

# Manipulative of Courtroom Language: Implication on Children In Conflict With the Law, Eldoret Court, Kenya

Odera Josephine

*Catholic University of Eastern Africa, Kenya*

**Abstract:-** This paper focuses on the the implications of the manipulative nature of courtroom language on children in conflict with the law. The study adopted a descriptive design method because the variables were not manipulated. The study was carried out in the children's court in Eldoret, Uasin Gishu County, Kenya. This is because Eldoret is close to the researcher and also being the major towns in North Rift region, the courts around have cases involving children that they handle. Therefore the research would also benefit the other courts across the country. The main instruments of data collection were audio recordings of the court proceedings and interview schedules of children's advocate both the prosecution and the defense attorney. The target population was children of 8 to 15 years old. From the analyses it is established. The children in conflict with the law usually find it hard to participate fully in a trial due to the nature of the courtroom language. The study recommends that the government to do a revision on the guidelines on how to do direct examination and cross examination of children in conflict with the law.

**Key Words:** Manipulative, Courtroom, Implication, Conflict

## I. INTRODUCTION

The discussion on implications of the Manipulative Nature of Courtroom Language on Children in Conflict with the Law has been a concern to the scholars. Questions can be manipulative. Questioning is the key flagship of the courtroom discourse. This demonstrates the power of language, which has influence and control of linguistic interactions. One party is placed in a situation where he/she needs to prove innocence to a crime and the other party is brought in to answer to the charges leveled against him/her. The judge or the magistrate always acts as an arbitrator. They need to get all the facts of the case which are normally assembled in a systematic way in order for them to get a clearer understanding of what happened before they make a ruling (Danet,1980).

Satia (2013) focuses on the strategies used in the magistrate's court in Kenya during cross-examination. The paper analyzed strategies of controlling the linguistic responses of prosecution witnesses that were employed by two accused persons in a grievous-bodily-harm case involving family members at a magistrate's court in Kenya. The study analyzed audio-recorded court proceedings using a discourse analytic approach. The range of controlling strategies used by the defendants included aggressive questioning styles, the use of

multiple questions, formulaic questions, epistemological challenges and accusatory remarks against the witnesses. Although the lay defendants demonstrated an unusual level of awareness of cross-examination strategies, the researcher proposes a further research on investigating where the lay litigants learnt the strategies.

Njeri et, al (2018) undertook a study on critical analysis of linguistic manipulation and power disparities among discourse participants in criminal trials at the Kibera Law Courts, and posited the view that the employment of manipulative techniques by both legal professionals and unrepresented accused persons during hearings is a vital part of the courtroom discourse. The researchers observed that the court participants in the various segments of criminal proceedings used judgmental sampling to select instances of linguistic manipulation. The findings of the study were that both legal professionals and lay defendants employ such linguistic manipulative techniques as "so", summarizers, alternative questions, and interruption to show control and dominance of the discourse in criminal proceedings at an equal level and despite the differences in legal knowledge. Power is unequally distributed among court participants and that this power imbalance is more rampant among courtroom officials.

### 1.1 Statement of the Problem

Due to their tender age and cognitive ability, children are disadvantaged when responding to questions. Cases involving children are not handled in the right manner; the right procedure is normally not followed. If the right procedure would have been followed in the cases, then the number of cases of appeal would go down. Therefore, the researcher investigated how following the right procedure and especially the linguistic strategies used in cases involving children would have a great impact in solving the cases amicably. Hence, cases involving child litigants are likely to be lost on the basis of the inability of children to understand the court proceedings and the language of the court. This is the gap this study was set out to fill.

### 1.2 Objective of the Study

To explain the implications of the manipulative nature of courtroom language on children in conflict with the law

