Lawyers' antics and nonverbal impoliteness in Nigerian court documents: An example of Mosojo versus Oyetayo

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Abstract

Unlike the inquisitorial court system, the adversarial court requires that counsels willfully resort to face-aggravating impolite non/verbal acts through the instrumentation of relevant court papers as well as the use of professional privileges at the cross-examination phase to the detriment of the opposition, thereby elevating the quest for victory above fact-finding and the dispensation of justice. The study evaluates counsels' impolite nonverbal communicative behaviour and professional antics which are complementary to verbal impoliteness. Anchored on Watts' (2003) theory of relational works and Culpeper's (1996) impoliteness super-strategies, the study drew fifteen (15) purposively selected examples, with preponderance of underlying nonverbal face-aggravating behaviour by professional courtroom participants, from archived pre-trial documents and transcripts of proceedings in Mosojo versus Oyetayo (2012). Against the existence of inquisitorial and fact-finding alternative dispute resolution (ADR) mechanisms, the disputants chose the adversarial Western-like court system, with a penchant for impolite non/verbal behaviour, for the resolution of the Obasinkin chieftaincy dispute in a Nigerian community. Findings revealed that counsels' antics and nonverbal impolite behaviour are not only embedded in some legal documents, but also manifested in the form of time-wasting, willful absence from court and embedded presupposing boobytrap arguments that were meant to frustrate the opposition and influence the course of justice. Litigants are advised to explore the ADR alternative while judges should regulate the courtroom use of language to prevent the miscarriage of justice.

Keywords: Lawyers antics, court documents, Nigeria, Mosojo vs Oyetayo, face-aggravation, impoliteness, nonverbal acts

1.0 Introduction

Unlike the inquisitorial court system whose philosophy is guided by fact-finding, thereby requiring moderate use of language, the verbal and nonverbal use of language in the

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adversarial court system is widely acknowledged as face-aggravating. In several African societies, however, there are mechanisms for alternative dispute resolution (ADR) and "friendly" traditional/customary courts that orient towards the ideology of the inquisitorial legal system, where emphasis on victory by a party against the other is not as prioritised as the desire to establish the truth and to dispense justice. This is hardly the case in the adversarial system where counsels often ''battle'' the opposition in order to emerge victorious. Court adversities involve story telling that is evaluated by the judge, with each side presenting persuasive evidence while simultaneously attacking the opposition's accounts.

The Western-like courtrooms rely on oral evidence presented in the form of questions and answers so that the ''pragmatic function of attorneys' questions becomes dominant [and] differs according to the intention behind them" (Monsefi 2012:45). Brouwer, quoted in Luchjenbroers (1991:4), further highlights the perception of the adversarial system as being primarily concerned with 'winning', rather than the revelation of truth. Consequently, victory for one party rather than the other may be achieved by wit or by aggression, a situation that may not necessarily justify that justice has been served to the deserving party.

Reese and Marshall (2015:4) reveal that the adversarial system ''leans on the skills of attorneys to represent their party's position to a judge who must either be persuaded into, or dissuaded from, believing a specific story''. Counsels plot their party's victory by inserting face-aggravating contents in some relevant legal documents such as Statement of Claims, Statement of Defence, Affidavits, Statement of Service, Motion on Notice, and other relevant documents. Such contents are face-damaging and may amount to impoliteness, thereby laying the foundation for full-blown hostility at the level of cross-examination.

While a preponderance of opinion seems to suggest that courtroom faceworks are largely verbal, this study argues that verbal face-threats in the courtroom are often complemented by non-verbal faceworks through underlying codes in certain court documents as well as through unspoken/body language at the hearing phase of a case. Considering the complementary role of nonverbal language to the courtroom persuasive language use in swaying victory to one direction rather than the other, the nonverbal component of language requires evaluative comments as the verbal mode does.

Court cases are won or lost depending largely on the extent to which counsels' antics are deployed and the degree of the use of aggressive nonverbal or body language. In extreme cases, face-aggravating use of language may amount to impoliteness notwithstanding the allowance of non/verbal aggression in the courtroom situation. Nonverbal impolite-constituting behaviour may occur at three stages in the court process: at the pre-trial level, during the on-going trial and at the phase of cross-examination. Papers relating to a case are filed at pre-trial, while motions on notice are filed in the course of an ongoing case. Cross-examination is the epicentre of legal confrontation in the adversarial court system. The intensity at this stage is often set by the tone and content of court papers.

