UNIVERSITY OF EDUCATION, WINNEBA

COMMUNICATION IN THE LEGAL PROCESS: THE CASE OF CROSS-EXAMINATION OF WITNESSES IN THE 2012 ELECTION PETITION IN GHANA

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DECLARATION

Candidate's Declaration

I, Manasseh Bangmarigu Jonah, declare that this thesis, except quotations and references contained in published works which have all been identified and duly acknowledged, is entirely my original research, and it has not been submitted, either in part or whole, for another degree elsewhere.

SIGNATURE: .....

DATE: ..... ……

Supervisor's Declaration

I hereby declare that the preparation and presentation of this thesis was supervised in accordance with the guidelines for supervision of thesis as laid down by the University of Education, Winneba.

Name: Dr. Mavis Amo-Mensah

Supervisor's Signature: .....

Date: .....

DEDICATION

I dedicate this work to my mentors.

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ABBREVIATIONS

EC…… Electoral Commission

NPP……. New Patriotic Party

NDC…… National Democratic Congress

ABSTRACT

This study explores the communication styles and strategies used in the legal process of the election petition in 2012. The researcher sampled six days of court sitting of the 2012 election petition as data and used Glaser and Strauss' (1967) constant comparative technique of content analysis to analyze the data. Guided by Beke's (2014) litigation communication theory and Aristotle's theory of rhetoric, the researcher discovered that lawyers used hostile style, soft style, and conversational style to cross-examine witnesses. Also, the lawyers used persuasive appeals such as logos (questioning, speech-making), pathos (impression management and non-verbal cues) and ethos (cultural reference personalization) to cross-examine witnesses as well as persuade audience. It was further established that the communication styles and strategies used were effective in eliciting the truth, background information, and specific information from witnesses to support the election petition. The researcher recommends that further studies on communication and legal processes are useful in building a robust field of research that could inform the practice of litigation communication in Ghana specifically, and Africa in general. This study adds to knowledge on effective communication strategies for cross-examining witnesses during election petitions.

CHAPTER ONE

INTRODUCTION

1.0 Background of the Study

Hoecke (2002) considered law as a means of communication because it involves legal argumentation and interpretation. According to Beke (2014), the law is a system of rules that is enforced through a set of legal institutions. Law serves as a tool that guides other sectors of society such as economics, politics, social life, and it is relevant in managing and enforcing moral frameworks and concepts in society (Whalen & Fondren, 2011). Communication in law was not easily reflected in the courtroom practice of the 1950s (the period of the emergence of the appearance doctrine) because courtroom communication was deemed secret and discretional, and usually far from public access and hearing (Hoecke, 2002).

Chrétien, de Peretti-Schlomoff, and Viguier (2015) posited that communication is crucial in the adjudication of justice in the courtroom. The role of communication in the judicial system, as discovered by Chrétien et al. (2015), was largely influenced and limited by what is termed Kilmuir's principles. The Kilmuir principles were based on the assertion of Lord Kilmuir, Lord Chancellor of England and Wales in 1955, that,

> "So long as a Judge keeps silent, his reputation for wisdom and impartiality remains unassailable: but every utterance which he makes in public, except in the course of the actual performance of his judicial duties, must necessarily bring him within the focus of criticism" (Chrétien et al., 2015, p. 4).

Kilmuir rules prohibited the participation of judicial stakeholders in public discussions (Crawford, 2019). These rules restricted the entire practice of the justice system to principles of secrecy and discretion unknown to the public. The prohibition of openness and diversity in courtroom communication culminated in issues of lack of public trust and mild democratic accountability that resulted in judicial scandals and allegations (Chrétien et al., 2015). For instance, Marc Dutroux's case in Belgium resulted in over 30,000 people demonstrating against the Supreme Court of Belgium's decision. In Ghana, the judicial scandal in 2015, in which 12 judges were accused of taking bribes, brought a lot of reputational issues in the justice system.

As a result of the need to make the justice system open and accessible to the public, the European Court of Human Rights (ECHR) advocated for open communication and practice in the justice system. This is rightly termed as _appearance doctrine' which is based on the doctrine that –not only must Justice be done; it must also be seen to be done" (ECHR, Case of Delcourt v. Belgium 1970 cited in Versacomp, 2012, p.12). The appearance doctrine has, therefore, championed a new wave of communication roles in the justice system that places relationship building and accountability to the public over the secrecy and discretion of the justice system. Since appearance doctrine has greatly influenced the law as practiced today, there is no doubt that courtroom communication is gradually coming out of secrecy and discretion (Chrétien et al., 2015).

Regarding communication in the courtroom, Whalen and Fondren (2011) argued that the guiding light in any courtroom is the communication that

is being exchanged: that is how the information about the case is learned; how the two sides of the case are presented; and how the decision is made and presented. Based on this, Whalen and Fondren (2011) asserted that without communication, the court system would cease to exist. Whalen and Fondren (2011) observed that communication in the courtroom is an ongoing never-ending topic that will only grow increasingly with time. The role of communication in legal practice in general and the courtroom largely influences the growing change in understanding of the concept of the public (Whalen & Fondren, 2015; Beke, 2014).

Chrétien et al. (2015) observed that the notion of the public is gradually changing in a legal communication setting. Chrétien et al. (2015) conceptualized publics in the legal communication in two major ways. First, the public could be viewed as the total citizenry in a geographical location. Second, the public is also known to be available to everybody. Christen et al. (2015) conceptualize public to comprise accessibility, which in turn requires bringing simple, understandable, and accurate information to a wide range of individuals. To make courtroom communication accessible to a wide range of individuals in society, there is a need for the justice system to tap the expertise of public relations practitioners who are liaising between the organization and the public (Beke, 2014). This has led to the emerging branch of public relations called litigation public relations championed by Beke (2014).

Litigation public relations is a specific branch of legal communication that focuses on using communication and public relations expertise to ensure the reputation of an organization is sustained or maintained before, during, and

after a litigation process (Beke, 2014). Litigation public relations is somehow similar to legal public relations which deals with the overall use of public relations in legal issues or practice, while litigation public relations deal with the use of public relations in sustaining the reputation of the litigant before, during and after the court case (Beke, 2014). To further differentiate litigation public relations from legal public relations, Beke (2014) coined the concept of the _œurt of public opinion.‘ Court of public opinion refers to the aggregate perception of the public about a legal proceeding that determines their prejudicial support of any of the litigants (Beke, 2014). The notion of the court of public opinion implies that the litigant that brings accessible information to the public has the support of the public before, during and after the legal process (Beke, 2014). The support of the public in the legal process determines largely the reputation of the litigant during and after the legal process. In election petitions, it is said that parties contest election results not only for the sake of winning but also to gain public trust and support for the subsequent elections (Chrnykh, 2014). In this light, the notion of the court of public opinion in election petitions is relevant for achieving the goals of the legal process both within the court and outside the court. The need to carry the public along the legal process has informed the attention litigation public relations practitioners give to the cross-examination stage of the legal process (Chrnykh, 2014)

In election petitions, the cross-examination stage of the trial process is very key for the success of the litigation process (Versacomp, 2012). According to Purdue (2012), cross-examination presents the greatest potential for high courtroom drama. The decisive power of cross-examination on the trial case is captured in the witty words of the trial lawyer Rufus Choate‘s motto that

–Never cross-examine more than is necessary. If you don‘t break your witness, he or she breaks you” (Purdue, 2012, p. 20). Cross-examination involves redefining the evidence of a court case and adding perspectives missing in the direct examination (Crawford, 2019). It is argued that jurors pay more attention to cross-examination than direct examination, but their attention is usually within the first ten minutes of the cross-examination (Purdue, 2012). This has made cross-examination a tactful task that requires hitting the nail on the head in the first few minutes of the examination of witnesses‘ reports. The main task of the lawyer is to discredit the witness and render the evidence invalid for a court hearing (Crawford, 2019). Therefore, the communication used in cross-examination is usually straightforward interrogative mood with hostile and soft communication styles (Crawford, 2019; Purdue, 2012). In election petitions, the cross-examination usually involves a process of verifying the irregularities claimed by the filing party and issuing a list of exhibits to approve or disapprove the witness‘ evidence validity (Crawford, 2019). This has called for communication scholars‘ attention to assess the impact of communication style on the election petition litigation process (Johnston & Kelly, 2021).

