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Navigating Justice in Multilingual Contexts: The Interpretation Paradox in Kenya's High Court

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Abstract | **Review Article**

Language diversity poses profound challenges in Kenya's High Court, where multilingualism is both a strength and a paradox. Although the Constitution of Kenya 2010 guarantees fair trial rights and interpretation, courtroom practice often exposes gaps in achieving true linguistic inclusivity. This paper interrogates the "interpretation paradox", the disjuncture between legal commitments to equality before the law and the systemic shortcomings of interpretation services. Drawing on constitutional provisions, case law, and human rights frameworks, the analysis shows how inadequate interpretation undermines access to justice, especially for marginalized linguistic communities. It further demonstrates how reliance on English and Kiswahili entrenches hierarchies of power, marginalizing indigenous language speakers and deepening legal inequalities. Framing the Kenyan experience within broader debates on language rights and comparative jurisprudence, the paper argues that interpretation is not just a procedural safeguard but a core human rights issue linked to dignity and participation. Addressing this paradox requires judicial training, investment in professional interpreters, and stronger institutional commitment to language rights so that Kenya's courts can transform multilingualism into a true pillar of justice.

Keywords: Interpretation paradox, Kenya, linguistic diversity, access to justice, human rights.

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INTRODUCTION

Language is a central component of justice, shaping how rights are articulated, defended, and adjudicated within legal systems. In multilingual societies such as Kenya, where over sixty indigenous languages coexist alongside English and Kiswahili, the courtroom becomes a space where linguistic diversity intersects with questions of equality, access, and fairness (Simpson, 2017). The 2010 Constitution of Kenya enshrines the right to a fair trial, explicitly guaranteeing that every accused person has the right "to be informed in a language that the person understands of the charge, with sufficient detail to answer it" and "to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial" (Constitution of Kenya, 2010, Article 50). These constitutional commitments signal the state's recognition of language as integral to the realization of justice.

Despite these guarantees, the practical realities of courtroom interpretation in Kenya reveal what may be termed an "interpretation paradox": the gap between formal legal rights and the lived experience of litigants in courts. On one hand, the judiciary acknowledges the indispensability of interpretation in ensuring fairness; on the other hand, systemic challenges, ranging from poorly trained interpreters to limited institutional investment in multilingual capacity, undermine these rights (Ngugi, 2018). As a result, litigants from marginalized linguistic communities often face significant barriers in accessing justice, despite constitutional and international guarantees. This paradox reflects not only an institutional shortcoming but also deeper hierarchies of language within the justice system, where English and Kiswahili dominate while indigenous languages remain peripheral.

The dominance of English and Kiswahili in Kenyan courts reflects both colonial legacies and postcolonial state-building efforts. English, introduced

during British rule as the language of administration and law, retains a privileged status as the official language of legal proceedings (Ghai & McAuslan, 1970; Mbori, 2019). Kiswahili, recognized in the Constitution as both a national and official language, has gained wider acceptance but often functions in subordinate roles in legal settings, particularly in superior courts. Indigenous languages, although widely spoken and critical for litigants' understanding, are rarely accorded substantive recognition. This linguistic hierarchy mirrors broader socio-political inequalities, where access to dominant languages correlates with social status, education, and power (Cheeseman, Lynch, & Willis, 2020).

Globally, the right to interpretation and linguistic inclusion in legal processes is recognized as a fundamental human right. Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR) guarantees that anyone charged with a criminal offense shall be informed promptly and in detail "in a language which he understands" of the nature and cause of the charge against him. Similarly, the African Charter on Human and Peoples' Rights underscores the right to equality before the law and fair trial guarantees (African Union, 1981). Kenya, as a state party to these instruments, bears an obligation to align its domestic judicial practices with these international standards. Yet, evidence shows that litigants often experience misinterpretation, incomplete translations, or outright denial of interpretation, thereby undermining the spirit of these protections (Karanja, 2021).

The consequences of inadequate interpretation extend beyond procedural irregularities; they fundamentally affect the administration of justice. Misinterpretation can distort testimony, obscure meaning, or lead to wrongful convictions, thereby undermining confidence in the judiciary (González, 2020). Moreover, marginalized groups—rural populations, women, and speakers of minority languages, are disproportionately affected, deepening existing inequalities in access to justice. In this sense, the interpretation paradox is not merely a linguistic issue but a human rights concern tied to dignity, equality, and participation (Skutnabb-Kangas & Phillipson, 2017).