Scholars such as Harris (1984), Penman (1990), Archer (2011), Teilanyo & Ayansola (2018) are unanimous that face-aggravation in its verbal mode is prevalent in the courtroom without necessarily backing their conclusion with empirical data from court papers. Those studies also ignore the complementary role of nonverbal language in the enactment of courtroom impoliteness, which often results from excessive verbal aggression. While the universal outlets of nonverbal communication such as gestures, body movement and so on have been investigated (e.g. Burnett & Budzinsky 2005; Saidi & Pfukwa 2011) in contexts other than the courtroom, the forms and judicial implications of nonverbal language which counsels often deploy as part of their professional antics are yet to feature prominently in the literature.

In contrast, this paper evaluates impolite-constituting actions of legal practitioners which are embedded in court papers and enacted at the phase of cross-examination alongside nonverbal linguistic behaviour that often complements counsels' verbal hostilities. The rationale

is to encourage stakeholders to consider the friendlier inquisitorial ADR alternative which is based on fact-finding rather than relying on impolite non/verbal persuasive acts as is the case with the conventional courts. There are other benefits of ADR that are outside the purview of this study. The paper further calls for a regulated use of courtroom language so as to minimise impoliteness as well as to protect the vulnerable from a miscarriage of justice. In achieving these objectives, certain questions become pertinent. What are the forms of counsels' nonverbal impoliteness in the courtroom process? What is the motivation for the enactment of nonverbal impoliteness and what are the likely consequences of unregulated counsels' antics?

2.0 Nonverbal communication in the courtroom

It is not surprising that there is a prevalence of studies on verbal courtroom communication particularly from the purview of faceworks and im/politeness at the expense of nonverbal communicative acts. This attitude is a clear demonstration of scholars' apathy towards a nonverbal communicative code, notwithstanding its high resourcefulness. In departing from the norm, however, Burnett & Badzinsky (2005) investigate jurors' reactions to judges' nonverbal communication in mock trials using taped segments of 'direct and cross examination that varied the judges' level of nonverbal involvement' in the proceedings. Comments about the judge led to the conclusion that jurors are aware of judges' negative nonverbal cues. From a semiotic angle, Saidi & Pfukwa (2011) describe non-verbal communication as an important aspect of semiotics and speech acts in legal discourse. While focussing on aspects of the nonverbal dress codes, movement, space and how they convey messages that can influence the outcome of a case in a Zimbabwean courtroom, Saidi & Pfukwa (2011:2) observe that 'the behaviour and actions of the members of the legal discourse community are 'culturally' determined.

The emphasis in Burnett & Badzinsky (2005) is on the nonverbal behaviour of the judge rather than that of the counsels. This distinction is significant considering that counsels' body language in an adversarial court is meant to frustrate the opposition while the exhibition of similar behaviour by a presiding judicial officer is most likely motivated by a different communicative purpose. Nevertheless, Burnett & Badzinsky (2005) echo this paper's argument that courtroom nonverbal cues are complementary to verbal hostilities which are partly influential to judicial outcomes, which may not guarantee that justice is served. The focus of both Burnett & Badzinsky (2005) and Saidi & Pfukwa (2011) is on the hearing phase of legal proceedings, thereby ignoring inherent impolite resources in court papers as well as nonverbal impoliteness at the level of cross-examination. This study is unique in its pragmatic approach and preference for the discursive notion of impoliteness in categorising excessive behaviour in the courtroom situation.

3.0 Relational work and impoliteness

Watts' (2003) theory of relational work, in distinguishing politic behaviour from the traditional polite and impolite labels and its provision for several levels of politeness: politic, appropriate, unmarked as well as marked behaviour which are operational in different contexts and genre, provides the theoretical anchorage for the study. Insights are however fed into the theory from Culpeper's (1996) impoliteness super-strategies.

Notwithstanding that the major linguistic ingredient for the fulfillment of legal purpose and justice is inherently face-threatening, the classification of what constitutes impolite language usage should take into consideration the context of performance (Ayansola 2017). It follows that nonverbal impolite acts may also be interpreted as politic or appropriate in line with Watts' (2003) proposal, depending on whether or not such behaviour is in conformity with the frame of the participants' expectations in a particular genre such as the courtroom.

On the one hand, politic behaviour is unmarked since it is perceived to be appropriate to the social constraints of the context of performance, while on the other hand, politeness is

positively marked and is perceived to go beyond what is expectable (Watts 2003). It is not always the case that appropriate utterances and their nonverbal components would be construed as politic as proposed by Locher & Watts (2005). Culpeper (2011:49) has therefore, highlighted the inherent problem in such generalisation when considering some contexts outside, say an army recruit training 'in which face-attacking discourse of some kind plays a central role, and thus might be said to be normal'. Bousfield (2008:7) contends that such intentionally face-aggravating utterances are marked, despite their appropriateness.

