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Comprehensibility of Legal Language: A Case Study of the Supreme Court Finance Act 2023 Ruling in Kenya

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Abstract

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In recent years, public interest in the understanding of judgments and rulings pronounced by courts has been on the rise. On the other hand, complicated legal expressions have long been a subject for complaints, as they impede access to justice, and worse still, access to information by ordinary people. It is in this context that an attempt has been made by this study to assess the comprehensibility of the legal language used in the Supreme Court of Kenya's Ruling on the Finance Act 2023. This study sought to assess the readability of the said Ruling using the Flesch Reading Ease Score, identified linguistic features contributing to making the ruling complex and proposed some recommendations for simplifying legal language without compromising its accuracy. This study was guided by Cognitive Load Theory and Plain Language Theory. According to the Cognitive Load Theory, comprehension is hampered when the intrinsic and extraneous loads become too heavy. On the other hand, the Plain Language Theory proposes clarity and simplicity with a view

to making writings accessible to all classes of readers. The study utilized both qualitative and quantitative research designs. The qualitative analysis embedded some linguistic features that included long sentences and technical legal terminologies. Quantitative analysis applied a number of readability metrics to five sample extracts from the judgment to provide empirical evidence of the challenge. Data collection involved clause-by-clause textual analysis of the ruling; results were cross-referenced against established readability indices for accuracy. The results were that the sentence structure in the judgment was very long and complex; there were even three clauses in one sentence at times. They also involved some very technical legal terms. These factors contributed to very low readability scores. The Flesch Reading Ease Scores, for example, ranged between -125.18 to -1.56. The scores demonstrated that lay audience would find the text difficult to understand. Finally, the study made some recommendations, including simplifying sentence structures, using plain language and defining technical and foreign terms. These recommendations, if effected, will reduce the complexity of legal language making such texts more comprehensible.

Keywords: *legal language, comprehensibility, Kenya Supreme Court, Finance Act 2023.*

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Introduction

Legal language is perceived as complex and very complicated often preventing the lay public from understanding critical judicial decisions (Tiersma, 1999). Several studies have shown that the general public faces significant challenges in comprehending legal regulations and other legal documents due to the use of complex and unclear legal language (Marlia et al. 2023). Research on the comprehension of legal terminologies has demonstrated a high degree of perplexity and ignorance among those without a foundation in law (Marlia et al.,

2023). As a result, there is an access gap to justice, unfairness in the application of the law, and even disregard for the law itself (Kimble 2018). Complicated and difficult-to-understand legal terminology runs counter to the guidelines for inclusive and successful communication (Butt & Castle, 2018). Tiersma, (1999) contends that legal discourse should employ ordinary language as much as possible if the law is to serve its social purposes.

Marlia et al. (2023) posit that the complexity of many legal texts is known through lexical density analysis. In most cases, a high lexical density index is the basis for legal language not being easily understood by the general public. When legal language is ambiguous, misinterpretations or misunderstandings may arise. Interventions are thus necessary for an enhanced understanding of legal terminologies to ensure that legal information is accessible without any obstacles at all. It is in this context that (Mukherjee et al., 2017) argue that there is need to ensure that legal language is made simpler through the use of plain words, plain writing, and the avoidance of technical terms. Such simplification will ensure that the general public comprehends legal documents such as court rulings.

Previous studies indicate that simpler legal language can increase public interest and, importantly, public understanding (Mattila, 2006). Legal language in Kenya has often been couched in a manner that is inaccessible to any person other than those within the profession (Kimathi, 2020). Such lack of clarity is especially disturbing in high-stake cases such as the Finance Act 2023 ruling, where clarity of public understanding is necessary in what the ruling portends for the taxpayer because of its far-reaching proposals on increased taxes. In his study, Gichuru (2021) observed that most legal documents in Kenya are riddled with technical terms, long sentences, and archaic vocabularies that alienate non-specialist readers. Such alienation is an important concern because it could lead to a decrease in public trust and participation in the whole judicial process, as noted by Muturi & Kiprono (2019).

