

Forms of Linguistic Ambiguity in Legal Discourse: A Forensic Pragmatic Analysis of Milimani Law Court Proceedings

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Abstract

Legal discourse operates at the intersection of language, power, and meaning, where precision is acknowledged yet ambiguity is pervasive. This article assesses the forms of linguistic ambiguity manifest in legal discourse at the Milimani Law Court in Nairobi, Kenya. Drawing on forensic linguistics, pragmatics, and jurisprudence, the study identifies and categorizes types of ambiguity that may compromise judicial interpretation, access to justice, and the rule of law. Through a qualitative discourse-analytic approach, courtroom observations, pleadings, and statutory instruments were analyzed to isolate lexical, syntactic, semantic, and pragmatic ambiguities. The findings reveal that while lexical ambiguity occurs from polysemous legal terminology, syntactic ambiguity stems from complex sentence constructions and unclear modifier attachment. Semantic ambiguity appears from context-dependent meaning

fluctuations, whereas pragmatic ambiguity results from implicature failure, indeterminate speech acts, and context-sensitive interpretations. The study maintains that these ambiguities are not merely linguistic inconveniences but practical jurisprudential problems that affect judicial discretion, litigant rights, and the validity of legal outcomes. The article concludes by advocating for plain-language legal drafting, enriched judicial training in linguistic analysis, and the institutionalization of forensic linguistic expertise in Kenyan courtrooms. These recommendations hold implications for applied linguistics, legal education, and judicial policy reform in common-law jurisdictions.

Keywords: Linguistic ambiguity, Legal discourse, Forensic linguistics, Pragmatics, Jurisprudence, Milimani Law Court, Courtroom discourse, Judicial interpretation

1. Introduction

1.1 Background to the Study

The law is fundamentally a linguistic institution. Statutes, judgments, contracts, and courtroom proceedings are all facilitated through language, making the study of legal discourse a necessary undertaking for linguists, jurists, and legal practitioners alike. Notwithstanding the legal profession's longstanding commitment to precision and determinacy, legal language is full of ambiguities that complicate interpretation, obscure meaning, and occasionally subvert the very justice the law seeks to administer (Tiersma, 1999). Nowhere is this tension more evident than in courtroom proceedings, where spoken and written legal discourse must deliver unambiguous meaning to judges/ magistrates, advocates, litigants, and court officials, over and over again under conditions of high risk and limited time.

Milimani Law Court, situated in Nairobi, Kenya, serves as one of the country's leading judicial institutions, handling constitutional, commercial, civil, and criminal matters. As a high-volume court operating within Kenya's common-law tradition, Milimani demonstrates the challenges that linguistic ambiguity poses to judicial administration in postcolonial legal systems. Kenyan legal discourse is significantly influenced by British colonial legal English while concurrently navigating the multilingual realities of contemporary Kenya, where English and Kiswahili function as official languages, and numerous indigenous languages serve as mother tongues for litigants and witnesses (Mazrui & Mazrui, 1996). This linguistic layering creates a fruitful environment for ambiguity, as legal concepts imported from English common law must be interpreted and applied in a sociolinguistic context that differs significantly from their original jurisdiction.

The presupposition that legal language is inherently precise has been challenged extensively by scholars in forensic linguistics, legal pragmatics, and jurisprudence (Solan, 1993; Gibbons, 2003; Coulthard & Johnson, 2007). Forensic linguistics, in particular, has established that courtroom discourse is subject to the same linguistic notions as ordinary language, although with consequences that are far more severe (Shuy, 2006). When a statutory provision is syntactically ambiguous, when a witness's testimony is pragmatically opaque, or when a judicial opinion relies on polysemous terminology, the resulting interpretive indeterminacy can affect the allocation of rights, liabilities, and freedoms.

1.2 Statement of the Problem

Regardless of growing scholarly attention to the language of the law, relatively little empirical research has examined the specific forms of linguistic ambiguity present in Kenyan courtroom discourse. Most studies on legal ambiguity are dedicated to Western jurisdictions, particularly the United States and the United Kingdom, leaving a significant gap in our understanding of how ambiguity operates in African legal contexts (Angermeyer, 2015). Milimani Law Court, as a site where common-law traditions intersect with local linguistic practices, offers an ideal case for examining how different forms of ambiguity manifest in legal discourse and what consequences they entail for judicial interpretation and access to justice.

The problem is not just academic. Linguistic ambiguity in legal discourse can lead to inconsistent judicial decisions, prolonged litigation, and the erosion of public confidence in the judiciary (Endicott, 2000). In a jurisdiction such as Kenya, where legal aid is limited and many litigants are laypersons with limited expertise in legal English, the costs of ambiguity are borne excessively by vulnerable populations. Understanding the forms that ambiguity takes is therefore a prerequisite for developing targeted interventions, whether in the form of plain-language drafting guidelines, judicial training programs, or forensic linguistic consultancy services.

1.3 Objective of the Article

This article discourses the following objective: to identify the forms of linguistic ambiguity present in legal discourse in the Milimani Law Court. In observance of this objective, the article follows three secondary aims: (1) to develop a comprehensive typology of linguistic ambiguity applicable to courtroom discourse in a common-law African jurisdiction; (2) to analyze the pragmatic and jurisprudential implications of each identified ambiguity type; and (3) to put forward recommendations for mitigating the negative effects of linguistic ambiguity in judicial proceedings.

1.4 Significance of the Study

This article contributes to numerous fields simultaneously. For applied linguistics, it extends the analysis of institutional discourse into the under-researched domain of Kenyan legal settings, offering empirical grounding for theoretical claims about language and power. For forensic linguistics, it provides a case study of how ambiguity functions in a postcolonial courtroom, complementing existing research on Western legal systems. For jurisprudence, it engages with foundational questions about the determinacy of legal rules and the role of judicial interpretation in addressing linguistic indeterminacy. Finally, for legal practice and policy, it offers actionable recommendations to improve the clarity of legal discourse and enhance the fairness of judicial proceedings.