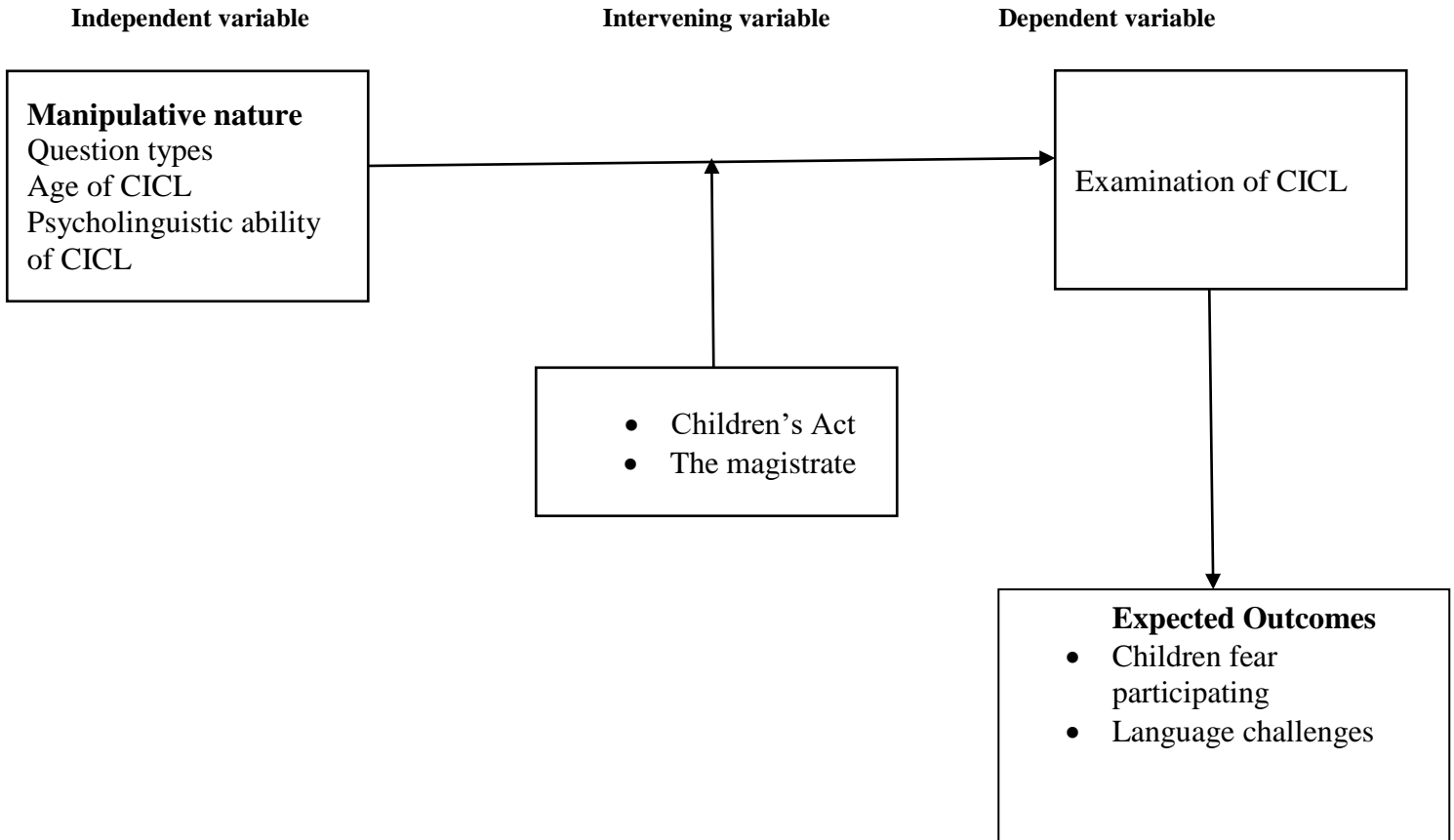
1.3 Research Question

What are the implications of the manipulative nature of courtroom language on children in conflict with the law?

II. CONCEPTUAL FRAMEWORK

In this study, guidelines existing in cases involving children in conflict with the law, the courtroom environment, the age of the accused and the linguistic strategies among others are some of the factors associated with cases involving children as accused. They are presented on figure 1.1 below;

Figure 1: Conceptual Framework



III. METHODOLOGY

A research design is the conceptual structure in which research is conducted (Kothari, 2003). This study adopted a descriptive research design because the variables were not manipulated. The qualitative procedures in sampling, data collection and data analysis were employed. Descriptive research is a study designed to depict the participants in an accurate way. It is mainly used to investigate social issues, and they enable researchers to come up with solutions or recommendations on how to deal with the disparities observed (Mugenda, 2008). The behavior of participants is described without interference of the researcher or affecting the participants' behavior. This type of design is good because of the high level of confidentiality involved. It is convenient and fast in collection and analysis of data.

According to the target population, the average population of Eldoret children remand home is 80-100. From this, the actual sample size of the respondents was arrived at by applying Mugenda and Mugenda's, (2003) recommendation of a

sample of 10 to 30 % of the target population. However, in a small universe a larger proportion can be selected. In this case, 50% of the population of 8-15 years was picked which was a total of 20 children and 3 lawyers. Purposive sampling was used to choose this age bracket.

The verbal discourse in the sampled trials was captured reflecting the examination and cross-examination of witnesses. This provided data on both the questioning patterns, pragmatic strategies and speech act functions used by various discourse participants in an attempt to win the trial. The recordings constituted the linguistic data that were analyzed to determine how power asymmetry was produced and challenged in courtroom discourse. Taking of freehand notes by the researcher on other features relevant to the trial participants, contributions and context was also done to assist in accurate transcription of data.