This paper interrogates the interpretation paradox in Kenya's High Court by situating it within the broader debates on language rights, legal pluralism, and decolonial jurisprudence. It argues that addressing the paradox requires moving beyond symbolic guarantees of interpretation to substantive reforms that professionalize court interpretation, strengthen judicial capacity, and embed linguistic rights within the culture of justice delivery. By drawing on constitutional provisions, judicial practice, and comparative perspectives from other multilingual legal systems, the study demonstrates that Kenya's path toward substantive justice must reckon with the reality of its linguistic diversity.

The central objective of this paper, therefore, is twofold: first, to highlight the disjuncture between Kenya's constitutional guarantees of fair trial rights and the practical limitations of interpretation in the High Court; and second, to propose pathways for strengthening linguistic inclusivity within the justice system. In doing so, the study underscores that multilingualism should not be perceived as a barrier but as an essential dimension of justice, reflective of Kenya's plural identities. Ultimately, affirming language rights in courtrooms is critical for moving toward a transformative jurisprudence that realizes equality not just in principle but also in practice.

Theoretical and Legal Framework

The Constitution of Kenya, 2010 provides a progressive framework for language rights. Article 7 recognizes Kiswahili as the national language, alongside English and Kiswahili as official languages, while obligating the state to promote and protect indigenous languages (Constitution of Kenya, 2010, art. 7). This provision reflects both symbolic and substantive recognition: symbolically, Kiswahili affirms Kenya's cultural unity, while substantively, it establishes the state's duty to enhance linguistic inclusion across public life (Mose, 2017).

Most crucially, Article 50 anchors language rights in the context of fair trial guarantees. Sub-article 50(2)(a) affirms that every accused person has the right to be informed "in a language that the person understands" of the charges, while sub-article 50(2)(m) entitles them to "the assistance of an interpreter without payment" if they cannot understand the language used in court (Constitution of Kenya, 2010). Kenyan courts have consistently underscored this right. For instance, in Criminal Revision E163 of 2021, the High Court reiterated that trial proceedings must be interpreted into a language the accused understands; failure to provide interpretation invalidates the fairness of the trial (Kenya Law, 2021). This constitutional framework thus affirms that linguistic accessibility is not a procedural luxury but a core element of due process. Nonetheless, implementation challenges persist, producing the interpretation paradox, an area where constitutional commitments do not always translate into lived courtroom practice (Mulwa, 2024).

Kenya's constitutional guarantees are reinforced by binding international human rights obligations. The International Covenant on Civil and Political Rights (ICCPR), ratified by Kenya in 1972, enshrines the right to fair trial in Article 14. Specifically, Article 14(3)(a) guarantees that an accused must be informed "promptly and in detail in a language which he understands" of the charges, while Article 14(3)(f) secures the right to the free assistance of an interpreter (ICCPR, 1966). The Human Rights Committee's

General Comment No. 32 clarifies that these provisions require states to ensure interpretation is of sufficient quality to guarantee comprehension and effective participation in proceedings (HRC, 2007, para. 25).

Regionally, the African Charter on Human and Peoples' Rights (ACHPR) affirms fair trial rights and equality before the law under Articles 3 and 7 (African Union, 1981). The African Commission has interpreted these provisions to include the necessity of linguistic accessibility, particularly for marginalized groups (ACHPR, 2003). Importantly, the Protocol on the African Court on Human and Peoples' Rights also empowers the Court to consider whether language barriers have infringed on rights to dignity, participation, and justice (Viljoen, 2012).

By ratifying these instruments, Kenya has undertaken binding commitments to provide not only formal access to interpreters but also substantive measures ensuring that interpretation services are accurate, professional, and impartial. The international human rights framework therefore sharpens domestic obligations, positioning language rights as central to justice delivery rather than secondary procedural issues.

Beyond constitutional and international guarantees, theoretical perspectives illuminate the justice–language nexus. First, theories of linguistic justice argue that language is not a neutral medium but a resource unequally distributed across society. According to Philippe Van Parijs (2011), justice requires mitigating the disadvantages that linguistic minorities face when dominant languages are imposed in public institutions. In Kenyan courts, where English and Kiswahili dominate, speakers of indigenous languages face structural exclusion unless effective interpretation safeguards are in place.

Second, legal pluralism theory highlights how multiple normative systems, formal state law, customary law, and linguistic-cultural practices, coexist in societies like Kenya (Griffiths, 1986; Merry, 1988). From this perspective, insisting solely on English and Kiswahili in the High Court disregards Kenya's plural legal and cultural heritage, privileging the language of state law over community norms. Recognition of indigenous languages in judicial processes thus becomes part of honoring pluralism and inclusivity in the justice system.

