

ABSTRACT

Legal discourse has special grammatical and stylistic features which are meant to enhance precision of the intended message. However, the same features can also create alienation and exclusion because of their complexity. In addition, participants in the legal process make deliberate discursive choices to legitimize their clients and delegitimize the opposing team during litigation. This study undertook a forensic-linguistic analysis of Kenya Supreme Court judgements on election petitions and civil cases with a view to explore the grammatical modality features, examine the transitivity processes, and to investigate the discursive features used for representation of legal ideology. The study was guided by Halliday's Systemic Functional Linguistics and Van Dijk Critical Discourse Analysis theories. Qualitative design was used in conducting the research. The population for this study comprised all the judgements made by the Kenya Supreme Court since the promulgation of the repealed constitution in 2010. Purposeful sampling was used in the identification of eight judgements for the study; four judgements on election petitions and four judgements on civil cases. The sampled judgements were then downloaded from eKLR digital repository for a detailed exposition. Data was collected through expository reading of the judgements with focus on grammatical, lexical and discursive categories. A lexical grammatical check-list was used in the identification of different grammatical and stylistic features as used in the Kenya Supreme Court judgements. Thematic analysis was used to analyse the data and to highlight the key patterns and categories of meaning in the study. Guided by Systemic Functional Linguistics, different aspects of grammatical modality were studied. The features that were explored under modality include deontic modality, dynamic modality and epistemic modality features. From the study, it was evident that the deontic modal categories are used in the Supreme Court judgements to articulate the prescriptive nature of legal discourse. Secondly, dynamic modals verbs are used in the Supreme Court judgements to signify ability, volition, intention and willingness while epistemic modal categories help to articulate different degrees of belief and conviction concerning legal issues. Various transitivity processes were also examined and analysed. These processes include behavioural, mental, verbal, material, relational, and existential processes. The processes are used in the Supreme Court judgements to index the cognitive, objective, dialogic, and referential aspects of legal discourse. Guided by CDA theory, various discursive features representing legal ideology were also investigated. These features include use of lexical stylistic features, legitimation, presuppositions, argumentation, interrogative forms, metaphors, precedence and predication. These discursive features are used to enhance clarity in the judgements and to uphold the infallible nature of the legal process. However, the features are also used for purposes of legitimation, delegitimation and exclusion during the legal process. Ultimately, this study offers insight on the role of linguistic choices in legal discourse and highlights the ideological qualities inherent in legal judgements. The study adds to existing knowledge on Forensic linguistics, Legal drafting and legal ideology.