Vol. 2 No. 1 June 2024
ISSN: 2705-3342

PERSUASIVE STRATEGIES IN COURT ROOM DISCOURSE

Ndubuisi Hyginus Onyemelukwe
Department of Languages,
School of Liberal Studies,
Yaba College of Technology, Lagos, Nigeria.
Email:
hyginusndubuisi@yahoo.com ndubuisiubakaamaeze@gmail.com

Henry Demenongo Abaya
Department of English,
Faculty of Arts,
University of Jos, Jos, Nigeria.
Email: abayahenry@gmail.com

Abstract
Previous studies have identified few persuasive strategies applicable in court room discourse, albeit, without so designating them and without considering whether or not the strategies are effective. Consequently, the present study proceeds to identify many more persuasive strategies and determine their degrees of effectiveness by critically analyzing purposefully selected court cases as addressed in recent final submissions of two Lagos-based legal pundits. The theoretical framework for the study identifies and explicates court room persuasive strategies as rhetorical devices and categorizes them as being linguistic or non-linguistic (cognitive). The submissions of Lagos-based pundits are chosen for the study, because Lagos is, indisputably, the home of tough and celebrated trials in Nigeria. Again, the case is one of the rare tenancy suits won by the defendant, a tenant, and so, a matter of public interest at all times and places in Nigeria. Substantially and very effectively, the two Final addresses (FADS) analyzed in the study reflect non-linguistic persuasive markers (NLPM), but very scantily exploit linguistic persuasive markers (LPM). That is, the two addresses jointly mirror pedagogical lopsidedness against (LPM) in connection with legal training in Nigeria, Africa and beyond. Again, in varying degrees, the two FADS reflect grammatical errors and blunders. The foremost implication of these findings is that legal training programmes around the world, especially in Nigeria and Africa lack adequate linguistic input. In other words, lawyers are not sufficiently exposed to language learning as it relates to proficient Use of English. Hence, there is urgent need for legal training curricular to be overhauled. It should be overhauled such that lawyers in training will begin to be sufficiently exposed to English grammar and rhetoric. Once they are so exposed, they will begin to produce FADS that are effective and error-free, grammatically. Such FADS will of course perfectly reflect both NLPM and LPM. These persuasive markers need to be reflected in lawyers' FADS, because court room discourse is an argumentative forum which must be grammatically impeccable and rhetorical to ensure effective communication, a necessary object of every discourse.

Key words*: Persuasive strategies, Court room discourse, Final addresses, Linguistic persuasive markers, Non-linguistic persuasive markers*

Vol. 2 No. 1 June 2024
ISSN: 2705-3342

Introduction

In very simple literal terms, court room discourse refers to a 'discourse in a court room.' Discourse means language in use in line with Brown and Yule's (1984:1) definition. Discourse in a court room then refers to language as used in a court room, i.e. , language as used in the context of a trial.The context of a trial which constitutes the domain of language use further defines discourse to be both oral and written communication; conversation or constructed texts (Brown and Yule (1984: ix, 68, 70, 71). Obviously, in every court room discourse, oral and written communications occur. The former takes the form of conversation as noted by Onyemelukwe (2011), while the latter manifests as constructed texts. Whichever form it takes at any point in time, court room discourse initiates a situation of focused verbal interaction among the trial judge, the plaintiff and defendant together with the prosecuting and defending counsels. In the course of the discourse, each of the last named interlocutors makes concerted efforts to sway the anticipated verdict of the judge to his own side.

In other words, each counsel makes a most desirable attempt to win the case for his client. This attempt is made by way of convincing or persuading the judge to buy the logic of the contending counsel. Onyemelukwe and Alo (2015) affirm that persuading the judge relies, exclusively, on evidence and authority rather than sentiments. Nevertheless, preceding evidence and authority are the persuasive strategies deployed by both the prosecuting and defending counsels to establish their respective arguments before the judge. Specially, what and what constitute these persuasive strategies?

Previous studies such as Onyemelukwe and Alo (2015), Holly (2010) and Quiroga-Clare (2010), Smith (1995), Alo (1998) and Mellinkof (1963) have identified some persuasive strategies applicable in court room discourse, albeit, without so designating them and without considering whether or not the strategies are effective. Consequently, this present study proceeds to identify many more persuasive strategies and determine their degree of effectiveness by critically analyzing a purposefully selected live case as addressed in recent final submissions of two experienced Lagos-based legal pundits. The submissions of Lagos-based pundits are chosen for the study, because Lagos is, indisputably, the home of tough and celebrated trials.