1.1.0 The 2012 Election Petition of Ghana

Ghana is known as the icon of African democracy with a smooth transfer of power from the incumbent to the opposition on two successive occassions (Adams & Asante, 2020). In the 2012 general election, the outcome of the election was contested through a petition in the Supreme Court of Ghana. The petition was filed by the NPP Presidential candidate, H. E. Nana Akuffo-Addo, and his vice-President, Dr. Mahamudu Bawumia (1st and 2nd Respondents) as plaintiffs against the then incumbent President-elect, H. E.

John Dramani Mahama and the electoral commission of Ghana, represented by Dr. Afari Gyan, the defendants. The case was filed on the 16th of April, 2013 with evidence of election irregularities such as over voting, lack of presiding officers' signatures, duplicating polling stations, and lack of biometric verification. These complaints were investigated in the court of law through an election petition hearing from 16th April to 29th August 2013. The extended period caused tension and unease on the part of the political environment and social fabric as a result of the already divisive ethical political environment. The cross-examination spanned 40 days with different witnesses being called to the dock starting from the plaintiffs' witness, Dr. Bawumia to the defendants' witnesses, Mr. Asiedu Nketia and Dr. Afari Gyan. With astute lawyers such as Tsatsu Tsikata, lawyer Aziz Bamba, Tony Lithur on the National Democratic Party legal team and Philip Addison, lawyer Appiah Appau on the New Patriotic Party legal team, the cross-examination was historic and dramatic in each court sitting.

1.2 Statement of Problem

Election results confirm the ultimate winner in every election process. However, losers in elections are fifty percent likely to dispute the outcome of elections (Adams & Asante, 2020). For instance, Adams and Asante (2020) found that from 1990 to 2021, about 58% of Presidential and parliamentary elections in developing democracies ended in losers refuting election results and using methods such as protests, boycotts, and petitions to challenge election results. Out of the global figure of 58%, the sub-sahara regional analysis revealed that about 80% of the election results challenge occurred in Sub-Saharan Africa (Adams & Asante, 2020). It is further established that losers of

executive and parliamentary elections resorted to courts to settle the post-electoral disputes (Adams & Asante, 2020; Azu, 2015). This implies that election petitions are becoming the major post-electoral processes for correcting the irregularities associated with elections in most developed and developing democracies. Erlish, Kerr, and Park (2021) observed that the reliance on the court of law for settling post-election disputes is a ‗democratic boon' because it is a sign that losers are ready to rely on the constitutional framework to handle election malfeasance. Erlish et al.'s (2021) observation is seen as a plus for developing democracies in Sub-Saharan Africa, where large numbers of petitions are recorded.

Chrnykh (2014, p. 1378) asked a very intriguing rhetorical question, ―why do political parties opt to employ barricades as opposed to barristers?" Chrnykh (2014) covertly posits that there is a high propensity of election complainants to resort to post-election petitions in court rather than using other forms of post-election disputes such as protests. This has made the need to examine the communication component of the litigation process quite pressing and needful. Crawford (2019) asserted that communication is vital in the courtroom. In a study by Crawford (2019), the author discovered that even though verbal and nonverbal communication forms have been investigated, there is little attention on the communication style. Crawford (2019) found that communication strategies such as impression management, persuasive skills, style of dress, and powerful speech could contribute to effective communication in cross-examination. Johnston and Kelly (2021) studied the barriers to effective communication in the cross-examination of witnesses, and the authors found that suggestibility, acquiescence, court language, and negative feedback served

as barriers to effective communication. Johnston and Kelly (2021) recommended that investigating the impact of communication in the unique environment and situation of cross-examination is key to improving the success of the litigation process.

Petit (2000) argued that election disputes are inherent to the election, and petitioning on an election is therefore not to be seen as a weakness, but as proof of the strength, vitality, and openness of the political system. Therefore, Petit (2000, p. 25) opines that ~~"t~~he right to vote would be merely abstract if the right to sue to enforce it was not guaranteed in law." Petit (2000) argues that the right to sue political parties in cases of irregularities is what enforces the right to vote from being abused by rigging and other election manipulations. Also, the UK Electoral Commission (2012) states that Election challenges are a fundamental part of the electoral process.

Beyond the pursuit of justice, scholars have found that election petitions are motivated by other factors (Erlish et al. 2021; Nkansah, 2016; Addison et al., 2005). For instance, Erlish et al. (2021) discovered that election petitions in Kenya were largely motivated by four factors which are overturning election results, reputation management, bargaining chip, and psychic benefits. Erlish et al. (2021) found that election petitions are mainly motivated by the desire to discredit election results and call for reelection in favor of the complainant. Also, an election petition is motivated by the desire of political parties to manage their reputation for future elections. Moreover, Erlish et al. (2021) revealed that an election petition is a tool for political parties to bargain with the incumbent for other benefits such as jobs and money. Finally, Erlish et al.

(2021) found that complainants also achieve some psychic benefits such as satisfaction derived from disturbing the winning party election. The work of Erlish et al. (2021) shows that when parties are not able to secure sufficient evidence to overturn the election results, they still reap other benefits from the election petitions than other forms of post-election disputes.

In a Nigerian-based study, Nkansah (2016) found that the high quantity of sub-national post-election petitions in Nigeria has overwhelmed the judiciary‘s capacity to handle non-electoral cases. Nkansah (2016) considered such development as a process of politicization of the judiciary which weakens the court‘s legitimacy. In a similar light, Erlish et al. (2021) described election petitions as a process of weaponizing post-election courts‘ challenges. The proliferation of election petitions is not limited to developing democracies but even developed democracies such as US and UK have had their share of it in their post-election disputes. In the 2020 US Presidential elections, Donald Trump and his Republican Party filed about 64 cases to challenge the results of the election in 12 state courts and the Supreme court of the US (Benner & Schmidt, 2020). Even though Benner and Schmidt (2020) discovered that Trump‘s petition was said to lack a factual basis, the number of petitions filed to register their post-election non-compliance with the election results is worth noting.

