

Mâatha: Descriptive Study of Litigation among Chasu Speaking People

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Abstract

This paper is a descriptive study of language use by Chasu speaking people of northern dialect in handling litigation. The study is a product of triangulated data from researcher's participant observation and interview sessions with the key informants, in addition to the researcher's own knowledge and insights as a native speaker. The findings showed that the Chasu speaking people have elaborate institutionalized language use in handling litigation in which there are a total of thirteen speech events of differing lengths and number of participants. There are also a total of thirty five speech acts that were constituents of different speech events. The patterns and procedures of the speech events are linearly arranged and participant roles clearly defined with clear manifestation of differing power relations.

Keywords: Maatha, Litigation, Speech events, Speech acts

1. Introduction

Language as a socially shared conventional code can be studied not only with reference to its formal properties but also with regard to its relationship to the lives and thoughts and cultures of people who speak it. This is because, as Gregerson (1977) asserts, language expresses value and is itself a value. Thus the organization of a society, its religious beliefs, its economy, and its judicial system are reflected in words.

Every language is thus context-bound, an argument shared by many sociologists and pragmatists who have tended to relate the study of linguistics with some social notions like language and gender, languages and race, language and politics, and language and advertisements, to mention but a few. However, such studies need to be put within particular cultural environments. For example, law practice, according to Gibbons (1994), is inconceivable without language. Language is therefore medium, process and product in the various arena of the law where legal texts, spoken and written, are generated in the service of regulating social behavior (Gibbons, 1994). In literate cultures, once norms and proceedings are recorded, standardized and institutionalized, a special legal language develops, representing a predictable process and pattern of functional representation. Verschuen (1974) gives an example of the trial that consists of constellation of different types of utterances (the judge giving instructions, the jury summation) and the dialogic clusters (witness interrogations) all inter textually linked (as an interrogation sequences, the jury summation summing up what has preceded), contextually participant roles are well defined (the accused, the judge, the prosecutor, defense attorneys, jurors, witnesses and expert witnesses). These institutional roles are defined in terms of turns or turn types to be used by each of them, e.g. judges give instructions, attorneys ask questions and object to each other's questions, witnesses answer questions and jurors mostly listen.

However, in preliterate societies (or oral communities), as Gibbons (1994) observes, there is no specific legal register of jargon; instead, the resources of everyday language are used to express this complex concept. There is also relative lack of codification of the law, which implies that few concepts have undergone the process of reification into specific legal terminology, which is typical of literate societies.

The absence of jargon and codification, nonetheless, does not mean simplicity nor does it suggest triviality in handling legal matters in the preliterate societies. In such societies, what happens in settling disputes is through litigation. Litigation, according to Gumperz (1986), is a case or dispute that is brought to a traditional court. It is thus topic-focused mutual speech behavior the distinctive attributes of which pertain to the content and role structure of talking. Such disputes usually arise when an identified party is charged with an offence and the accused counters the charges. In this traditional way of settling disputes language, notes Myers (1990:498), language is used as a powerful tool where conflicts and hostilities are transformed into harmony. It is through the use of language that communication is made possible to solve differences among friends through bargaining mediation and arbitration. However, in this litigation process, unlike in formal western courts, there are no distinctive paraphernalia, no judges' robes, participants do not dress up to go to court, no one has to

constantly play a host role, no law books, no gravel, no judges, no bench and no witness stand (Gumperz, 1986).

The aspect of litigation has not been widely studied in the linguistic arena. Among the few studies are Frake (1990) on Akan people, Obeng (1997) on Yakan people and Goldman (1986) on Huli people. For the Yakan, Frake (1990) made an ethnographic study of the people's traditional ways of settling dispute. Among the wrongs that warranted litigations were desecrating the world's supernatural beings, wrongs against ancestors, theft, murder, manslaughter, fights and property disputes. During the process, the participants tended to use elaborate linguistic expressions in talking about different types of offences along with a variety of semantic dimensions dealing with the nature and the consequences of the acts as well as social relationship between the offender and the complainant. He also noted that the litigation process involved stating the offences involved, laying the charges by the complainant who must identify the offender and assume responsibility for the identification.

Another study is by Obeng (1997) of the Akan people in Ghana. He focused on the structure and procedural issues in handling litigation. He noted the following participants and steps: i) *Linguistic choices* which are determined by the speaker's intent, the institutional nature of the discourse, the ages of the interactants, their gender and their socio-economic status, ii) *the akyame*, the people who act in various capacities in the traditional court. These have institutional power which may be expressed through language; iii) *the court setting*, which has the jurisdiction to hear cases and fine litigants; iv) *Requests to speak or clarify* in which a litigant requests a speaking turn using such address forms as *agyanou* and *nana* (i.e. 'elders') as well as differential expressions like *mo adoworoma* (i.e. 'by your Grace') and *anidie mu* (i.e. 'respectfully'). These expressions show that the litigants are of lower status by virtue of the institutional nature of the discourse, v) *admission of guilt* in which the speaker, on recognizing his/her lack of power, on the one hand, and the addresser's power, on the other, succumbs to humility and uses expressions *mepa mo kya* (i.e. 'please/I beg you') and *may mofomoso* (i.e. 'I am guilty'), and vi) *Forgiving*, in which only the *akyames* are the sole custodians for granting forgiveness. Forgiveness is in the form of statements or commands.

Goldman's (1986) study of Huli people of New Papua Guinea focused on the question formation, selection and sequencing in the traditional court settling of disputes. He found that differentials in the nature and structure of speech, role relationships and gender-inflected patterns are in part responsible for a contrast in discourse strategy between Huli men and women; for example, whereas the women provided more reason-based statements, the men seemed to leave the justification structure to the inference by the audience.