Third, the principle of equality before the law provides a normative anchor. John Rawls' theory of justice situates equality as a foundational value of fair institutions (Rawls, 1999). Transposed to language, equality requires that no litigant be disadvantaged because of linguistic background. This resonates with Tove Skutnabb-Kangas and Robert Phillipson's (2017) work on linguistic human rights, which frames denial of language accommodation as a form of structural inequality. Ensuring linguistic equality in Kenyan courts therefore extends beyond procedural fairness to safeguarding human dignity and substantive justice.

The Interpretation Paradox in Practice: Formal Guarantees vs. Courtroom Realities

The Kenyan Constitution explicitly guarantees linguistic accessibility in courts, yet the everyday reality in the High Court reveals a troubling interpretation paradox: the gap between constitutional promises and lived experiences of litigants. While Article 50 enshrines the right to interpretation, implementation remains inconsistent, exposing structural weaknesses in Kenya's justice system (Constitution of Kenya, 2010).

In principle, Kenyan courts are required to provide interpretation services to ensure that all parties understand proceedings. However, studies show that interpretation in many courts is often ad hoc, inconsistent, or altogether absent, particularly outside major urban centers (Mulwa, 2024). Defendants frequently rely on clerks, police officers, or untrained bilingual individuals who may lack professional competence in legal interpretation (Karanja, 2010). This undermines the accuracy and reliability of translated testimony, leaving room for misrepresentation and procedural injustice.

Case law illustrates the gravity of this problem. In Swahibu Simbauni Simiyu & Another v. Republic [2011] eKLR, the Court of Appeal quashed a conviction on the basis that the trial court had failed to provide proper interpretation to the accused, thereby violating Article 50 of the Constitution (Kenya Law, 2011). Similarly, in Anthony Njue Njeru v. Republic [2006] eKLR, the court underscored that failure to provide interpretation invalidates trial proceedings because the accused cannot effectively participate in their own defense (Kenya Law, 2006). These decisions highlight the judiciary's recognition of interpretation as a fundamental right, even as lower courts continue to struggle with implementation.

Systemic Challenges in Interpretation Services

The persistence of the interpretation paradox in Kenya's High Court is closely tied to systemic challenges that undermine the delivery of reliable interpretation. Chief among these is the shortage of trained interpreters, a problem that reflects broader structural gaps in judicial administration. Despite Kenya's vast linguistic diversity, with more than forty indigenous languages spoken across the country, the judiciary employs only a limited number of professional interpreters. This shortage has forced courts, especially those located outside urban centers, to rely on unqualified personnel who often lack the linguistic and legal skills required for accurate translation. In some instances, police officers, court clerks, or even fellow

litigants are informally tasked with interpretation, raising questions about accuracy, neutrality, and fairness (Githiora, 2018). Such practices directly undermine the constitutional guarantee of a fair trial, as litigants may not fully understand or participate in proceedings.

Another major systemic weakness lies in the absence of standardized guidelines and quality controls for court interpretation. Unlike other areas of legal practice, where professional standards are rigorously enforced, court interpretation in Kenya remains loosely regulated. There are no nationally recognized benchmarks for assessing competence, and interpreters are rarely subjected to evaluation or oversight. This lack of standardization has led to widespread inconsistencies in interpretation, where accuracy may vary dramatically from one court to another. In some cases, interpretations are partial, biased, or legally inadequate, introducing distortions into the trial process and jeopardizing the rights of accused persons (Ogechi, 2009). The unevenness of interpretation practices also weakens public trust in the judiciary, as litigants perceive justice outcomes as dependent not only on legal arguments but also on the quality of language mediation.

The problem is compounded by underfunding and the low prioritization of interpretation services within the judicial budget. Judicial reforms in Kenya, particularly since the promulgation of the 2010 Constitution, have emphasized infrastructural expansion, digitization, and backlog reduction (Judiciary of Kenya, 2020). While these reforms are essential, they have often relegated language rights to the periphery of judicial policy. Limited resources are allocated to the recruitment, training, or retention of interpreters, leaving many courts ill-equipped to provide competent services. This systemic neglect reinforces the perception that linguistic rights are secondary to administrative efficiency (Omolo, 2016). In effect, interpretation is treated not as a constitutional entitlement but as a logistical afterthought, undermining the judiciary's own commitment to equality before the law.