2.0 Theoretical Framework: Court Room Persuasive Strategies as Rhetorical Devices

Generally speaking, persuasive strategies refer to those linguistic devices exploited by an interlocutor for the purpose of persuasion. Persuasion is synonymous with conviction. Hence, it means prompting one's fellow interlocutor or discourse participant to adopt an advanced point of view on a given issue. Persuasion is objectified in discourse on the justification that the proposed viewpoint is mutually beneficial to both the proposer and his co-interactant (May, 2008:1). The ability of a discourse participant to achieve persuasion in an argumentative discourse as obtainable in a court room and elsewhere is a function of several variables. Broadly classified, these variables are either linguistic or non-linguistic. Subsection 2.2 dwells on the non-linguistic category of the variables. So subsection 2.1, below, proceeds to expatiate on the linguistic category.

2.1 Linguistic Markers of Persuasive Discourse

In linguistic terms, persuasive strategies are purely rhetorical. In other words, they derive from rhetorical devices. Rhetorical devices as defined by Onyemelukwe (2011:94) are those linguistic resources that go with effect and beauty of expression. Hence, linguistic persuasive strategies achieve persuasion, relying on the inherent effectiveness of the rhetorical devices that yield them. Rhetorical devices are inherently effective in that they enhance graphic description and articulation of ideas for profound insights. It is note-worthy to also state that the beauty of expression that accompanies the devices step up their effectiveness to guarantee persuasion. Beauty of expression is a function of the colour which its yielding rhetorical devices add to an interlocutor's utterances. That is, rhetorical devices, whether linguistic or traditional, elevate interlocutors' expressions by deepening their meanings to make them generally connotative.

Vol. 2 No. 1 June 2024
ISSN: 2705-3342

It follows from the foregoing that linguistic court room persuasive strategies should and must reflect the use by court room discourse participants of the following:

a. connotative expressions
b. emotive ejaculations in form of phrases or clauses
c. repetition of ideas for emphatic purpose
d. rhetorical questions
e. direct statements: those that directly identify with the addressee Cf. Alo (1998:125)
f. parallelism
g. agentive and appositive syntax
h. topicalization and nominalization

Consequently, court room discourse participants – lawyers and judges – are expected to internalize sound knowledge of rhetorical devices in all its ramifications. In fact, expert knowledge of the devices is imperative for court room discourse participants, if they objectify persuasion in written communications. Expert knowledge is indispensable to them, because no written communication can be effective (persuasive) without rhetorical devices in line with Onyemelukwe's (2011:95) postulation which relies on Harris'(2008:2) assertion to explain that in every text rhetorical devices are next in importance to an appropriate and clear thesis, sufficient supporting arguments as well as logical progressive arrangement of ideas.

No prosecuting or defending counsel would ever win a case without effective use of rhetorical devices in every necessary oral and written communication relating to the case. That is, the degree of effectiveness of a counsel's rhetoric in court room discourse largely determines whether or not the counsel wins or loses the case. This assertion is valid on the assumption that the counsel has ensured a thorough homework, has the facts of the case with relevant evidences and violates no legal technicality.

Court room persuasive strategies, as expounded so far, are capable of enhancing the winning of a case, because the rhetorical devices that yield them make striking impressions on the mind of the trial judge. For instance, connotative expressions, which in this study refer to all figurative and idiomatic expressions, create mental images in the mind of the judge that can effectively capture his sensibility in favour of a counsel. The counsel in question must, howbeit, deploy the expressions with impeccable contextualization. Similarly, rhetorical questions, if appropriately managed, raise very salient issues which the judge would, otherwise, have neglected to the detriment of a litigant. Invariably, emotive ejaculations tickle the pathos of the judge in favour of a counsel and his client. This assertion is illustrated in the typical examples of emotive ejaculation found in Mark Anthony's speech as contained in Shakespeare's *Julius Caesar* and the placating utterance of the town clerk in St. Paul's sacred scriptures found in Christian Holy Writ (Acts 19:35-41).