In Ghana, Atengble (2014) studied the impact of social media on Ghana‘s 2012 election petition. The researcher discovered that social media was predominantly used as a public information tool, commentaries, expression of opinions, and advocacy of the audience. In other words, the court of public

opinion was largely spearheaded on the social media space. Though Atengle's (2014, p. 15) study did not focus on communication, the researcher observed that during the court proceedings, many terms and concepts such as "I put it to you", "I suggest to you", amicus curiae, contempt, councils, the order in court, motions, and the like were used by officers of the court, and this trickled into public discourses as members of the listening public were readily digesting such contents. Versacomp (2012) observed that cross-examination could adopt a hostile or soft communication style between a lawyer and a witness. Versacomp (2012) opined that questioning should be towards summarizing testimony, commenting to the jury, asking would-it-surprise-you questions, pursuing a line of questioning, and asking speech-making questions. In their review of literature on cross-examination for three decades, Kelly et al. (2021) confirmed the assertion of Crawford (2019) that there is generally a lack of literature on the area of communication in cross-examination. Johnston and Kelly (2021) also observed that the available evidence of literature on communication and cross-examination focused on simulated cases rather than real-time cases. This methodological weakness and general lack of literature in the area of communication and cross-examination has negatively affected the knowledge of effective communication strategies in the courtroom and court of public opinion (Beke, 2014; Chrnykh, 2014; Johnston & Kelly, 2021). The current study, therefore, explores the communication strategies used by lawyers and witnesses in cross-examination during Ghana's 2012 election petition.

1.3 Research Objectives

1. To explore the communication styles used by lawyers to cross-examine witnesses in the 2012 election petition of Ghana.

2. To investigate the persuasive appeals used by witnesses and lawyers in the 2012 election petition of Ghana.
3. To explore how the persuasive appeals used in the election petition facilitate the legal process of Ghana.

1.4 Research Questions

1. What communication styles were used by lawyers to cross-examine witnesses in the 2012 election petition?
4. What persuasive appeals were used by witnesses and lawyers in the 2012 election petition?
5. How did the persuasive appeals used in the election petition facilitate the legal process?

1.5 Significance of the Study

First, the study will contribute to the emerging field of litigation communication and public relations by providing empirical evidence of how communication styles and strategies are used to achieve effective communication in courtroom discourse. The study provide insights for subsequent studies in litigation communication and litigation public relations by informing scholarship on how communication is influential in winning the trial process in the court of public opinion (Beke, 2014).

The second importance of the current study is that it will contribute to the practice of the litigation process in the law court. This openness in judiciary practices is gradually calling for communication scholars to investigate how communication could be used to effectively win public trust in judiciary institutions and processes. The old focus of appealing to the selected legal elites

in the courtroom is now expanding to include the vast majority of the public in court proceedings due to the changing notion of _public‘ and the emerging concept of public opinion (Erlish et al., 2021). Just as the Areopagus (Acts 17:22) was for arguing philosophical ideas in ancient Athens, the media space and public at large most probably provided space for arguing social justice cases. The present study will, therefore, provide insight into how communication in the law court could adopt effective communication styles and strategies to appeal to the jury as well as the court of public opinion.

Thirdly, the present study will contribute to the theoretical work of Beke (2014) on litigation communication and litigation public relations. Beke‘s (2014) litigation communication theory has not been used in extant studies to decipher its usefulness in understanding litigation communication. The present study seeks to use this theory, especially the trial stage of the theory, to understand how instrumental communication is in the litigation process.

1.6 Delimitation of the Study

The present study is delimited to the communication strategies used for cross-examination during litigation communication. Attention is given to communication styles and appeals over other aspects of the litigation process because there is little research on the communication styles and appeals used in the litigation process. Also, the study is delimited to the 2012 Presidential election petition. The 2012 election petition is chosen because it is established in the literature that it was a petition that focused on the legal and constitutional breaches in the election procedures (Asante & Asare, 2016) . Moreover, it was more public and tense with an extended period of 13th April 2013 to 29th August

2013 (Asante & Asare, 2016). In comparing to 2012 and 2020 election petitions, Citionline (2021) described the 2020 election petition as based on arithmetic and logic while 2012 was based on constitutional and legal issues. Asante and Asare (2016) concluded that the 2012 election petition was a leap in the democratic consolidation in Ghana, hence the need to study the communication strategies and styles used in the cross-examination.

1.7 Organization of the Study

The present study is organized into five chapters. In the first chapter, the researcher established the background of the study, the statement of the problem, research objectives, and research questions of the study as well as the significance of the study. The chapter concluded with the delimitation, organization, and summary of the chapter. Chapter two explained the fundamental concepts of the study, provided sufficient empirical studies to establish the research gap, and concluded with a theoretical framework to guide the analysis. In chapter three, the research outlined the research design, research data collection, analysis, and ethical considerations. Chapter four focuses on the data collected as well as analysis to find answers to the research questions that underpinned the study. The final chapter provided a summary of the entire study, the major findings, the recommendations, the conclusions, and the study‘s limitations.

1.8 Chapter Summary

This first chapter has shown how communication in the legal sector has now moved beyond secrecy to openness. The background established that even though communication is vital in courtroom communication, especially cross-

examination, there is no founded information or evidence on the communication styles and strategies that are relevant to effective communication during cross-examination. The objectives are to discover the communication styles, the communication strategies used in cross-examination as well as the effectiveness of the communication strategies. The chapter has, therefore, laid the foundation for exploring the communication strategies used in cross-examination during election petitions.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This chapter provides a detailed review of available related empirical studies in areas essential to understanding the study. Also, the chapter includes a discussion of the theoretical framework, that is Beke's (2014) litigation communication theory and Aristotle's modes of persuasion.

2.1 An Overview of Communication in the Courtroom

Dominick (2007, p. 12) defined communication as ~~"~~the process by which meaning is exchanged between individuals through a common system of symbols, signs, or behavior." From this definition, communication is seen as a process in that it is not a one-step event but a series of activities, exchanges, and sets of behaviors that occur over time. Legal communicators have described the communication that takes place in the courtroom as courtroom communication (Beke, 2014; O'Leary, 2016; Naidoo, 2018).

Courtroom communication, like other forms of human communication, involves the use of both verbal and nonverbal communication (Wood, 2007). In courtroom communication, there is great reliance on both verbal and nonverbal cues for validating the message of the witness (Beke, 2014). The burden of proof is not based on what is said alone, but on how it is said and what other meaning systems are available to the jury (Naidoo, 2018). For instance, witnesses nonverbal cues such as their smile, posture, and eye contact among others can communicate their credibility or honesty concerning the case (Naidoo, 2018; O'Leary, 2016). It is said by Naidoo (2018) that the jury pays

close attention to verbal cues than nonverbal ones because nonverbal cues are more genuine and honest in discovering the truth. According to Rodman and Proctor (2003), there are five major functions of nonverbal cues which are repeating, complementing, substituting, contradicting, and deceiving. In the courtroom, effective communication is highly dependent on both categories of communication: verbal and nonverbal communication. The meaning sharing among the communicators, thus lawyers, judges, and witnesses among others, is described as litigation communication (Crawford, 2019).

