

Pragmatic Functions of Selected Nigerian Supreme Court Judgements on Criminal Cases

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Abstract

The understanding of the judges' utterances plays a crucial role in achieving communicative goals in court judgements, including Nigerian Supreme Court judgements. Existing linguistic studies on court judgements approached them using narrative analysis, critical discourse analysis, stylistic analysis and the investigation of their grammatical features. However, scant attention has been paid to pragmatic functions of judges' utterances in Supreme Court judgements. Therefore, this study considers the pragmatic functions of judges' utterances in Nigerian Supreme Court judgements. John Austin's Speech Act Theory, coupled with Srikant Sarangi's Discourse types, serve as the theoretical framework. The data for this research are 2020 and 2021 Supreme Court judgements on criminal cases selected from Law Pavilion Electronic Law Reports. The years were purposively selected because of the significant expansion of the bench from 12 justices to 20 justices during the period, while the criminal cases were purposively selected because of their grave social implications in Nigerian society. It was discovered that the judges' utterances are sites of layered illocutionary and discursive work. Judicial narratives do more than report events: they assert, state, disapprove and declare. It was also found that only institutional actors enabled by institutional procedures control shifts between discourse types. Thus, through the examination of the pragmatic functions of the utterances in Nigerian Supreme Court judgements, communicative goals are achieved.

Keywords: courtroom discourse, pragmatics of court judgements, judges' utterances, speech acts in legal discourse

Introduction

Legal language is largely manifested in court judgments. They are not merely informative but have huge implications for individuals and the growth and development of societies. Also, judges rely on linguistic interpretation to understand legislation; they prepare and pass judgments by using language. This, therefore, makes the linguistic study of court judgements crucial in a dynamic society. Most linguistic studies on courtroom discourse focused on areas such as narrative analysis, critical discourse analysis, stylistic analysis and grammatical features. These are evident in Smejkalova (2011), Richard and Nwizug (2017), Emenike and Ogoanah (2022) and Daniel (2024), respectively, among others. These approaches are employed to uncover the meaning embedded in court judgements. In spite of the available studies, court judgements remain understudied because of the continual amendments of laws governing society, which directly affect judicial decisions. Court judgments are still perceived as legal documents that are too complex to be understood.

Consequently, communicative goals are defeated, and judges' utterances are misconstrued. Makodia (2007, p.3) observes the knotty nature of legal discourse when he said: "legal discourse seems to have failed in communicating thoughts with the common men and women. Legal discourse is known for its obscurity, ambiguity and complexity". No study known to the researcher has thoroughly investigated the pragmatic functions of Supreme Court judges' utterances using a theoretical perspective of John Austin's (1962) speech act theory synchronised with Srikant Sarangi's (2000). Therefore, this study sets out to determine the acts performed in the utterances of the Supreme Court judge and identify the discourse type within which the acts are performed. Through this linguistic investigation, the Supreme Court judges' utterances are demystified.

Literature Review

Smejkalova (2011) examines the use of storytelling in the courtroom. The judgment of a Czech court is examined using narrative analysis and thus brings to the fore the issues of narrative differentiation. He posits that legal rules set the pedestal for storytelling. Smejkalova (2011) considered one Czech court judgement, which could not represent all Czech judgements. He further concentrated on the narrative aspect of the judgement, thus excluding other aspects of the judgement. Away from Smejkalova's (2011) focus, Susanto (2016) examines the interaction between a judge and a defendant in a Chinese criminal trial. He focuses on the language of law as object, process and instrument. He argues that judges use language in directing, instructing and ruling. Interestingly, his concentration was on a criminal trial in a trial court, but he did not address the criminal case at the highest court in China. Richard and Nwizug (2017) use Critical Discourse Analysis in analysing specific courtroom proceedings in Nigeria with the aim of exposing how inequality, dominance, power and control play out. Supreme Court Quarterly Report 1990 audio recordings and observation of High Court proceedings constitute the data. Richard and Nwizug (2017) reveal that power is unequally distributed in the courtroom. Richard and Nwizug (2017) were able to highlight power differentiation using the Critical Discourse Analysis approach. Daniel (2021) focuses on substance-based judgements of Nigerian Supreme Court lead judges. The Generic Structure Potential and the transitivity system were applied in the study. Nine obligatory micro elements and four micro elements were found and were projected through major and minor process clauses. Chinwe and Obobolo (2022) employ a systemic functional approach in the examination of Federal and Supreme Court judgements on Dr Orji Uzo Kalu's indictment in a criminal case of corruption and money laundering. They examined transitivity choices as well as