Legal language clarity does not serve only the purpose of attaining accessibility but is also a principle that underpins democratic ideals as enshrined in the Kenyan Constitution. The Constitution provisions for transparency and citizen participation in governance; Article 10 speaks about national values and principles of governance (Constitution of Kenya, 2010). As such, the judiciary would be accessible to the citizens through its communication. Studies from other jurisdictions show that excessively complex legal language inhibits full civic engagement and understanding. Therefore, this study is a response to the increasing demand that judicial language be made accessible, especially in those cases involving high public interest where public understanding of the same is greatly required for informed civic engagement.

The current study contributes to the existing literature by narrowing its scope to the Kenya Supreme Court ruling that declared the Finance Act 2023 constitutional and investigates how far the legal language applied impairs the readability of this judgment to the general population. Article 163(3) (b) of the constitution gives the Supreme Court the jurisdiction to hear and determine appeals from the Court of Appeal and any other court or tribunal as prescribed by the national legislation.

The handling of such a case is of great public interest and therefore public understanding of court rulings is essential for legitimacy and public trust. However, the legal language used by judges in their judgments and rulings is still technical and complicated, making it difficult for a larger audience to understand (Ochieng & Abongo, 2020). To determine how well the court's language supports judicial transparency and public understanding, this study will examine the comprehensibility of the language used in the ruling made by the Supreme Court on the constitutionality of the Finance Act of 2023.

The study was anchored within Forensic Linguistics (FL) framework. FL is one of the disciplines in Linguistics that involves the application of linguistic knowledge and methods to legal and criminal issues. FL

principally analyses language with respect to crime and judicial procedures (Ahmed, 2021). According to Kondrashova (2022), forensic linguists are concerned with the language of the written law in terms of its complexity and origin. They are also interested in the use of language in forensic procedures and the study of judicial procedures from the point of arrest, interview, charge, trial and finally sentencing. Further, FL focuses on analysing legal language as evidence or as legal speech. According to Olsson & Luchenbroers (2014), language as legal discourse focuses on legal documents, legal judgements, and other legal proceedings, whereas language as evidence concerns authorship attribution and meaning interpretation.

The term "Forensic Linguistics" was originally used by Professor Jan Svartvik in 1968 in his study titled *"The Evans Statements: A Case for Forensic Linguistics."* He examined language evidence in the Birmingham Six case. Through his analysis of suspects' comments to police, Svartvik demonstrated A Case for Forensic Linguistics, providing an analysis of four statements purportedly made to the police by Timothy Evans in which he confessed to strangling his wife and baby daughter in 1949 (Blackwell, 2012), marking the birth of a new area of forensic expertise (Coulthard & Johnson, 2007) how linguistic patterns could indicate coercion and discrepancies, casting doubt on the veracity of confessions.

His research sparked interest in the topic by demonstrating how linguistic analysis could uncover hidden problems in legal contexts. The field became even more well-known in the 1980s when linguists started examining a range of courtroom language, police reports, and legal documents in an effort to spot bias, misunderstandings, or contradictions. These efforts were greatly aided by pioneers such as Roger Shuy and Malcolm Coulthard, who created techniques for speech analysis, authorship analysis, and sociolinguistic profiling. FL has now developed into a recognized field that seeks to promote research within law and provides linguistic knowledge for legal interpretation.

Legal language in Kenya is often characterized by the use of technical terms, long and complicated sentences and the overuse of the passive voice. This makes it very difficult for the lay audience to comprehend rulings made by courts. Most decisions of the Supreme Court in Kenya, for example, the Finance Act 2023 are of immense interest to the public. However, very little research has been done to observe the linguistic features that make it inaccessible to the public. Therefore, this paper seeks to fill this gap by critically assessing and suggesting measures for achieving a balance between legal accuracy and accessibility.

The following objectives guided the study: to establish the readability of the Finance Act 2023 Supreme Court Judgment; to investigate the linguistic features which create complexity in legal language and; to make recommendations toward simplifying legal language in court judgments.

The reason why this research is necessary is the issue of legal language accessibility. Legal language has consequences on how people perceive the judiciary and how they relate to the process. In Kenya, court judgments are usually about important national issues, but the judgments do not make any impact since the language used is not accessible to the ordinary person. One such judgment that had serious repercussions on the citizens was the Finance Act 2023.