2.2 Non-Linguistic Persuasive Markers of Court Room Discourse

In 2.0 above, reference is made to non-linguistic variables that also determine the ability of a speaker to achieve persuasion in an argumentative discourse. In this study, the variablesare designatedasnon-linguistic persuasive markers of court room discourse, otherwise referred to as non-linguistic persuasion markers (NLPM). NLPM, unlike linguistic persuasion markers (LPM), identified and explained in subsection 2.1, are cognitive in nature. In other words, to appropriate them, court room discourse participants should and must tap from their cognitive prowess (thinking faculty or discretion). Doing so would make both their oral and written argumentations to reflect proper ideational co-ordination.

The foregoing implies that NLPM rely exclusively on the substance and sequence of court room discourse rather than its presentation or packaging which delineates the province of LPM. Hence, NLPM as largely deducible from section 2.1 include:

- an appropriate and clear thesis
- sufficient supporting arguments
- logical and progressive sequence of ideas
- analogical arguments, i.e., analogies
- aptness and technical use of language
- disambiguated expressions

For detailed explications of the above constituents of NLPM, see Harris (2008), Onyemelukwe and Alo (2015) as well as Alo

(1998). However, that the incorporation of NLPM and LPM as court room persuasive strategies underpins Onyemelukwe and Alo's (2015.) ascription of prominence to the role of evidence and authority in the context of court room discourse. Consequently, as already signaled, court room discourse participants who desire victory must always tender highly researched and authoritative oral and written communications in terms appropriate to the legal profession.

3. Data Analysis and Discussion

The data for analysis in this study are extracts from the final addresses (FADS) of the plaintiff (Mr. Cypo) and the defendant (Mr. Louise) in a tenancy suit. The suit was won by the defendant. By winning the case, the defendant was freed from being unlawfully ejected out of his duly rented apartment by the plaintiff. The suit is purposively selected for the study, because tenancy issues are always matters of the moment in Nigeria, especially in Lagos which is the geographical setting for the study. In other words, tenancy matters continually generate public interest. They are of general interest to Nigerians, because landlords in Nigeria are considered to be too money-conscious, thereby making life difficult for their tenants by the throat-cutting rents they demand. The exorbitant rents they collect upfront from tenants, some of whom are beginners in life more often than not, have negative socio-economic implications for the tenants and even for the nation at large as wealth creation is generally hampered. Again, a good number of tenants are rendered homeless as they lose out in the battle over arbitrary rent increase with their landlords. Obviously, this homelessness destabilizes the tenants, occupationally. It, therefore, becomes interesting to see as in the present suit that a tenant wins a tenancy case against a landlord.

A critical look at the FADS of both the plaintiff and the defendant reveal that the addresses reflect the NLPM and LPM expounded in the theoretical framework above. The latter is, howbeit, very scantily reflected. That the FADS scantily reflect the LPM indicates that the counsels to the litigants in the suit, like other lawyers, are certainly deficient in Use of English, generally. This assertion is highly underpinned by the position of the only lawyer interviewed in the course of this study. The barrister, who opted for anonymity, said that LPM, or rhetorical devices in conventional linguistic terms, have nothing to do with the winning and losing of a case by a counsel. According to him, winning or losing a case in court by a counsel is strictly determined by the weight and relevance of the evidence and authority accessible to the counsel.

While the barrister is not completely off the track, we deduce, that evidence and authority are fundamental but not strictly the sole prerequisites for winning a case in court, or in discourse terms, for achieving persuasion in court room discourse. A counsel as a court room discourse participant is naturally expected to meticulously articulate and present his oral and written communications in good language. In the context of this study, good language is synonymous with rhetorical language: the language that goes with beauty of expression and persuasive effect.

A counsel's oral and written discourse needs to be rhetorical, beyond reflecting relevant weighty evidence and authority, if he must secure active audience from the judge. Securing active audience from the judge is surely indispensable to a counsel, because passive audience from the judge is most likely to be detrimental to his evidence and authority, irrespective of how relevant and weighty they are. Another reason why a counsel must objectify rhetorical communication in court is that the language of the legal profession is inherently magisterial. Since the language of law is magisterial, it logically follows that the legal profession itself is magisterial. Therefore, this magisterial nature of the profession, obviously, hinges on language. Hence, the language of the profession must be rhetorical and persuasive to enable the profession retain its inbuilt magisteriality. Hence, the ability to win a case in court goes beyond the knowledge of legal principles as claimed by the barrister on behalf of his learned friends.