Tekourafi (2005) and Blitvich (2010) have argued that specific linguistic expressions [in verbal or nonverbal form] should be analysed in particular contexts of use. In Tekourafi's (2005:248) words, 'the regular co-occurrence of particular types of text and particular linguistic expressions as [sic] the unchallenged realisations of particular acts that create the perception of politeness'. For Blitvich (2010:10), a comprehensive model of (im)politeness must be presented in a way characteristic of a particular situational context or genre, a 'unit of analysis needed and useful not only for interpersonal face-to-face, dyadic communication, but also for intergroup, mediated, polylogal communication'.

Blitvich's (2010) approach to the study of (im)politeness has its root in Swales's (1990:14) concept of genre which is defined as:

> a class of communicative events, the members of which share some set of communicative purposes. These purposes are recognised by the expert members of the parent discourse community, and thereby constitute the rationale for the genre. This rationale shapes the schematic structure of the discourse and influences and constraints choice of contexts and style […] exemplars of a genre, exhibit various patterns of similarity in terms of structure, style, content and intended audience.

In relating Swales' (1990) concept of genre to politeness, Blitvich (2010:62) defines politeness as:

> [either] the use of lexico-grammatical strategies or realisations of prosodic features typically associated, i.e. recurrent, with a specific (pre)genre and/or (ii) the complying with the established, (pre)genre-sanctioned, norms and interactional parameters regulating the rights and obligations associated therein with a given individual social identity which can thus be interpreted as face- maintaining or enhancing.

Whereas a linguistic activity may be explained from multifarious theoretical models including a frame-based micro-analytical approach (Tekourafi 2005) and granted that professional and institutional interaction may require a genre-based approach (Blitvich 2010), a rewarding theoretical model of impoliteness research should take into cognisance the context of performance and genre, thereby informing Culpeper's (2005:38) argument that 'impoliteness comes about when: (1) the speaker communicates face-attack intentionally, or (2) the hearer perceives and/or constructs behaviour as intentionally face-attacking, or a combination of (1) and (2)'. Culpeper (1998:86) has described impoliteness as a type of aggression and that the courtroom is a 'legitimate form of verbal aggression', since 'prosecutors are licensed to aggravate a witness's face'.

Harris (1984) shares the same sentiment in his observation that the courtroom is characterised by a number of facework activities and not just the type stated by Brown & Levinson (1987). Penman (1990) and Culpeper (1998), like Harris, are unanimous in their recognition of the prevalence of facework in the courtroom, thereby underlining that verbal warfare, with or without remedy, is an interactional requirement in courtroom proceedings. Brown & Levinson (1987:1,51) perceive the courtroom as self-regulatory and capable of curtailing verbal hostilities, thereby ensuring 'communication between potentially aggressive parties'.

When counsel's negative conduct runs against the frame of expectation in a particular genre, it becomes a handshake that goes beyond the elbow (Ayansola 2017). Such abnormal conduct becomes marked, salient and is deemed to have crossed the politic to the impolite zone,

notwithstanding the perception of the courtroom as the participants' battlefield. This is the situation with counsels' nonverbal acts and the unwritten contents of certain court papers in trial and pre-trial, respectively.

Culpeper's (1996:41-42) template for the evaluation of impoliteness is useful for the analysis of nonverbal impoliteness in the courtroom situation. It enumerates how interlocutors may deliberately attack one another's face in the courtroom as summarised below. (1) Positive impoliteness: strategies that are designed to damage the addressee's positive face want (his desire to be appreciated and liked). Example: name-calling or uttering taboo words. (2) Negative impoliteness: strategies that are intended to damage the addressee's negative face wants (the desire to have freedom to act as he chooses and not imposed on or impeded by others). Example: scorning or threatening the other. (3) Sarcasm or mock politeness: insincere or surface politeness strategies. Example: 'You are a friend indeed!' (4) Withholding politeness where politeness would be expected.

3.1 Impoliteness and nonverbal communication

Patterson (1982/1987) makes a case for nonverbal analysis to be approached from a functional perspective, with the reward that different meanings and outcomes may come from such an endeavour. From the same premise, Mehrabian & Williams (1969) identify a 'relationship between the sender's intended persuasiveness and the target's perception of persuasiveness'. LaCrosse (1975:580) further submits that 'affiliative behaviors were more persuasive than nonaffiliative behaviors'. Their stances are supportive of this paper's argument that nonverbal behaviour plays a significant role in the expression of attitudes and opinions and that face-threatening nonverbal behaviour may constitute impoliteness with dire implications for the legal process.