Despite constitutional provisions that emphasise transparency, accountability, and public participation, the continued use of dense legalese undermines these principles by excluding non-specialist audiences. This creates a gap between the judiciary and the public, potentially eroding trust in legal institutions and limiting access to justice. Therefore, examining the comprehensibility of judicial language is not only a linguistic concern but also a democratic necessity.

Furthermore, this study contributes to the existing body of knowledge by applying Plain Language Theory to the analysis of legal texts within the Kenyan context, an area that remains relatively underexplored. By identifying specific linguistic barriers and proposing practical solutions, the study offers both theoretical and applied insights that

can inform legal drafting, policy formulation, and judicial communication. Ultimately, the research is justified by its potential to enhance transparency, promote inclusivity, and strengthen public confidence in the legal system.

Additionally, the study is justified because it bridges a critical knowledge gap through an in-depth investigation into those features of legal language that make the public fail to understand. It further gives directions towards language simplification in Kenya's courts, as provided by Owino & Mbote, (2023). The present study has brought out an aspect of communication that Kenyan courts need but have so far failed to honour, both at the level of constitutional values and judicial duty to the public, focusing on the language issue in the Finance Act of 2023 ruling, a ruling of great public interest.

This study integrated two theories, Cognitive Load Theory and Plain Language Theory, to investigate the comprehensibility of legal language in Kenya, with a keen interest in the Supreme Court ruling on the Finance Act 2023 ruling. Cognitive Load Theory (CLT), developed by Sweller (1988), states that the human brain has a very limited capacity of processing information in working memory and that if the cognitive load becomes very high, it impairs comprehension and consequently hinders learning. CLT is particularly relevant to understanding how such complex legal language in judicial rulings, such as that found in the Finance Act 2023 ruling, places a high cognitive load on non-expert readers and thus hinders their comprehension. Sweller and Chandler (1991) distinguished between intrinsic load, or difficulty inherent in the content itself, and extraneous load, imposed by structure and presentation of the information, and suggested that the former may be minimized by clarity and succinctness of information presentation. This distinction becomes important because it tries to explain how legal texts, with their complicated sentence structures, terms, and closely packed organizations, enhance extraneous load and make the process difficult for general readers. On the other hand, Cook et al. (2019) mention

that legal language can easily create an unnecessary level of complexity, thereby increasing the cognitive load on unspecialized audiences. Meanwhile, Tiersma (1999) and Gibbons (2003) stress that in this respect, simplification of legal language should be performed in a way to make it more available and less cognitively burdensome. Applying CLT, the present research links readability issues in legal documents to cognitive load that needs to be endured by the reader and thus calls for plain language reforms which would make the materials more accessible to a wider public, and therefore better known, understood, and consequently able to participate in those legal procedures.

Plain Language Theory (PLT) places greater emphasis on simplification to facilitate clear communication (Redish, 1985). PLT asserts that the simplification of language, without necessarily affecting the meaning, can ensure that legal and official documents become more accessible (Mellinkoff, 2004). The proponents of PLT assert that traditional legal text in use can be paraphrased and simplified without affecting the legal implications of such texts and can thus enable members of the general public to understand such documents more fully (Kimble, 1992).

The application of Plain Language Theory in the legal context is relatively unexplored but presents a good approach in Kenya, which would improve the public's engagement in judicial processes. It has been indicated in researches that when more accessible, legal documents contribute to increased public confidence and open government (Mellinkoff, 2004). A similar approach in Kenyan courts will help remove some mystique from the language of the law, making court rulings, policies, and other official documents comprehensible. Williams, (2005) notes that critics of PLT commonly argue that simplification lacks precision in legal documents while the proponents argue that the two poles of precision and clarity can go together to assist laypersons in understanding what is contained in the legal document.

Methodology

This study employed both qualitative and quantitative research designs. For qualitative design, textual analysis was used to analyse how clear the language, structure, and style were in the Finance Act 2023 judgment delivered by the Supreme Court of Kenya. According to Schreier (2012), textual analysis is especially useful for the detection of patterns in text. This enables a more profound analysis of lexical complexity, syntactic organization, and overall readability of the Supreme Court judgment. By investigating these factors, linguistic features that may impede or facilitate public comprehension of legal documents, in particular, judgments of high-profile cases-could be disclosed. Quantitative research was used to sample five excerpts from the ruling to provide empirical evidence of readability challenges.