In Botswana, Moumakwa (2010) studied the Setswana *Kgotla* System: a mechanism for a traditional conflict resolution focusing on how the *Kgotla* was functioning the role it played in addressing conflicts arising from within and between its communities in modern Botswana. He noted that the cases were mainly presided by *Kgosi* or *Kgosana* and the crimes included thefts, fights and other forms of public nuisance. The judgment varied from communal service to reimbursement or corporal punishment (public flogging, which is in the form of several cuts with a cane across the back).

Schapera (1955) also studied the handling of civil and criminal wrongs according to Tswana laws and customs. In the case of a civil wrong, it was expected that the victim would first look to the wrongdoer for satisfaction by direct negotiation. Should this fail, then the matter proceeds to the local court and, if necessary, through the hierarchy to the chief's court. The matter is tried at the instance only of the victim or the victim's representative. He further noted that a Tswana chief was also provided with advice from his senior male relatives. They would intercede with the chief in the event that a man felt aggrieved by some action or decision of the chief.

In South Africa, Monnig (1967) studied Pedi tribal law that emphasizes group relationships and rights rather than those of the individual. He observed that stress is placed on restoring relationships as well as the reconciliation of groups. He recounts:

The court takes great pains to reconstruct the cause of any dispute, to show individuals who are not accused how their actions may have given rise to the complaint, and frequently advises the accused that he may have a counter claim. The court always enquires whether the disputing parties have tried to come to a mutual settlement beforehand, and frequently refers a case back to the families involved to attempt by private discussion to resolve their dispute (Monnig, 1967:308).

He further observed that the majority of disputes are resolved through the mediation process within or between family groups. Thus, the Pedi have a highly evolved system of conflict resolution, and parties are actively encouraged to resolve their differences without intervention from the chiefs or their delegates through the medium of family processes as courts of first instance.

Again in South Africa, Kuckertz (1990) studied the institution of mat associations as one of the conflict resolution mechanisms prevalent among the Pondo people. The mat leader is the first person whom a disputant approaches with his problem in cases involving two such groups, that the members of the two hospitality groups would meet and attempt to settle the matter between themselves. Hammond-Tooke (1997) earlier on noted the unusual feature of this court in the use of ukuzidla, i.e. a self-imposed fine and is employed thus:

If a person realizes that he is in the wrong, or it is apparent to him that his fellow lineage members deem him so, he may impose a fine of a sheep, goat or even a beast on himself to indicate his contrition and to wash away his offence. This 'ukuzidla' is sometimes also resorted to in the headman's court, constituting an admission of guilt. It is known as 'imali yoku zithandazelo' (money of begging for mercy) and is an indication to the court of the sincerity of repentance. In a case where the guilty party imposes a fine on himself that the members of the 'inkundla' regard as inadequate, they regard this as proof that he is not really sorry, and may increase the fine; on the other hand, if he fines himself too heavily, they are likely to reduce it. (Hammond-Tooke 1975:173)

2. Theoretical Framework

The current study adopted Dell Hymes' (1962) theory of the Ethnography of Communication, which he defines the in-depth study of the ways of communicating within a particular speech

community. Hymes (Ibid: 125) further argues

Speakers of a language in particular communities are able to communicate with each other in a manner which is not only correct but also appropriate to the socio-cultural context. This ability involves a shared knowledge of the linguistic code as well as of the socio-cultural rules, norms and values which guide the conduct and interpretation of speech and other channels of communication in a community ... [T]he ethnography of communication ... is concerned with the questions of what a person knows about appropriate patterns of language use in his or her community and how he or she learns about it.

In a subsequent publication, Hymes (1989) proposed the notion of ‘ways of speaking’ i.e., the idea of language as a set of ways of speaking as an alternative to the idea of language as grammar, an abstracted set of rules or norms. The theory of speech situation encompasses four notions that are hierarchically arranged thus:

i) *Speech community*, which Pousada (2004) defines as is a group of speakers who share at least one communicative variety and the norms for its appropriate use, constitutes a number or series of speech situations. Speech community is usually (but not necessarily) circumscribed geographically. Examples of speech community would be a clan, sectors, and neighborhoods.

ii) *Speech situation*, when communication between individuals is governed by basic, implied rules. In an ideal speech situation, participants would be able to evaluate each other’s assertions solely on the basis of reason and evidence in an atmosphere completely free of any non-rational “coercive” influences, including both physical and psychological coercion (Habermas, 1990). Pousada (2004) suggests that the absence of speech can be meaningful within a speech situation and should be included in the analysis. Examples of speech situation would be student assemblies, litigations, trials, weddings, and graduations. In each speech situation there is a series of speech events.

iii) *Speech event* is thus the basic unit for analysis of communicative interaction in speech communities. Speech events are social events which are carried out through communicative means, especially speech, examples of which are speeches, verbal duels, flirtations, wedding vows, prayers, classroom lessons (Pousada, 2004).

iv) *Speech acts* are at the bottom of the hierarchy, realizing speech events. According to Austin (1962), there are three types of acts that can be performed by every utterance, given the right circumstances. a) Locutionary, which is the act of actually uttering, b) Illocutionary, which is the act performed in saying something and c) Perlocutionary act, which is the act performed by saying something in a particular context. It represents the change achieved each time, in a particular context. Thus, For Austin, what the speaker is doing is creating social realities within certain social contexts. Sarle (1989) focused on the *illocutionary acts* performed by the speaker guided by what he called regulatory and constitutive rules his typology, which is what we will confine this study is as follows: a) *assertives*, which commit the speaker to the truth of the expressed proposition, b) *directives*, which are attempts the

speaker makes in order to get the addressee engaged in a certain action, c) *commissives* commit speaker to some future course of action, d) *expressives* which express speaker's attitude to a certain state of affairs specified (if at all) in the propositional content, and e) *declarations*, which are Speech Acts which effect immediate changes in the institutional state of affairs and which tend to rely on elaborate extra linguistic institutions.