patterns of language in relation to power. With the use of Halliday's (1994) Systemic Functional Linguistics as their theoretical base, it was discovered that the court judges mostly use the verbal process in commanding, asking or stating. Emenike and Ogoanah (2022) investigate the move-structure of Nigerian appellate court judgements. The English for Specific Purpose (ESP) genre theory serves as the theoretical framework. The study identified six move-structures which can aid the understanding of the composition and the interpretation of appellate court judgements. They are identifying the case, stating the case history, arguing the case, deriving ratio decidendi, pronouncing the judgement and validating the judgement. Alkabiri (2024) delves into the argumentation strategies employed in the courtroom with a focus on Nelson Mandela's trial in 1964 and Bill Clinton's trial in 1998. This is achieved by highlighting the linguistic elements targeting the persuasion of the conversationalists in the discourse. He discovers that lawyers and litigants use a wide range of argumentation strategies to influence their recipients in order to convince the court of their arguments. Alkabiri (2024) dwelt on the use of argumentation strategies at the trial court without accounting for the functions of the judges' utterances. Daniel (2024) considers that complement clauses in Nigerian Supreme Court lead judgements by employing Du Bois' stance triangle model. The frequency, form and stance functions of that-complement clauses are examined. It is discovered that that-complement clauses are mainly verb-based and they indicate epistemic and few alignment stances. While Daniel (2024) focused on the syntactic elements in Supreme Court judgements, little attention was paid to the pragmatic implications of the Supreme Court judgements.

The Supreme Court in Nigeria

The Supreme Court is the apex/highest court in Nigeria. It is a court of finality. There is no further appeal from this court. The chart below shows the organogram /hierarchy of the court system in Nigeria.

Supreme Court



Court of Appeal



High Court (Federal & state/ Sharia/ customary Court of Appeal)



Magistrate court/customary/ sharia court

The above underscores the place of the Nigerian Supreme Court. The Nigerian Supreme Court is a model to other lower courts in Nigeria. It occupies an enviable position in Nigeria's justice system. In addition, the summary of all court decisions made on a case (from the first court that sat on the matter to the Court of Appeal) is often replicated in a Supreme Court judgement. This gives us a good grasp of what is obtainable in the lower courts. Therefore, the linguistic exploration of Nigerian Supreme Court judgements avails the researcher the opportunity to investigate the court system in Nigeria.

Theoretical Framework

John Austin's (1962) Speech Act Theory, complemented by Srikant Sarangi's (2000) Discourse Types, constitutes the theoretical framework for this study.

Speech Act Theory

John Austin's (1962) speech act theory was explained in his book, *How to Do Things with Words*. He opined that we do things with words, and they are not just for describing the world. Austin's theory was based on three notions: performativity, the three aspects of every speech act and felicity conditions. Performativity involves the bringing into existence of something. There is a performance of action when expressions are uttered under the right conditions. For instance, the expression "I now pronounce you husband and wife" brings a marriage union into existence when uttered under the right conditions. The right condition means the statement must be said by a priest or a judge. Second, for Austin (1962), in every speech, the locutionary act, illocutionary act and the perlocutionary act are performed. The locutionary act is the act of saying, which is realised in the literal words that we say. The illocutionary act is the intended meaning behind the saying of the words, while the perlocutionary act is the effect of the saying on the hearer. The felicity conditions are the right conditions that must be met for performatives to work. When the conditions are not met, it becomes infelicitous. Thus, John Austin posits that every utterance has words (locution), intention (illocution) and effect (perlocution). Marina Sbisa pushed the frontiers of John Austin's speech act theory. Marina Sbisa's approach to John Austin's speech act theory was adopted for the study. Marina Sbisa, a former student of John Austin, gives a robust idea of Austin's speech act within a social context situation. Sbisa (1984) introduced "illocutionary effect" as the change in the social state when a speech act is performed and recognised. She argued that speech acts have social implications. John Austin perceived the manifestation of speech acts

in a single utterance, while Marina Sbisa considers the manifestation of speech acts within the wider social context. She describes them as social acts. For instance, the statement “I divorce you” does not merely perform the act of divorcing. The utterance creates new social and legal identities for the parties involved, and its force is dependent on how the institution recognises it.