1.5 Scope and Delimitation

The article centers precisely on the forms of linguistic ambiguity present in discourse at the Milimani Law Court. While the analysis draws on broader theoretical frameworks from forensic linguistics and legal philosophy, the empirical focus is on discourse produced within

this specific judicial setting. The article does not attempt to quantify the frequency of each type of ambiguity across all Kenyan courts, nor does it assess the constitutional validity of particular statutory provisions. Rather, it seeks to identify and categorize the forms of ambiguity that appear in legal discourse, using demonstrative examples drawn from courtroom proceedings and legal interviews.

2. Review of Related Literature

2.1 Legal Discourse and the Ideology of Precision

A self-conscious commitment to precision, reserve, and technicality has historically characterized legal discourse. This commitment is reflected in the specialized vocabulary, syntactic complexity, and ritualized formulae that differentiate legal language from ordinary speech (Maley, 1994). Legal drafting conventions, such as the use of shall, hereby, and notwithstanding, are designed to eliminate uncertainty and create legally enforceable obligations (Butt & Castle, 2006). Comparably, judicial opinions are expected to state the law clearly, applying established precedents to new factual circumstances in a manner that leaves little room for interpretive doubt.

However, this ideology of precision has been the subject of constant critique. Tiersma (1999) claims that legal language is habitually unnecessarily complex, serving social functions of professional gatekeeping and mystification rather than communicative clarity. Bhatia (1993) observes that conflicting requirements mold legal genres: on the one hand, they must be sufficiently precise to create binding legal effects; on the other hand, they must be sufficiently flexible to accommodate unforeseen circumstances. This tension between precision and flexibility is a primary source of linguistic ambiguity in legal discourse.

The stiffness of legal language also contributes to ambiguity. Archaic expressions, Latinate terminology, and complicated syntax are not just stylistic choices; they are linguistic features that can obscure meaning, particularly for laypersons unfamiliar with legal conventions (Kimble, 2006). In postcolonial jurisdictions such as Kenya, where legal English was imported as part of colonial administration, the correctness of legal discourse is intensified by its cultural distance from the everyday linguistic practices of the population (Mazrui & Mazrui, 1996).

2.2 Forensic Linguistics and the Study of Legal Ambiguity

Forensic linguistics began as a critical field for examining the language of the law from an empirical, evidence-based perspective. Coulthard and Johnson (2007) define forensic linguistics as the application of linguistic knowledge to legal contexts, including both the analysis of legal language and the use of linguistic evidence in judicial proceedings. Within this broad concern, the study of ambiguity occupies a central place, as interpretive differences frequently form the basis of litigation.

Shuy (2006) demonstrates how linguistic analysis can illuminate problems of meaning in criminal cases, civil disputes, and regulatory proceedings. His work on tape-recorded evidence, for example, shows how phonological, syntactic, and pragmatic ambiguities in recorded speech can lead to different interpretations of intent and guilt. Correspondingly, Solan (1993)

examines how judges interpret ambiguous statutory language, arguing that the principles of statutory construction are themselves influenced by linguistic suppositions that may not withstand rigorous analysis.

The application of forensic linguistics to African legal systems remains underdeveloped. While scholars such as Angermeyer (2015) have examined multilingual courtroom discourse in South Africa, and Kombo (2013) has studied language policy in Kenyan courts, few studies have systematically analyzed the forms of ambiguity present in East African legal discourse. This article seeks to address this gap by providing a detailed classification of types of ambiguity as they manifest in the Milimani Law Court.

2.3 Pragmatics and Legal Interpretation

Pragmatics, the study of how context contributes to meaning, is necessary for understanding legal ambiguity. While semantics deals with the literal meaning of words and sentences, pragmatics studies how speakers and hearers infer intended meanings in specific contexts (Levinson, 1983). In legal settings, pragmatic inference plays a central role in witness examination, judicial interpretation, and the application of legal rules to particular facts.

Grice's (1975) cooperative principle and its associated maxims—quality, quantity, relevance, and manner—provide a foundational framework for analyzing legal discourse. In courtroom settings, witnesses, advocates, and judges/magistrates are expected to observe these maxims, yet the confrontational nature of common-law proceedings creates systematic pressures to flout them. A witness may provide less information than required (violating the maxim of quantity) to avoid self-incrimination; an advocate may phrase a question in a manner that is intentionally obscure (violating the maxim of manner) to provoke a desired response. These pragmatic manipulations introduce ambiguities that are not reducible to lexical or syntactic indeterminacy.

Speech act theory, developed by Austin (1962) and Searle (1969), offers another pragmatic framework for analyzing legal discourse. Legal utterances normally perform speech acts—promising, ordering, declaring, or permitting—with binding institutional force. However, the illocutionary force of a legal utterance may be ambiguous, particularly when the performative verb is absent or when the context fails to establish the speaker's institutional authority. Kurzon (1986) has revealed that legal documents often perform speech acts without clear performative formulas, relying instead on contextual cues to establish their binding force. This reliance on context generates opportunities for pragmatic ambiguity.

2.4 Jurisprudence and the Indeterminacy of Law

The problem of linguistic ambiguity is not merely linguistic; it is a jurisprudential problem that strikes at the heart of legal theory. Legal positivists such as Hart (1994) have long acknowledged that legal rules have an 'open texture,' meaning that they have a core of determinate meaning surrounded by a shadow of uncertainty. In the shadow zone, judges must exercise discretion to resolve hard cases, drawing on principles, policies, and social values.

Endicott (2000) claims that vagueness and ambiguity are pervasive in law and that attempts to eradicate them are neither practicable nor wanted. Legal language must be general enough to

apply to multiple cases, yet specific enough to guide conduct; this dual requirement inevitably generates indefiniteness. However, Endicott differentiates between vagueness (borderline cases), ambiguity (multiple meanings), and interpretive disagreement (divergent applications of clear rules). Each of these phenomena requires different analytical tools and raises distinct jurisprudential questions.