The concern in this study is mainly the number of speech events characterizing litigation among the Chasu speaking people as a speech situation and mainly focuses on the first five: setting, participants, ends, acts and sequence. Then we will explore the type, pattern and number of speech acts in each speech event.

3. Research Questions

The study sought to answer these questions:

- i) How is litigation conducted and what issues are litigated?
- ii) What roles do the participants play in the litigation?
- iii) What is the pattern of language use in different procedural speech events and their constituent speech acts?

4. Methodology

4.1 The Language under Study

The language that this study focused on is a northern Pare dialect of Chasu, which is spoken in Mwangi district of Kilimanjaro region. It is spoken by about 401,249, according to 2012 census (National Bureau of Statistics, 2013). According to Mreta (1998), Chasu is a Bantu language which has two dialects: a northern dialect the speakers of which refer to their dialect as 'Kiathu' and a southern dialect to which its speakers refer as 'Kimpare'. Due to the vastness of the area in the Kimpare speaking Same district, there are several varieties including Kimbagha, Kisuji, Kigonja and Kimamba.

Chasu, like many other ethnic languages, apart from its use for ordinary day to day interpersonal communication, is also being put to use for various socio-cultural and socio-political issues such as *kieko* (for initiation), *ngani* (ostentatious public greetings), *vughimbi* (for marrying), *ndethi* (for cursing), *kuololea* (for cleansing someone from curse) and *maatha* (for litigation). The current study focused on the last aspect. It was a synchronic study as it does not take into account historicity of *maatha* nor did it involve the mutual influence it had in the course of its speakers' social intercourse with other neighboring ethnic groups and its future prospects or survival.

4.2 Study Design and Approach

The study involved a case study design and was both exploratory and descriptive in approach (ref. Dixon et al, 1990). This approach is relevant for the study of this nature that seeks to find out what is going on among the Chasu-speaking community with regard to their use of language in traditional litigation.

4.3 *The Target Population, Sampling and Instrumentation*

All Chasu speaking adults of Ngujini village in Mwangi district were the target population for the current study. However, I focused on those who were able to attend litigation sessions and played various participant roles as judges, jurors, defendants, claimants, witnesses, and kins to the disputants. Moreover, I singled out some elders (after the sessions) for detailed informal interview.

Accidental sampling and purposive sampling were used to draw sample. I happened to be around when series of traditional disputes were being handled and asked to be part of the observers and sought permission to video-record the events. In that way I counted whoever attended the session as my respondent. After every session, I asked experienced elders who acted as jurors, defendants and claimants to their availability for an informal interview.

The data gathering instruments were thus two:

i) *Observation*, in which I attended the litigation sessions where I was a recorder. What was observed included the general pattern of the litigation process, the structure, the venue and the sitting arrangement as well as the various ways in which language was used. I also observed and took note of the various gestures and other body movements that I deemed were part and parcel of the communicative process.

ii) *The interview schedule*: I administered an informal interview that I had prepared with the key elders who agreed to be interviewed. The respondents were asked to give as much of what they know about the way judgments were being handled and the effectiveness of how the language was packaged and used.

5. The Presentation of and Discussion on the Findings

This part is the presentation of the findings and its subsequent discursive insights. We begin with the setting of the litigation, then the issues that are usually litigated followed by the participants in the litigation. Thereafter a section on the speech events constitute *maatha* as a speech situation and their constituent speech acts follows and, finally, is a discussion on a few details of language use in greetings, breaking the kernel of the news, the narrative structure and closure and pattern of occurrence of speech acts.

5.1 *The Kigongo (the litigation venue)*

Among the Chasu speaking people, litigation does not happen just anywhere. There is a particular area that is used for reconciliation and settling of disputes. The kigongo, which, according to one elderly respondent, literally translates ‘hill top’ and the leader is called ‘mghothi wa kigongo’ (i.e. ‘the elder of the hill’) is the ‘official venue’ and is usually under a tree near the hill elder’s compound. Originally, before the dissolution of traditional kingship in Tanzania, the venue for the litigation used to be at the kitala (i.e. ‘the palace’). During the chieftainship, there was a well defined hierarchical ladder and in each step there were elders who listened to the case mainly as jurors and cross examiners while the judge was a man occupying any of the social leadership positions. The exception, according to another elder respondent, was the mfumwa (i.e. ‘the king’) who had vadhighani (i.e. the soldiers whose

task was to defend the king, to loot the neighboring kingdoms and bring war captives and loots (including women and young men to work as vadhoro (i.e. ‘the slaves’). The king also had ‘mnjama’ (i.e. an advocate’) who represented him in the prosecution of various cases. It was, however, only the king who could give such capital punishments as death or banishment.

The surviving elements of such structure is the hill leader acting the role of the king but only in settling disputes and in pronouncing judgments and some fellow elders inhering the role of vanjama (‘advocates).

5.2 *Mburi (the cases)*

The major object of any litigation process is the presence of disputes in which the disputants seek to litigate. Among the Chasu people there are numerous of those but the most prevent ones, according to my respondents, are the following:

5.2.1 Shinde

These are extramarital sexual affairs including those caught red-handed in the act and those suspected of having affairs with someone else’s spouse. Also included in this category is sexual relations involving an adult (married or unmarried) and a minor, incest and fornicating with animals.

5.2.2 Viraro

These are verbal insults, use of abusive language, jeers or any form of inter-relational bickering. The Chasu people have a set of words that are considered obscene; for example calling someone by the name of his/her sexual or excretory organs. Among serious offences in this category is calling someone mthavi (i.e. ‘a witch/wizard’), mkea (i.e. ‘a thief’) and jeering at a child using an inherited name from a grand parent or grand-parent-in-law who happens to be there and hears it.