Sbisa opines that an utterance cannot occur in isolation; it must be uttered in an appropriate circumstance. This is what Oishi (2006) calls a speech act situation. Context in speech act theory “is a cluster of actual state of affairs or events of various kinds, related to the issuing of an utterance and to its intended force” Sbisa (2002 p.422). In other words, modified Sbisa modified the speech act theory to be applicable to real-life situations because speakers and hearers live in a society.

Furthermore, Sbisa’s (2002, 2006, & 2013) work improves on John Austin’s concept of performative utterances. The first is how performative utterances manifest. They manifest through the use of performative verbs that are related to the utterances. For example, the utterance “I divorce you” has a performative verb of divorce in which the action is performed as at the time it is uttered. Second, how the illocutionary force of speech acts is projected when there are no explicit performatives. The linguistic and non-linguistic indicators, such as the intonation, adverbial connectives, mood, modal verbs and the environment, point to the act that is performed. The inexplicit ways are expressed through the linguistic indicators and non-linguistic indicators, while the explicit ways are expressed through the use of the performative verbs. Consequently, Sbisa’s approach to speech theory will help in identifying the performative verbs and their illocutionary force in the judges’ utterances, thereby projecting the acts that are performed and their social implications.

Discourse Types

Discourse types developed by Srikant Sarangi are a theoretical concept that is institution-based. It focuses on talk forms in activities which are goal-driven. It also concentrates on specific acts that are performed in activities. Discourse types (DT) perform a complementary role to Levinson’s activity type (AT) Odebunmi (2010). AT provides “large contextual background” for participants in an activity while DTs “relate to talk forms that are goal-driven” Odebunmi (2010, p.13). According to Sarangi (2000, p.11) DTs are:

specific manifestation of language form in their interactional contexts (e.g from utterance types such as how are you? What are we doing here? to the sequential organisation of

questions and answers as in a cross-examination, to stylistic features as in a promotional talk.

Therefore, DTs are language depictions in various contexts of interaction. Sarangi further makes a distinction between activity type and discourse type:

While activity type is a means of characterising settings (e.g, a medical consultation, a service encounter, a university seminar), discourse type is a way of characterising forms of talk (e.g medical history taking, promotional talk, interrogation, troubles telling, etc.)

It can be deduced that activity type accounts for the wide contextual background that aids the interpretation of DTs, while DT is a means of addressing talk forms. In other words, activity type provides the template for interpreting talk forms. “DTs thus refer to specific acts performed in ATs such as advice (DT) in counselling (AT), questioning (DT) in interview (AT), and presentation (DT) in seminar (AT)” Odebunmi (2010, p.13). For this study, Sarangi’s discourse types will account for the talk forms realised to achieve the goal of justice when the activity type of delivering the Supreme Court judgement is ongoing.

Methodology

The study adopts a qualitative approach. The qualitative approach enables us to look into the data and describe its features and their implications in relation to the objective of the study. Supreme Court judgements could either focus on criminal cases or civil cases. The focus of the study is on the judgments that concentrate on criminal matters because of their grave social implications in Nigerian society. The purposive sampling technique was adopted. 2020 and 2021 were purposively selected because of the significant expansion of the bench from 12 justices to 20 justices. This brought the Supreme Court to its highest capacity during this period. Therefore, seven Supreme Court judgements are selected from the years 2020 and 2021, respectively, making a total of 14 Supreme Court judgements. The Supreme Court judgements were extracted from *Law Pavilion Electronic Law Reports* (LPELR). The *Law Pavilion Electronic Law Reports* were preferred to other law reports because of its reliability, easy accessibility and its recognition by Nigerian Bar Association. The top-down method of analysis was used in the study.

Analysis

Judgments delivered at the Supreme Court in Nigeria are found to perform certain pragmatic functions, which are the reporting act and the pronouncing act.

Reporting Act

The reporting act is performed when the judge gives a report of a case from the trial court to the Court of Appeal. This is usually presented initially in a judgment before the Supreme Court judge evaluates the case based on its merits. In other words, the reporting act usually precedes the pronouncing act. It serves as a basis for the judge to make the pronouncement which will lead to the dismissal or the allowance of the appeal. The reporting act is further divided into the following micro acts: the informing act and narrating act.