Critical legal scholars have pressed the analysis further, arguing that legal indefiniteness is not an incidental feature of legal language but a structural characteristic that serves ideological functions (Tushnet, 1983). On this view, the apparent objectivity of legal interpretation disguises/covers the political choices that judges/ magistrates make when resolving ambiguities. While this article does not adopt a critical legal studies perspective wholesale, it acknowledges that resolving linguistic ambiguity in legal discourse is never purely a technical exercise; it is always rooted in relations of power and institutional practice.

2.5 Ambiguity in Multilingual Legal Contexts

The study of legal ambiguity takes on added complexity in multilingual jurisdictions. This is evident in Kenya's language policy, as enshrined in the Constitution of Kenya 2010, which designates English and Kiswahili as official languages and recognizes indigenous languages as national languages (Constitution of Kenya, 2010). In practice, however, English dominates legal proceedings at the High Court level, including at the Milimani Law Court. At the same time, Kiswahili is used in magistrates' courts, and indigenous languages are permitted for witness testimony with interpretation (Kombo, 2013).

This multilingual regime creates multiple trajectories/ directions for ambiguity. Translation between languages introduces semantic and pragmatic mismatches, as legal concepts in English may lack precise equivalents in Kiswahili or indigenous languages (Mazrui & Mazrui, 1996). Code-switching between English and Kiswahili in courtroom discourse can distort the boundaries between legal and ordinary meanings, therefore, creating uncertainty about which interpretive framework applies. Furthermore, witnesses who testify through interpreters may find their statements altered through the interpreter's linguistic choices, introducing ambiguities that were not present in the original utterance (Angermeyer, 2015).

2.6 Synthesis and Research Gap

This article identified that linguistic ambiguity is not a minor irritant but a structural feature of legal discourse, produced at every level of language and reinforced by the institutional conditions of courtroom communication. The precision – versus – flexibility tension identified in the ideology of legal language (2.1) supplies the structural purpose for ambiguity, explaining why drafters and Judges / Magistrates alike tolerate unspecified wording even as they profess a commitment to clarity.

Forensic linguistics (2.2) supplies the methodological device for observing indeterminacy empirically, yet its application has been focused overwhelmingly in tools perform in a postcolonial, multilingual courtroom. Pragmatic theory (2.3) and jurisprudential accounts of legal indeterminacy (2.4) then explain from complementary angles, why ambiguity matters: pragmatics demonstrations how pressure to flout Gricean maxims and to obscure illocutionary

force is built into confrontational courtroom interaction. While jurisprudence illustrates that the resulting indeterminacy is not just a communicative inconvenience but a site of judicial decision with direct consequences for rights and outcomes.

Finally, the literature on multilingual legal contexts (2.5) shows that in jurisdictions such as Kenya, these lexical, syntactic, semantic, and pragmatic pressures are heightened by translation, interpretation, and code-switching between English, Kiswahili, and Indigenous languages. Notwithstanding of this convergence, three gaps remain unaddressed by the existing literature. First, as Section 1.2 and 2.2 both observed, empirical studies of legal ambiguity remain focused in the United States and the United Kingdom (Solan, 1993; Gibbons, 2003; Coulthard and Johnson, 2007), and forensic linguistic scholarship on African courts is limited to isolated studies of multilingual discourse (Angermeyer, 2015) or language policy (Kombo, 2013) rather than ambiguity itself.

Second, no reviewed study amalgamates lexical, syntactic, semantic, and pragmatic ambiguity within a single analytic framework applied to one courtroom setting; existing work tends to isolate one linguistic level (for instance, Grice – inspired pragmatic studies, or Jurisprudential accounts of vagueness) rather than tracing how the four levels interact, as Bhatia's (1993) and Tiersma's (1999) accounts of competing genre pressures would predict they must.

Thirdly, none of the studies reviewed analyses how Kenya's specific sociolinguistic conditions, and an inherited common - law register functions alongside English – Kiswahili – Indigenous language multilingualism, shape the distribution of ambiguity types in practice. This article addresses these three gaps directly: it develops a combined four- part typology of ambiguity (Section 3), applies it empirically to courtroom discourse, pleadings, and judgements at Milimani Law Court (Section 4 -5), and thereby law setting that the literature reviewed above has yet to examine.

3. Theoretical Framework

3.1 An Integrated Framework for Analyzing Legal Ambiguity

This article adopts an integrated theoretical framework that links insights from forensic linguistics, pragmatics, and jurisprudence. The framework is designed to capture the multiple dimensions of linguistic ambiguity in legal discourse, recognizing that ambiguity is not a uniform phenomenon but a collection of related phenomena with distinct linguistic outlines and legal consequences.

At the linguistic level, the framework differentiates between four major types of ambiguity: lexical, syntactic, semantic, and pragmatic. Lexical ambiguity occurs when a word possesses multiple meanings; syntactic ambiguity occurs when a sentence structure permits multiple analyses; semantic ambiguity occurs when contextual factors affect the truth-conditional content of an utterance; and pragmatic ambiguity occurs when the force, implicature, or perlocutionary effect of an utterance is indeterminate (Levinson, 1983; Thomas, 1995).

At the jurisprudential level, the framework draws on Hart's (1994) concept of open texture and Endicott's (2000) taxonomy of legal indeterminacy to analyze how each type of linguistic

ambiguity draws on judicial interpretive practices. The framework also integrates insights from critical discourse analysis (Fairclough, 1995) to examine how ambiguity is unequally distributed across social groups and how its resolution reflects institutional power relations.