According to Beke (2014), litigation communication is a type of legal communication that deals with the managing of the reputation of an organization or an individual during a legal dispute situation (Brandwood, 2000; Beke, 2014). It is a type of legal communication that involves managing communication in a long and devastating legally-driven conflict or dispute, which means a legal case that has potential to damage reputation of parties involved in the proceedings (Fitzpatrick, 2000). Fitzpatrick (2000) argued that every organization is susceptible to a legal dispute that may threaten its reputation. Fitzpatrick (2000) noted that there are special sensitivities, dynamics, and knowledge involved in communicating publicly during a legal dispute. Beke (2014) recommended the need for legal practitioners to utilize the interdisciplinary PR approach to support their clients in the litigation process. Interdosciplinary approach to PR requires the deployment knowledge and methods from other related disciplines such as psychology, advertising, law and many others to handle complex PR issues.

Fitzpatrick (2000) argued that court cases provide high-profile news for journalist and it is the responsibility of the litigation PR practitioner to ensure that the client win in the *court of public opinion*. The court of public opinion also called the arena by Beke (2014) refers to the general public opinion of the general public based on available evidence in the public space. The court of public opinion could largely impact court proceedings and usually, it is curtailed by the imposition of judicial restrictions (Beke, 2014).

Beke (2014) stated that the legal PR practitioner positions the legal process effectively in the public court of public opinion. It involves managing the communication process through the use of different methods during any legal proceedings. This is key in ensuring client reputation is intact before, during, and post-litigation processes (Haggerty, 2003).

2.2 An Overview of Election Petitions

UK Electoral Commission (2012) defined an election petition as the legal procedure for challenging the outcome of an election within a specified period. The Electoral Commission, Ghana, (1992), Act 284, described election petition as the process of legally questioning the validity of election results. Three major factors are catered for in the law regarding election petitions. These three factors are the petitioner, the grounds, and the procedure (IDEA, 2009).

The first factor, which is the petitioner, according to the laws of Ghana (The Electoral Commission, 1992, Act 284), just like the UK, is likely limited to a candidate of the election or a registered voter who is affected by the outcome of the election. In Ghana, The Electoral Commission (1992, Act 284) gives an extension to acclaimed candidates, nominees, and elected candidates.

Despite the limited accessibility for individuals and outsiders to petition elections in Ghana, the international bodies on election petition regulation are calling for more understanding in challenging the outcome of election results (International Institute for Democracy and Electoral Assistance (the IDEA, 2009). The Electoral Commission of the UK (2012) demanded reform to make access to petition elections available to all stakeholders of the election.

The second factor is the grounds of the petition. In Ghana, election petition filing must be based on illegal practices contrary to the constitutional provisions that suffice in the election process (1992, Act 284). For instance, in the 1992 constitution issues of bribery, cheating, intimidation, and other malpractices could amount to petitioners contesting the election results in the law court (1992, Act 284). Also, an election petition could be submitted on the ground of disqualified candidate being elected, or non-compliance with any provision of the constitution On any of these grounds, the 1992 Constitution of Ghana, Article 284, clause 16 demands that the plaintiff, that is the petitioner, file the petition to the high court within twenty-one days after the election for 20,000 Ghana cedis (1992 Constitution). The high court has the sole right to examine the evidence or grounds before validating the petition as worth the case of a petition or not. The Ghanaian election petition may require revision in terms of the grounds of petitioning to reflect the current international bodies' standards.

The third factor is the procedure. The procedure for filing an election petition is directly stated in the Constitution that the plaintiff should present sufficient evidence supporting the petition that the election results are not valid

(1992, Act 284). In Ghana, the sue is first done at the high court level where the validity of the sue is determined and further steps are taken to seek a court hearing and verdict. The Council of Europe's Venice Commission (2012) proposed that the procedure for challengers to follow, from bringing the challenge up to its determination, should be simple. The UK Electoral Commission (2012) adds that necessary measures should be put in place to eliminate formalism and avoid decisions of inadmissibility on account of a challenger's procedural error. Moreover, The UK Electoral Commission (2012) recommends that the procedures should be reconsidered in the electoral law to provide a right of appeal to an appropriate higher level with authority to review and exercise final jurisdiction in the matter. The constitutional procedure is not a one-step event but a series of events that might not prompt to ensure fast processing.

Election petitions require the rigorous process of a court of law to resolve the discrepancies (Purdue, 2012). In so doing, the litigation process includes both direct and cross-examination. The direct examination involves the witness being examined by the witness' own lawyer. Direct examination is very relaxed, less rigorous, and mostly towards making available the evidence of the witness to the jury (Crawford, 2012). On the other, cross-examination involves the opposition lawyer examining the witness to validate, discredit and reduce the available evidence to support the case (Crawford, 2012). Cross-examination is usually more tense and rigid in that it contributes significantly to the court's verdict on the case (Purdue, 2012). During cross-examination, witnesses can be emotional, hostile and tough, and many more.

2.3 Communication, Election Petitions, and, Cross-examination

There have been several studies on election petitions around the world and Ghana in particular. These studies have covered the nature of election petitions, the scope, and the effect of election outcomes and petitions.

Regarding the legal framework of election petitions, The UK Electoral Commission (2012) conducted a critical review of the electoral legal framework of the UK on election petitions. The UK Electoral Commission (2012) discovered that the UK election petition legal framework is not accessible nor transparent to citizens, and the legal framework has complex requirements as grounds for petitioning elections. Aside from these challenges, the Commission (2012) found the lack of court repeal, the high cost of petitioning as well as an opaque legislative provision as barriers to successful petitioning of election results. Moreover, there is a lack of promptness in processing election petitions as well as the prohibition against the returning officers from petitioning results. Based on these findings, the UK Electoral Commission (2012) argued that it is challenging for smaller parties, and by extension individuals, to challenge election results through petitioning, except for bigger parties. The Electoral Commission concluded that the UK legal framework on election petitioning is outdated, inaccessible, complex, and inefficient. The UK Electoral Commission (2012) recommended that there is a need for fundamental reform to ensure the UK has a system to challenge elections that complies with principles set out by international bodies and that which promotes public trust and confidence in election results.

In another study, Cantú and García-Ponce (2015) explored the effect of losing an election on the electorates' perception of electoral integrity in Mexico. Interviewing over 7000 voters during and after elections, Cantú and García-Ponce (2015) discovered that voters who supported the losing candidate were significantly disposed to distrust the integrity of the electoral administration. The author further established that despite voters' low rating of electoral integrity, the voters still show up for elections in subsequent years. The authors also found that electoral observers' presence during the election does not affect voters' rating of electoral integrity. The authors concluded that the low perception of electoral integrity significantly resulted in election disputes and high non-compliance to election results.

Regarding election justice, Orozco-Henríquez, Ayoub, and Ellis (2010) conducted a study to explain how electoral justice work to ensure the prevention and resolution of election-related malfeasance. The authors opined that electoral justice is the cornerstone of democracy in that it safeguards both the legality of the electoral process and the political rights of citizens. Orozco-Henríquez et al. (2010) regarded electoral justice as the fundamental tool for the continual process of democratization, and as a catalyst for the transition from the use of violence as a means for resolving political conflict. The study discovered that effective electoral justice requires the institution of electoral bodies that will work at providing civic education and entrenching proper culture for the prevention of electoral disputes. In a similar study, Hafner-Burton, Hyde, and Jablonski (2016) studied election-related violence and incumbent chances of victory. Using NELDA data set from over 122 countries around the world with 339 election-related violence, Hafner-Burton et al. (2016) found that pre-

election-related violence gives a 51.3% increase in incumbent victory in the elections. On the other hand, post-election-related violence delays the activities of elected leaders.