Nonverbal communication occurs across different activity-types and involves facial expressions and gestures as well as body posture. It complements spoken words in the transmission of different shades of meaning, through pitch, tone, voice volume as well as stance. It is difficult to assemble evidence of paralinguistic cues in the Nigerian courtroom situation where live recordings of trials are largely forbidden. This limitation can be overcome by gaining access to the transcript recordings of courtroom proceedings where the enactment of impolite nonverbal acts in addition to those that may be expressed in between the lines in the drafting of plaintiff's Statements of Claims (SC) and the defendants' Statements of Defence (SD) are improvised. Transcripts of proceedings are revealing of overt/covert nonverbal impolite acts which are complemented by an analyst's application of pragmatic presupposition based on what lawyers say or write.

The presuppositions of an utterance in the opinion of Karttunem (1974:186) 'determine[s] the class of contexts in which the sentence [utterance] could be felicitously uttered'. Karttunem's position is as applicable to an utterance as it is to the written language, as well as to verbal and nonverbal communicative acts. While arguing that the notion of presupposition could not be adequately defined in purely semantic terms of truth conditions, Karttunen (1974:186) defines 'presupposition as obtainable if surface sentence A pragmatically presupposes a logical form L, if and only if it is the case that A can be felicitously uttered only in contexts which entail L'. An illustration with an entry in the SC is provided:

> The plaintiff is a member of Obasinkin Logun Kando's family of Ila-Orangun, and he took this action against the above-named defendants for himself and on behalf of all other members of Obasinkin Logun Kando family of Ila-Orangun. The first defendant, who is in no way related to the plaintiff's family, is a member of Elepa's family in Isedo Quarter of Ila-Orangun (Mosojo vs. Oyetayo 2012:5).

The above excerpt excludes the defendant as a member of the plaintiff's family, thereby presupposing that he lacks natural claim to the title of Obasinkin, the title being presumably

reserved for members of the Logun Kando family. Granted that this is not explicitly stated, the inference can be drawn from the contextual clues offered by the legal environment. The exclusion is face-threatening and impolite notwithstanding its expedience in the context.

4.0 Data collection and methodology

Data were drawn from Mosojo versus Oyetayo (2012) in the high court of Osun State, Nigeria. The case is of interest to the study for its ample demonstration of courtroom nonverbal impoliteness in a conventional court notwithstanding that the litigants are in-group members of a cultural community that thrives on ADR; also considering that the dispute bordered on a chieftaincy contestation which falls under the purview of the traditional ruler. Broadly, the data comprised purposively selected archived and open access pre-trial documents in the following order: four (4) Sworn Affidavits, one (1) Statements of Claim and one (1) Statements of Defence. Ten lawyers, made up of both the plaintiff and the defence, formed the population of the study. While it is difficult to assemble evidence of paralinguistic cues in the Nigerian courtroom situation where live recordings of trials are largely forbidden, this limitation is overcome with the transcript manifestly indicating nonverbal expression of impoliteness in the court papers and at the level of cross-examination. The analysis was guided by Watts' (2003) theory of relational works and Culpeper's (1996) impoliteness super-strategies. Hence, incidences of impolite nonverbal behaviour were analysed top-down in a situation where they exceed sanctioned aggression as well as the participants' frame of expectation. In all, fifteen excerpts were analysed.

5 Presentation of data and discussion of findings

Impolite nonverbal court behaviour comprise counsels' antics which are rooted in relevant legal documents, with a manifestation in time-wasting, willful absence from court and presupposing arguments are strategies that are scripted for influencing judicial outcomes.

5.1 Antics of time-wasting

Time-wasting shenanigans, which are often rooted in court papers, may serve useful legal purposes to the counsel. It may be used to buy time so the benefitting counsel could adequately prepare for the trial. It may also be used as an instrument of frustration for wearing down the opposing parties, witnesses included. The court itself may become frustrated on account of technical hurdles that may be planted by counsel. Judges are known to have played into the scripts of some smart lawyers by withdrawing from certain cases or by making pre-empted pronouncements in the lawyer's favour. Witnesses have also refrained from testifying in court on account of incessant adjournments because of finance and physical considerations. There is a preponderance of time-wasting strategies in the papers filed by counsels in Mosojo versus Oyetayo as are exemplified below:

Excerpt 1: (Extracts from an affidavit by the plaintiff sworn to 17th February, …)

> Plaintiff: That I filed the Statement of Claim in the case on 21st December, …That the defendants have failed to file their Statements of Defence. That thirty days, the time allowed to the defendants by the Rules to file their Statements of Defence, have elapsed (Mosojo v. Oyetayo 2012:17).