Consequently, a lawyer in Nigeria and other English-speaking nations, contrary to the notion avowed by the interviewee above, generally requires sound knowledge of English Linguistics, especially in connection with grammaticality and rhetoric. Grammaticality is essential, because any oral or written communication fraught with

Vol. 2 No. 1 June 2024
ISSN: 2705-3342

ungrammaticality is endemically uninteresting and even nauseating. Such a communication in court room discourse can never attract a focused audience. That is, a counsel, who turns in such a communication risks missing the crucial attention of the judge to the detriment of his case. Missing the attention of the judge is indisputably detrimental to a counsel, because the judge is the most important discourse participant in a court room.

The foregoing deduction largely explains why the plaintiff lost the case in question here. The FAD of his counsel is replete with ungrammaticality, thereby making the address too boring for the judge to read. Consider the following from the address:

a. The plaintiff further claimed the sum of N2,500.00k being ( ) arrear of rent for the month of August, 1998 and **mesne** –profit at the rate N2,500.00k per **a** month from the 1st day of September, 1998, until possession is given(-) up.
b. …through his erstwhile solicitor by a notice to guit dated the 27th day of July, 1998, and subsequently…to recover possession of his afore-said two bed flat and it's appurtenances dated( ) 1st day of September,1998.
c. ….because of seris acts of nuisance and unsavoury conducts of the defendant and his perchant of paying his rent in arrears and intermitedly.
d. The plaintiff asked the tribunal to **give** him possession because he equally need to renovate and personally use ( ) same.

Note that the highlighted or bracketed spots in the extracts above and below indicate the error incidents in the FAD. All the errors are clearly grammatical in nature, ranging from errors of omission to those of misuse of the articles, wrong punctuation and collocation. Certainly, in view of the fact that all the errors are found on the first page of the address, the plaintiff's counsel created a bad first impression of ungrammatical language use which most likely jeopardized the judge's attentive perusal of the address, especially as subsequent pages are more heavily loaded with ungrammaticality as seen below:

e. It is our further submissions that, granted exhibit "D" was served on the defendant. before the service of exhibit( ) "B" and "C", then ….
f. . . . as exhibit "B" expressly had a warning that (it) cancels all previous notices served on the defendant.
g. . . . but the notice stated it's expiration a day later, i.e. 1st June, 1967.
h. . . . having proved before this honourable tribunal to have complied with all requirement ( ) of the law….
i. See section 20(1) of the rent edict No.6 of 1967 is entitled to all his claims before this honourable court.
j. . . . and exhibit "B" is a valid statutory **guit** notice.
k. It may be pertinent to recapitulate that the defendant during cross examination clearly demonstrated his penchant for lies telling even when on oath as he in one breath informed the court he coned not pay and within a twinkle of an eye, wanted the tribunal to belief( ) he never said that….
l. Taking cognizance of the afore cited case laws, we call on the tribunal to ignore and expunch exhibit "D" from it's proceedings as it was **never** pleaded by the defendant.
m. The reason for its rather regid rule of pleading and evidence has been clearly stated in the case of ….

In terms of rhetorical language use, the plaintiff's counsel's FAD lacks merit completely. Hence, the address is quite devoid of the beauty of expression and persuasive effect that usually accompany any written communication that deploys rhetorical devices. In the light of the foregoing postulations, it is no surprise that the address failed to secure him the desired victory.

On the other hand, a close look on the FAD of the defendant's counsel discloses that the address is substantially devoid of grammatical errors. Also notable in the address is that its first page is very nearly error-free, grammatically speaking. Indisputably, the near error-free nature of the first page created a positive first impression in the mind of the judge that the counsel is a serious-minded professional. In other words, the page captured the judge's active and intensive reading propensities in favour of the counsel and subsequently prompted him to note every particular detail in the counsel's final

Vol. 2 No. 1 June 2024
ISSN: 2705-3342

submissions. In terms of LPM, the address is very largely deficient. Nevertheless, its effective, albeit non-proficient, deployment of the rhetorical question makes it a winning trump card: *Assuming without conceding that exhibit B... can the plaintiff succeed in this suit with exhibit B?*

