baada ya siku kadhaa.*

Ujumbe pia, unapotea wakati mkalimani anakalimani '*You have been convicted on your own plea*' kuwa 'mmehukumiwa kwa sababu mmeitikia makosa' kana kwamba kukiri makosa ndiko kumesababisha kuhukumiwa kwao wala si kwa sababu kuwa wamepatikana na hatia na wamekubali kuwa walifanya makosa. Pengine hili ndilo jambo lililowafanya wengi wa washtakiwa kukana mashtaka yaliyowakabili. Inawezekana kwamba hii ndiyo iliyokuwa sababu ya washtakiwa wengine kunyamaza walipoulizwa iwapo walikiri makosa au la. Walifikiri kwamba kukubali mashtaka kulisababisha kushtakiwa kwao na iwapo wangepata au kunyamaza, hakimu angekosha kuwahukumu na pengine kuwaondolea mashtaka. Hawakuelewa kuwa hakimu alitoa hukumu kutokana na mashtaka yaliyowakabili na kwa vile walikubali makosa yao alikuwa radhi kutoa hukumu iliyowafaa.

Katika diskosi ya kesi B,

*KM: 'In your full senses, against the law. Your penis penetrated the vagina of the said girl who is five years old.'*

MK: 'Kupenda kwako na kinyume na sheria. Uliweza kusababisha sehemu yako ya uume kupenyeza sehemu ya siri ya msichana huyo ambaye ana miaka mitano.'

Mkalimani amekalimani 'in your full senses' kuwa 'kupenda kwako' badala ya 'ukiwa na akili timamu' kana kwamba amekalimani 'on your on free will' anapokalimani kuwa 'kwa kupenda kwako au ikiwa ni kupenda kwako kunajisi'. Ukalimani huu umekosa kuonyesha kuwa mshtakiwa alikuwa na 'akili zake timamu' wala hakuongozwa na tamaa zake tu bali na akili yake pia. Mkalimani alifaa kukalimani hiki kirai cha kiongozi wa mashtaka hivi kwamba suala la mshtakiwa kuwa na 'akili yake timamu' na kwa 'hiari yake' alitenda kitendo hicho cha unyama cha kumnajisi mtoto huyo wa umri wa miaka mitano. Katika hukumu za jaji suala la urazini wa akili ya mshtakiwa wa kosa lolote lile ni muhimu kwa sababu walio na akili punguani wanachukuliwa kuwa hawakuelewa uhalifu walioufanya.

Msamati wa Kiingereza 'penis or male genitals' umekalimaniwa kuwa 'sehemu yako ya uume' huku 'vagina or female genitals' imekalimaniwa kuwa 'sehemu ya siri'. Msikilizaji ambaye haelewi kuwa utamaduni wa jamii nyingi za Kiafrika, huwalazimu kutumia tasfida kuficha lugha ya matusi au lugha chafu atachanganyikiwa. Atakosa kuelewa ujumbe uliokusudiwa kwa sababu sehemu za 'siri' hutofautiana kutoka utamaduni mmoja hadi mwingine. Huenda akaeleweka visivyo kwani katika jamii nyingine za Kiafrika huenda 'sehemu ya uume' ikamaanisha mkono wa kulia. Katika taaluma ya kisheria hasa katika mahakama, msamati unaotumiwa katika kesi ni muhimu katika uamuzi wa jaji.

Katika diskosi ya kesi B,

*Km: 'You are accused of a second count of indecently touching the girl's genital area on 4/7/2015 at Kiptere.'*

Mk: Una shtaka mbadala kuwa uliweza kupapasa sehemu za siri za msichana huyo 4/7/2015 ukiwa Kiptere.

Mkalimani anakalimani 'second count of the similar case' kuwa 'kesi mbadala' ya kupapasa sehemu ya siri. Msamati uliotumiwa unazua wazo kuwa kesi ya kwanza huenda ikatupiliwa mbali na ashtakiwe kwa kosa jipya la kupapasa kwa mkono sehemu ya siri ya msichana huyo. Kwa mshtakiwa asiyelewa lugha ya mahakama, huenda akafikiria kuwa kesi hiyo ni nafuu na ina hukumu nyepesi kuliko kesi ya kwanza iliyomkabili. Aghalabu, kesi zote mbili zina uzito sawa kisheria kwa sababu zote zinahusu unyanyasaji wa kimapenzi kwa wana wa kike. Kwa hivyo, mkalimani angesema kuwa 'shtaka la pili kuhusu kesi hii ni kuwa ulimkosea heshima kwa kumgusagusa kwa mkono msichana husika sehemu yake ya siri.' Badala yake ukalimani wake ungeleta dhana kwamba mshtakiwa anatolewa mashtaka ya pili yanayohusiana na yale ya shtaka la kwanza. Huenda akakubali shtaka la pili akifikiri kuwa yale ya kwanza yametupiliwa mbali na mashtaka mepesi kidogo yamechukua nafasi yake huku akifikiri kuwa shtaka la kunajisi limeondolewa na badala yake anashtakiwa kwa kosa la pili la kumpapasa msichana. Mkalimani amefanya hivyo kwa sababu ameshindwa kupata msamati mwafaka wa kutumia ili kueleza ujumbe huo kwa lugha ya Kiswahili.