The implications of these systemic challenges are most acutely felt by marginalized linguistic communities. For speakers of languages such as Nubian, Somali, Pokot, or Borana, competent interpretation is often unavailable, effectively excluding them from meaningful participation in legal processes. Without accurate translation, litigants risk misrepresentation of their testimony, misunderstanding of charges, or inability to follow proceedings, which erode their right to a fair hearing. Thus, systemic deficiencies in interpretation do not merely reflect administrative inefficiency but perpetuate structural inequalities within Kenya's legal system.

The interpretation paradox is also entangled with broader language hierarchies in Kenya's judiciary. English and Kiswahili function as the default languages of record, while indigenous languages are relegated to "accommodation" status only when necessary. This hierarchy mirrors Kenya's colonial history, where English was institutionalized as the language of governance and law (Mumma, 2015). By continuing to privilege English and Kiswahili, the High Court inadvertently reinforces social stratification: urban, educated litigants are empowered, while rural and minority-language speakers are marginalized.

Beyond practical exclusion, this dynamic has symbolic implications. It signals that some languages, and by extension, their speakers, are less legitimate in the eyes of the law. As Ngũgĩ wa Thiong'o (1986) argues in *Decolonising the Mind*, linguistic hierarchies reproduce structures of domination by privileging colonial and elite languages over indigenous ones. The persistence of this hierarchy in Kenyan courts thus reflects not only an administrative shortcoming but also a deeper struggle over identity, recognition, and equality before the law.

Language Hierarchies in the Kenyan Judiciary

The Kenyan judiciary operates within entrenched language hierarchies that privilege English and, to a lesser extent, Kiswahili, while relegating indigenous languages to peripheral roles. This hierarchy reflects both colonial legacies and post-independence state-building policies, where language choice has historically been intertwined with governance, law, and socio-economic mobility (Mazrui & Mazrui, 1998). In the context of the High Court, the continued dominance of English, despite constitutional recognition of Kiswahili and indigenous languages, creates structural barriers to justice for litigants who lack proficiency in the official languages.

a. Colonial Legacy and the Entrenchment of English

English remains the primary language of record and legal discourse in the High Court, a legacy of British colonial administration. During colonial rule, English was institutionalized as the language of law, education, and governance, creating an elite class of citizens with access to legal and political power (Ghai & McAuslan, 1970). Post-independence Kenya retained this linguistic infrastructure, with English continuing to dominate court proceedings, legislation, and legal education (Mbori, 2019). This reliance on English perpetuates colonial continuities, where legal authority is mediated through a foreign language not widely mastered by the majority of citizens.

As a result, English proficiency becomes a gatekeeping mechanism in the judicial process. Litigants and even some lawyers from rural or marginalized backgrounds may struggle to fully engage in English-dominated proceedings. This effectively restricts participation to those with formal education, privileging

the urban elite while marginalizing rural populations who primarily communicate in indigenous languages (Mumma, 2015).

b. The Ambiguous Role of Kiswahili

Kiswahili holds a unique position in Kenya's legal system. Recognized in the Constitution as both a national and official language (Article 7), it is widely spoken across ethnic groups and has potential to democratize access to justice (Constitution of Kenya, 2010). Yet, its role in superior courts remains limited. In practice, Kiswahili is often confined to lower courts or used informally in communication, while formal judgments and records remain in English (Ogechi & Nyamasyo, 2010).

This restricted use of Kiswahili reflects deeper institutional ambivalence. On one hand, it is promoted as a unifying national language; on the other, its secondary status in legal practice undermines its transformative potential. The judiciary's hesitation to fully embrace Kiswahili reflects both concerns about technical legal vocabulary and the inertia of entrenched colonial-era traditions (Muthwii, 2004).

c. Indigenous Languages and Marginalization

Indigenous languages spoken by the vast majority of Kenyans, remain largely invisible within the High Court. They are only invoked when interpretation is deemed necessary, and even then, the quality and availability of interpretation are inconsistent (Mulwa, 2024). Unlike English and Kiswahili, indigenous languages lack formal recognition in judicial practice, legal documentation, and legal training. This invisibility not only excludes non-English/Kiswahili speakers from meaningful participation but also delegitimizes indigenous languages as vehicles of legal authority.