Purposive sampling technique was used to select Finance Act 2023 Supreme Court judgement for analysis. According to Nyimbili & Nyimbili (2024), purposive sampling is a technique where researchers deliberately select cases that are most relevant to the study's objectives. It helps to ensure that the sample effectively represents the characteristics being investigated.

To collect data for the present study, the Finance Act 2023 Supreme Court ruling was downloaded from Electronic law reports (eKLR). The ruling was thoroughly analysed to identify linguistic features such as sentence complexity, prevalence of technical legal terminologies and passivation. The study applied readability metrics, the Flesch Reading Ease Score, to quantify the text's accessibility. Rudolph Flesch developed the Flesch Reading Ease Score (FRES) in 1948. Flesch Reading Ease Score is an important tool for assessing the readability of English-language texts. This score accurately predicts how well readers will comprehend the text or message and their user experience.

The score is calculated by assessing the content's sentence and word length. Short sentences with shorter words receive a higher score,

indicating that the content is simpler and easier to read. Conversely, longer sentences with longer words receive lower scores, indicating that the content may be more suited for advanced readers. Secondary data, such as scholarly articles and reports on legal language, provided theoretical and contextual support.

Formula for calculating the Flesch Reading Ease score is as follows:

$$206.835 - 1.015 \times (\text{total words} / \text{total sentences}) - 84.6 \times (\text{total syllables} / \text{total words})$$

The scores could be interpreted as follows;

90-100- Very easy to read

80-89- Easy to read

70-79- Fairly easy to read

60-69-Standard reading difficulty

50-59- Fairly difficult to read

30-49- Difficult to read

0-29-Very Confusing

A negative score indicates extreme difficulty, requiring advanced education (postgraduate level) to comprehend.

Use of Artificial Intelligence Tools

Artificial intelligence (AI) tools were used to a limited extent in this study, mainly to assist with minor language editing, organization of ideas and improvement of clarity. All core aspects of the research, including data collection, analysis, interpretation, and final writing, were conducted and verified by the authors to ensure accuracy and academic integrity.

Results and Discussion

Complex Syntax and Sentence Structure

Legal language in the Finance Act 2023 ruling was often marked by long, complicated sentences with several clauses. The following are five excerpts from the judgment delivered by the Supreme Court that exemplify the assertion above.

1. “The consolidated appeal challenged the impugned judgment on the grounds that the appellate court erred by finding that, the High Court misconstrued and abdicated its mandate under Article 165(3) by holding that it had no jurisdiction to intervene in policy matters; Sections 21, 23, 24(c), 32, 34, 38, 44, 69, 72, 80, 81, 83, 85, 86, 87, 100, 101 and 102 of the Act were unconstitutional for not being subjected to the entire legislative stages and public participation; Parliament is obligated to give reasons for rejecting or adopting the proposals received after conducting public participation, and failure to do so offends Article 10(1) and (2) of the Constitution; the estimates of revenue were not included in the Appropriation Bill and the Appropriation Act, 2023 and that the Act violated Articles 220(1)(a) and 221 of the Constitution as read with Sections 37, 39A and 40 of the PFM Act; the question of the constitutionality of affordable housing levy which was introduced by Section 84 of the Act was moot; Sections 76 and 78 of the Act which amended Section 7 of the Kenya Roads Act, were unconstitutional; and that the entire Act was vitiated and was therefore, unconstitutional.”
2. “Section 2 thereof was challenged on the basis of introducing digital monetization as a tax on payments for entertainment, social, literal, artistic, education or any other material electronically through any medium or channel; that the imposition of tax on “winnings” from betting, gaming and lotteries is a function of County Government; Sections 40 to 48 that amended Sections 2,

20, 28, 40, the First and Second Schedule of the Excise Duty Act and introduced a requirement for the remittance of excise duty on betting and gaming within 24 hours of closure of a transaction, as well as excise duty on alcoholic beverages within 24 hours of removal of the goods from the stock room; and Section 33 thereof which amended Section 17 of the VAT Act to introduce 16% VAT on insurance compensation.”