Katika kesi C,

*Km: 'According to the complainant of this case who is Victor.'*

*Mk: 'Kesi hii ambayo ni ya Victor.'*

Ujumbe asilia unabadilika kwa kuwa haeleweki kama Victor ni mlalamishi au mshtakiwa. Ukalimani mwafaka ungekuwa, 'Kulingana na Victor, ambaye ni mlalamishi katika kesi hii.' Ukalimani huu ungeonyesha wazi mlalamishi ni nani katika kesi hii.

Pia, katika kesi C,

*KM: 'The said person (the accused) took the complainant to transport for her sand. Which he did. He was ferrying the sand to the roadside.'*

MK: 'Wewe mshtakiwa ukamchukua akusafirishie mchanga. Ambayo alifanya. Alikuwa anapeleka mchanga kando ya barabara.'

Msamati 'transport' umekalimaniwa kuwa 'safirisha' badala ya 'kubeba au kusomba' kulingana na muktadha wa matukio. Msamati 'kusafirisha' unaibua wazo la masafa marefu mno na pia kwa kutumia chombo cha kusafirisha kama

vile gari. Hivyo basi, msamiati ‘somba’ ambao unaibua dhana ya kubeba kitu kwa masafa mafupi na kukichukua kitu kizito mgongoni, kichwani au begani huku mtu akitembea kwa miguu ungefaa katika muktadha huu.

Isitoshe, katika kesi C,

Km: *‘as his mother had received information from school that he had not been attending school and she had been informed by the members of the public that he had been working for the accused person.’*

Mk: ‘na mamake alikuwa amepata habari kutoka shuleni kwamba hakuwa akienda shule, alikuwa ameambiwa na watu kwamba walikuwa wamemuona akikufanyia wewe kazi.’

Maneno *‘Members of the public’* yanakusudia kuwa na maana ya kipragmatiki ya watu wa eneo hilo ambao walikuwa wakimfahamu mamake mlalamishi, mlalamishi na mshtakiwa husika. Katika diskosi hii maneno hayo yamekalimaniwa kuwa ‘watu’ badala ya ‘umma au watu waliomjua na kumuona.’ Msamiati ‘watu’ hauashirii ujumbe mwafaka kuhusu wananchi waliomjua na waliomuona huyo mtoto akifanya kazi badala ya kwenda shuleni. Hapa msamiati ‘watu’ unaweza kumaanisha yeyote hata wale wasiomjua huyo mtoto.

Vile vile, katika kesi C,

KM: *‘On second July, when the complainant saw his mother when he was carrying sand, he ran away and his mother ran after him.’*

MK: ‘Na hii tarehe mbili mwezi wa saba wakati mlalamishi alimwona mamake, akiwa amebeba mchanga, alitoroka lakini mamake alitoka kumfuata.’

Hapa, neno *‘and’* limekalimaniwa kuwa ‘lakini’ neno ambalo linaibua wazo la kupinga au wazo la ukatifu ili kufafanua jambo fulani. Ujumbe uliokusudiwa katika matini asilia ni ‘na hivyo’. Pia, katika ukalimani huu haieleweki iwapo ni mama au mtoto aliyekuwa akibeba mchanga.

Katika diskosi ya kesi C pia, mkalimani amekalimani maneno, *‘as his mother had received information...’* kuwa ‘na maamake alikuwa amepata habari...’ ambapo neno ‘as’ limekalimaniwa kuwa ‘na’ badala ya ‘kwa sababu’. Dhana ya nyongeza imechukua mahali pa dhana ya ‘kwa sababu’ na hivyo kubadilisha maana ambayo ilikuwa imekusudiwa katika matini asilia.

Katika kesi D,

KM: *‘The AP officers who were on their routine duty at Fort Tenan area, at the shopping centre, found the accused person who appeared suspicious and on approaching him he started running away. They followed him. They caught him. On inquiring and doing a search, they discovered twenty four rolls of bhang from his trouser pocket. They arrested him and took possession of the recovered bhang.’*

MK: ‘Maofisa wa utawala ambao walikuwa wakifanya kazi yao ya kawaida area ya Fort Tenan, walikupata wewe mshtakiwa ukionekana mshuku\*. Walipokukaribia, ulianza kukimbia. Walikufuata, wakakushika. Walikushikashika waliendelea kupata misokoto ya bangi kutoka mfuko wako wa long’i

Katika matini hii, mkalimani anakalimani kifungu *‘appeared suspicious’* kuwa ‘ulionekana mshuku’. Neno ‘mshuku’ si leksimu katika lugha ya Kiswahili bali alikusudia kusema kuwa ‘alionekana kama mhalifu’. Mkalimani alikusudia kunyambua neno la Kiswahili ‘shuku’ liwe ‘mshukiwa’ ili kuwa nomino lakini hana ujuzi wa lugha ya Kiswahili kwa hivyo unyambuzi wake umezua mtafaruku kuhusu alichomaanisha anapotumia neno ‘mshuku’ ambalo si msamiati katika lugha ya Kiswahili. Hata hivyo, msamiati mwafaka katika muktadha huu ni ‘mhalifu’.