3.2 Forensic Linguistic Analysis

Forensic linguistic analysis provides the methodological backbone for the framework. Following Coulthard and Johnson (2007), this article treats legal discourse as a form of institutional discourse characterized by lopsided power relations, specialized genres, and high-risk communication. The forensic linguistic approach implies close attention to the textual details of legal documents and transcripts, studying how linguistic choices create, sustain, or resolve ambiguity.

The framework also includes the concept of 'linguistic fingerprinting' (Coulthard, 2004) in a modified form. While traditional linguistic fingerprinting seeks to identify individual authors through stylistic analysis, this article uses stylistic and structural analysis to identify the 'signature' ambiguity patterns that characterize different genres of legal discourse at Milimani Law Court. Pleadings, for example, may display different ambiguity outlines than oral testimony or judicial opinions, reflecting the different communicative purposes and audience designs of these genres.

3.3 Pragmatic Theory

Pragmatic theory supplies the tools for analyzing how context forms meaning in legal discourse. The framework uses Gricean pragmatics (Grice, 1975), relevance theory (Sperber & Wilson, 1986), and speech act theory (Austin, 1962; Searle, 1969) as complementary analytical lenses. Gricean pragmatics is used to analyze how conversational implicatures generate ambiguity when maxims are flouted or when the cooperative principle itself is suspended in confrontational settings. Relevance theory is used to examine how hearers process legal utterances to achieve optimal relevance, and how competing interpretations arise when an utterance's relevance is underdetermined. Speech act theory is used to classify the performative functions of legal utterances and to identify cases where illocutionary force is ambiguous.

3.4 Jurisprudential Hermeneutics

The framework also draws on jurisprudential hermeneutics, the theory of legal interpretation, to situate linguistic ambiguity within broader debates about judicial methodology. Following Bix (1995), the article differentiates between semantic and normative indefiniteness, recognizing that even when linguistic meaning is clear, normative disagreement may persist about how that meaning should be applied. However, the article focuses mainly on semantic indefiniteness—cases where the language itself fails to fix a determinate meaning—because this is the form of indeterminacy most responsive to linguistic analysis and most liable to redress/ remedy through linguistic intervention.

4. Methodology

4.1 Research Design

This study uses a qualitative research design grounded in discourse analysis. The qualitative approach is appropriate for identifying the forms of linguistic ambiguity because ambiguity is a contextual phenomenon that resists quantification; understanding how ambiguity functions requires close attention to the details of language use in specific communicative situations (Silverman, 2013). The study is descriptive and analytical, aiming to categorize and explain types of ambiguity rather than test hypotheses or measure frequencies.

4.2 Data Sources

The data for this study include interviews, courtroom observations, pleadings, and judgments encountered in proceedings at the Milimani Law Court. Courtroom observations and interviews provide access to the oral discourse of trials, including witness testimony, examination-in-chief, cross-examination, and judicial interventions. Pleadings—including statements of claim, and defenses—represent the written discourse that frames the issues for trial. Judgments offer insight into how judges/ magistrates articulate their interpretive reasoning, often addressing ambiguities explicitly. Statutory provisions applied in the Milimani cases illustrate how legislative ambiguity spills over into judicial proceedings.

Data were collected through systematic observation of court proceedings and the procurement of publicly available court records through a questionnaire. All data were marked anonymous to protect the identities of judicial officers who served as respondents. The selection of respondents was purposive, targeting cases in which linguistic ambiguity appeared to play a significant role in the proceedings or the outcome.

4.3 Analytical Procedure

The analytical procedure involved four stages. First, all texts were read repeatedly to gain a holistic understanding of their content, structure, and communicative purpose. Second, possible ambiguity sites were identified through close reading, with particular attention to words, phrases, or structures that permitted multiple interpretations. Third, each ambiguity site was classified according to the typology developed in the theoretical framework: lexical, syntactic, semantic, or pragmatic. Fourth, each ambiguity was analyzed in context to establish its communicative effects, its legal consequences, and the interpretive approaches used by courtroom participants to resolve it.

The analysis was authenticated through triangulation of multiple data sources. Where possible, ambiguous utterances were compared across different genres and cases to identify frequent patterns. The analysis also considered the reactions of courtroom participants—judges/magistrates, advocates, and witnesses—to ambiguous language, treating these reactions as evidence of how ambiguity is perceived and managed in practice.

4.4 Ethical Considerations

The study followed ethical guidelines for research involving legal documents and human subjects. All personal identifiers were removed from the documents used and judgments. The study did not involve active intervention in proceedings or the recording of private communications. Rather, it analyzed publicly, procedurally available documents in accordance with the principles of open justice and academic freedom.

5. Forms of Linguistic Ambiguity in Legal Discourse at Milimani Law Court

The analysis of legal discourse at Milimani Law Court reveals four main forms of linguistic ambiguity: lexical, syntactic, semantic, and pragmatic. Each form is examined below with demonstrative examples drawn from courtroom observation, interviews, and questionnaires.

5.1 Lexical Ambiguity

Lexical ambiguity arises when a word or phrase possesses more than one meaning, and the context fails to disambiguate among the alternatives (Lyons, 1977). In legal discourse, lexical ambiguity is particularly consequential because legal terminology repeatedly carries both ordinary-language meanings and specialized technical meanings.

5.1.1 Polysemy and Homonymy

Polysemous legal terms—words with multiple related meanings—are a persistent source of ambiguity. The term 'possession,' for example, appears frequently in criminal and civil proceedings at Milimani Law Court. In ordinary language, possession implies physical custody or control. In legal discourse, however, it may refer to actual possession (physical custody), constructive possession (the legal right to control without physical custody), or joint possession (shared control among multiple parties). When a statute or pleading uses 'possession' without specifying which sense is intended, the resulting ambiguity can affect the outcome of a case.

Homonymous terms, words with unrelated meanings, also create ambiguity. The word 'tender,' for example, may refer to a formal offer (as in a contract tender), a means of payment (legal tender), or a physical gesture (to tender documents). In commercial arguments heard at Milimani, the failure to specify which meaning applies has led to interpretive disagreements about whether a party's conduct constituted a valid contractual offer or a just initial expression of interest.