The marginalization of indigenous languages perpetuates socio-economic inequalities. Speakers of languages such as Turkana, Pokot, or Somali often face compounded vulnerabilities, as their exclusion from courtroom communication intersects with geographic, ethnic, and class-based marginalization (Cheeseman, Lynch, & Willis, 2020). In this way, language hierarchies contribute to systemic injustices, where linguistic identity directly shapes one's ability to access legal protections.

d. Symbolic and Structural Implications

The privileging of English and Kiswahili also carries symbolic weight. It communicates whose voices are legitimate in legal discourse and whose are peripheral. As Ngũgĩ wa Thiong'o (1986) argues, linguistic hierarchies reproduce power structures by valorizing colonial languages and silencing indigenous ones. Within the High Court, this dynamic reinforces perceptions of law as an alien system, disconnected from the lived realities of many citizens (Okoth-Ogendo, 1991).

Moreover, the absence of indigenous languages in formal legal processes erodes the judiciary's legitimacy among marginalized groups. For justice to be seen as legitimate, it must not only be impartial but also linguistically accessible. By failing to accommodate Kenya's linguistic diversity, the judiciary risks perpetuating a form of "linguistic injustice" where the law remains an exclusive preserve of the educated elite (De Schutter, 2007).

Comparative Perspectives: Lessons from Multilingual Jurisdictions

The challenges of navigating justice in multilingual contexts are not unique to Kenya. Many countries grapple with balancing linguistic diversity, national unity, and access to justice. By examining comparative experiences, particularly from South Africa, Canada, and India, valuable lessons can be drawn for addressing Kenya's interpretation paradox.

South Africa provides a particularly instructive case, given its explicit constitutional recognition of 11 official languages. Section 6 of the 1996 Constitution enshrines the equal status of these languages and mandates the state to take practical measures to elevate the status of indigenous languages previously marginalized under apartheid (Constitution of South Africa, 1996). In judicial contexts, litigants are entitled to use their language of choice, and courts must provide interpretation when necessary (Pienaar, 2016).

Despite these constitutional commitments, implementation has been uneven. English dominates in higher courts, while indigenous languages are more commonly used in magistrates' courts. Nonetheless, South Africa's model demonstrates the symbolic and practical value of embedding linguistic pluralism into constitutional and legal frameworks. It reflects a conscious effort to affirm linguistic identity as part of substantive justice (Kaschula & Ralarala, 2004). For Kenya, the South African example illustrates both the possibilities and the challenges of moving beyond tokenistic recognition toward a genuinely multilingual judiciary.

On the other hand, Canada's legal system operates under an official bilingual framework, with English and French recognized as equal languages in federal institutions, including courts (Official Languages Act, 1985). Section 19 of the Canadian Charter of Rights and Freedoms guarantees the right to use either language in federal courts, while Section 14 of the Charter ensures the right to interpretation if a litigant cannot understand or use English or French (Charter of Rights, 1982).

Unlike Kenya, Canada has invested heavily in professional interpretation services, particularly in criminal trials, where language barriers could compromise fair trial rights (Beaulac, 2002). Moreover, the courts have consistently affirmed language rights as fundamental, not merely procedural, emphasizing that access to justice must be linguistically inclusive (R. v. Beaulac [1999] 1 S.C.R. 768).

Canada's bilingual experience highlights the importance of institutional investment in interpreter training, judicial sensitization, and enforcement of language rights. For Kenya, the lesson is that recognition of language rights must be backed by concrete measures to ensure equality in practice.

India offers another compelling comparative model due to its extraordinary linguistic diversity. With 22 official languages recognized under the Eighth Schedule of the Constitution, India has adopted a federal approach where states determine their official languages, while English and Hindi function as link languages in the judiciary (Constitution of India, 1950).

In practice, High Courts and the Supreme Court primarily use English, though some state High Courts allow the use of regional languages in proceedings (Annamalai, 2004). Interpretation is widely provided to accommodate litigants who do not understand English or Hindi, although challenges of quality and availability remain (Agnihotri, 2007).

India's experience demonstrates both the pragmatic necessity of a lingua franca in complex legal systems and the tensions of linguistic exclusion. While English continues to dominate, the federal framework provides some space for linguistic pluralism at regional levels. For Kenya, India underscores the possibility of adopting a layered approach, where Kiswahili could serve as a unifying lingua franca while indigenous languages are supported through interpretation services in localized courts.