Pia, maneno *‘doing a search’* yamekalimaniwa kuwa ‘kushikashika’ badala ya ‘kupekua, kusaka au kupeleleza’ kwa maana ya kutafuta kitu fulani kwa kumgusa mtu sehemu mbalimbali za mwili wake au mavazi au anachokibeba. Msamiati ‘kushikashika’ unaibua wazo la kucheza au kufanya mzaha na sio wazo la kumpekua mshukiwa wa uhalifu ilivyokusudiwa katika LC.

Sehemu ya sentensi, *‘They found rolls of bhang’* imekalimaniwa kuwa ‘waliendelea kupata bangi.’ Ni wazi kuwa mkalimani ametumia neno ‘waliendelea’ badala ya ujumbe uliokusudiwa kuwa ‘walipompekua walipata’ misokoto ya bangi. Ujumbe umebadilika kuwa walikuwa wamepata bangi tayari na wakiendelea kupata nyingine walipompekua zaidi. Ujumbe uliokusudiwa katika matini asilia ni kuwa walipomkamata na kumpekua, walipata misokoto hiyo ya bangi.



Maneno *'he ran away'* yamekalimaniwa kuwa *'alikingibia'* ambalo katika mawazo ya watu wengi huibua wazo la kufanya mazoezi au mchezo wa riadha. Badala ya kukimbia mkalimani angetumia neno *'kutoroka'* ambalo linaibua wazo la kukimbia ili kuepuka kukamatwa au kukutana na mtu fulani na linaleta taswira ya mshukiwa huyo akikimbia huku askari wakimfukuzia nyuma ili wamkamate.

Katika matini hii, mkalimani alishindwa kukalimani msamiati *'shopping centre'* hadi lugha ya Kiswahili. Badala ya maneno hayo ya Kiingereza mkalimani alitumia neno lingine la Kiingereza *'area'* ambalo haliibui taswira ya eneo la maduka. Neno *'area'* linaibua dhana ya eneo fulani lolote ambalo si lazima liwe na maduka au eneo la kibiashara. Kwa hivyo, ujumbe kuhusu eneo lenye maduka ya kuuzia bidhaa mbalimbali haujitokezi alivyokusudia msemaji wa diskosi asilia katika lugha ya Kiingereza.

Katika kesi E,

*KM: The complainant was at her place of work, when you the accused, went and confronted her there where she attacked her by scratching her.*

MK: Mlalamishi alikuwa mahali pake pa kazi, wakati wewe mshtakiwa, wakati ulienda na kumsimamia mahali pake na kumshambulia kwa kumkwaruza.

Fungu la maneno, *'Went and confronted her there'* limekalimaniwa kuwa *'wakati ulienda na kumsimamia mahali pake (pa kazi)'* ambapo dhana ya mshtakiwa *'kufanya kazi kwa niaba ya mlalamishi'* imejitokeza. Ujumbe uliokusudiwa ni kuwa mshtakiwa alimkabili kwa nia ya kumpiga au kungombeza mlalamishi akiwa kazini kwake.

Pia, katika diskosi hii kiongozi wa mashtaka anasema,

Km: *'She had been beaten by her husband'.*

Mk: *'ulikuwa umepigwa na bwanako'*

Mkalimani anatumia msamiati *'bwana'* ulio na viko vya maana ambavyo vitaleta utata katika kuelewa maana iliyokusudiwa. Dhana *'bwana'* katika matumizi ya lugha ya kila siku ina maana ya *'mwajiri wake'*, *'mumewe'* au mwanamume yeyote yule anayestahili heshima zake. Ukalimani wa mkalimani unatokana na mazoea ya matumizi ya neno *'bwana'* hata hivyo, msamiati huu wa Kiswahili ungeibua maana yoyote kati ya hizo zilizotajwa hapo juu kwa wasikilizaji kwa sababu katika muktadha huu kumetajwa *'kazi'*. Ujumbe wa mkalimani unakanganya kwa vile haeleweki kama ni *'mwajiri'* au *'mumewe'* ambaye alikuwa anamchapa kulingana na wanawake ambao walikuwa wakimsengenywa katika LP.