5.2.3 Kuketa ndeni

This literary means ‘premarital pregnancy’. This is a serious matter since, to the Chasu people, premarital sex is a cultural crime that soils the virtue of chastity in which virginity is highly prized and valued. An unmarried pregnant girl is said to have tarnished the public face of her mother under whose guidance she (the girl) was to be till she marries.

5.2.4 Vukea

This refers to any form of theft of someone else’s property. It also includes ‘mihaka’ (i.e. land border) disputes and kuiva mwana (i.e. privately circumcising a child without informing relatives and neighbors).

5.2.5 kukoma mundu

This literally means murder or manslaughter. The murder of a person except during battle is a very serious crime against the living and the ancestors. Its severity varied from killing a kin, a pregnant woman, a neighbour, an elderly person, a teenager, a person from a neighboring

village and a visiting foreigner, in that decreasing order of magnitude.

5.3 Main Participants

Litigation as a process involves a number of primary people without whom it is not litigation. The following are the major participants: i) *Mreshitaki* (i.e. the claimant) who lays charges either directly by going to the hill leader or asking a friend or a relative to do so; ii) *mreshitakiwa* (i.e. ‘the defendant’) who is the one against whom the charges are laid and she or he is summoned either by the hill leader or by an elder commissioned by the hill leader; iii) *mghothi wa kigongo* (i.e. ‘the hill leader’) who is the host and the traditional judge of the litigation; iv) *vashahidi* (the witnesses) who would testify in both parties; v) *vaghothi* (the elders) who are part and parcel of the hill-leader litigation expertise. These are both jurors and cross examiners and vi) *vandughu* (the relatives) who are a group of relatives, neighbors and friends who are sympathizers of both parties. These participants play different roles ranging from giving verdict and cross examining to listening and quietly observing and learning vicariously.

5.4 The Speech Events and their Speech Acts

Maatha, being a speech situation, consists of a number of speech events that are also realized by a number of speech acts in a chronology as presented below:

5.4.1 Kutika mburi he Kigongo (Laying of charges)

This is done by the one who feels offended by first consulting with close relatives and friends to share his/her predicaments and complaints. This enables him/her to get a perspective. Secondly, after a decision to take the matter to the hill leaders is reached, the claimant then consults a confidant or friend and asks him/her to go and present the matter to the hill leader.

The major speech acts are of i) *summoning* to friends: ‘*nimi namuitanga aha it naketa ikombere...*’ (it is me who have asked you here to let you know that I have a situation to handle ‘); ii) *requesting*: *iki ningeni viteto vya kunighenja* (‘now kindly give me words that would help me’ and iii) *directing*: *we mghothi ‘X’, tonga unitikie ii mburi he kigongo* (‘you elder ‘X’, go and represent me in presenting this case to the hill’).

The sentence types are largely declaratives since the person is basically presenting and sharing his/her predicament with relatives and friends and sometimes imperatives in requesting someone to do a favor of being the one to present the case.

5.4.2 Ijambi (the Mat)

The complainant brews some *dengelua* (‘local brew’) and prepares a *mbuta* (pot of the local brew) and take it to the hill leader on the day of litigation. The drink is not just for quenching the thirst of the litigants; it is, according to one elder respondent, a ‘sine qua non’ presence if litigation if it is to deserve its befitting gathering; it unites the litigants for they will all partake of it and ask the ancestors to join them through that very brew. As the case is about to be heard, the elders and all people present will be served a *luhembe* (‘drinking horn’) and only when each has started sipping the brew does the complainant (or his/her spokesperson)

begin presenting the case.

The featuring speech acts are i) *commissive*: ‘*naete ii mbuta hetha vandu vatete na niho tayari kuthikija vaghothi*’ (‘I bring this pot of brew for the people to talk and I am ready to listen to the elders’), ii) *directive*: *vaghothi, gureni luhembe hetha mthikije kiteto changu* (‘elders, hold the horn of brew so that you can listen to my words’) and iii) *expressive*: *neidhirwe iti mwaitika na kudha he ii mburi* (‘I am happy that you have responded to my call and have come for this litigation’).

5.4.3 Kuthongoa mghothi (consulting the advocate)

The complainant usually (though not always the case) consults an elder reputable for his skillful manipulation of language making the word both witty and persuasive. This is called *kuthongoa mghothi* (literally meaning ‘to pulp up an elder’). To do this the complainant narrates the whole story of the case giving all the details while he/she undergoes the interrogation and cross examination from the chosen elder. The kernel of this event is: *nekikuomba uoke momo wangu hena ii mburi yoothe ambuo wee wemannje vundu ithanga letonga*. (‘I beg of you to be my mouthpiece in this whole matter since you are experienced and you know how the world moves’), which is an elaborate *directive* of the begging speech act type. The response from the elder is usually an *indirect commissive*: *tuneghesha icho tweneidima ambu nicho twaingwa ni Idhuva* (‘we shall do what we can since this is the responsibility bestowed to us by The Sun’)¹.

5.4.4 Mwitango (the summoning)

The defendant is given a verbal summon either by the hill leader himself or by an emissary. The words that are used are of entreating him/her to attend the hearing without fail but do not specify the nature of the issue (although she/he will have expected the call since he and/or his sympathizers will have made observation or monitored the movement of his/her adversary).

The primary speech act here is an *indirect directive*: *kwa icho nitekuthemba unaredhe aho he iyo mburi bila kutera ambuo ni chedi aa mambo akatetwa na kukenjwa* (‘so I entreat you to make sure you come for this case since it is important that these things are spoken into and sorted out’). It is indirect since the speaker used expressive but seeking to summon him to the hearing. The defendant, usually having no alternative to this kind of summoning uses the speech act of *commissive*: *haya nakuthikia na ninedha uo muthi* (‘ok I have heard you and will be there on that day’).