The study was based on both primary and secondary data collected through audio-recordings of court proceedings, questionnaires and interviews. The collection of data using

multiple methods was used considering the complexity of the courtroom procedures. The research instruments designed were first tested in the field before being applied by the research team during the actual data collection. They were structured according to the research objectives where the survey data was obtained by administering structured questionnaires containing both closed and open ended questions for the children in conflict with the law. Milroy and Gordon (2003) note that in studies involving lengthy recordings, 'the borderline between overt and covert recording can become blurred' (p. 83). This assertion holds true in the court set up where it would be impractical for the researcher to negotiate permission to record with every participant. Qualitative data was clustered according to the type of responses and then coded to interpret findings

#### IV. DISCUSSIONS OF FINDINGS

According to the study findings the Implications of the Manipulative Nature of the Courtroom Language, the youngest child was 10 and 12 years for both lawyers. This can be attributed to the fact that they are approaching the adolescent ages, where they are experiencing a lot of changes emotional, psychological and physical in their bodies. During this stage, the children are likely to be withdrawn from their guardians, they want to experience on their own, and some end up committing crimes due to peer pressure. They want to belong, to be accepted and to be loved. When all these are not fulfilled, they end up looking for attention in the wrong places. Another observation could be that most of the parents have left their children to be disciplined by the church or the teachers in school. Due to the high number of this age group, it then becomes an uphill task for them to be able to control these children, the gap present can lead some of them to commit such crimes and find themselves in courts or juveniles. Emotional gaps can also lead to crimes. When some of these children are left at the mercy of the outside world, they end up feeling lonely; to fill the gap they may fall into bad companies. Poor parenting leads to lack of moral values and this affects the principle of life. When such imbalance is struck it may likely affect the behaviour of this child.

Children in conflict with the law are always disadvantaged when they lack legal representation makes them unable to participate effectively in the legal system. This can lead to lack of a fair trial. When a child is represented by a lawyer in court, he/she stands a better chance in his/her case as legalese is a challenge to the children. Intimidating court setting can also make a child be at a disadvantage. Most children's cases are dealt with in adult courts. Lack of privacy often leads them to tend to shy away from being effective in cases involving them as offenders.

Language barrier and lack of proper terminologies to utilize in courts make children in conflict with the law be at a disadvantage. Children may say one thing to mean another one in court. Language barrier is also a contributing factor but the court will mostly ask the child to state a language that they

feel most comfortable with or get the court clerk to act as a translator. The children in conflict with the law can answer questions out of context. This may also contribute to their inability to comprehend the language of the court and many a times translation done may not carry the intended meaning. Translating legal interactions in courtroom may be so demanding to the court clerks. The court clerk is faced with conflicting responsibility as a translator of conveying the whole message, requiring him/her to attend to "intended meaning, implied meaning and presupposed meaning" (Hatim and Mason, 1990:33). So they are tasked to ensure that there is no loss in the translation.

The *voire dire* will establish whether or not the child is intelligent enough to answer the questions. The questions used are based on the answers anticipated by the examiner. The younger the child, the less complex and more plain the questions should be. The children in conflict with the law are in most cases treated differently from those of the children who are witnesses in courts in terms of questioning. This may be attributed to the fact that children in conflict with the law are the accused hence seen as criminals and especially if the crime committed is capital offences such as murder. The lawyers and the prosecutor will try as much as they can to be harsh to this group especially during cross examination.

Language use has not worked for the children in conflict with the law. A few times the language used has been to the detriment of the children in conflict with the law. They have to rely on an interpreter which may make some words to loose meaning during the translation process. Matuet, al (2012) found out that the interpreters role in any courtroom proceedings is very crucial. The interpreters have a complex role of ensuring that they pass the right information from the source language to the target language. They have a great role to understand and appreciate their role to avoid biasness and ambiguity. The interpreters should always observe the rules of accuracy, omission, interruption and impartiality. The perception on addition during interpretation was due to the fact that oral legal discourse is goal-oriented and when not fully understood, impacts negatively on the participants. This was different from the findings of the current study where to do the nature and fatigue of their role, the interpreter a times omits some information.

#### V. CONCLUSION

Courtroom defendants play a very vital role in any court process. The findings of this study demonstrated that the children in conflict with the law face challenges when appearing in courts in cases involving them. They are required to by the Kenyan law to try and absolve themselves from the crimes that they are accused of committing. The criminal justice system should ensure that children in conflict with the law feel safe, valued, understood and well integrated in the court process. The courts should adapt to child-friendly services and effective languages so as to enable them

participate fully in a trial. The child-friendly provisions should be highly encouraged.

#### VI. POLICY RECOMMENDATION

Based on the findings of the present study, it would be prudent for the government to do a revision on the guidelines on how to do direct examination and cross examination of children in conflict with the law. This will enable the court staff handle these children best basing on the language tailored for them. Finally establish a fully-fledged children's court in all the major towns away from the public eye. This will ease anxiety and fear on the part of the children hence they will be able to handle and participate well in cases that they are involved in.

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