Ujumbe katika sentensi,

Km: *'The complainant raised an alarm...'*

Mk: *'Mlalamishi aliweza kupiga rabsha...'*

Dhana *'kupiga rabsha'* imetumika kama msemu wa lugha ya Kiswahili ili kusawazisha msemu wa Kiingereza *'raise an alarm'* lakini msemu wenyewe ni *'zua rabsha'* ambao unazua ujumbe wa kisemantiki kuwa alisababisha fujo au kusababisha kuwepo kwa kelele nyingi zenye vurugu na machafuko. Ujumbe uliokusudiwa katika matini chanzi ni kuwa mlalamishi *'alipiga kamsa'* au kelele ili kuita watu waende kumsaidia wakati alikuwa akiaziriwa kwa kushambuliwa na mshtakiwa.

Vilevile, katika diskosi za kesi F,

*KM: 'On 4/8/2016, police officers who were at Kipsitet shopping centre were informed of the presence of the accused person in the shopping centre, who was suspected to be of foreign national. The officers approached this person and on interrogation, they actually established that he is a Tanzanian national. At that particular time, you did not have any entry permit or any authorization to allow you to be in Kenya.'*

MK: *'Jana saa tano na nusu, maaskari ambao walikuwa katika soko ya Kipsitet ... kwamba ulishukiwa kuwa wewe si mtu wa Kenya, ni wa nchi ingine. Maaskari walipokuja na kukuuliza maswali walijua kuwa wewe ni mwananchi wa Tanzania. Hukuwa na permit yoyote au kibali ya kuonyesha kuwa ulikuwa umekubaliwa kuingia Kenya.'*

Hapa, mkalimani alikalimani ‘*shopping centre*’ kuwa ‘soko’ ambapo ameibua dhana ya kuwa alikuwa amekamatwa akiwa katika eneo la wazi ambapo bidhaa huuzwa ilhali kiongozi wa mashtaka alikuwa anamaanisha eneo la maduka. Ujumbe uliojitokeza kutokana na ukalimani huo huenda ukampa mshtakiwa nafasi ya kukataa mashtaka kwa sababu hakukamatwa kwenye eneo la soko bali kwenye eneo la maduka. Taswira ya nyumba nyingi za kuuzia bidhaa inafaa kujitokeza na si eneo tambarare au jumba moja kuu la kuuzia bidhaa.

Mkalimani alikalimani visivyo maneno ‘*any entry permit or any authorization to allow you to be in Kenya*’ na badala yake alikalimani neno ‘*permit*’ kuwa ‘kibali’ aliposema ‘hukuwa na *permit* yoyote au kibali ya kuonyesha kuwa ulikuwa umekubaliwa kuingia Kenya’. Maneno ‘*permit*’ na ‘*any authorization*’ yamechukuliwa kuwa yana maana sawa ndio sababu mkalimani anatomia msamiati ‘kibali’ ili kurejelea dhana zote mbili. Mkalimani angesema ‘hukuwa na kibali wala stakabadhi zozote za kukubalia kuingia Kenya.’

Mkalimani alikalimani maneno ‘...*at around 11.00 am*’, kuwa ‘saa tano na nusu’ bila kutaja kwamba ni asubuhi. Ukalimani huu unaweza kuvuruga ujumbe kwa sababu karibu saa tano inaweza kuwa kati ya saa nne na nusu na saa tano na nusu. Pia, hali ya kutojulikana kama ni mchana au usiku inaweza kuleta utata katika kuelewa ujumbe uliokusudiwa. Mkalimani angesema ‘takribani saa tano asubuhi’ ndipo ujumbe uliokusudiwa ueleweke ilivyostahili.

Hali hii ya kukosa kukalimani ujumbe uliokusudiwa katika diskosi hizi za wahusika katika uendeshaji wa kesi katika mahakama unaashiria kuwa huenda wahusika wakakosa haki au kupata hukumu isiyowafaa. Hii ni kwa sababu hakimu anamtegemea mkalimani kuwasilisha ujumbe uliokusudiwa katika matini chanzi ili kupata majibu sahihi kwa maswali wanayoulizwa. Majibu ya wahusika humsaidia hakimu kukata kesi husika inavyostahili.

#### **Ujumbe Ulichopekwa:**

Kwa mujibu wa kamusi ya Kiswahili sanifu TUKI (2000), uchopekaji ni kuweka vitu baina ya vitu vingine. Katika muktadha huu wa ukalimani neno uchopekaji litakuwa na dhana kwamba ni mchakato wa kubadili umbo la nje la sentensi kwa kuliongezea maneno ambayo hayakutokea katika MC lakini ambayo mkalimani anadhamiria kuyatumia ili kueleweka. Anapofanya hivyo, mkalimani anakiuka sharti la kuwa mkalimani bora kwa sababu ya kupitisha ujumbe na maoni yake binafsi ambayo hayakubaliki katika ukalimani.