Informing Act

Informing act is performed when the judge informs us of what has transpired in the lower courts, such as the magistrate court, high court and the Court of Appeal. We are informed about the procedures followed in the course of hearing the matter, the facts of the case, the positions and arguments of the lower court judges, as well as their verdicts. The informing act is performed to acquaint us with the genesis of the case. It serves as an introduction to a judgment. This is seen in the following excerpt.

Excerpt 1

On 26/3/2012, the respondent sought to arraign the appellant and four others before the High Court of Anambra State, Awka Judicial Division, on a two-count charge of conspiracy to commit murder and attempted murder. Although the charges were read and interpreted to them, they declined to plead thereto on the ground that they had a pending motion challenging the competence of the charge.

Igwe v State (2021)

The above excerpt embodies the information on the commencement of the arraignment of the appellant and four others. They were arraigned before the High Court of Anambra State on a two-count charge of conspiracy to commit murder and attempted murder. However, they declined to plead on the ground that they had a pending motion challenging the charges against them. This

marks the beginning of the case, upon which other matters are built. The respondent attempted to arraign the appellant, but it was not successful. The illocutionary force is operational in the use of the word “arraign” but could not be sustained because of its perlocutionary effect on the appellant. It was a misfire because the appellant refused uptake by declining plea. The appellant argued that there was a pending motion enabled by institutional provisions. The prosecution declared the beginning of the trial, but the appellant counter-declared. It results in the social reality of the procedural context. There is an apparent discourse type shift from a plea-taking to that of a preliminary objection.

Excerpt 2

The appellant, as second defendant, and two other defendants were arraigned before the Lagos State High Court on a two-count charge of conspiracy to commit robbery and robbery. They were alleged to have used a toy gun to attack and rob a motorcycle rider and his passenger and dispossessed them of the sum of N500 and N1500.00 respectively. *Femi Ayoade v. The State (2020)*

The excerpts report speech acts that happened in the State High Court. The appellant was charged with conspiracy to commit robbery and robbery using a toy gun to threaten and collect some amount of money from a motorcyclist and the passenger. The judge discloses this information to enable us to follow the progress of the given case. The informing act is performed to carry along the reader. The illocutionary force of arraignment was projected through the word “arraigned” as the appellant was brought before the Lagos State High Court and charged accordingly. In addition, at the Supreme Court, the alleged robber was given a legal identity as the appellant, while at the State High Court, he was referred to as the defendant. The institution determines the legal identity of the robber.

Excerpt 3

This is an appeal by the state against the judgement of the Court of Appeal, Abuja Division delivered on 17th day of March, 2016 wherein the appeal by the respondent was allowed and the judgement of the trial court, which convicted and sentenced the respondent, was set aside.

State v. Ali Ahmed (2020)

The judgment of the Court of Appeal was in favour of the respondent (Ali Ahmed), and the appellant (state) is dissatisfied with it; therefore, the appellant seeks redress at the Supreme Court. The respondent had been convicted of murder at the trial court, but the Court of Appeal set aside the judgment of the trial court and judged in favour of the respondent. This made the appellant further appeal to the Supreme Court. The informing act is performed to explicate the case of murder. The Court of Appeal made a declaration which was instantiated through the use of the performative verb “allowed”. The perlocutionary effect on the respondent was his discharge and acquittal. However, this declaration is bound by the higher judicial authority at the Supreme Court, which could affirm it or set aside the judgment of the Court of Appeal. This implies that Illocutionary effects and perlocutionary effects are determined and limited by institutional conventions.

Narrating Act

The narrating act, as a subset of the reporting act, is performed when the judge tells us about the incident that led to a crime being committed. The features of narration, such as the time, date and place of an event, are stated by using a storytelling pattern. This is done in order to give a detailed and comprehensive account, which will help in convicting or vindicating the accused. This is evident in the excerpt below:

Excerpt 4

PW1- one Ishiaku Abdulrazaq, a barber was in his barbing shop sometime in December, 2009 when the respondent came to his shop to barb his hair. The respondent then informed PW1 of an event that was disturbing his conscience. He then told PW1 that he fought with someone by the river side of old water and that he stabbed the boy with his knife. The respondent admitted that he knew the boy and PW1 agreed to follow him to the family of the boy he stabbed, to take him to the hospital for treatment but the respondent refused and left the shop that day. *State v. Ali Ahmed 2020*