Murison (2013) studied Presidential and parliamentary election petitions in Uganda for the 2001, 2006, and 2011 elections. Using over 140 parliamentary petitions and two Presidential petitions, Murison (2013) revealed that even though the judges in the Supreme Court of Uganda acknowledged election irregularities in the Presidential elections in 2001 and 2006, the judges still ruled in favor of President-elected (H.E. Museveni) because of executive pressure on the judiciary. Murison (2013) found that high courts in Uganda, after discovering substantial evidence of bribery and election irregularities in the parliamentary petitions, called for by-elections to allow the people to re-elect the genuine leader. According to the study, high courts are most likely to rule in favor of parliamentary petitioners with substantial evidence than the Supreme court of Uganda will do for Presidential petitions. The study by Murison (2013) revealed the power of the executive arm of government in influencing petition outcomes.

Gathi and Akinkugbe (2021) explored the benefits of judicializing election petitions at the international courts of Africa. Using four mega-political dispute cases which were submitted to the African court, ECOWAS Court of Justice and East African Court of Justice and two national election petitions in Kenya, Gathi, and Akinkugbe (2021) revealed that the petitioning of election-related disputes to international courts is largely motivated by the lack of trust in national courts and desire of plaintiffs to gain a higher forum for addressing

election-related violations. Gathi and Akinkugbe (2021) found that judicializing election disputes at African courts give petitioners a forum to communicate violation of international human rights, the establishment of an equal and fair political environment for minority parties, and a deterrent to future political violations at the national elections. Gathi and Akinkugbe (2021) concluded that building resilient competent courts at the national level could reduce petitioning at the international level. Based on Gathi and Akinkugbe‘s (2021) findings, one can deduce that petitioners are not only motivated by overturning election‘s results, but other factors such as exposing the ills of the democratic practice in order to strengthen the system and establish justice for future. This makes election petition a preferred means of resolving election irregularities over barricades in Africa.

Nadeau, Daoust, and Dassonneville (2021) investigated the winning-losing gap and its impact on citizens‘ assessment of the quality of democracy. The authors used a dataset of 163 elections from 51 countries around the world. Using correlation analysis, Nadeau et al. (2021) showed that both winners and losers have low satisfaction with election outcomes when the quality of the democracy is deemed poor.

The authors concluded that citizens‘ satisfaction with election outcomes is primarily controlled by their understanding of democracy. One can infer from the finding of Nadeau et al. (2021) that post-election disputes are more likely to occur in countries with poor democratic systems. It is, therefore, important to improve legal means of settling post-election disputes as an effective constitutional means for dissolving post-election disputes. In Ghana, Ayelazuno

(2013) interrogated the absolute majority of election victory in Ghanaian general elections focusing on two major elections (2008 and 2012 general elections), to expose the flaws of the absolute majority. Ayelazuno (2013) found that the absolute majority poses two major flaws to electoral peace. One, the absolute majority system promotes ethnic politics among the major political parties as a way to secure the fifty percent plus one vote win. This has resulted in the alignment of the major political parties on ethnic lines such as the New Patriotic Party to the Akans and the National Democratic Congress to the Ewes. The second flaw of the absolute majority in the promotion of political exclusion of minority regions is in the determination of political victory.

Ayelazuno (2013) recommended that Ghana should add a double-winning system to the absolute majority system as a check to avoid ethnic politics and minority exclusions. A double-winning system involves securing the win of a simple majority of valid votes cast in five regions. Bosompem (2019) investigated the use of Facebook for political communication by political parties in Ghana. Using mixed methods, Bosompem (2019) gathered data from 117 Facebook posts of the selected parties and interviewed officials of the political parties. The author found that Facebook was used as a public information ad-hoc communication tool rather than coordinated communication for building mutual relationships with electorates. Bosompem (2019) recommended that political parties should establish public relations units with experts to manage political communication, and also provide training for political communicators to engage electorates through social media platforms.

From a political economy perspective, Bukari (2017) studied Ghana's elections from 1992 to 2019 using macro-level data from the district-level voting turnouts and micro-level data from 600 respondents in Brong Ahafo and the Central region of Ghana. The author found that aside from the ethnic factors that determine voters' participation in electioneering, there are other factors such as development-oriented issues, articulation of policies, income level of voters as well as the area of residence. For instance, the author revealed that voters with low income tend not to participate in voting more than voters with high-income levels. Bukari (2017) also found that voters' participation in elections brought about infrastructural development in communities. It was apparent that there was no relationship between voters' participation in the election and individual income, and job opportunities. Owusu-Mensah and Rice (2018) studied the role of the activist Supreme Court in defending democratic procedures. Tracking the election procedures and judiciary intervention from 1992 to 2016, Owusu-Mensah and Rice (2018) found that the Supreme court of Ghana has been effective in addressing political malfeasance that is capable of marring democratic procedures.

These studies on election and election petitions in Africa, and Ghana in particular, provide insight on how the African continent has imbibed the democratic principles of elections, separations of powers and check and balances. The reliance on judiciary arm of government, thus the justice system, for addressing election-related irregularities is a sign of democratic maturity even though issues of reputation and communication are still barriers to effective justice system (Asante & Asare, 2016). The present study gleans from these studies two important issues. First, there is growing reliance on court

system for resolving election related disputes (Orozco-Henriquez et al., 2010). The studies across Africa as shown in Murison (2013) for Uganda, Gathi and Akinkugbe (2021) for Kenya, Asante and Asare (2016) for Ghana among others is indicative that election petitions are widely used to settle election disputes. The second issue noticed from these studies is that there is little or no attention on the place of communication in resolving election related disputes in court of law. While the legal procedings of election petitions are made public, the lack of attention on the function of communication in election petition success is worth exploring. It is this bit of election thesis that the present study explores the styles of communication and persuasive appeals used by communicators during election petitions in Ghana. This is needful in order to emphasize the importance of effective communication in the legal process during election petition. There are extant studies elsewhere that have shed light on the area of courtroom communication. Regarding communication in the courtroom, some studies have explored how communication takes place in cross-examination. These studies pointed out some of the strategies that were used during cross-examination to achieve effective communication.

For instance, Versacomp (2002) explored the meaning, scope, and form of cross-examination and found that cross-examination is usually limited to the evidence provided in the direct examination as well as the credibility of the witness. Regarding communication style, Versacomp (2002) identified two main styles which are the hostile style and the soft style. Versacomp (2002, p. 52) describes the hostile style as ~~"t~~he savage, slashing, hammer-and-tongs method of going after a witness to make him tell the truth." On the other hand, Versacomp (2002, p. 52) described the soft style as ~~"t~~he smiling, soft-spoken,

ingratiating method directed to lulling the witness into a sense of security and gaining his confidence." While the hostile style is vigorous, rapid-fire examination, the soft style is the quiet, easy, friendly examination style. Each of these styles has communicative function to lawyers. For instance, according to Versacomp (2002), the soft style, also known as the gentler approach, usually is effective in causing the witnesses to yield to concessions desired by the cross-examiner. On the other hand, the hostile style, otherwise known as the vehement style, is capable of making the hostile witness more hostile thereby revealing the credibility of the witness to provide the vicious answers to support cases (Versacomp, 2002).