The above rhetorical question is the only LPM in the address. It is effectively deployed, having been used to direct the attention of the judge to the evidential weakness of exhibit B. Howbeit, it is non-proficiently deployed, because the counsel proceeded to provide an answer to it even as it is absolutely unnecessary: *The answer is in the negative.*

The defendant's counsel's non-proficient use of the rhetorical question, coupled with his earlier vociferation proves indeed that lawyers generally place very little premium on LPM. This assertion is further validated by the presence of no other LPM in the address. Again, the fact that both FADS in focus contain grammatical errors, nay, grammatical blunders, since most of the errors are unpardonable, points to the linguistic deficiency of legal practitioners with reference to Grammar. Consequently, it can rightly be concluded that lawyers in training, in Nigeria at least, do not receive adequate linguistic exposure. That is, these potential legal practitioners are generally and fundamentally deficient in effective use of English. This perturbing reality is certainly indicative of critical curricular lacunae in the training programme for prospective members of the bar and it calls for urgent rectifying attention of the policy makers in charge of the legal profession in Nigeria, Africa and even beyond. With reference to LPM, it is clear that lawyers in training are insufficiently exposed, especially in relation to their applicability in court room discourse. This mind-bugling platitude explains why already trained lawyers relegate language power to the background in their daily professional enterprises, even as they do the much they do by means of language.

Obviously, unaware of the consolidating professional benefit they stand to derive from effective rhetorical and proficient language use, trained lawyers tenaciously hold unto evidence, authority and legal technicality as the only professional paraphernalia required for victorious professional outing. This unwelcome situation makes imperative, a complete and total curricular re-engineering with reference to legal training. The recommended curricular re-engineering is, indeed, imperative and urgently so since as it stands now, only NLPM are substantially reflected in lawyers' court room communications. Court room discourse should and must reflect both NLPM and LPM in the light of the explications and postulations integrated in this study. Fundamentally, it should and must be asserted here that court room discourse is an argumentative forum which must be grammatically impeccable and rhetorical to realize effective communication, a necessary object of every discourse.

4.0 Conclusion

The two FADS analyzed in this study substantially reflect NLPM, but very scantily exploit LPM. That is, the two addresses jointly mirror pedagogical lopsidedness against LPM in connection with legal training in Nigeria, Africa and beyond. Again, in varying degrees, the two FADS reflect grammatical errors and blunders. The foremost implication of these findings is that legal training programmes around the world, especially in Nigeria and Africa lack adequate linguistic input. In other words, lawyers are not sufficiently exposed to language learning as it relates to proficient Use of English. Hence, there is an urgent need for legal training curricular to be overhauled. It should be overhauled such that lawyers in training will begin to be sufficiently exposed to English grammar and rhetoric. Once they are so exposed, they will begin to produce FADS that are effective and error-free, grammatically. Such FADS will of course perfectly reflect both NLPM and LPM. These persuasive markers need to be reflected in lawyers' FADS, because court room discourse is an argumentative forum which must be grammatically impeccable and rhetorically apt to realize effective communication, a necessary object of every discourse.

References

Alo, M. A. (1998) *Style in Language and Communication.* Port Harcourt: Aeddy Link.

Vol. 2 No. 1 June 2024
ISSN: 2705-3342

Brown, G. & Yule, G. (1984) *Discourse Analysis.* Cambridge: Cambridge University Press.

Christian Holy Writ: *Acts of the Apostles* Chap.19:35-41.

Harris, R. A. (2008). *A Hand book of Rhetorical Devices.* Potsdam, Germany: NELS.

Holly, M. (2010). *Awareness of the Language of the Law and the Preservation of Register in the Training of Legal Translators and Interpreters*: Online.

May,L. (2008). *Ten Persuasive Writing Techniques:* An online publication.

Mellinkoff, D. (1963). *The Language of the Law*, Boston, Little, Brown & Co.

Onyemelukwe, N. H. (2011). A Critical Discourse Analysis of Ideology and Meaning in Selected Novels of Chinua Achebe: An M.Phil. Project, Department of English, University of Ibadan

Onyemelukwe, N. H. & Alo, M. A. (2015). Aptness and Ambiguity in the Language of Law, *American Journal of Linguistics*: online.

Quiroga-Clare, C. (2010). *Language Ambiguity: A Curse and a Blessing.* Online: E-mail: cecilia89@comcast.net