Ishiaku Abdulrazaq was in his shop in December, 2009 when the respondent came to barb his hair. The respondent disclosed that he fought and stabbed a boy. The barber volunteered to follow him to the injured boy's family so that the boy can be taken to the hospital for treatment. However, the respondent rejected the offer of the barber. The place of interaction where the respondent disclosed the offence he committed is mentioned as well as the month and year that he confessed. Here is a respondent who injured another, presented through the illocutionary force of stabbing. He confesses his misdeed to the barber, igniting a perlocutionary effect of concern and offering to take the injured to the hospital. The respondent divulges his criminal act to the barber because of being pricked by his conscience.

Excerpt 5

The facts of the case which led to this appeal in brief are that on 13/8/2010 at about 9:20 pm the appellant, who at the time was resident at N. 1 Gada Street, Ogbunabali, Port Harcourt went to No. 6 of the same street to invite out his friend, one Manuchim Owuru but the latter declined on the ground that he was not feeling well.

Wowem v. State 2021

The facts of the case are presented by using the story-telling method. An interaction had ensued between two people, and the date, time and place of the interaction are stated. The information disclosed is relevant to the appeal as it informs us about the order of events, as well as enables the court to be able to situate the appeal. The story, in the long run, is evidence against the appellant who committed murder. The appellant uses the illocutionary force of inviting to urge his friend to come to his house. However, this was declined by the hearer, the friend, who responded that he was sick. The social act advocated by Sbisai was performed, but its uptake failed. The decline meant that he could not honour the invitation; he was too weak to come over and would need to take care of himself. The interaction reported in the excerpt is a lay talk which is lifted into an institutional discourse and labelled "facts of the case". It establishes the factual ground on which legal decisions would be made.

Excerpt 6

On 25/1/2014, at Kalgo Town, Kalgo Local Government of Kebbi State, a group of hunters, including the appellant and

one Mohammed Bandi, went on a hunting expedition, and a fight broke out over bush meat. Offended by what Mohammed Bandi said to him during the fight, the appellant used an axe to inflict injury on Mohammed Bandi's head.

Kalgo v. State (2021:1)

An account of what happened between the appellant and another (Mohammed Bandi) is narrated in the excerpt. The date of the incident is first stated, followed by the place of the fight. This is followed by stating what happened and the aftermath. A group of hunters had gone on a hunting expedition and there was a fight over a game that was caught. The appellant and Mohammed Bandi were among the group of hunters. Mohammed Bandi made a remark that provoked the appellant, which made the latter inflict injury on Mohammed Bandi's head. The illocutionary act is performed when Mohammed Bandi said something to the appellant, and the illocutionary effect is the creation of an offence. The social nature of people is highlighted by the group of hunters going on a hunting expedition. Individuals are social actors who perform acts which have implications in society. The appellant fought over a game and was offended by what was said to him by his fellow hunter. He thus inflicted injury on the hunter, leading to his death. Notably, the constant change in social status is depicted. It moves from being a hunter to an offended hunter and to the status of an appellant. Furthermore, the excerpt constitutes the fact of the case that later declarations can latch on to.

Pronouncing Act

Pronouncing act typifies the voice of the Supreme Court judge in the process of dismissing or allowing an appeal. After the judge has reported the ongoing proceedings in the lower courts, he delves into the case by evaluating it. The judge begins to state his view by asserting, stating, disapproving and eventually making his declaration. Pronouncing act is divided into the following micro acts: asserting act, stating act, disapproving act and the declaring act.

Asserting Act

The Supreme Court judge performs an asserting act through the expression of their position in a clear, confident and firm manner. The judge firmly discloses his view on a matter and tows a particular line of thought which eventually transcends into a conclusion. Let us hear what the judge has to say:

Excerpt 7

I am of the firm view that the lower court acted in error when it affirmed the decision of the Kaduna State High Court which in turn affirmed the decision of the Chief Magistrate's court which found the Appellant guilty of the offence of cheating.

Theophilus Kure v. COP (2020)

The opening of the excerpt with the phrase "I am of the firm view" connotes the illocutionary force framed as opinion. The judge believes that the three lower courts were wrong in their conviction of cheating. The asserting act is used to bring the judge's view to the fore. However, the judge is not just asserting but signalling the next legal move of overturning the conviction. The legal state of the appellant changes as the judge makes his assertion. The illocutionary effect is that, first, the appellant's status shifts from a convict to an appellant whose case has judicial backing for reversal. Second, the lower court's decision becomes erroneous, and the Supreme Court takes on an obligation to justify its assertion. Therefore, the excerpt portrays the first step in setting aside a conviction by reshaping legal relationships.