Also, Purdue (2012) explored the techniques of cross-examination focusing on goals, functions, and techniques. The study found that jurors pay more attention to cross-examination as a decisive component of the case than direct examination. According to Purdue (2012), the relevance of cross-examination requires proper preparation and mind numbering to ensure that lawyers and witnesses play within the rules to achieve the purpose of the cross-examination. The study also confirmed the ten commandments of cross-examination by Younger (1975, 1977) as relevant techniques for guiding communication in a cross-examination. In a similar vein, the U.S Department of Transformation Law Center (2012) provided a detailed explanation of the goals, methods, and forms of questioning in cross-examination.

According to the U.S Department of Transformation Law Center (2012), cross-examination is vital in the trial process because it serves as a tool for validating the authenticity of the evidence provided to support a case. The goal

of cross-examination is to authenticate the evidence and impeach witnesses in the trial process. Denault and Patterson (2021) investigated how nonverbal communication is marginalized through virtual trial procedures in the post-pandemic world. Examining commentary and cautionary statements of lawyers and judges in Canada, Denault and Patterson (2021) found that nonverbal cues can authenticate the credibility of a witness by revealing witness attitudes, regulating interaction, managing impressions, and revealing physical and mental disorders. The authors argued that virtual trial proceedings limit nonverbal communication cues available to jurors and lawyers, thereby, harming the integrity of the justice system.

Doak and Doak (2017) studied the communication difficulties associated with non-verbal cues of witnesses in a court of law. The authors found that non-verbal witnesses had been neglected in the court of law until recently when new laws made room for the assistance of such witnesses. Doak and Doak (2017) showed that lack of competence, low credibility and inability to express oneself in the courtroom affect the communication effectiveness of non-verbal witnesses. They recommended that Augmentative and Alternative Communication such as Voice-Output Communication Aids could be used to improve the performance of non-verbal witnesses in the courtroom. Investigating questioning as a strategy of communication, Reppen and Chen (2020) studied the difference in the use of Wh-question in direct and cross-examination in authentic versus TV courtroom language. Using a corpus-based register approach, Reppen and Chen (2020) gathered data from three high profile criminal trials: The O.J. Simpson trial, and the Boston Bombing trial; the Oklahoma Bombing trial, as well as three popular TV courtroom series: Boston

Legal, Murder One, and The Practice. The authors found that the lawyers used facilitating questions to aid witnesses to provide correct answers. On the TV series direct examination, and wh-questions were used to elicit background and specific information from witnesses, however, there was no evidence of facilitating questions. In the cross-examination, Reppen and Chen (2020) found that authentic trial lawyers minimally used wh-questions because such questions allow witnesses to explain facts and win jury approval. Lawyers used open-ended wh-questions to jeopardize witness‘ credibility.

In the TV series, Wh-questions were used to elicit expanded information that will create inconsistencies and cast doubt on witness credibility. Morrison, Forrester-Jones, Bradshaw, and Murphy (2019) investigated how communication style affects witnesses with intellectual disabilities. The authors conducted a systematic review of 24 peer-reviewed research articles for four decades. They discovered that witnesses suffered four main communication challenges which are suggestibility, acquiescence, confabulation, and court language. Morrison et al. (2019) discovered that the factors that influence these are age, IQ level, and question style. The authors recommended that there is a need for further studies on the impact of communication on the unique environment and situation of cross-examination. Kirby (2017) conducted an ethnographic study on how the court culture affects the effective engagement of victims, witnesses, and defendants in the criminal court. Based on Crown Court criminal proceedings and advocacy for youth proceedings, Kirby (2017) interviewed 90 participants from Crown Court and surveyed 215 participants from youth advocacy proceedings. The author discovered that the ritualized and formalized nature of court proceedings affect effective engagement between

professionals and users (victims, witnesses, defendants, etc). Kirby (2017) specifically noted that the aggressive hostile style of cross-examination, as well as the professionals' _doing my job' phrase cause users to experience discomfort and unease during cross-examination. Kilby (2017) concluded that revising the communication style and court culture is the sure way to make court proceeding engaging and effective in establishing justice.

Farley, Jensen, and Rempel (2014) investigated how courtroom communication (oral, written, and nonverbal) influence procedural justice. The authors sampled seven judges and 209 defendants from the Milwaukee County Criminal Court for the quasi-experimental study. Using a five-dimensional procedural justice framework (voice, trust, respect, understanding, and helpfulness), Farley et al. (2014) discovered that judges adopted plain language, eye contact with defendants, explanation of the order of cases, and interest in defendants' understanding and views in the court decision. Farley et al. (2014) concluded that further booster training is required to improve courtroom communication. The study by Farley et al. (2014) demonstrates that communication training is key to improving procedural justice among courtroom communicators. However, such communication training requires knowledge of effective communication styles and strategies to ensure stakeholders are equipped for effective courtroom communication.

In an Ireland-based study, O'Leary (2016) explored how the litigation process accommodates witnesses with communication difficulties. Using constructivist grounded theory, O'Leary (2016) studied eight practicing barristers in Ireland who have handled cases involving witnesses with

communication difficulties. The author discovered through the interview results that the Criminal Evidence Act of 1992, in Ireland‘s provision for ensuring justice for witnesses with communication difficulties, did not completely address issues faced by people with such impairment. O‘Leary (2016) found that the removal of wigs and gowns of judges and lawyers as demanded by the law minimally aided witnesses with communication difficulties to feel comfortable. However, the law recommendations of recording witnesses‘ evidence and using video conferencing helped to ensure effective communication among witnesses with communication disabilities. O‘Leary (2016) further revealed that witnesses with communication difficulties were treated with communication strategies for children (giving them toys, balls, items, etc) because the judges lack adequate knowledge of communication difficulties. Another situational factor that affected the implementation of the law was the lack of guidelines in the law to deal with individual cases of witnesses with communication difficulties.

Morrison, Forrester-Jones, and Murphy (2019) studied the communication and cross-examination of children and adults with communication difficulties. Having cited the European court‘s identification of children and adults with communication difficulties as vulnerable witnesses, Morrison et al. (2019) examined available empirical studies on the area to establish the communication needs required by these vulnerable witness groups. Morrison et al. (2019) revealed suggestibility to leading questions, negative feedback, acquiescence, lack of accuracy, and difficulty in understanding court language as challenges to vulnerable witnesses in the courtroom. These challenges were further worsened by the age, IQ level, question styles used,

ability of memory recall, and delays in questioning by lawyers. Morrison et al. (2019) called for more research in communication and cross-examination that is based on the practical methodology of live court proceedings rather than staged methods.

In South Africa, Naidoo (2018) examined the role of nonverbal cues and demeanor in courtroom communication and found that nonverbal cues such as eye contact, facial expression, intonation, and body language impacted the outcome of the trial in the litigation process. Also, Naidoo (2018) discovered that the demeanor of a witness revealed their credibility, truthfulness as well as honesty in the presentation of evidence for a case. Despite the importance of nonverbal cues and demeanor on the trial outcome, Naidoo (2018) found that judges did not have the needed skills to decode and analyze nonverbal cues during the communication of verdicts on cases. Naidoo (2018) concluded that the ability of the legal actors to detect, analyze and decode signs within the non-verbal communication process is essential for the improvement of the litigation process, hence there is a need for training of legal actors on communicative skills.