5.4.5 Kukoma mburi (case presentation)

This is done by the claimant’s ‘advocate who skillfully and persuasively presents the case addressing the members of the jury (not the defendant): *Vaghothi mwewaha, nianjela idhuva iti leniingie nzinya ya kudha aha. Hetiweo ‘hena vaghothi hethikondika kindu’. Uu mndgu wangu anithemba nimvwire iti mighuva yakwe yaoka yetemwa ni mundu ethimannje* (‘elders who are here, i praise the Sun for giving you energy to be here. It is said ‘whenever there are

¹ It is worth noting here that the Chasu elders use pluralist ‘we’ when referring to themselves in accepting public task. Also for the traditional Chasu, *The Sun* (used in title case) is used to refer to God.

elders, nothing goes wrong'. This brother of mine asked me to inform you that his sugar canes have been being harvested by someone not known to him'). Then after a long narrative he reaches the climax: *kwa icho vaghoti vetu mndu eye emvoniwe ekitema mighuva ni Senkondo. Iki eomba itio atete hanini etema mighuva ya vandu?* ('therefore, our elders, the person who has been caught harvesting the sugarcanes is Senkondo. So, he has asked you elders to ask him; why does he cut other people's sugarcanes?').

The case presentation consists of a series of speech acts: i) an *expressive* in which the speaker first thanks God (The Sun) and then the elders, citing a common proverb that the presence of elders guarantees that all is fine; ii) *declaration* that he is a mouthpiece of the claimant and formally presents the case, iii) another *declaration* that it is Senkondo who has been stealing the sugarcane; and iv) finally he makes a *directive* by making a humble plea that the elders probe from the defendant why he steals other peoples' sugarcanes.

5.4.6 Kugarusha (the elders' response)

The hill leader asks the elders to comment on the case just presented or inquire any classification from the claimant's speaker. The defendant is also called upon to react to the charges by asking for clarification: *Haya vaghoti, mwaithikija ii mburi. Iki ngarushenithe. Naunywi va mondo wakwe Senkondo muidima kugarusha.* ('Now elders, you have heard the case. Now, I ask you to respond/react to the case. You too from Senkondo's side, feel free to ask for clarification').

The major speech acts here are two: i) *the assertive* in which the hill leader states that the elders have heard the case and ii) *the directive* in which he invites them (and all others) to respond by asking for clarification.

5.4.7 Admission/Denying the Charges

The defendant is then called upon to admit or counter the charges. He/she does so while displaying calmness and suppression of whatever ill-feelings he/she may have against the claimant. Among the strategies one may use if one admits the charges is to call for sympathy by using such persuasive language like *'hata ete unywi vaghoti mwekighendadhe* (even if it were you, elders, what would you have done?) or employ proverbs like *'hetiweo, vukiva ni nzota yethive terua* ('it has been said famine is a balancing ring that cannot be taken off the head' and eventually explicitly admit: *icho ateta uo mreteta ni cha kweri* ('that which the sayer has said is true').

In the admission of charges, we note the use of proverbs to appeal for sympathy and the formula for the proverbial saying is first the employment of semantically empty *'hetiweo'* ('it has been said') without stating the originator plus the use of perfective 'has been said' to imply finality and unchangingness of truth conditionality and finally the proverb itself.

In this speech event there two speech acts; i) *the directive* in the form of the question, ii) *assertive* in the form of presenting the proverb and ii) *indirect commissive* in acceptance/admission of charges.

If, however, the defendant denies the charges he may employ a different proverb (while

maintaining the expected non aggression) like *'hetiweo, mwitango wethithuwa chethuwa nimburi.iki nami naitika mwitango mira iyo mburi nauthua'* (it has been said a call is never refused but what can be refuse/denied is the case (charges) and I deny the charges). If that is the case, the speech events 5.4.8 to 5.4.10 apply.

5.4.8 Vashahidi (the witnesses)

The witnesses from each side are called upon to testify. They are urged to tell the truth and are reminded that the *ngoma* (the ancestors) will react against anyone who dares bear false witness against a kin or anyone else. However, according to one of the elder respondents, the main witnesses who are seriously listened to are those from the claimant's side, the assumption being that nobody would take someone to court without having reasons to do so. That is why the witnesses are asked to give their testimonies verifying or strengthening the truthfulness of the charges. The defendant is usually given equal weight of the witnesses.

The speech acts are i) *Directive: vashahidi mwedhie, inzoni aha ghati mira mtete ukweri* ('You, the witnesses that have come, come here to the centre but be truthful'), ii) *verdictive*, in the form of a threat: *mwekiteta mwongo ngoma jinemgharukia* ('if you tell lie the ancestors will react against you'), and iii) *assertive: nikitio: vashihi kawaida vefuma he mreshitaki...* ('I tell you this: the witnesses are usually from the claimant's side...').

5.4.9 Ikombera (the Interrogation)

The elders are asked to chip in and give their comments upon the case. Usually, they start by relating the case at hand to some former similar incidences in which either or both the claimant and defendant had been involved or any other case and they show how bad it is for a kin or clan member to be involved in any fracas as these rapture peace and harmony of the family/clan. Then the elders turn to the defendant and start interrogating him/her aiming at pressuring him/her to plead guilty.

The elders sometimes reach a stage in which they intimidate the defendant with such sanctions as exclusion from membership or that the ancestors are around listening to and monitoring whatever is being said so as to see that justice is served, and that god will bring him/her more misfortune should he/she persist denying charges which they, the elders, believe are true since nobody (they claim) would dare lay charges against his kinsman/woman without any reason. Moreover, these elders were observed persistently asking the defendant such questions as *hanini uu mndu ati ni we wemuivie na ethi mundu ungi wowothe?* (i.e. 'why would this man single you out and not anybody else?').