Excerpt 8

In this case, the appellant's action of inflicting injury on the deceased in reaction to being hit with a stick cannot be deemed proportionate to the threat he is alleged to have been faced with. *Nasiru v State 2021:33*

The judge asserts that the appellant's reaction to the deceased was not proportionate to what the deceased did to him. At the locution level, he evaluated the appellant's violent response to being hit with a stick and concluded that it was not proportionate. At the illocution level, the judge removes self-defence as a justification for the appellant's violent response. The deceased had hit him with a stick, while he retaliated by inflicting injury on the deceased with a cutlass. The deceased died as a result of the injury inflicted on him. The judge performs an asserting act based on the evaluation of proportionality.

Stating Act

The expression of the law, principles of the law, constitution, statutes, overtly or covertly, amounts to the performance of the stating act. The judge performs a stating act as a means of supporting his

stance or arguments in favour of the appellant or respondent. It is performed as a way of accentuating the merits in the appeal brought before the Supreme Court. The stating act is performed in the following excerpt involving Akpakpan and the state.

Excerpt 9

In any case, the law makes the appellant criminally responsible for any excess force applied. Section 305 of the Criminal Code Law, Cap.38, vol.2, Laws of Akwa Ibom State of Nigeria, 2000 states thus, any person authorised by law to use force is criminally responsible for any excess according to the nature and quality of the act which constitutes the excess. *Akpakpan v State 2021:31*

In other words, the appellant, who was a police officer acted excessively, and this made him criminally responsible for the death of the deceased. He had shot the deceased, who did not exercise undue confrontation to the appellant. The judge performs a stating act by stating Section 305 of the Criminal Code Law, Cap. 38, vol.2, Laws of Akwa Ibom State of Nigeria, 2000, to buttress his argument that the appellant acted out of proportion and would be penalised for it. The social or legal status of the appellant shifts from a person who used force to a person criminally responsible for excess force. It ultimately becomes the obligation of the court to ascertain whether the force was excessive.

Excerpt 10

On this matter of whether or not the appellant's right to fair hearing was complied with in keeping with the provisions of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria. Section 36(4) of the CFRN provides as follows: "whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal." *Lucky Obasi v. The State (2020:17)*

Lucky Obasi, the appellant, had contended that his matter was delayed, while the respondent argued that the appellant deliberately delayed the matter by being absent from court on several occasions. Instead of this, the judge invokes the provisions of a section of the Constitution to assert

that a fair hearing is within a stipulated time, which is to be determined by the court. The legal status of the appellant changes from being a convict to a rights-holder. The Supreme Court is now obligated to address Section 36 (4).

Excerpt 11

...the original notice of appeal was filed on the 84th day from delivery of the judgement of the court below, whereas the law prescribes 30 days for filing of a notice of appeal in a criminal matter under Section 27(2)(b) of the Supreme Court Act. *Jude Onwuzulike v. The State (2020)*

The notice of appeal ought to have been filed within the statutory period of 30 days from the date on which the Court of Appeal judgement was delivered. This is brought to the fore by performing the stated act. The judge states what the law says in Section 27 (2)(b) of the Supreme Court Act as regards the time when the notice of appeal should be filed. The judge is not just stating what is in the Supreme Court Act, but also juxtaposing the day the notice was filed to the number of days the law requires. As a result of the inappropriate timing of the filing of the original notice of appeal, which is tantamount to not following the due legal procedures, the court is obligated to address the timing and strike out the appeal irrespective of the merits of the case. Invariably, the Court of Appeal's judgement remains valid.