Katika diskosi ya kesi C, mkalimani alikalimani ‘*When he was working for you,*’ kuwa ‘akiwa anakufanyia kazi kama kawaida,’ ambapo ni wazi kuwa ameongeza maneno ‘kama kawaida’ kana kwamba lilikuwa ni jambo la kawaida kwa mtoto huyo kumfanyia mshtakiwa kazi hiyo. Mkalimani alichopeka maneno hayo kutokana na uelewa wake wa ujumbe wa kiongozi wa mashtaka bila kuzingatia maneno yaliyotumiwa moja kwa moja. Maneno yaliyochopekwa katika usemi huu yanaibua dhana kuwa lilikuwa ni jambo lililozoeleka na kuwa mlalamishi alikuwa akimfanyia mshtakiwa kazi wakati wote wala si siku hizo chache ambazo alifanya kazi bila mamake mlalamishi kujua.

Mkalimani vile vile katika diskosi za kesi C amekalimani sentensi ‘*I will enter for you a plea of not guilty because you have denied the judges...*’ kuwa ‘Umekataa maelezo, kwa hivyo korti itaandika kuwa umekataa mashtaka...’ ambapo mkalimani alichopeka maneno umekataa ‘maelezo’ badala ya ‘mashtaka’ yaliyomkabili mshtakiwa. Katika sehemu hii, mkalimani aligundua kuwa alitumia msamiati ambao si sahihi na akarekebisha kwa kurudia ujumbe huo kwa kutumia msamiati ‘mashtaka’ ili kuweza kueleweka vilivyo.

Katika diskosi F, mkalimani anachopeka maneno ambayo hayakutokea katika diskosi asilia anapokalimani ‘*foreign national*’ kuwa ‘si mtu wa Kenya, ni wa nchi ingine’. Maneno ‘si mtu wa Kenya’ yameongezwa na mkalimani ili kusisitiza kuwa mtu huo ni mgeni na mtu kutoka nchi nyingine ambayo si Kenya.

#### **Ujumbe Uliodondoshwa:**

Kwa mujibu wa kamusi ya Kiswahili sanifu TUKI (2000), udondoshaji ni mchakato wa kuacha nje viambajengo vya sentensi wakati wa kuikalimani na hivyo sentensi husika huchukua muundo wa nje tofauti kabisa katika ML na ule wa MC. Hali hii hutokea mkalimani anapoamua kuwa ujumbe fulani haufai kukalimaniwa kwa sababu hauna uzito wa kubadilisha ujumbe muhimu wa diskosi husika. Baadhi ya wakati, mkalimani husahau sehemu ya ujumbe mzima uliosema katika MC kwa sababu ya kuwa na kumbukumbu mbaya au kwa sababu hakisikia sentensi yote kwa sababu anasikiliza anayoyasema msemaji wa LC huku akikalimani katika LL. Katika utafiti huu, mkalimani amedondosha ujumbe uliokusudiwa katika MC kama ifuatavyo;

Katika diskosi ya kesi A sentensi *'Together, you were found by the officers playing cards'* imekalimaniwa kuwa 'mlikuwa pamoja, mlipatikana mkicheza mchezo wa karate'. Hapa mkalimani alikosa kuwataja 'maafisa wa polisi' ambao waliwakuta wahalifu hao wakiwa pamoja wakicheza mchezo huo ndipo wakawakamata. Mkalimani alifaa kukalimani kuwa maafisa wa polisi waliwakamata waliwavumania wakiwa pamoja wakicheza mchezo huo haramu wa kamari.

Katika diskosi ya kesi A, mkalimani amedondosha baadhi ya maneno katika ukalimani anapohawilisha ujumbe wa LC hadi LL. Ametumia maneno machache ili kuwasilisha ujumbe ambao alichukulia kuwa muhimu kwa mshtakiwa ambapo hakukalimani maneno *'and they will win money'*. Ujumbe kuhusu kutapeliwa kwa umma kwa njia ya udanganyifu haukujitokeza katika LL.

*Km: You have been accused of cheating the public that you are playing cards and they will win money.*

Mk: Mmeshtakiwa kwa kosa la kucheza karate kwa umma.

Katika diskosi ya kesi A, mkalimani alikosa kukalimani diskosi yote ya kiongozi wa mashtaka baada ya washtakiwa kuitikia mashtaka. Alidondosha sehemu kubwa ya MC na kukalimani sentensi ya mwisho pekee ya ujumbe wa kiongozi wa mashtaka. Sehemu hii ni matini ambayo haikukalimaniwa;

*KM: 'I wish you to know that the accused have agreed that they were found in the said place and there were cards found in their possession which they used to play and fifty shillings which the officers found with them where they were playing the cards. I have them and I want to produce them as exhibit for this case; the cards are here and the fifty shilling coins.'*

Mk: 'Na kadi ambazo mlilikwa nazo na kiongozi wa mashtaka anataka kuzitoa na pia pesa shilingi hamsini kama kielelezo.'