The defendant, as observed from the excerpts above, was reluctant in responding to the issues in the plaintiff's Statement of Claims (SC). In simplified terms, the SC is a pre-trial document which contains the core premise(s) upon which the litigant's proposed arguments in the hearing stage are hinged. The Defence Counsel (DC) is expected to file objection to certain contents in the SC in the form of a Statement of Defence (SD) within a maximum of thirty days as prescribed

by rules. The hearing could only commence after the SD has been served on the plaintiff Counsel (PC). It should be noted that the SC, in this particular instance, was filed on 21st December whereas as at 17th February, being the date of filing the affidavit, the DC was yet to file the defence.

The frustration of the plaintiff in not being served the SD, two months after he had filed the SC, was ventilated in an affidavit as excerpted above. The cost of the nonverbal underhand tactics of evading responsibility on the part of the DC was not only face-aggravating and impolite to the PC and the court, it further prevented the plaintiff from court attendance on19th March as well as resulting in the forced adjournment by the court as presented below:

Excerpt 2:

> Court: (*19*th *March, … . The plaintiff was absent*). There is no affidavit of service on the plaintiff. Case is adjourned to 10/04/ … . (Mosojo v. Oyetayo 2012:17).

Notwithstanding the involuntary adjournment of 19th March, the SD remained elusive as late as 10 April, five months after the SC was served on the defence, thereby forcing an adjournment yet again. Rather than serve the statutory papers, the DC's antics was a motion to extend the prescribed time for the execution of SD. The well-scripted antics of the defence resulted in a motion for the extension of time within which to file the statutory SD though there was no service of the motion on parties. This precipitated another adjournment as recorded in the next excerpts.

Excerpt 3:

> Court: (*20th March, … . The plaintiff was present. 6*th, 7th and 8th *defendants were present while others were absent. No appearance for defendants*. There is no affidavit of service on the motion. Case is adjourned to 14/5/… for hearing of the motion (Mosojo v. Oyetayo 2012:18).

The DC's shenanigans of evading the service of the SD on the PC continued unabated until the adjourned date, resulting in the absence of the latter from court. Worse still, the motion seeking an extension of time for the administration of the SD was not served on the PC. The motion was, however, served on the Senior State Counsel (henceforth SSC), who as part of the defence was representing the 9th and 10th defendants, thereby reinforcing the DC's wilful desire of frustrating the PC's interest. The cost is yet another adjournment, to 23rd May.

Excerpts 4:

Court: (*1*0th *April, … . The plaintiff was absent. 1st, 6th, 7th, 8th defendants present.*

Others absent. Defence Counsel present. State Counsel Present. No appearance for plaintiff. The Senior State Counsel has been served the Defence Counsel's application for extension of time but the plaintiff has not been served). Motion is adjourned to 23/5/… . for hearing. It is hereby ordered that the application of 1st to 8th defendants be served on the plaintiff and also that the plaintiff's application to set case down for hearing be served on the State Counsel on behalf of the 9th and 10th defendants (Mosojo v. Oyetayo 2012:17).

> Notwithstanding that the ulterior motive behind the time-wasting antics was identified by the judge, he granted the relief for the extension of time which was sought by the defence as presented below: Excerpts 5:
>
> PC: (*Accepts service [of the motion] and he is ready to argue the motion. Mr X is not opposing the application but he is asking for costs*).
>
> Court: Motion for extension of time. Order as prayed. The defendant/ applicant is hereby granted extension of time within which to file statement of defence. Time is extended till today 14th May, 1984. There will be 25.00 costs in favour of the plaintiff /

respondent. The statement of defence already filed is hereby deemed to be filed and served with effect from today (Mosojo v. Oyetayo 2012:24).

The service of the SD on the PC that ordinarily should not exceed thirty days took the DC a whooping six months. It took the order of the court as is documented in Excerpts 5 for the DC to serve the SD. The impolite nonverbal acts which were enacted by the DC in his reluctance in the timely service of the SD and Notice of Motion on the PC as part of numerous strategies at frustrating the opposition did not go unnoticed by the court, thereby necessitating the award of cost against the aggressor as was demanded by the PC, who was the primary target of the DC's nonverbal impolite acts.