Broader Comparative Insights

A comparative analysis of multilingual legal systems reveals several lessons that are highly relevant to Kenya's struggle with the interpretation paradox. The first insight is that symbolic recognition of language rights is insufficient in the absence of practical implementation mechanisms. South Africa, for instance, enshrines eleven official languages in its 1996 Constitution, positioning multilingualism as a cornerstone of democratic inclusion (South Africa Constitution, 1996). However, despite this progressive framework, English continues to dominate judicial proceedings, while indigenous languages remain largely excluded from courtroom practice (Madonsela, 2017). This gap between constitutional ideal and judicial reality demonstrates that symbolic commitments alone cannot dismantle entrenched linguistic hierarchies.

The second lesson is that institutional investment is critical to the effectiveness of interpretation services. Canada offers a compelling example through its recognition of both English and French as official languages under the *Official Languages Act* of 1969. This recognition is not merely rhetorical but backed by significant state investment in professional training, accreditation, and deployment of interpreters across courts (May, 2012). As a result, litigants can meaningfully participate in proceedings in either language, enhancing the credibility of justice delivery. This experience underscores the fact that linguistic rights require tangible resourcing—through professionalization, continuous training, and financial support, if they are to move beyond aspiration.

A third insight emerges from India, where pluralism in legal contexts requires a careful balance between efficiency and inclusivity. The Indian judiciary primarily operates in English and Hindi, yet it formally recognizes more than twenty scheduled languages. To manage this complexity, courts allow the use of regional languages in lower jurisdictions while reserving English for higher courts, thereby achieving a compromise between linguistic inclusivity and administrative efficiency (Mohanty, 2010). This model illustrates how multilingual systems must be carefully structured to avoid overwhelming the judiciary while still ensuring that linguistic minorities are not excluded.

Taken together, these comparative experiences highlight that Kenya's interpretation paradox cannot be reduced to a logistical or administrative problem. Rather, it reflects deeper questions of justice, dignity, and equality in a multilingual society. Addressing it will therefore require more than increasing the number of interpreters; it demands a cultural shift within the judiciary that recognizes language not merely as a tool of communication but as a core component of human rights and democratic participation. Only by embedding multilingualism structurally and normatively can Kenya's courts move toward a more inclusive and transformative jurisprudence.

Human Rights and Access to Justice

Access to justice is widely acknowledged as a cornerstone of democratic governance and the rule of law. It is not only about the availability of courts but about ensuring that individuals can meaningfully participate in legal processes without linguistic, cultural, or socio-economic barriers. Within the Kenyan context, the question of language rights in judicial proceedings brings into sharp relief the extent to which human rights principles are being realized or undermined in practice. The promise of justice becomes hollow where litigants cannot fully comprehend the charges against them,

cannot follow proceedings, or cannot respond adequately because of language exclusion.

From an international perspective, the principle of access to justice is firmly embedded in human rights law. Article 10 of the Universal Declaration of Human Rights (UDHR) provides that everyone is entitled, in full equality, to a fair and public hearing by an independent and impartial tribunal. The International Covenant on Civil and Political Rights (ICCPR) further expands this guarantee, stating under Article 14(3) that any accused person has the right to be informed "promptly and in detail in a language which he understands" of the nature and cause of the charge, and to have free assistance of an interpreter if they cannot understand the language used in court (United Nations, 1966). These provisions make clear that justice is not truly accessible unless it is linguistically inclusive. Kenya, as a signatory to the ICCPR, bears a binding obligation to align its judicial practices with this principle. Yet, in practice, litigants in Kenya's High Court often encounter inadequate interpretation, raising the question of whether the state is meeting its international commitments (Muigua, 2021).

Regionally, the African Charter on Human and Peoples' Rights (ACHPR) guarantees, in Article 7, the right to a fair trial and equality before the law (African Union, 1981). While the Charter does not explicitly refer to language, the African Commission has interpreted access to justice broadly, encompassing both procedural and substantive fairness, which necessarily includes the ability of litigants to understand and participate in proceedings (Viljoen, 2012). The Protocol establishing the African Court on Human and Peoples' Rights provides further avenues for redress, though in practice, few litigants in Kenya can access such mechanisms. What is significant, however, is that the African human rights system recognizes that linguistic exclusion in legal processes constitutes a form of discrimination and therefore undermines the universality of justice.