Ujumbe wote wa sentensi ya kwanza katika sehemu hii haujitokezi kwa vyovyote kwa sababu mkalimani hakukalimani sentensi hii nzima. Hii inaonyesha kuwa ni vigumu kuwa na usawa katika ukalimani wa ujumbe kutoka matini chanzi hadi matini lengwa. Hakuna sababu maalumu kuhusu hali hii ila kuwa mkalimani pengine aliamua kuwa ujumbe katika sentensi hii si muhimu na hivyo kuacha kuukalimani. Udondoshaji wa ujumbe kama huu unaweza kumkosesha mshtakiwa nafasi ya kuelewa mashtaka dhidi yake na kumfanya hakimu kutoa uamuzi usiofaa katika kesi husika.

Vivyo hivyo, katika diskosi ya kesi B,

*Jaji: So, a plea of not guilty has been entered for you.*

Mk: ...

*Jaji: And the alternative*

Mk: ...

*Jaji: You will be given another date of hearing.*

Mk: Utapewa tarehe ya kusikilizwa tena.

Mkalimani alikosa kukalimani sentensi mbili za jaji na hivyo ujumbe ambao jaji alikusudia kumwarifu mshtakiwa haukuweza kumfikia mshtakiwa huyo. Hivyo basi, itachukuliwa kuwa mshtakiwa hakujua kuwa hakuwa amekiri makosa yake yote mawili aliyosomewa mahakamani mbele ya jaji na hivyo alihitajika kusomewa mashtaka yake upya katika tarehe mpya ya kesi kusikilizwa tena mahakamani. Ujumbe huo ulipotea kwa sababu mkalimani aliamua kudondosha sentensi hizo katika ukalimani wake kwani alifikiri kuwa si muhimu kwa mshtakiwa.

Pia, katika diskosi za kesi C, mkalimani alikosa kukalimani sentensi,

*Km: 'According to the complainant of this case who is Victor. However, he was not paid because he did not finish and the rain started raining before lunch time.'*

Mk: 'Kesi hii ambayo ni ya Victor. Hakumaliza. Mvua ilianza kunyesha kabla ya saa ya maakuli.'

Mkalimani alidondosha ujumbe *'However, he was not paid because he did not finish'* yaani 'mlalamishi hakupata malipo ya siku hiyo kwa sababu hakumaliza kazi'. Ujumbe huu ni muhimu katika diskosi hii kwani kutolipwa kwa mlalamishi pengine ndiko kulikomfanya mamake mshtakiwa kuenda kumtafuta mwanawe na kumshtaki mshtakiwa kwa kumfanyiza mwanawe kazi wakati alistahili kuwa shuleni. Pia, mkalimani anadondosha maneno *'according to the complainant'* na

'However, he was not paid because he did not finish' anapokalimani matini katika LP kwani pengine alifanya uamuzi kuwa ujumbe huo si muhimu katika kesi hii. Hata hivyo, ukosefu wa ujumbe huo katika MP huenda ukaathiri maamuzi ya jaji.

Isitoshe, mkalimani amekalimani maneno ya jaji, 'The accused, is that true?' kuwa 'Hayo maelezo ni ya ukweli?' Mkalimani amedondosha maneno 'The accused'. Katika ML haieleweki anayelizwa swali hili kama ni mshtakiwa au ni kiongozi wa mashtaka au mtu mwingine katika ukumbi wa mahakama. Hali hii huenda ikamfanya mshtakiwa kutojibu swali hili kwa sababu hajui kama mlengwa wa swali hili ni yeye mshtakiwa.

Katika diskosi D, mkalimani mbali na kukosa kukalimani ujumbe huu;

Km 'On inquiring and doing a search they discovered'

Mk: 'Walikushikashika waliendelea kupata'.

Maneno 'On inquiring' yamedondoshwa katika sentensi ya mkalimani anapokalimani kipande hiki cha ujumbe wa kiongozi wa mashtaka. Hali ya kumpekua mshtakiwa ili kuchunguza kama alikuwa na bangi hiyo haijitokezi katika sehemu ya ukalimani katika LL. Badala yake, inaonyesha kuwa walikuwa wanampapasapapasa kana kwamba walikuwa wanacheza au kumchokoza bila kutafuta chochote na hawakupeleleza kwanza kabla ya kuanza kumpekua mshtakiwa.

Vivyo hivyo, katika kesi E,

KM: *You injured her on her left side of the nose, and the upper right arm.*

MK: Ulimjeruhi upande wake wa kushoto wa pua na upande wa kulia.