According to one elder, Mr Kasupari, there is usually one or two senior elders who do not speak but keep on looking searchingly at the defendant and they will speak last, after being asked to do so by the hill leader. When these elders eventually speak, they are very elegant as they first perform a little ritual of spitting on the ground and/or hitting the ground with their walking sticks or pointing the defendant with their walking stick and tell him/her their own convictions of the whole matter, usually using such formulaic clauses as *mwanawa, kundaki nikuvwire cha kuvotia* (i.e. 'my child, concede so that I can tell you the way to win justice'). If the defendant says *'nakunda'* (i.e. 'I concede'), this elder may shake his (the defendant's)

hand and praise him/her in the presence of everybody and ask other elders to reward such courage and audacity. If, however, the defendant responds with *hai mghothi wetu* (i.e. ‘No, our elder’) the cross examining continues.

The speech acts in this event are i) *directive* : a) (by the hill leader) *vaghothi vetu mwewaha, ala magheri afika a unywi kugharusha* (‘our elders that are here, time has come for you to respond and give your remarks’), b) (by as senior elder) *hanini uu mndu ati ni we wemuivie na enthi mundu ungi wowothe* (i.e. ‘why would this man single you out (and not anybody else) and bring you here as a thief’), c) (by senior elder) *mwanawa, kundaki nikuvwire cha kuvotia* (i.e. ‘my child, concede so that I can tell you the way to win justice’ ii) *assertive*: (by the defendant) *‘mi nitio, kindu kibaha ni lukindo lwa vandughu* (‘I am saying this, the important thing love among kinsmen’), and iii) *commissive*: (by defendant) *‘nakunda’* (i.e. ‘I concede’).

5.4.10 Kuvotwa (the Conceding)

If the defendant utters *‘nakunda’* (i.e. ‘I concede’) in response to the senior elder’s tricky but authoritative ‘my- child- concede- so- that- I-can- tell –you- the- way- to- win- justice proposal, then he/she is said to *kuvotwa* (to be defeated by conceding) . If, however, that does not happen, the interrogation continues and much more verbal coercion and tactical cross examining is served until the defendant either proves his/her innocence or explicitly admits the responsibility for the charges or implicitly does so by falling silent.

Two speech acts feature in this speech event: i) *Directive*: *yeto we mreshitakiwa ugharushadhe he ichi kiteto cha uu nghothi na vaghothi vangi?* (‘You, the defendant, what do you say as a response to these words from this elder and other elders?’) and ii) *Commissive*: *natio, nakunda...*(‘I say this, I concede!’).

5.4.11 Mathibo (breakthrough beer/wine)

This is the celebration of the breakthrough in the case by asking both the defendant and the claimant to bring in their *‘kadende’* (a small pot of sugarcane wine). The two pots of wine are emptied into one *mbuta* (larger pot of wine) to symbolize the sole aim that the two people are socially united and that all that they came to seek was reconciliation, above anything else. The youngest amongst the men gathered is asked to serve the wine beginning with the defendant followed by the claimant, then the senior elders, the hill leader and finally other lower rank elders.

There are two speech acts here: i) *Expressive*: *tuanjela itdhuva aha handu twafikia* (‘we praise the sun for the stage we have reached’), ii) *Directive*: a) *we mghothi wetuitange na we mretaingwa kwa ii mburi, eteni kadende kila mndu* (‘you elder that called us and you other elder who was summoned here, bring your small pot of wine each’), b) *wee mbwange, tahia mawa vaghothi na vandu voothe vewaha* (‘you, young man, serve the beer to the elders and all others who are here’).

5.4.12 Maamoro na Matodho (the ruling and the penalty)

The hill leader suggests the ruling by addressing first the elders about the usual and apparently the obvious-to-everyone form of punishment or fine to be imposed on anyone who

commits a certain wrong. Forms of the fine depend on the type and magnitude of the crime committed. Among the penalties included i) *petha* ('money') for wrongdoing involving replacement of a physical damage to the property or repayment of the equivalent of stolen but perishable goods, ii) *ndorome* ('a male sheep') payable to someone who is a victim to verbal harassment of insults notably the elderly, one's parents or in-laws, or crime against the ancestors, iii) *nzenge* ('male goat') payable to the jury of elders by one found guilty of falsely accusing someone else especially of taking part in which practicing, adultery or fornication. This is to be slaughtered in public with some rituals and then eaten by all who have been part of the litigation, iv) *mawa* ('sugarcane wine') for offenders of such vices as stealing, insulting an age mate or showing disrespect to the elder or to the cultural norms/practices, v) *Ng'ombe* ('a cow') for the people who are found guilty of such charges being caught in the act of impregnating a girl, breaking other peoples' marriages and assaulting one's parents or any elder.

This speech event involves a i) *directive* from the Hill leader a) in the form of suggestion: *Ikio hena mburi thaa ii ya vukea uu mghothi mreshitakiwa aete mbuta ndatu ja mawa na petha viku thelathini* ('now in a case like this involving theft the defendant will have to bring three pots of sugarcane beer and thirty thousand cash') and b) in the form of asking for confirmation: *Kana thivwo vaghoti?* ('Or isn't that so, elders?'), ii) *assertive* by the elders: *nivwo huvo vundu wateta* ('it is quite right what you have said) then iii) *commissive* on the part of the defendant: *mi nakunda na kuitikia kwa ngoro mwe* ('I accept and will respond to it whole heartedly').