The interpretation paradox in Kenya highlights the tension between formal guarantees of fairness and the structural inequalities produced by language hierarchies. By privileging English and, to a lesser extent, Kiswahili as the dominant languages of legal discourse, the judiciary reproduces colonial legacies of linguistic dominance (Mbori, 2019). Indigenous languages, despite being mother tongues for the majority of Kenyans, remain largely invisible in courtroom practice. This linguistic exclusion maps onto broader social inequalities, since speakers of indigenous languages are often drawn from rural or marginalized communities with less access to education and fewer economic resources. As Cheeseman, Lynch, and Willis (2020) observe, linguistic barriers in governance processes tend to reinforce pre-existing inequalities of power, ensuring that access to justice is stratified along class and ethnic lines.

Beyond the practical obstacles, the absence of effective interpretation raises profound human rights concerns. The Convention on the Elimination of All Forms of Racial Discrimination (CERD) obliges states to guarantee equal treatment before tribunals without distinction based on race, ethnicity, or language (United Nations, 1965). In Kenya, however, the failure to provide accurate and professional interpretation effectively discriminates against those who are unable to access dominant languages, thus violating both domestic and international obligations. Skutnabb-Kangas and Phillipson (2017) have argued that linguistic exclusion should be recognized as a form of structural violence, since it denies individuals equal dignity and agency within legal processes.

Interpretation, therefore, is not merely a procedural safeguard but a fundamental human rights imperative. González (2020) emphasizes that interpreters function as guardians of justice, since they mediate the very terms in which rights are claimed, defended, and adjudicated. When interpretation is poor, inaccurate, or absent, the legitimacy of legal proceedings is compromised, and the risk of miscarriages of justice increases. This is particularly acute in criminal trials, where a mistranslation of testimony or evidence can mean the difference between acquittal and wrongful conviction. In such cases, language is not a neutral medium but a determinant of life, liberty, and dignity.

For Kenya to address this interpretation paradox, a human rights-based approach is essential. This means recognizing that linguistic accessibility is not an optional courtesy but an enforceable right. It requires systemic investment in the training and accreditation of professional interpreters, institutional mechanisms to monitor the quality of interpretation, and a cultural shift within the judiciary to treat language rights as integral to fair trial guarantees. The UN Human Rights Council (2017) has highlighted that linguistic barriers represent structural obstacles to justice, especially for vulnerable groups, and that states must take proactive measures to dismantle them. For Kenya, this translates into embedding language rights into the daily practice of its High Court, ensuring that litigants are not alienated from the very institution designed to protect their rights.

In sum, the human rights framework makes clear that access to justice cannot be separated from questions of language. The interpretation paradox in Kenya's High Court is not simply a logistical failure of service delivery but a deeper reflection of structural inequalities that undermine the principle of equality before the law. Bridging this gap requires moving beyond symbolic constitutional guarantees toward a transformative practice that affirms multilingualism as central to justice.

Challenges in Kenya's High Court

Despite constitutional guarantees and human rights commitments, the High Court of Kenya continues to face serious challenges in providing equitable interpretation services. These challenges are multidimensional, ranging from structural limitations and resource constraints to deeply entrenched historical and sociolinguistic hierarchies. Together, they illustrate how the promise of linguistic inclusivity in legal proceedings remains more symbolic than substantive.

One of the most pressing challenges is the shortage of qualified interpreters within the judiciary. Although the Constitution requires that all parties in a trial be informed of the charges and proceedings in a language they understand, the practical implementation is undermined by a lack of trained professionals (Muigua, 2021). Court proceedings often rely on ad hoc interpreters, sometimes even drawn from court clerks or police officers, who may lack adequate linguistic or legal training. This reliance compromises both the accuracy of interpretation and the impartiality required in judicial contexts. Research by González (2020) shows that misinterpretations in legal settings can fundamentally distort testimonies, affect credibility assessments, and, in extreme cases, lead to miscarriages of justice. The Kenyan situation reflects this risk, particularly in criminal trials involving speakers of marginalized indigenous languages.

Another challenge lies in the dominance of English and Kiswahili as the languages of legal discourse. While these languages are officially recognized under Article 7 of the Constitution, their status has entrenched a linguistic hierarchy that sidelines the majority of Kenya's indigenous languages. As Mbori (2019) notes, this hierarchy is a colonial legacy, where English, in particular, was institutionalized as the language of law, governance, and education. Even after independence, courts have continued to treat indigenous languages as peripheral, relevant only when translation is absolutely necessary. This marginalization creates systemic disadvantages for individuals who cannot communicate effectively in English or Kiswahili, thereby perpetuating social inequalities in the legal sphere.