Mkalimani alikosa kukalimani ujumbe uliokusudiwa katika LC mara kadhaa aliposhindwa kupata msamiati mwafaka katika LL. Mkalimani alilazimika kudondosha baadhi ya ujumbe au kuteua msamiati ambao alionelea ulikaribiana kimaana na msamiati ambao ulifaa kutumiwa. Kwa kufanya hivyo, alipoteza ujumbe ambao ulikusudiwa katika MC. Kwa mfano;

'You injured her on...upper right arm' ulikalimaniwa kuwa 'ulimjeruhi ...upande wa kulia' ambapo mkalimani amedondosha maneno 'upper arm'. Hali hii inasababisha kutoeleweka mahali ambapo aliumizwa. Inaweza kueleweka kuwa alimjeruhi sehemu ya kulia na kushoto kwenye pua lake au sehemu ya kushoto ya pua na sehemu yoyote ya kulia kwenye mwili wa mlalamishi. Kutokana na ukalimani huu mlalamishi aliumizwa sehemu ya kulia fulani au sehemu zote za kulia za mwili wa mlalamishi.

Katika diskosi ya kesi E,

Km: *She boarded a motorcycle and went to the police station where she reported her complaint.*

Mk: aliweza kuenda kituo cha polisi na kuweza kuripoti.

Sehemu ya sentensi ya kiongozi wa mashtaka katika matini hii, 'She boarded a motorcycle and' haikukalimaniwa. Maneno haya yote yalidondoshwa na kusababisha kupotea kwa ujumbe ambao ulikusudiwa kuonyesha kuwa mlalamishi alitumia pesa kiasi fulani katika usafiri kwa pikipiki, pesa ambazo huenda akadai kufidiwa na mshtakiwa wa kesi hii. Jaji pia alifaa kuelewa hivyo na kuzingatia jambo hilo wakati wa kukata kesi na mshtakiwa naye alifaa kuelewa hivyo kutokana na ukalimani wa ujumbe husika ili asiye akaduwa akiambiwa amlipe mlalamishi kiasi fulani cha fedha kama fidia.

Isitoshe, katika diskosi za kesi E,

KM: *She reported at Nyagacho Police Station. The complainant was treated at Kericho District Hospital and issued with a p3 form. The statements were recorded.*

MK: 'Aliripoti Nyagacho Police Station. Na mlalamishi alienda Kericho District Hospital na aliweza kujaziwa p3 form. Na mlalamishi aliweza kuandika statement.'

Maneno 'was treated...' yalidondoshwa pia kusababisha kupotea kwa ujumbe kuwa alitumia pesa ili kupata matibabu katika hospitali na alikuwa ameumia sana na hivyo mlalamishi huenda akadai fidia kutoka kwa mshtakiwa. Mshtakiwa hakupokea ujumbe huo na huenda akashindwa ni kwa nini jaji amwagize katika hukumu yake kuwa amfidie mlalamishi katika kesi hii.

Maneno 'police station', 'statement na district hospital' yanasalia hivyo katika MP kwa sababu mkalimani hakupata kisawe chake katika lugha ya Kiswahili.

Katika kesi F, mkalimani amedondosha sehemu nzima ambayo inarejelea tarehe 'On 4<sup>th</sup> /8/ 2016, that is yesterday, at around 11.00am' kutoka sentensi ya kiongozi wa mashtaka na badala yake mkalimani alikalimani, 'jana saa tano na nusu'. Tarehe iliyotajwa ilikuwa ni ya siku ambayo ilikuwa imetangulia lakini mashtaka hayo yakirejelewa baadaye katika LL, msomaji atatatanishwa na siku mahususi iliyokusudiwa kwa sababu mkalimani amedondosha tarehe iliyotajwa katika MC.

Katika ukalimani wa diskosi ya kesi F,

*Km: Police officers who were at Kipsitet shopping centre*

Mk: Maaskari ambao walikuwa 'soko' ya Kipsitet

*Km: were informed of the presence of the accused person in the shopping centre*

Mk: .....

*Km: who was suspected to be of foreign national,*

Mk: kwamba ulishukiwa kuwa wewe si mtu wa Kenya, ni wa nchi ingine

Kulitokea ukosefu wa usawa wa ujumbe uliokusudiwa ambapo mkalimani alidondosha maneno 'police were informed of the presence of the accused person' katika LL. Ukosefu were ujumbe huu katika LL utaleta mtafaruku kuhusu walivyojua kuwa mshtakiwa alikuwa mgeni nchini Kenya.

Isitoshe, mkalimani alikosa kukalimani sentensi, 'At that particular time you did not have any entry permit...' kwa hivyo ujumbe huo haukupitishwa kwa mshtakiwa. Pengine, kudondoshwa kwa sehemu hii ndiko kulikomfanya mshtakiwa kukana mashtaka na hata kuchanganyikiwa akubali au asikubali mashtaka. Hata mshtakiwa aliwambia kuwa huo ulikuwa 'ukweli wao' na akakataa na wakati huo huo kukubali mashtaka mpaka akamchanganya hakimumu. Mwishowe, hakimumu aliamuru afikirie alikusudia nini ndipo asomewe mashtaka yake tena baadaye ndipo pengine ayaelewe ndipo amjibu hakimumu.