5.1.2 Technical vs. Ordinary Meaning

A unique feature of legal discourse is the tension between technical legal meanings and ordinary-language meanings. Kenyan statutes, inherited from and influenced by English common law, frequently use terms that have acquired specialized legal meanings through centuries of judicial interpretation. When lay litigants come across these terms or when they are applied to factual contexts that differ from their common-law origins, ambiguity arises.

The term 'reasonable,' ubiquitous in carelessness and contract law, exemplifies this problem. In the ordinary language of Kenyan litigants, 'reasonable' may mean fairness, moderation, or common sense. In legal discourse, it operates as a term of art, invoking objective standards of

care, foreseeability, and balance that have been explained through case law. The gap between ordinary and technical meanings creates ambiguity when judges/magistrates, advocates, and litigants operate with different implicit definitions of the term.

5.1.3 Archaic and Latinate Vocabulary

Kenyan legal discourse, like that of other common-law jurisdictions, retains archaic and Latinate expressions that are cloudy to contemporary speakers. Terms such as hereinafter, aforementioned, inter alia, and prima facie appear regularly in pleadings and judgments. While these terms may be unambiguous to trained legal practitioners, they introduce lexical ambiguity for lay litigants and witnesses who must navigate proceedings without full comprehension of the terminology. Even among legal professionals, the precise scope of some archaic terms is uncertain; 'prima facie,' for instance, may mean 'sufficient to establish a case without disproving' or 'on the face of it,' depending on the context and the jurisdiction of precedent.

5.2 Syntactic Ambiguity

Syntactic ambiguity occurs when the grammatical structure of a sentence permits more than one interpretation (Kess & Hoppe, 2015). Legal drafting conventions, which prioritize comprehensiveness over brevity, often produce syntactically complex sentences that are vulnerable to multiple parses.

5.2.1 Attachment Ambiguity

Attachment ambiguity arises when a modifier (such as an adjective, adverbial phrase, or relative clause) could grammatically modify more than one element in a sentence. Statutory provisions and contractual clauses at the Milimani Law Court frequently exhibit this form of ambiguity.

Consider a supposed but representative contractual clause: 'The tenant shall not make any alterations to the premises without the prior written consent of the landlord, including structural changes.' The modifying phrase 'including structural changes' could attach to 'alterations' (meaning that structural changes are a subset of prohibited alterations) or to 'prior written consent' (meaning that structural changes require prior written consent while other alterations may not). This attachment ambiguity has given rise to landlord-tenant disputes over whether beautifying alterations require consent.

5.2.2 Scope Ambiguity

Scope ambiguity occurs when quantifiers, negations, or modal functions have unclear domains of application. Statutory language often uses universal quantifiers ('all,' 'every,' 'any'), existential quantifiers ('some,' 'a '), and modal verbs ('shall,' 'may,' 'must') whose scope is not clearly marked.

A representative example from Kenyan company law, applied in commercial disputes at Milimani, involves the phrase: 'Every director shall disclose any interest in a contract with the company.' The scope of 'any' is ambiguous: does it mean that directors must disclose all

interests (universal reading), or that they must disclose at least one interest if they have multiple (existential reading)? Likewise, the scope of negation in provisions such as 'No person shall be denied the right to ... except on grounds of ...' can generate ambiguity about whether the exception applies to the denial or to the right itself.

5.2.3 Coordination Ambiguity

Coordination ambiguity arises when conjoined elements are not clearly delimited. Legal documents often use lists and coordinated structures to enumerate rights, obligations, or conditions. When the scope of coordination is unclear, ambiguity results.

For example, a statutory provision stating that 'citizens have the right to life, liberty, and security of the person' raises questions about whether 'security of the person' is coordinated with 'life' and 'liberty' as a separate right or whether it modifies 'liberty.' In constitutional litigation at Milimani, such coordination ambiguities have been invoked to argue for expansive or restrictive interpretations of fundamental rights.

5.2.4 Ellipsis and Gapping

Legal discourse often uses ellipsis—the omission of words that are recoverable from context—to avoid repetition. While ellipsis promotes textual economy, it can introduce ambiguity when the omitted material is not clearly recoverable. In courtroom arguments at Milimani, advocates often use gapping constructions such as 'The plaintiff claims breach of contract; the defendant, frustration of purpose.' The omission of the verb 'claims' in the second clause is grammatically licensed. However, it may create ambiguity as to whether the defendant is asserting a counterclaim or merely denying the plaintiff's claim.

5.3 Semantic Ambiguity

Semantic ambiguity occurs when the truth-conditional content of an utterance is underdetermined by the linguistic form and context (Kempson, 1977). Unlike lexical ambiguity, which contains multiple meanings of a word, and syntactic ambiguity, which comprises multiple parses of a sentence, semantic ambiguity involves indefiniteness about what the world must be like for the utterance to be true.

5.3.1 Vagueness

Vagueness is a persistent form of semantic ambiguity in legal discourse. A term is vague if it has borderline cases—cases where it is unclear whether the term applies (Endicott, 2000). Legal standards such as 'reasonable care,' 'probable cause,' 'due process,' and 'substantial injustice' are inherently vague, requiring judges/magistrates to draw lines within a range/variety without precise linguistic guidance.

At Milimani Law Court, vagueness is remarkably evident in constitutional and human rights litigation. The Constitution of Kenya 2010 guarantees rights to 'reasonable' administrative action, 'adequate' housing, and 'the highest attainable standard' of health. Each of these standards incorporates vague predicates that leave significant interpretive latitude for judicial officers. While some vagueness is unavoidable and even desirable in constitutional provisions,

excessive vagueness in statutory or contractual language can undermine the certainty and fairness of legal outcomes.