The quality and consistency of interpretation also remain major obstacles. Studies have documented cases in which interpreters in Kenyan courts fail to capture the nuances of testimony, particularly when dealing with idiomatic or culturally embedded expressions (Obiero, 2010). Such deficiencies are not merely linguistic but epistemic, as they reflect the inability of the judicial system to accommodate diverse cultural frameworks of meaning. When testimony is reduced or distorted in translation, litigants from marginalized communities are denied the opportunity to fully articulate their experiences, thereby weakening their ability to secure justice.

Furthermore, institutional neglect exacerbates the interpretation paradox. Unlike judges or advocates, interpreters occupy a low status within the judicial hierarchy, often poorly paid, inadequately supervised, and excluded from professional development opportunities (Wandera, 2018). This lack of recognition has discouraged the development of interpretation as a professionalized field within Kenya. The judiciary has not invested sufficiently in interpreter training programs or accreditation mechanisms, resulting in significant variation in standards of practice across courts. Without systemic reforms, interpretation remains treated as a logistical necessity rather than a cornerstone of justice delivery.

A related challenge is the lack of technological integration in interpretation services. While some jurisdictions globally are experimenting with digital translation tools, remote interpreting platforms, and multilingual court transcription systems, Kenya's courts continue to operate with outdated manual practices. According to the Judiciary of Kenya (2020), the slow pace of technological adoption in judicial processes has constrained efforts to improve accessibility and efficiency. The COVID-19 pandemic revealed both the possibilities and the limitations of virtual hearings, yet language accessibility was largely overlooked in the transition, highlighting the judiciary's narrow conceptualization of access to justice.

Finally, the sociopolitical context compounds these challenges. Linguistic exclusion in the courts reflects broader societal inequalities in Kenya, where language proficiency is closely tied to education, class, and geography. Speakers of minority languages, often from marginalized rural areas, not only face linguistic barriers but also broader structural disadvantages that limit their ability to navigate complex legal systems (Cheeseman, Lynch, & Willis, 2020). For such communities, the court system often appears alien, intimidating, and inaccessible, reinforcing their mistrust of state institutions. This alienation undermines the judiciary's legitimacy and risks entrenching patterns of exclusion that run counter to the principles of justice enshrined in the Constitution.

In sum, the challenges facing Kenya's High Court in addressing the interpretation paradox are both practical and structural. They reflect resource shortages, institutional neglect, and entrenched language hierarchies that collectively compromise the right to a fair trial. Addressing these challenges requires more than piecemeal solutions; it demands a reconceptualization of interpretation as central to the delivery of justice and the equal participation of all citizens in the legal process.

CONCLUSION

The interpretation paradox in Kenya's High Court highlights the persistent disjuncture between constitutional guarantees of fair trial rights and the lived realities of litigants navigating a multilingual legal system. While Article 50 of the 2010 Constitution affirms the right to interpretation and Article 7 acknowledges the importance of indigenous languages, the practical delivery of these rights remains inconsistent and often inadequate. The dominance of English and Kiswahili entrenches linguistic hierarchies that marginalize speakers of indigenous languages, thereby undermining substantive equality before the law.

This paper has shown that language is not a neutral medium of communication but a site of power that can either facilitate or obstruct justice. Comparative jurisprudence and international human rights frameworks—including Article 14(3) of the ICCPR and the African Charter on Human and Peoples' Rights—underscore interpretation as a non-derogable right tied to dignity, participation, and fairness (United Nations, 1966; African Union, 1981). Kenya's failure to consistently operationalize this right reflects not only administrative gaps but also broader structural inequalities that must be urgently addressed.

To overcome these challenges, the study has recommended a multidimensional approach. Professionalizing court interpretation through structured training and accreditation would ensure consistency and credibility. Institutional investment in interpreters across High Courts would guarantee coverage for indigenous languages, while embracing technological innovations could mitigate resource constraints. Beyond structural measures, embedding linguistic justice into judicial culture and involving multiple stakeholders, including communities themselves, remains critical. Without such systemic transformation, interpretation risks remaining a symbolic safeguard rather than a substantive guarantee.

Ultimately, the Kenyan judiciary stands at a crossroads. By confronting the interpretation paradox head-on, it has the opportunity to transform its jurisprudence into one that affirms multilingualism not as a barrier but as a resource in the pursuit of justice. In so doing, Kenya can position itself as a regional leader in integrating language rights into judicial practice, thereby aligning with both its constitutional aspirations and its international obligations. Addressing the interpretation paradox is therefore not only about rectifying administrative inefficiencies; it is about reimagining justice as inclusive, participatory, and reflective of Kenya's plural identities.

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