Pia, katika diskosi F, mkalimani alidondosha ujumbe 'at that particular time' anapokalimani ujumbe wa kiongozi wa mashtaka 'at that time you did not have any entry permit or any authorization to allow you to be in Kenya.' Mkalimani anakalimani kuwa 'hukuwa na permit au kibali ya kuonyesha kuwa ulikuwa umekubaliwa kuingia Kenya.' Ni wazi kuwa ujumbe huu ulidondoshwa kwani mkalimani alifikiria kuwa haungebadilisha ujumbe uliokusudiwa katika MC.

### 3. MUHTASARI

Data husika zilichanganuliwa katika kategoria zifuatazo; usawa wa ujumbe, usawa wa maumbo, usawa wa mitindo na usawa wa toni baina ya LC na LL. Kipengele cha ujumbe kiligawanywa katika sehemu ya ujumbe uliokalimaniwa vyema, ujumbe uliokalimaniwa visivyo, ujumbe uliochopekwa katika matini pokezi na ujumbe uliodondoshwa. Kipengele cha ujumbe kilichanganuliwa ili kudhihirisha kuwa ni vigumu kulandanisha ujumbe wa matini yote katika LC na LL. Data za kesi sita zilizoteuliwa na kuchanganuliwa zilibainisha kuwa hakuna ukalimani baina ya lugha mbili ambao unaweza kulandana kwa kila namna katika vipengele vyote vya lugha vya lugha husika. Wakalimani walitumia mbinu zote za ukalimani yaani mbinu ya neno kwa neno, mbinu sisisi, ukalimani wa kisemantiki na pia kipragmatiki katika ukalimani wa diskosi hizo zilizohitaji kukalimaniwa. Hata hivyo, ilibainika kuwa wakalimani walikumbwa na changamoto za usawa wa kipengele cha ujumbe katika ukalimani wa diskosi za wahusika baina ya lugha mbili husika (Kiingereza na Kiswahili) zilizotokea katika mahakama. Changamoto hizo za usawa wa ujumbe katika ukalimani wao zilitokana na sababu kadhaa. Kwa mfano, kuwepo kwa vitate katika lugha ya Kiswahili, ukosefu wa msamiati maalumu wa kisheria na maadili ya lugha kufuatia utamaduni wa jamiilugha husika kuliwatitiza wakalimani. Pia, wakalimani walikosa kunyambua maneno ya lugha ya Kiswahili ipasavyo ili kuleta wazo lililokusudiwa katika MC. Isitoshe, wakalimani walionekana kuchopeka baadhi ya ujumbe ambao haukutokea katika MC walipohisi kuwa ujumbe huo ulifaa kuwepo ili kufafanua ujumbe wa mhusika katika ML ili ujumbe uweze kueleweka vyema. Zaidi ya hayo, wakalimani walidondosha baadhi ya ujumbe ambao waliuchukulia kuwa haukuwa na umuhimu wowote katika ukalimani wa MC hadi ML. Hali hii iliibua kubadilika kwa ujumbe tofauti na ilivyokusudiwa katika MC. Hali hii huenda ikaathiri uamuzi wa jaji.

#### 4. MAHITIMISHO

Ilibainika kwamba wakalimani walikosa kulandanisha ujumbe wa MC na ML kwa kuwa walidondosha ujumbe uliokusudiwa katika MC walipokalimani MC katika LC. Baadhi ya wakati ujumbe ambao haukujitokeza katika MC ulichopekwa katika ML. Fauka ya hayo, wakalimani walipotoza ujumbe wa MC walipotumia msamiati ambao una maana tofauti na ule uliotumiwa katika MC. Matokeo ya utafiti huu yanadhihirisha maoni ya Olsen (2009) kuwa ni ndoto kwa wanasheria kutarajia ukalimani wa ML kulandana na MC kwa sababu shughuli ya ukalimani ina changamoto nyingi. Hale na Gibson (1999) wanasisitiza kuwa ukalimani ni harakati yenye dosari nyingi katika ulimwengu wenye dosari.

Kipengele cha ujumbe kilichanganuliwa ili kudhihirisha kuwa ni vigumu kulandanisha ujumbe wa matini yote katika LC na LL. Ilibainika kwamba wakalimani walikosa kulandanisha ujumbe wa MC na ML kwa kuwa walidondosha ujumbe uliokusudiwa katika MC walipokalimani MC katika LC. Baadhi ya wakati ujumbe ambao haukujitokeza katika MC ulichopekwa katika ML. Fauka ya hayo, wakalimani walipotoza ujumbe wa MC walipotumia msamiati ambao una maana tofauti na ule uliotumiwa katika MC. Pia, matokeo ya utafiti huu yalidhihirisha maoni ya Hale na Gibson (1999) wanasisitiza kuwa ukalimani ni harakati yenye dosari nyingi katika ulimwengu wenye dosari.

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