This review has established election petitions as a fundamental challenge to the electoral system in democratic governance (UK Electoral Commission, 2012). The studies have established that an election petition is one of the major ways of addressing post-election disputes, and there is a growing reliance on using barricades rather than bullets to settle election complaints (Gathi & Akinkugbe, 2021; Nadeau et al., 2021).

In the area of electoral justice, the work of Orozco-Henriquez (2010) has shown how political culture and civic education could aid in building trustworthy electoral justice for the citizenry. On the other hand, Morrison (2013) found the dominance of executive power over justice institutions as a threat to electoral justice, hence the need for the executive arm of government to be checked. Electoral justice, therefore, is highly dependent on assessing the judiciary institutions, especially the extent to which election petitions are handled and resolved in the court of law. In this, Gathi and Akinkugbe (2015) established that the only way to avoid appeal to the international court of law by petitioners is for national courts to prove their competency and commitment to truth and justice. Likewise, Morrison (2013) added that it is important to build resilient high courts and supreme court to handle all forms of election issues at the district and national levels respectively.

In the case of Ghana, Owusu-Mensah and Rice (2018) found the Supreme Court as serving as a neutral mediator and arbitrator for all political parties. Moreover, Ayelazuno (2013) recommended the need to reconsider replacing the absolute majority system as a system of winning electioneering since it has contributed to ethnic politicking and lack of reflection of the electorates‘ true choice. The minimal marginal gap experienced by losers motivates them to turn to the courts as avenues for overturning election results in the loser‘s favor. As far as the absolute system is still in existence and there is a great tendency to _judicializing election‘ as Gathi and Akinkugbe (2021) observed, the need to better equip the justice institutions as the panacea for healing election-related wounds in the electoral system of Ghana is key to maintaining the feat of Ghana as the icon of democracy in Africa.

Regarding questioning, Catoto (2017) found through textual analysis of 30 stenographer notes and extracted data that questioning types such as yes or no questions, probing questions, open-ended questions, and leading questions are effective in communicating during cross-examination. On the other hand, Catoto (2017) discovered that multiple questions, opinion or statement questions, and misleading questions are seen as ineffective and usually objected to. In a study of African-American lawyers, Hobbs (2003) found spontaneity, personalization, proverbial statements, cultural reference, phonological variants, signifying, and tonal semantics as indicating style of communication. Versacomp (2012) added that the exhibits and other written materials used as evidence in the courtroom are part of the verbal communication modes used in the trial stage. In terms of nonverbal communication, Naidoo (2018) found that physically attractive people can benefit from the halo-effect of beauty being good thereby adding to their credibility.

Naidoo (2018) also discovered that nonverbal cues such as averting gaze, hesitating, shifting position, fidgeting, and perspiring are indicative of lies. On the other hand, long pauses, and long response latencies indicate evasive evidence. Likewise, nonverbal cues such as staring, pointing, hand speech, proximity, turning away, and smiling as signals of status and power. Naidoo (2018) added that the demeanor of the witness such as appearance and emotional expression contributes to the dual processing of the jury.

The story model focuses on how lawyers and witnesses communicate the case in court to the jury. Like the dual-process model, the story model involves the use of verbal and non-verbal modes of communication. In election

petitions, this involves the submission of exhibits to back the evidence. Purdue (2012) mentioned that badgering and argumentative should be avoided in the story model. Badgering is shouting and intimidating the witness as a way to scare and credit him or her as to provide proof. Also, argumentative involves making remarks that belong to the closing argument of a case. This involves speech-making, comments, and rhetorical questions. Versacomp (2012) called for the use of summarizing testimony, would-it-surprise-you questions, and proverbial statements as ways to communicate the story.

The literature so far has pointed to a lack of attention on litigation communication (Beke, 2014; Crawford, 2014, etc), especially the communication strategies and styles used in courtroom communication. The available studies have established how nonverbal cues such as facial expression, eye contact, physical appearance, and gestures, among others are capable of contributing to the effectiveness and credibility of courtroom communication (Denault & Patterson, 2012; Doak & Doak, 2017; O'Leary, 2016). Aside from the nonverbal cues as communication strategies, other scholars found questioning, personalization, proverbial statements, and cultural references as verbal strategies for achieving effective communication in the courtroom (Crawford, 2014; Farley et al., 2014; Hobb, 2008; Morrisson et al., 2019; Reppen & Chen, 2020).

The literature also showed some challenges associated with courtroom communication. Among the issues discovered as challenges included court language, confabulation, acquiescence, and suggestibility (Kilby, 2017; Morrisson, 2013; Reppen & Chen, 2020). Concerning the witnesses, researchers

have found that age, IQ level, status, and physical challenges can affect their communication effectiveness (Kilby, 2017; Denault & Patterson, 2021). Some scholars also found that lack of communication training for court staff as well as law students is affecting the acquisition of communitive skills for effective communication (Purdue, 2012; US Department of Transformation Law Center, 2012).

Based on the reviews, the present study specifically focuses on cross-examination and communication strategies, unlike previous studies that focused on forms of communication such as nonverbal communication and verbal communication. The present study uses authentic cross-examination cases, unlike studies that used simulated court cases or TV series as source data.

2.4 Theoretical Framework

The researcher adopts two theories to guide the study: litigation communication theory by Timothy Beke and modes of persuasion by Aristotle.

Litigation Communication Theory

Beke (2014) proposed a litigation communication theory to guide how lawyers leverage communication and public relations to manage cases from beginning to end without losing their valuable asset: reputation. Beke (2014) defined litigation as the legal procedure for resolving civil or criminal disputes. As opined by Beke (2014), litigation communication involves three distinct but interrelated stages, namely: pre-trial stage, trial stage, and post-trial stage. The pre-trial stage involves all the processes and communications before the filing of the lawsuit in a law court. The trial stage involves all the communication during the case in a law court. A post-trial involves communication after the

verdict on the case (Beke, 2014). In each of these stages, there are communication strategies employed by litigation public relations experts to win the lawsuit in the interest of clients.

Pre-Trial Stage

In the pre-trial stage, Beke (2014) identified two important communication strategies used by litigation public relations practitioners to influence the lawsuit in their favor, and these are trial prejudice and pre-trial publicity. Trial prejudice is the inability of the juror to be impartial on a case due to access to sufficient information outside the courtroom that has influenced the juror's opinions on the case (Beke, 2014). Given trial prejudice, Brandwood (2000) argued that law enforcers might be extremely prejudicial due to the availability of sufficient details on a case. Knowing the impact of trial prejudice on a success of a case, litigation public relations experts engage in pre-trial publicity as a tool to provide sufficient information on an issue before the case goes to court (Beke, 2014). Pre-trial publicity means giving adequate information to support the position of one's client outside the courtroom. Beke (2014) mentioned the trial by media which involves using media to provide extensive coverage, especially in a high-profile case that will in turn influence juries opinions. Brandwood (2000) observed that details released by law enforcers might also be extremely prejudicial, thereby, threatening and depriving the defendant of an impartial jury, because the jurors will have pre-existing opinions that might have an impact on their ability to deliberate impartially. Gracia and Ewing (2008) observed that in the ―United States lawyers [often] use all of the instruments of influence to embarrass large

corporations in an attempt to persuade them to settle large lawsuits before they ever reach a courtroom" (p. 41).