3. “That while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.”
4. “The two limbs of the test are: (a) whether the mandate, functions or powers of the subject state agency, or institution unjustifiably strays into the nucleus, core functions, or pre- eminent domain that are the exclusive competence of another branch of government from a functional point of view; and whether the exercise of the subject assigned mandate, functions, or powers will harm or threaten the realization of the national values and principles articulated in the Constitution.”
5. “The High Court was further faulted for holding that in view of the merger of policy and legislation, it had no jurisdiction to interfere with tax legislation, contrary to the principles of public finance, equal protection of law, fairness and judicial authority under Articles 10, 27, 159, 165, 201 and 259; and for adopting an economic policy which does not reflect the financial status of the majority.”

Table 1: FRES analysis of the above sentences

Sentence	FRES Calculation	Findings and Discussion
i.	$206.835 - 1.015 \times (200 / 1) - 84.6 \times (305 / 200)$ $= -125.18$	Extremely complex text with long sentences and numerous legal terms. The very low score indicates that the text is nearly incomprehensible to the average reader. It is suitable for legal professionals but excludes lay audiences. Shorter sentences and simplified language would improve its accessibility.
ii.	$206.835 - 1.015 \times (133 / 1) - 84.6 \times (219 / 133)$ $= -67.46$	Long, single sentence with dense legal language and complex clauses. The negative score highlights the extreme difficulty in readability. A significant barrier for non-experts exists due to lengthy phrasing and specialized jargon.
iii.	$206.835 - 1.015 \times (84 / 1) - 84.6 \times (144 / 84)$ $= -23.45$	A relatively shorter text compared to others, but still challenging due to its sentence structure and legal terminology. Although shorter, the single-sentence format and use of abstract legal phrases reduce readability. Breaking the sentence into smaller, more concise parts would help clarify the meaning.
iv	$206.835 - 1.015 \times (76 / 1) - 84.6 \times (133 / 76)$ $= -18.36$	A medium-length text with one sentence, legal jargon, and abstract concepts. The text is difficult to read, primarily due to its abstract and technical language. Simplifying the sentence structure and avoiding unnecessary technicalities would improve readability without losing meaning.

v	$206.835 - 1.015 \times (66 / 1) - 84.6 \times (110 / 66)$ $= -1.56$	Moderately long, complex sentence with legal references and layered phrasing. The sentence's structure, including multiple legal references, hinders readability. Using shorter sentences with simpler expressions can make it more approachable for a wider audience while preserving the legal nuances.
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The sentences structures, while precise, can be challenging for lay readers to process due to their length and the layering of clauses. Research has shown that legal texts with lengthy and complicated sentence structures cannot be easily understood by a layperson. Crystal (2004) argues that extended sentences in legal documents tend to be associated with reduced comprehension rates for non-experts, who find themselves either unable or struggling to unpack the embedded ideas. The problem is not only one of sentence length but also of syntactic difficulty that falls beyond the competence of readers untrained in the legal variety. As Bhatia (1993) mentioned, "legal language is inherently complex. Multiple layers of clauses add to the obscurity and make texts inaccessible and remote." Moreover, citing the benefit of using shorter sentences in legal documents for good readability without compromising on precision, Redish & Cramton (2008) are well-known proponents of plain language.

Further, the cognitive load theory supports the fact that with longer sentences, readers have more to do, and therefore, more cognitive load causes distortion in comprehending the central meaning of a statement (Sweller, 1988). The focus on the language to be legally accurate incidentally serves as a barrier, and in that light, there has been a growing demand for plain legal language that would maintain meaning with less formality. As Tiersma (1999) points out, while lawyers and scholars re-evaluate the conventional ways of drafting, research also denotes that there is a greater need to balance precision

and access so that legal documents increasingly could serve a wide readership without sacrificing legality. Jaya Verma's (2016) research on Indian Legal texts found that an average sentence length was 71.33 words. She noted that some sentences exceeded 400 words. The challenge with such lengthy sentences is that it is difficult to follow through leading to misinterpretation or a complete lack of comprehension especially by the lay public.

Use of technical or foreign words and expressions, especially from Latin

The study found that in their rulings, the Supreme Court judges used phrases shown in the table below. The meanings of the words and phrases have been provided for the sake of lay readers.