5.2 Antics of frequent absence from court

Counsels' frequent absence from the courtroom is a nonverbal act which serves as tools for frustrating the opposition or to buy time for adequate preparation for the on-going case. In either case, it is not often the case that a counsel would be absent from court based on an act of God. Rather recurring absence amounts to impoliteness. Such attitude is meant to achieve a pre-determined purpose at the expense of the opposing party. Instances of counsels shunning of court sessions and the underlying antics behind such actions are exemplified below.

Excerpts 2:

Court: (*19th March, … . The plaintiff was absent. No appearance for plaintiff. The Defence Counsel was present. The Senior State Counsel was present*). There is no affidavit of service on the plaintiff. Case is adjourned to 10/04/… . (Mosojo v. Oyetayo 2012:17).

Both the plaintiff and his counsel were absent from court under the pretence of not being served with the Affidavit of Notice. Whereas this is legitimate, the absence was a ploy to further discredit the DC whose notoriety for denying the opposition access to statutory papers has already been established by court. This strategy is to present himself as a victim of the DC's aggression so he could curry the sympathy of the court. The PC's absence was premeditated. He could hardly claim not to be unaware of the sitting since the Registrar, by rules, would have notified all stakeholders of the court schedule.

The antics of shunning court sessions were perpetrated by both the plaintiff and the respondents. Both counsels took time in avoiding the court on the flimsiest excuse. On the next sitting, it was the turn of the DC, having made the same excuse which was tendered by his colleague, to stay away from the court. The court as exemplified in Excerpts 6 had to adjourn the case for the umpteenth time, thereby acting the scripts of the DC.

Excerpt 6:

Court: (*plaintiff prese*nt. *6th, 7th and 8th defendants present. Others absent. No appearance for defendants*). There is no affidavit of service of the motion. Case is adjourned to 14/5/… for hearing of the motion (Mosojo v. Oyetayo 2012:24).

It was the PC's turn in the enactment of counsels' antics and alternating absence as exemplified in Excerpt 4 which features the absence of the PC and his crew from court. The defence was on ground, however, to attend to the business of the day. The PC's failure to show up in court was hinged on the failure of the DC in serving him with the "affidavit of service.

Excerpts 4:

Court: (*10*th *April, … . The plaintiff was absent. 1*st, 6th, 7th, 8th defen*dants present. Others absent. defendants Counsel present. State Counsel Present. No appearance for plaintiff. The Senior State Counsel has been served the Defence Counsel's application for extension of time but the plaintiff has not been served*). Motion is

adjourned to 23/5/… . for hearing. It is hereby ordered that the application of 1st to 8th defendants be served on the plaintiff and also that the plaintiff's application to set case down for hearing be served on the State Counsel on behalf of the 9th and 10th defendants (Mosojo v. Oyetayo 2012:17).

As argued in Excerpt 2, the shenanigans of the PC's absence were scripted to blackmail the defence since the counsel was by rules notified of the day's business. The absence is apparently a counter-face-threat targeted at the opposition who did not serve him the necessary papers. The following example showcases a situation where both the DC and PC were not in court, thereby requiring the court to adjourn and make an order that the Registrar should serve the parties the affidavit of service.

Excerpts 7:

Court: (*Parties absent except* 9th and 10th *defendants, represented by the SSC.*). There is no affidavit of service. Order: Hearing is adjourned to 18/9/… . Notice of this date is to be communicated by the Registrar of this court to the plaintiff and all the defendants (Mosojo v. Oyetayo 2012:30).

Counsel may shun the courtroom based on unsubstantiated sickness. This is the case in Excerpts 8 where the parties were present in court except the PC who in a letter addressed to the court claimed to have been sick. Such sickness that was reported through a letter without being corroborated by official correspondence may be yet another strategy for playing legal mind-games. That action resulted in adjournment for the umpteenth time.

Excerpts 8:

Court: (*Mr X for the plaintiff wrote to court asking for an adjournment because he is sick*. Case adjourned 27/2/… for mention. Motion adjourned 27/2/… for hearing (Mosojo v Oyetayo 2012:38).

The PC's apology as contained in Excerpts 9 which was tendered in the court's next sitting, is an admission of the speaker's impolite acts of frustrating the opposition and court by the PC's action in claiming to be sick, thereby avoiding court attendance as well as the medium of communicating same.