5.3.2 Deixis and Referential Ambiguity

Deictic expressions, words such as 'this,' 'that,' 'here,' 'there,' 'now,' and 'then'—derive their meaning from the context of utterance. In courtroom discourse, where multiple speakers, documents, and events are referenced, deictic expressions are recurrent sources of referential ambiguity.

During witness examination at Milimani, questions such as 'Did you see that?' or 'What happened then?' depend on deictic anchoring that may be unclear to the witness, the judge/magistrate, or the transcribing clerk. When a witness responds to an ambiguous deictic reference, the resulting testimony may be misinterpreted or misrecorded. Equally, in written judgments, references to 'the aforementioned property' or 'the said agreement' create referential chains that are difficult to follow and may break down if the antecedent is ambiguous.

5.3.3 Presupposition Failure

Semantic ambiguity also occurs from presupposition, the background assumptions that an utterance takes for granted. When a legal utterance carries a presupposition that is not shared by its audience, or when the presupposition itself is debatable, ambiguity results about the conditions under which the utterance is meaningful.

In family law proceedings at Milimani, for example, a petition stating that 'the respondent has abandoned the matrimonial home' presupposes the existence of a 'matrimonial home' and the fact of 'abandonment.' If the parties disagree whether the residence in question qualifies as a matrimonial home or whether the respondent's departure constitutes abandonment, the assumption fails. The petition's semantic content becomes ambiguous. Courts must then decide not only whether the facts support the claim but also what the claim means.

5.4 *Pragmatic Ambiguity*

Pragmatic ambiguity is the most context-dependent form of ambiguity, occurring when the force, implicature, or perlocutionary effect of an utterance is indeterminate (Thomas, 1995). In courtroom discourse, pragmatic ambiguity is inescapable because the institutional context imposes constraints on interpretation that differ from those in ordinary conversation.

5.4.1 Illocutionary Force Ambiguity

Illocutionary force ambiguity occurs when it is unclear what speech act a speaker is performing. In legal discourse, the same linguistic form may serve multiple illocutionary functions depending on the speaker's institutional role and the procedural context.

At Milimani, questions asked by judges/magistrates during trial may function as genuine requests for information, tests of advocates' competence, warnings about evidentiary deficiencies, or introductions to judicial intervention. An advocate who misidentifies the illocutionary force of a judicial question may respond inappropriately, damaging their client's case. Similarly, statements made by advocates during negotiation or mediation may be

pragmatically ambiguous: are they offers, threats, promises, or just expressions of opinion? The illocutionary force of such statements determines their legal consequences, yet the context may not provide sufficient cues for disambiguation.

5.4.2 Implicature Ambiguity

Conversational implicature, the meaning that a speaker implies but does not clearly state, is a rich source of pragmatic ambiguity. Under Grice's (1975) cooperative principle, hearers infer implicatures by assuming that speakers are being truthful, informative, relevant, and clear. However, courtroom discourse is fundamentally confrontational, and speakers often misuse the maxims to generate misleading implicatures.

During cross-examination at Milimani, an advocate may ask a witness: 'Isn't it true that you were at the scene at midnight?' The literal content of this question is a confirmation request, but the implicature is that the witness's presence at the scene is incriminating. If the witness answers 'yes,' they may be taken to have accepted not only the fact of their presence but also its incriminating significance. The pragmatic ambiguity lies in whether the witness's answer addresses the verbatim question, the implicature, or both.

Implicature ambiguity is also widespread in judicial opinions. When a judge writes that 'the appellant's argument is not without merit,' the literal meaning is positive (the argument has some merit). However, the implicature may be dismissive (the merit is insufficient to prevail). Litigants reading such opinions may be uncertain about whether the judge is endorsing their argument or rejecting it.

5.4.3 Perlocutionary Ambiguity

Perlocutionary ambiguity concerns the effects that an utterance has on its audience. In legal discourse, the intended perlocutionary effect of an utterance may differ from its actual effect, and both may be indeterminate.

A judicial warning to an advocate, for instance, may be intended to improve the advocate's conduct (perlocutionary effect: reform) but may actually intimidate the advocate into withdrawal or silence (perlocutionary effect: suppression). The ambiguity about which perlocutionary effect obtains matters for the fairness of the proceedings and the rights of the litigant. Relatedly, a settlement offer communicated by an advocate may be intended to promote resolution but may be perceived as a sign of weakness, encouraging the opposing party to litigate more aggressively.

5.4.4 Politeness and Face-Threatening Ambiguity

Politeness theory (Brown & Levinson, 1987) provides another lens for analyzing pragmatic ambiguity in legal discourse. Courtroom interactions are highly face-threatening: judges threaten the face of advocates by evaluating their competence; advocates threaten the face of witnesses by challenging their credibility; litigants threaten each other's face by making accusations. The tactics used to lessen these face threats introduce pragmatic ambiguity.

At Milimani, judicial officers often use indirect speech acts to soften criticism of advocates. A judge may say, 'Perhaps counsel would like to reconsider that submission,' rather than 'That submission is incorrect.' The indirect formulation is polite, but it is pragmatically ambiguous: is the judge offering a suggestion, issuing an instruction, or expressing disbelief? The advocate must infer the judge's intent from tone, context, and institutional norms, and a misinference can have procedural consequences.

5.4.5 Cross-Cultural Pragmatic Ambiguity

The multilingual and multicultural context of the Milimani Law Court intensifies pragmatic ambiguity. Kenyan courtroom discourse often involves participants from different ethnic, linguistic, and educational backgrounds, each bringing distinct pragmatic conventions to the interaction. A directive issued by a judge/ magistrate from one ethnic community may be interpreted differently by an advocate from another community, depending on cultural norms for deference, directness, and authority.

Witnesses testifying through interpreters face mainly severe pragmatic challenges. The interpreter's rendering of a witness's testimony may preserve the propositional content while altering the pragmatic force. A witness who answers a question indirectly, in accordance with the pragmatic norms of their home community, may have their testimony rendered as slippery or uncooperative by an interpreter who adopts the direct pragmatic norms of English legal discourse. This cross-cultural pragmatic ambiguity affects not only the clarity of testimony but also the credibility assessments that judges and juries make.