Table 2: Technical and foreign terms in Supreme Court Finance Act 2023 Ruling

Term/Phrase	Description
amici curiae	Latin for "friends of the court." It refers to individuals or organizations not directly involved in a case but who offer information, expertise, or insight that bears on the issues in the case.
void <i>ab initio</i>	Latin for "void from the beginning." This means something is considered invalid from the outset, as though it never had legal effect.
ratio decidendi	The legal reasoning or principle upon which a court's decision is based. It is the binding part of a judgment in common law.
mala fide	Latin for "in bad faith." This term describes actions done with dishonest intent or without the intention to follow through genuinely.
supra	Latin for "above." Used in legal writing to refer to an earlier citation or section of a document.
stare decisis	A doctrine in law that means "to stand by things decided." It refers to the principle of adhering to precedent in making legal decisions.
quo ante	Latin for "as before." It refers to returning to the previous state or condition.

jurisprudence	The theory, study, and philosophy of law. It involves the analysis of legal principles, practices, and the nature of law.
subsumption	In law, it is the act of applying a general rule or principle to a particular case.
justiciability	The quality of a matter being appropriate for court review. A justiciable issue is one that courts have the power to hear and decide.
non-justiciability	Issues those are not appropriate for court adjudication, often because they involve political questions or matters outside the scope of judicial review.
underinclusive	A law or policy that applies to some, but not all, cases that might fall under its intended purpose, leaving out other cases that are similar or relevant.
appellant	The party who appeals a court's decision, seeking review and reversal of that decision.
moot	A case or issue that no longer requires a judicial decision because the issue has been resolved or is no longer relevant.

This study appreciates the fact that just like any other profession, law has its specific register. Some of the words used are borrowed from Latin and Law French and as such the said words cannot be replaced by other words without losing the important aspect of their accumulated meaning and significance. However, the technical and foreign terms have been used as if in a floodgate, without enough simplification or explanation. While such words may be necessary to construct a legal argument, unless sufficiently explained, the public will continue to remain lost in an understanding of judicial reasoning that should inform important decisions. The excessive use of legal Latin terms without accompanying explanations assumes a degree of familiarity with legal terms that most citizens would not have due to an overuse of legal Latin without explanation; well criticized in research such as Williams (2011), affirming that such an over-reliance on jargon in legal judgments alienates audiences outside the targeted expert.

(Danet, 1980) asserts that the use of such complex legal language can obscure legal processes from the public. The consequences of this exclusive language do not stop at the question of understanding; they

carry implications for public trust in the courts. To the extent that legal documents are incomprehensible, people may perceive the judicial process as withdrawing its processes from them through elitism or obscurity. For instance, a ruling may come to declare certain actions ultra vires—a person or entity acted beyond their lawful authority—but if not explained, then the public may well not understand what such a decision would mean. This is the linguistic gap that points to the need for more obvious language in legal documents, thus facilitating the twin values of transparency and inclusiveness in the exercise of justice.

Passivation

The findings also reveal extensive use of the passive voice in legal judgments. The following are six excerpts from the Supreme Court ruling after a thorough textual analysis:

1. “It is admitted in the Hansard that by the time the Finance Bill was coming up for Second Reading as expressed by Hon. (Dr.) Otiende Amolo SC...”
2. “It was asserted that Article 109(3) as read with Article 110(1)(a) of the Constitution is the ultimate determinant of which Bills must be presented for concurrence by the Speakers of both Houses to determine whether a Bill affects the functions and powers of county governments.”
3. “It was urged, in addition, that notwithstanding the enactment of the Affordable Housing Act, the questions of law raised with respect to the findings on the said levy which was introduced in the Act in issue requires this Court’s consideration.”
4. “It was further submitted that the Bill was a culmination of a long, exhaustive and thorough multi-stakeholder process that ensured involvement from the grassroots level to the national government level...”
5. “It was argued that the legislative process that resulted in the Act was not subjected to the concurrence process of both Speakers of

Parliament (National Assembly and Senate) as envisaged under Article 110(3) of the Constitution...”

6. “It was also urged that public participation with respect to the Bill was not sufficient since most views/proposals arising therefrom were rejected...”

The passive construction here obscures agency, making it less clear who exactly conducted the analysis or reached the judgment. According to Bhatia (1993), passive structures can contribute to a sense of detachment, which complicates comprehension.