Excerpts 9:

Court: (*Mr X for plaintiff/Applicant apologises to court for the contents of his last letter to the Registrar of this court*). Case adjourned 2/5/… for definite hearing (Mosojo v Oyetayo 2012:38).

Counsels' alternating absence from sittings continued unabated until the court decided to halt the underlying impolite body language of the legal actors. This is established in Excerpts 10 and 11 where the PC again wrote the court informing it of his absence and the consequent imposition of cost on the PC who is the worst culprit in the impoliteness of absence, respectively.

Excerpts 10:

Court: (*24th June, … . plaintiff present.* 1st, 4th, 6th, 7th, 8th, 9th and 10th d*efendants, present. 2nd, 3rd and 5th defendants absent. DC for 1st-8th defendants present. SSC for* 9th and 10th de*fendants, present. Mr X for plaintiff wrote to court asking for an adjournment as he is away to Ijebu-Ode High Court today* (Mosojo v Oyetayo 2012:38).

Excerpts 11:

Court: (*19th September, … . plaintiff present. 1st defendant present; 4th, 5th, 6th, 7th and 8th defendant present 2nd, 9th and 10th defendant absent_3rd defendant is dead. Mr Akande for 1st_8th defendants. Mrs M.F. Oladeinde, senior state counsel is not in court. Plaintiff asks for an adjournment because his lawyer is not in court*). Case

> adjourned 19/9/85 for mention. Plaintiff is to pay N50.00 cost to the defendants (Mosojo v Oyetayo 2012:39).

The PC's notoriety for shunning court sittings came to a peak when he proceeded to Ijebu-Ode High Court presumably to attend to other legal matters at the expense of the ongoing litigation. The PC was privy to the sittings of the court on 24th June and 19th September but was absent on each occasion. The recurring impoliteness of this action motivated by the desire to frustrate the opposition could no longer be condoned by the court, hence the award of costs against the PC and the validation of the argument that certain nonverbal actions, including unjustifiable absence from court, constitute impoliteness against the target(s).

5.3 Antics and impoliteness of nonverbal presupposition

Certain unwritten arguments are often embedded in trial documents as a pre-emptive path which counsels plan to chart at hearing and cross-examination. Such arguments are implicit and entail nonverbal fundamental defensive ideologies that are pivotal to legal victory. Nonverbal entailments are prevalent in the SC and SD and are scripted by the PC and DC, respectively as are illustrated below. Counsels often use varying strategies to distract the opposing party and to exclude targets from certain rights and privileges, family ties inclusive, as a way of laying legal landmines for them.

Excerpts 12:

> The plaintiff is a member of Obasinkin Logun Kando's family of Ila-Orangun, and he took this action against the above-named defendants for himself and on behalf of all other members of Obasinkin Logun Kando family of Ila-Orangun.
>
> The first defendant, who is in no way related to the plaintiff's family, is a member of Elepa's family in Isedo Quarter of Ila-Orangun.
>
> The Obasinkin chieftaincy title is a traditional chieftaincy title in Ila Orangun, which has remained in the family of the plaintiff exclusively for over a generation and throughout the track of history in Ila-Orangun (Mosojo v Oyetayo 2012:5).

The defendant is in the SC excluded as a member of the plaintiff's *Logun Kando* family, thereby presupposing that naturally, he has no claim to *Obasinkin*, the title of *Obasinkin* being presumably reserved for members of the *Logun Kando* family. The ideological disqualification of the defendant as a claimant to the *Obasinkin* though not explicit, inference can be drawn from the contextual clues offered from the third paragraph above. In the Yoruba culture, the exclusion in this context is short of calling the defendant a bastard and usurper, thereby affirming that nonverbal acts may complement verbal communication. In this instance, the nonverbal complementarily reinforces the intensity of impoliteness and the attack on the hearer's positive face.

The next example features a below-the-surface assertion that the plaintiff is the rightful claimant to the title.

Excerpts 13:

> The first holder of the Obasinkin chieftaincy title was Logun Kando, the ancestor of the plaintiff's family. … Logun Kando died during the reign of Orangun Oboyunmoyara over 300 years ago and his son Fagbemila succeeded him (Mosojo v Oyetayo 2012:6).

The muted argument in the extract above is in the reiteration of the title as the exclusive legacy of the plaintiff's family for 'over 300 years'! The presupposing interpretation is that if Logun Kando, projected in the SC as the progenitor of the family, was the first holder of the title and was succeeded by Fagbemila, his son (the SC contains a chronicle of successive Obasinkins from inception till date, all produced from the same family); it becomes logical that

the male offspring from the family have always been crowned as *Obasinkin*, whereas non-family members, the defendant inclusive, are impostors.