Disapproving Act

A disapproving act is performed when the judge disapproves of a wrongdoing done in the course of a court process, or he expresses his displeasure at an action performed by a legal officer. The following excerpt exemplifies it:

Excerpt 12

My lords, before I round off this judgement, permit me to make an observation about the attitude and disposition of A.A. Oladunmiye, Chief Legal Officer, Ministry of Justice, Ondo State, counsel for the respondent. His disgusting comportment in court at the hearing of this appeal was thoroughly scandalous to say the least...He half-heartedly, approached his assignment, worse still, his cavalier

proclivity for fripperies was most shocking. *Obaro v State*
2021:14

The judge comments on the attitude of the legal officer who was the legal counsel to the respondent. He castigates the legal officer and sees him as a person who did not discharge his duty as expected. He expresses his displeasure using words like “disgusting”, “scandalous” and “cavalier”. The appellant had been accused of kidnapping and murder. However, the prosecution failed to convincingly prove that the appellant committed the offences. With the judge’s disapproval, there is a social shift in the label of the counsel to the respondent to a lawyer of shameful conduct. Thus, an institutional pressure is created for the Ministry of Justice in Ondo State and Oladunmiye to respond. The judge, as a social actor in protecting the sanctity of the justice system, is depicted through the enactment of the disapproving act.

Excerpt 13

I wish to deprecate the attitude of the learned counsel for the appellant in manufacturing stories to suit the interest of his client...Learned counsel should refrain from manufacturing facts to suit the interest of his client. As a minister in the Temple of Justice, counsel should always be guided by raw facts as disclosed by the evidence before the court. To be forewarned is to be forearmed. Learned counsel should heed to this advice against the future. *Enebeli v State (2021:31,33)*

Again, the Supreme Court judge disapproves of the unethical practice of the counsel to the appellant. The use of the word “deprecate” indicates the disapproval of a behaviour. The counsel had fabricated stories on behalf of the appellant to exonerate him of the offence of murder, which he had committed. The Supreme Court judge was able to identify the discrepancies in the story told and disapproved of such practice as a way of warning and correcting the counsel. The illocutionary force of “deprecate” is employed to shift the counsel’s status from an officer of the court to an officer under warning. The expression “minister of justice” redefines what counsel is. This creates a normative obligation for lawyers. In sum, the social act of professional correction is foregrounded through the disapproval of the counsel’s unethical practice.

Declaring Act

The declaring act is performed when the judge gives the verdict. It indicates finality. The judge makes a declaration which is binding on the appellant and the respondent. The judge expressly states the position of the court in favour of the appellant or the respondent. This can be seen below.

Excerpt 14

The judgement of the trial court which convicted the respondent and sentenced him to death is restored and the judgement of the court below is set aside. Respondent acquittal and discharge order is reversed. Appeal allowed

State v Ali Ahmed 2020

Four declarative acts are performed by the judge. First, the judge brings to reinstate the sentence on the respondent as pronounced by the trial court. The performative verb “restored” indicates the performance of the act. Second, the judge makes the judgement of the court below inconsequential through the illocutionary force of setting aside the judgement. Third, the legal status of the respondent as a freeman is withdrawn through the use of the performative verb “reversed”. The new social and legal identity of the respondent is created. Fourth, the expression “appeal allowed” signals that the judgement favours the appellant, which creates immediate institutional obligations of detaining the respondent and the commencement of the execution process of the respondent.

Excerpt 15

In the present case, both the trial court and intermediate court had dutifully considered whether the defence of self-defence and accident, from the available facts, could avail the appellant in anyway, and dismissed them as unavailing. I must also dismiss the appeal. The issue is against the appellant and I hereby affirm the concurrent decisions of both the trial and lower courts. *Egheghe v State 2020:12*

The trial court and the Court of Appeal had evaluated the appellant’s defence of self-defence and concluded that it could not avail him. The judge concurs with the conclusion of the two courts, which is reflected in the use of the words “dutifully” and “also”. “Dutifully” suggests the judges at the lower courts were competent, and “also” shows his agreement to the dismissal of the appeal. Therefore, he performs the declaring act of dismissal of the appeal, which comes to reality at the time the utterance is made. In the same vein, the judge subsequently performs another declaring

act by affirming the decisions of the lower courts through the explicit use of the performative verb “affirm”.

Conclusion

The analysis of judicial writing achieves legal outcomes through a dual mechanism. Illocutionarily, it creates and alters status through declarations recognised by the institution. Discursively, it exercises power by controlling which facts are deemed relevant and how they are labelled. In addition, institutional actors control the shift in discourse types. Therefore, legal meaning is not found in facts alone but is produced at the intersection of institutional speech acts and professionally managed discourse shifts. Future studies may consider how institutional speech acts and talk forms are produced in civil cases of the Supreme Court judgements.

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