6. Discussion

6.1 *The Distribution and Interaction of Ambiguity Types Explainer*

The analysis shows that the four forms of ambiguity are not isolated phenomena but interact in complex ways within legal discourse. Lexical ambiguity frequently mixes with syntactic ambiguity: a polysemous word placed in a structurally ambiguous sentence generates exponentially more interpretations than either ambiguity alone. Semantic and pragmatic ambiguities are similarly intertwined; a vague predicate (semantic ambiguity) may be deployed in an utterance whose illocutionary force is unclear (pragmatic ambiguity), creating a layered indefiniteness exponentially that resists simple resolution.

At Milimani Law Court, these interactions are most evident in constitutional litigation, where the interpretation of fundamental rights requires simultaneous attention to the lexical meaning of constitutional terms, the syntactic structure of rights provisions, the semantic vagueness of standards such as 'reasonableness,' and the pragmatic force of judicial pronouncements. The complexity of these interactions underscores the need for interdisciplinary approaches that merge linguistic analysis with legal expertise.

6.2 *Ambiguity and Judicial Interpretation*

The forms of ambiguity identified in this study have direct implications for judicial interpretation. Kenyan judges, who function within a common-law tradition, use a range of interpretive techniques to resolve ambiguity: the literal rule, the golden rule, the mischief rule,

and purposive interpretation. Each of these techniques presupposes a particular theory of linguistic meaning, and each is vulnerable to the types of ambiguity cataloged above.

The literal rule, which directs judges to give words their ordinary meaning, assumes that words have a single, context-independent meaning—a presupposition undermined by lexical and semantic ambiguity. The golden rule, which permits judges to depart from literal meaning to avoid illogicality, relies on a distinction between ordinary and strange meanings that is itself semantically vague. The mischief rule and purposive interpretation, which look to the underlying purpose of legislation, require judges to infer legislative intent. This pragmatic inference is subject to the same ambiguities as any other implicature.

These observations do not suggest that judicial interpretation is impossible or arbitrary. Rather, they suggest that judicial interpretation is an inherently linguistic activity that benefits from clear attention to the forms and sources of ambiguity. Forensic linguistic expertise, currently underutilized in Kenyan courts, could assist judges in identifying types of ambiguity, evaluating competing interpretations, and articulating the linguistic basis for their interpretive choices.

6.3 Access to Justice and Linguistic Inequality

Linguistic ambiguity is not distributed equally among courtroom participants. Trained advocates and judicial officers have the linguistic and legal competence to navigate ambiguity, to misuse it strategically, and to resolve it through interpretive argument. Lay litigants, witnesses, and self-represented parties characteristically lack this competence, placing them at a systematic disadvantage.

At Milimani Law Court, where commercial and constitutional disputes often pit well-resourced corporations against individual litigants, this linguistic inequality has significant implications for access to justice. A lay litigant who cannot comprehend the archaic terminology of a pleading, who is confused by syntactic complexity, or who misunderstands the pragmatic force of a judicial question is disadvantaged in the adjudication of their rights. The identification of ambiguity types is, therefore, a step toward diagnosing the linguistic barriers that hamper/ obstruct access to justice.

6.4 Implications for Forensic Linguistics

This study contributes to forensic linguistics by extending the empirical base of research on legal ambiguity into an understudied jurisdiction. The typology developed here, lexical, syntactic, semantic, and pragmatic ambiguity, provides a framework for analyzing courtroom discourse in other African common-law courts and for comparing patterns of ambiguity across jurisdictions.

The study also highlights a possible avenue for forensic linguistic expertise to contribute to judicial administration. Forensic linguists can assist courts in drafting plain-language versions of legal documents, in training judicial officers to recognize and manage ambiguity, and in providing expert testimony in cases where linguistic interpretation is dispositive. The

institutionalization of forensic linguistic services in Kenyan courts would represent a significant advance in the application of linguistics to legal practice.

6.5 Implications for Jurisprudence

From a jurisprudential perspective, the study reinforces the claim that legal indefiniteness is not just a philosophical abstraction but a practical problem with identifiable linguistic manifestations. Hart's (1994) concept of open texture and Endicott's (2000) analysis of vagueness are not merely theoretical constructs; they are descriptions of phenomena that can be observed and analyzed in the discourse of actual courts.

The study also invites reflection on the relationship between language and the rule of law. The rule of law requires that legal norms be general, public, prospective, coherent, clear, and stable (Bingham, 2010). Linguistic ambiguity threatens the clarity and stability of legal norms, undermining citizens' ability to predict the legal consequences of their actions. By identifying the specific forms that ambiguity takes, this study provides a basis for evaluating the extent to which legal discourse at Milimani Law Court satisfies the linguistic conditions for the rule of law.

7. Conclusion

This article has identified and analyzed the forms of linguistic ambiguity present in legal discourse at the Milimani Law Court. Through a qualitative discourse-analytic approach grounded in forensic linguistics, pragmatics, and jurisprudence, the study has developed a four-part typology of ambiguity: lexical ambiguity, arising from polysemous and technical vocabulary; syntactic ambiguity, arising from complex sentence structures and unclear modifier attachment; semantic ambiguity, arising from vagueness, deixis, and presupposition; and pragmatic ambiguity, arising from indeterminate illocutionary force, implicature, perlocutionary effects, and cross-cultural communication.

Each of these types of ambiguity poses distinct challenges for judicial interpretation, legal practice, and access to justice. Lexical ambiguity undermines the shared meaning supposed by legal communication; syntactic ambiguity multiplies the interpretive possibilities of legal texts; semantic ambiguity introduces borderline cases that resist determinate resolution; and pragmatic ambiguity obscures the intended force and effect of courtroom utterances. Together, these ambiguities compromise the clarity, certainty, and fairness of legal proceedings.