In a counter-strategy, the DC picked holes in the ideologically scripted SC of the PC.

Excerpts 14:

> DC: The 1st to 8th defendants further aver that there are two ruling houses for the Obasinkin Chieftaincy viz Oro-Apo Ruling House and Wale-Olu Ruling House.

That the following came from Oro-Apo Ruling House – Obasinkin Epadunmoye Winjobi (2) Obasinkin Egunjobi and T.A. Oyetayo while Obasinkin Wale-Olu, Dada, Omitogun and Jekayinfa came from Wale-Olu Ruling House (Mosojo v Oyetayo 2012:21).

Aware of the booby-trap set by the PC in his claim that the *Obasinkin* is solely reserved for the Logun Kando family and that any attempt to acquiesce to that argument would jeopardise the defendant's legal interest since the latter is not a member of the family, the DC in discrediting such claim averred that contrary to the plaintiff's claims, the title is rotational between two ruling houses. This argument goes with the nonverbal presupposition that the defendant is not a usurper but has a legitimate claim to the title, granted that he belongs to the alternative ruling house that could as well sponsor candidates for the chieftaincy title of Obasinkin.

Through a similar strategy, the DC attempted to evade another legal mine as illustrated below.

Excerpts 15:

> PC: The plaintiff further avers that Obasinkin Jekayinfa, an illiterate, who was the ruling Obasinkin at the time the Chieftaincy Declarations were passed and approved did not inform the ruling House of the intention and attempts to split Obasinkin Ruling House into two (Mosojo v Oyetayo 2012:8).
>
> DC: The 1st to 8th defendants deny paragraphs 26 & 27 of the plaintiff's statement of claim and will require strict proof of the averments at the trial of this action but state further that the Chieftaincy Declaration which regulates the appointment of the Traditional Chiefs and other Chiefs in Ila Local Government was made after due consultation with the interested parties during the reign of Obasinkin Jekayinfa. It was approved on the 19th day of March, 1960 (Mosojo v Oyetayo 2012:21).

In response to the nonverbal presupposing claim by the plaintiff that the action of Jekayinfa, the then title-holder when the Chieftaincy Declaration of 1960 was passed, was not binding on the his family since the then title-holder was unlettered, the defence insisted the Declaration was made 'after due consultation with the interested parties during the reign of Obasinkin Jekayinfa'. The pragmatics of the DC's response is that of co-opting Jekayinfa as the author of the controversial Chieftaincy Declaration which has given legitimacy to the defendant's claim to the title of *Obasinkin.*

6 Conclusion

This study has demonstrated that the adversarial courtroom thrives on various forms of faceworks and impolite nonverbal behaviour which are significantly complementary to verbal communication. Counsels often deploy nonverbal foul and fair means towards the achievement of legal victory, thereby sacrificing the quest for truth and justice. Granted that nonverbal communication is largely constitutive of pitch, gestures, facial expressions, and so on, this study focused on the stance and attitude of counsel which are often enacted through time-wasting, frivolous absence from court and nonverbal presuppositions which are forms of impolite devices aimed at frustrating the opposition and the court with far-reaching implications on the delivery of justice. Time-wasting and counsels' frequent absence from court are meant to

intimidate the opposing counsel, wear out the witness and ultimately frustrate the court. Nonverbal presupposing arguments being the flip-side of name-calling are embedded in pre-trial documents as a pre-emptive impolite strategy which counsels hope to chart at hearing and cross-examination. Implicit arguments are pragmatic boobytraps for the opposing lawyer as well as nonverbal ideological landmines for the opposition. In various forms and guises, nonverbal impoliteness is aimed at ensuring justice, hence the popular affirmation that 'justice delayed is justice denied'. In conclusion, since the conventional court is prone to impoliteness and, therefore, the miscarriage of justice, citizens should explore alternative dispute resolution mechanisms which rely on fact-finding and are less prone to impoliteness. In the alternative, courtroom language use should be moderated while vulnerable participants are protected from counsels' verbal intimidation so that fairness and justice would not be sacrificed in the adversarial court system.

Significantly, this study extends the scope of nonverbal communication beyond the traditional manipulation of pitch, gestures, facial expressions, and so on to include time-wasting, frivolous absence from court and nonverbal presuppositions which are impolite devices by counsels that are applicable to the courtroom. In so doing, this paper has set the pace in addressing the paucity of studies on nonverbal courtroom impoliteness.

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