5.4.13 Kuomba Kushingiwa (asking for forgiveness)

Having accepted both the responsibility for the wrongs and the fine imposed, the accused brings the fine on the day set by the elders to the convenience of everybody and asked to *kukoma mburi* (to formally say what the message of the gathering is about)². In other words, the accused is asked to publicly ask for forgiveness. He/she does this by addressing the elders, asking forgiveness from the claimant via the elders and thus addressing the claimant in the third person referring to him/her as *uo mindughu wangu* ('that brethren/sister of mine'), a term that shows both remorse and affection. Alternatively, an orator-elder, asked before hand by the accused, does the asking for forgiveness on his/her behalf.

For insults or any form of character deformation, one is required to *kuoja vusho* ('clean somebody's face') and to anoint the claimant's lips with animal fat as a sign of restoring the victim's dignity. To do this, one has to slaughter a male sheep, cut a fattened tail, roast it and give it to the claimant who eats it while the accused utters some words of remorse and begging for forgiveness and social reconnection to him/her. Then he (or young helpers around) roasts the liver and the heart and gives them to the claimant this time asking him/her to share them with the elders around and he (or his chosen spokesperson) once asks the claimant to forgive him/her and (should he accept the apology) tell the elders and those around with whom he shares the roasted liver and heart that he has forgiven him/her.

² Among the Chasu Speaking people, people will not start drinking or eating before the theme of the gathering is explicitly made known by the host or his chosen kinsman, even when the reason for the gearing is obvious to everyone.

Another case is when the defendant persistently and adamantly refuses to admit charges especially when the evidence or exhibit are lacking and it is hard to find witnesses. When even the efforts of skillful elder orators fail to convince him/her to admit his/her suspected wrongdoing, the hill leader resorts to what is called '*kurighia*' (literally meaning 'swearing ritual') during which the claimant brings a chicken and gives it to the hill-leader who calls each to come and prove their innocence. The claimant is called first and is instructed to touch the chicken saying declare his honesty regarding the dispute and asking to be vindicated by the direction to be taken by the to-be –amputated head of the chicken would fall. The defendant is the called and is similarly instructed to touch the chicken and say that he/she is innocent and that his/her innocence will be vindicated by his own chosen direction the to-be-amputated head of the chicken will take.

The hill-leader then quickly chops the chicken head off. Whoever is proved wrong by non-fulfillment of the prediction of the direction the head would receive serious admonition and exhortation from both the hill leader and the elders gathered and is made to apologize to the person he/she has wronged and pay the penalty imposed.

In this speech event the speech acts are i) an *expressive* by the hill leader thanking the elders, the defendant and the claimant and their families for coming: *nitio havacheni kwa kudha aha he muthi uu* 'I say this, thank you all for coming here on this day'); ii) a *declaration* from the hill leader: *kwa icho mburi yetu etie aha naidunge* ('therefore let the matter begin that has brought us here begin'), iii) another *expressive* from the defendant's spokesperson a) thanking the elders and most importantly the claimant for his clemency: *uthwi twatio, nahavacheni vaghothi na hatha uu mghothi Thengathu kwa ngoro yakwe yena mbonea* ('we say this, thank you elders and particularly this our elder, Thengathu, for his clement heart') b) formally asking for forgiveness from the defendant (who has asked him to do so on his behalf): *na kwa iyo ngoro yedi yakwe mghothi Thengathu na vaghothi mwewaha uo mghothi aniti nitete iti etio umushingie* ('and for that kind heart of the elder Thengathu and the elders present, the elder who has asked me to be his spokesman asks for your forgiveness'), iv) a *commissive* from the defendants spokesperson: *eahidi iti ethikahundukie kang!* ('he promises not to repeat that ') and finally, v) a *directive* from the hill leader: *ao matodho na aitwe!* ('Let the fines be brought forth').

6. Discussion

The following are the major issues/patterns one can discern in the data as analyzed in 6.1 above.

6.1 Breaking the Kernel of the News

After greetings there follows the breaking of kernel of the news, which is like the heart of the speech event. It usually follows (though with some variations and a few exceptions) this sequential order:

Formal address

	Title	Presence
<i>Wee</i>	<i>Mghothi/vaghothi</i>	<i>Wewaha/mwewaha</i>
2 nd person (You)	Elder/Elders	Who is/are here

Response:

	Act of Listening
<i>Na-/twa-</i>	<i>-kuitikia</i>
Ist person (You)	I/ we have responded to you We are here to listen

A proverbial saying (Optional):

<i>Subject</i>	<i>Passive Voice</i>	<i>Proverb</i>
<i>Empty Subject</i>	<i>Hetiweo</i> (“It has been said”)	<i>Vundughu ni kindu chedi</i> (“brotherhood is a good thing”)
		<i>Mwitango wethithuwa</i> (‘a call is never ignored’)
		<i>Hata thimba irahaia ikagurwa ni kadama yekiiva mani a ng’ombe</i> (“ Even a lion feel shy when caught by a calf stealing the cow’s grass”)

6.2 The Narrative

This was observed to be conforming to Labov’s (1972) model, which is divided into four parts; i) the orientation, which refers to the circumstances which surround the narrative account, ii) core narrative, which is the account of itself, i.e. what happened, including often what was said and seen as well as what was done, iii) elaboration (an optional part), which provides for details, clarification and exemplification of the core narrative, and iv) the point, which allows the significance of the narrative account for the larger trial narrative, i.e. usually the guilt or innocence of the defendant. In the case of our study, a) orientation is signaled by the request, ‘shigheni nikome mburi’ (‘let me present the case’); where he prepares the elders for listening to what he has to say, b) the core narrative is signaled by a ritualistic spitting on the ground, signaling partly joining himself with those in the netherworld and partly the seriousness of what he is about to say then presenting the contextual background of the suspicion and eventually the decision to engage in investigation, c) elaboration is signaled by a preparatory proverb setting the scene, “iki tha vundu twemanyije, hetiweo ja mkea ni makumi matatu na kenda ya makumi mane enegurwa duu!” (‘as you know, it has been said the thief’s days are thirty nine and on the fortieth, he/she will surely be caught’).d) the point, where the narrator gives the details of the procedural maneuvers that led to the capture of the thief and how the capturing was diplomatically but sarcastically handled: first, greeting the suspect right in the act of being captured ‘evava Thekondo³ (‘how are you Senkondo’), then commending him for the work ‘pole na ndima’ (literally ‘we salute your good work’), the suspect’s (natural) instinct to run away and the entreat, ‘thela uthidindike, itemka tugaye’ (‘please, do not run away, stop so that we can talk’). This manner of non confrontation and an apparent use of soft language, sarcastic notwithstanding, is said to be more effective in