The analysis reveals a consistent and systematic use of passive constructions in the selected excerpts from the Supreme Court ruling, indicating that passivation is a dominant grammatical feature in the dataset. All six sampled sentences exhibit passive voice structures, typically following the pattern of a dummy subject (“it”), an auxiliary verb (“is/was”), and a past participle (For example, admitted, asserted, urged, submitted, argued). For example, expressions such as “It was argued that...” and “It was submitted that...” illustrate agentless passive constructions in which the doer of the action is omitted. Grammatically, these constructions suppress agency by foregrounding the action or proposition while backgrounding or entirely excluding the actor. This pattern is not incidental but reflects a broader stylistic preference in legal discourse, where impersonalisation is often used to achieve formality and neutrality (Bhatia, 1993). However, the frequent omission of agents has important implications for comprehensibility, particularly for lay readers. Without explicit identification of who is responsible for specific claims or arguments, readers are required to infer meaning, thereby increasing cognitive processing demands. This aligns with insights from Cognitive Load Theory, which posits that complex and implicit structures can overwhelm working memory and hinder understanding (Sweller, 1988). Furthermore, the repeated use of similar passive constructions creates syntactic uniformity that may obscure distinctions between different arguments presented in the text. From the perspective of Plain Language Theory, which emphasizes clarity, directness, and reader-oriented communication, the dominance of agentless passives reflects limited

adherence to accessibility principles (Cutts, 2013). Plain language guidelines advocate for the use of active voice and explicit agents to enhance transparency and ease of comprehension. In contrast, the findings of this study demonstrate that the reliance on passive constructions in the analysed legal text contributes to reduced readability and increased interpretive effort. Therefore, passivation, while serving institutional and stylistic functions in legal writing, also constitutes a significant barrier to accessibility, reinforcing the study's broader argument that linguistic features of legal discourse can impede effective public understanding.

Conclusion

The language of the Finance Act 2023 Petition judgment is a good example of how legal language is both a strength and a limitation in public-facing legal documents. No matter how precise it might be from a legal perspective, the convoluted syntax, specialist jargon, and passive constructions limit public comprehension, especially those without formal training in the law. These findings demonstrate the increased demand for clarity in legal language such that landmark judgments in Kenya, and by extension those of public interest, are accessible and understandable to the greater public.

Recommendations

The study makes the following suggestions to help ensure the lay public understands legal language;

1. The court should be encouraged to adopt plain language when summarising court rulings. The problem lies where the court usually, when giving rulings and judgments, addresses member of the bar/lawyers rather than the general public. The court assumes that everyone has access to a legal practitioner for purposes of interpretation of these documents. Sometimes they quote the maxim, 'Ignorance is not a defence in a court of law'. Actually it is

not an assumption but a presumption. The court, therefore, expects the general public to make an effort to understand the law. This study therefore recommends for the use of plain language especially on cases that are of great public interest such as the Finance Act 2023 Petition.

2. Secondly, this study recommends for definitions of technical and foreign terms. Supreme Court of Kenya, among other courts, should consider providing summaries or simplified versions of judgments for explaining the terminologies of important legal terms and what such a decision may imply practically. This will enhance public understanding, but also go a long way in ensuring that justice can be seen to be transparent and hence inspire civic participation in judicial processes. The judiciary could provide some explanatory glossary for many legal terms commonly used in rulings, which would help bridge part of the knowledge gap between them and the general public.
3. In addition, there should be clarity of agency. Active voice as opposed to passive voice could be used to specify actors in legal decisions, making it clear who is responsible for each action, thus improving accountability and transparency even if its meaning is not immediately clear upon first reading.
4. Court should be encouraged to issue summarised briefs for public access. The law is very wide and in one judgement, different sources of the law are usually quoted, that is, The Constitution of Kenya, Acts of Parliament, case laws and sometimes law journals and publications that have been considered overtime to contribute to the Kenyan Jurisprudence. It is therefore, very close to impossible for the court to omit certain aspects of the judgements as they give clarity on why they have reached a certain conclusion. However, the court could issue accessible summaries for rulings and when they are giving an advisory opinion. These briefs would condense complex legal reasoning into concise

points and clarify implications, ensuring transparency and engagements.

Conflict of interest

The authors declare that there are no conflicts of interest regarding the publication of this study.

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