This article offers three recommendations for addressing these challenges. First, legal drafting in Kenya should be reformed to incorporate plain-language principles, reducing unnecessary syntactic complexity, archaic vocabulary, and ambiguous modifier attachment. Second, judicial training programs should include modules on forensic linguistics and legal pragmatics to prepare judicial officers to recognize and manage ambiguity in the proceedings before them. Third, the institutionalization of forensic linguistic expertise, through court-appointed experts, amicus curiae briefs, or dedicated linguistic advisory units, should be considered as a tool for improving the linguistic quality of judicial administration.

These recommendations are not just technical fixes; they are contributions to the broader project of strengthening the rule of law and ensuring that legal discourse serves its intended communicative function. As this study has shown, the forms of linguistic ambiguity in legal discourse are not accidental features of an otherwise perfect system; they are systemic consequences of the complex relationship between language, law, and power. Addressing them requires sustained interdisciplinary collaboration among linguists, jurists, legal practitioners, and policymakers.

Future research should extend the analysis to other Kenyan courts, including magistrates' courts and specialized tribunals, to evaluate whether the types of ambiguity identified here are generalizable. Comparative research with other African common-law jurisdictions—such as Uganda, Tanzania, and Nigeria, would clarify the extent to which local linguistic ecologies, colonial legal inheritances, and institutional practices shape patterns of ambiguity. Quantitative studies could also supplement the qualitative analysis presented here by measuring the frequency of different types of ambiguity and correlating them with case outcomes.

In conclusion, the identification of linguistic ambiguity in legal discourse is not an exercise in linguistic display; it is an essential step toward a more just, transparent, and effective legal system. At Milimani Law Court and beyond, the clarity of legal language is inseparable from the lawfulness of legal authority.

References

- Angermeyer, P. S. (2015). *Speak English or what? Codeswitching and interpreter use in New York City small claims court*. Oxford University Press.
- Austin, J. L. (1962). *How to do things with words*. Clarendon Press.
- Bhatia, V. K. (1993). *Analysing genre: Language use in professional settings*. Longman.
- Bingham, T. (2010). *The rule of law*. Allen Lane.
- Bix, B. H. (1995). Law, language, and legal determinacy. *Oxford Journal of Legal Studies*, 15(1), 1-20. <https://doi.org/10.1093/ojls/15.1.1>
- Brown, P., & Levinson, S. C. (1987). *Politeness: Some universals in language usage*. Cambridge University Press.
- Butt, P., & Castle, R. (2006). *Modern legal drafting: A guide to using clearer language* (2nd ed.). Cambridge University Press.
- Constitution of Kenya. (2010). Government Printer.
- Coulthard, M. (2004). Author identification, idiolect, and linguistic uniqueness. *Applied Linguistics*, 25(4), 431-447. <https://doi.org/10.1093/applin/25.4.431>

- Coulthard, M., & Johnson, A. (2007). *An introduction to forensic linguistics: Language in evidence*. Routledge.
- Endicott, T. A. O. (2000). *Vagueness in law*. Oxford University Press.
- Fairclough, N. (1995). *Critical discourse analysis: The critical study of language*. Longman.
- Gibbons, J. (2003). *Forensic linguistics: An introduction to language in the justice system*. Blackwell.
- Grice, H. P. (1975). Logic and conversation. In P. Cole & J. L. Morgan (Eds.), *Syntax and semantics: Vol. 3. Speech acts* (pp. 41-58). Academic Press.
- Hart, H. L. A. (1994). *The concept of law* (2nd ed.). Clarendon Press.
- Kempson, R. M. (1977). *Semantic theory*. Cambridge University Press.
- Kess, J. F., & Hoppe, R. A. (2015). Ambiguity in psycholinguistics. *Pragmatics & Cognition*, 22(2), 197-215. <https://doi.org/10.1075/pc.22.2.02kes>
- Kimble, J. (2006). *Lifting the fog of legalese: Essays on plain language*. Carolina Academic Press.
- Kombo, J. K. (2013). Language policy in Kenya and the new constitution. *International Journal of Humanities and Social Science*, 3(10), 75-84.
- Kurzban, D. (1986). *It is hereby performed Explorations in legal speech acts*. John Benjamins.
- Levinson, S. C. (1983). *Pragmatics*. Cambridge University Press.
- Lyons, J. (1977). *Semantics* (Vols. 1-2). Cambridge University Press.
- Maley, Y. (1994). The language of the law. In J. Gibbons (Ed.), *Language and the law* (pp. 11-50). Longman.
- Mazrui, A. M., & Mazrui, A. A. (1996). A tale of two Englishes: The imperial language in post-colonial Kenya and Uganda. In J. A. Fishman, A. W. Conrad, & A. Rubal-Lopez (Eds.), *Post-imperial English: Status change in former British and American colonies, 1940-1990* (pp. 271-302). Mouton de Gruyter.
- Schane, S. A. (2006). *Language and the law*. Continuum.
- Searle, J. R. (1969). *Speech acts: An essay in the philosophy of language*. Cambridge University Press.
- Shuy, R. W. (2006). *Linguistics in the courtroom: A practical guide*. Oxford University Press.
- Silverman, D. (2013). *Doing qualitative research* (4th ed.). SAGE.
- Solan, L. M. (1993). *The language of judges*. University of Chicago Press.

Sperber, D., & Wilson, D. (1986). *Relevance: Communication and cognition*. Harvard University Press.

Thomas, J. (1995). *Meaning in interaction: An introduction to pragmatics*. Longman.

Tiersma, P. M. (1999). *Legal language*. University of Chicago Press.

Tushnet, M. (1983). Following the rules laid down: A critique of interpretivism and neutral principles. *Harvard Law Review*, 96(4), 781-827. <https://doi.org/10.2307/1341059>

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