³ Among the Chasu speaking people forms of greeting are varied across gender and age. Thus, ‘evava’ is for the male adults and the elderly males.

winning over the surrender and remorse of the suspect than if it were done otherwise.

It is worth noting that, during the case presentation, in its episodic parts of orientation, core narrative, elaboration and the point, interruptions are not common. One is left to narrate the story to its fullness without being interrupted. However, should one of the audience be emotionally overwhelmed by a particular remark, point or proverb in the course of the narrative, one can make ejaculatory phrases like yeetoni (similar “to my gosh!”, thinyelani (‘close to ‘my my!’) or mbwanyeni (‘close to ‘my clansmen!’).

6.3 Closure

The litigation is brought to an end with an announcement from the young member of the gathering who has been serving the traditional wine calling the host to bring a ndubule (‘a small pot of beer kept in the hiding for this purpose’). When the pot is brought, the server announces, ‘vaghothi mwewaha (‘elders who are present’), hala handu tweoho tuhavuka (‘where we were (seated) we are leaving’), ii ndubule ni kuti uu mghothi atuitanga aha ashukuru kwa kudha kwenyu (‘this small pot of wine is a word from the elder who has called us here that he is thankful for our coming’). One of the renowned elders responds by giving thanks to the host, praying that unity and love last forever like the sun.

6.4 Central and Peripheral Participants

The number of participants can be classified into those that are central and those that are peripheral. The central ones are those that are necessary and thus primary for litigation to take place and these include the claimant, the defendant, the hill leader and the elders. The peripheral ones are those whose presence is either to reinforce the validity of her claims or counterclaims (these are the witnesses) or to show solidarity with and sympathy for either party. These could be labeled as secondary since the litigation can still go on without them.

6.5 The Number of Speech Events and Distribution of Speech Acts

Maartha has proved to be an elaborate and complex speech situation with a total of thirteen speech vents of differing lengths and number of speech acts, e.g. ikombere and kuomba kushighiwa are relatively longer while mwitango and kuthongoa mughothi are short events with less number of speech acts.

The speech acts that are constituted in speech events are also diverse as detailed in Table 1 below.

Table 1 Types and Distribution of Speech Acts

Speech event	Speech Acts						Total
	Declaration	Comissive	Directive	Expressive	Assertive	Verdictive	
LoC			1				1
Mat		1	1	1			3
CA		1	1				2
Sum.		1	1				2
CPr.	2		1	1			4
ER		1	1				2
A/DoC		1	1		1		3

Wit.			1			1	2
Inter.			1		1		2
Conc.	1	1	1		1		4
BtB		1	1		1		3
R&P		1	1				2
AF	1	1	1	2			5
TOTAL	4	9	13	4	4	1	35

Legend:

LoC: Laying of Cha

Mat: the Mat

CA: Consulting the Advocate

Sum.: the Summoning

Cpr.: Case Presentation

ER: the Elder's Response

A/DoC: Admission/Denial of Charges

Wit.: the Witnesses

Inter.: Interrogation

Conc.: Conceding

BtB: Breakthrough Beer

R&P: the Ruling and Penalty

AF: Asking for Forgiveness.

The data in table 1 above are very telling three main areas. First, the recurrence of speech acts is not homogeneous and one; e.g., a directive appears in all thirteen speech events (typical of litigation and even in the western court system) while verdictive appears in only one speech event. Secondly, the last is not the least by virtue of being last since asking for forgiveness (AF) has the largest number of speech acts, with a total of five, with expressive (in the form of gratitude and apology) mark the ultimate end of *maatha*: to reconcile and reunite broken relations. Other speech events that have four speech acts each are CPr. (with dual recurrence of declaration and thus befitting its title of 'presenting' the case) and conceding It is worth noting that gratitude follows a hierarchy in which God (*Izuva*) is the first, then elders, the claimant, the defendant and all others. Third, in the row of total (of overall speech act distribution across speech events), in addition to predominance of directive that has already been explained, we have another worth mentioning. This is comissive mainly by the defendant, which shows one's own sentence promising to change rather than being 'corrected' in prisons and assurance to the claimant and the elders that he wishes to continue being integral member of the society.

7. Conclusion

This paper has been a presentation, analysis and discussion of *maatha* as practiced by the Chasu speaking people of Kilimanjaro. It has provided a number of insights: First, *Maatha* resembles other traditional litigations some of which were part of the literature review in the involvement of elders and having a venue which is essentially a homestead of one of them. It is also similar to most of the traditional court systems by excluding women as key players in litigation since they do not play the primary roles of hill leader or elders. However, they can be claimants, defendants, witnesses or sympathizers. Furthermore, it has been noted that among politeness strategies employed by various participants is the use of the title *mghothi* ('elder') and the use of third person singular *uo* ('that') to refer to a person when the addressee is present. This is the case even when the claimant is addressing the defendant.

Lastly, power relations are manifest especially in the elder's frequent use of directives and their performance of rituals to pave the way to and even to accompany their interrogations and verdicts.

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