Aside from the pre-trial publicity, there is also mediation between the parties mostly through an independent mediator to settle the case outside the courtroom. The mediation is usually to find common grounds, but failure to reach a consensus at the mediation gradually leads to the completion of filing the court case.

The influence of pre-trial publicity on trial prejudice is a very delicate situation in that the need for a fair trial is threatened by the need for a free press. Beke (2014)

> The right of an individual (e.g., a criminal defendant in a criminal trial) to receive a fair, impartial trial, the acts of the court as well as the right of the press to publish information about the trial (e.g., court report) may come into conflict (p. 74)."

Trial Stage

The trial stage is the stage where the filed case is heard and decided in the courtroom (Beke, 2014). The decision-makers in the courtroom, judges, and jury members, use different mechanisms to reach a verdict on a case. Beke (2014) discovered that two theories that influence decision-making in the courtroom, are the dual-process models of cognitive processing and the story model. In the dual-process model, the jury and judges pay attention to the verbal and non-verbal communication of witnesses to ascertain the authenticity of the evidence. Verbal communication involves questioning, using figures of speech, comments, summary speech, and many others. Beke (2014) asserted

that the burden of proof is what convicts a defendant and so using appropriate communication and PR skills could aid in proving the defendant guilty.

Post-Trial Stage

Beke (2014) discussed the post-trial stage as the stage after the verdict of the court. In this stage, the defendant and plaintiff both have to either accept the verdict or appeal to higher courts outside the country. In the cases where verdicts are accepted, petitioners usually give reasons and explanations for their decision to do to keep their followers confidence in their position as leaders. For instance, in the 2012 election petition verdict, the then petitioner, H. E. Nana Akuffour Addo accepted the verdict because of the peace of Ghana. The slogan after his acceptance was that Ghana won.

Relevance of the Theory to the Study

In his work on litigation communication among companies, Beke (2013) explored how the litigation process works within the company context. Beke (2013) opined that litigation communication is about managing public perceptions of the institutional or individual clients in a long and devastating litigation process. There are special sensitivities, dynamics and knowledge involved in communicating publicly during a legal dispute. Using companies in England as cases, Beke (2013) found that the trial stage is usually where complex application of persuasion is required within and outside the court in order to maintain the image of a company.

Drawing from Beke‘s (2014), the present study finds three main relevance of Beke‘s litigation communication theory. First, the theory explains

the type of communication that occurs in each stage of the legal process. While pre-trial publicity and trial media are useful in the pre-trial stage, the trial stage involves lawyers‘ and witnesses‘ ability to use both verbal and nonverbal cues to present sufficient burden of proof. Therefore, litigation communication theory provides the basis for analyzing the communication that takes place in the courtroom. Second, the theory recommends effective communication strategies that are useful in courtroom communication. With these recommended communication strategies, the researcher will be able to analyze the communication cues into their appropriate communication strategies. Third, litigation communication theory explains how post-trial involves acceptance or rejection of the verdict.

Aristotle's Theory of Rhetoric

Aristotle informs modern-day public speaking speeches and the area of rhetoric. Aristotle's theory of rhetoric is based on the idea that good persuasion requires a proper mixture of reasons, emotions, and ethics (Mccormack, 2014). Aristotle divided persuasive discourse, and legal arguments in particular, into three categories: logical argument (logos), emotional arguments (pathos), and ethical appeal or credibility (ethos). These three categories have since been commonly referred to as Aristotle's three modes of proof (Mccormack, 2014).

Modes of Persuasion

Logos seems to be the most widely promoted, accepted, and sought-after mode of persuasion in most fields (Jamar, 2002). The legal rhetoric has transcended classical rhetoric in favor of a more logical, rationality-based form of discourse. Logos is based on the use of reasons, figures, facts, explanations, illustrations, and many other ways of credible information to persuade the audience. It is not as easy as when we want to persuade a child to take his or her breakfast (Mccormack, 2014). Logos involves presenting information in a logical and organized manner that is devoid of credibility issues.

Also, **ethos** is another mode of persuasion proposed by Aristotle. Ethos involves the credibility of the speaker. Ethos also involves establishing sound use of moral logic. It involves using ethical principles such as duties, religious principles, and many more to inform argument or communication. As observed by Kadoch (2000) theorists have emphasized the importance and superiority of logic and rationality in a communication setting, Aristotle recognized that it is not true, as some writers assume in their treatises on rhetoric, that the personal

goodness revealed by the speaker contributes nothing to his power of persuasion; on the contrary, his character may almost be called the most effective means of persuasion he possesses. In courtroom communication, Naidoo (2018) found the demeanor and nonverbal cues of the witnesses as valuable in determining their credibility.

Again, Aristotle discovered the use of **pathos** as a mode of persuasion. As stated by Mccormack (2014), people's everyday experiences leave little doubt that emotions can influence the decisions they make, much as the outcome of their decisions can influence the emotions they experience. Citing Mitchell (2002), Mccormack (2014) asserted that Aristotle recognized this fact, noting while introducing the pathos mode of proof, that ~~p~~ersuasion may come through the hearers when the speech stirs their emotions. Our judgments when we are pleased and friendly are not the same as when we are pained and hostile." It is clear from these sentences that persuasion is not without emotional touch. Emotions express the inner state of mind and thought. Effective communication that does not include expressing emotion and the use of emotionally inclusive language may fail to appeal to the public. A lack of emotions may strip communication of its credibility and authenticity.

Therefore, using emotions in communication to achieve effectiveness is not a sign of weakness but a sign of skillfulness in the use of language for effective communication. Naidoo (2018) found that facial expressions of sad looks or no emotion attract better judgment of innocence and credibility. Versacomp (2012) also revealed that soft and conversational styles appeal more effectively to a jury than hostile and savage styles of communication.

Relevance of the Theory to the Study

Aristotle's modes of persuasion is beneficial to the present study in three main ways. First, the theory provides specific techniques for analyzing a written or oral communication into their modes of persuasion. In composing persuasive speech or writing, Aristotle opine a speaker or writer should consider the artistic aspects that makes a speech logical, ethical and emotionally appealing.. For instance, Baker (2013) studied the specific techniques useful in applying Aristotle's modes of persuasion in communication. The author first remarked that the modes must be well-balanced in order to create effective persuasion. Baker (2013) discovered that facts in the form of figures, anecdotes, historical antecedents could create effective logos appeal; while the rank, goodwill, expertise, image and common ground of speaker could enhance ethos appeal.

On the other hand, the use of stories, vivid images and feeling evoking words could achieve effective pathos appeal. Despite these techniques, Baker (2013) concluded certain contexts such as technical manual may prefer more logos over pathos and ethos because manuals must be precise, accurate, logical and unambiguous. Legal proceedings require a balance of the three modes of appeal. Likewise, using Aristotle's modes of persuasion, Jamar (2008) analyzed the movie *Lawrence of Arabia* to ascertain the specific techniques used to achieve logos, pathos and ethos. Jamar (2008) discovered that using rank, goodwill, expertise, image and common ground enhances speaker's credibility; whereas, logical syllogism, figures, facts and rhetorical questions enhance speaker's appeal to reasoning. Finally, Jamar (2008) found that using stories, imagery and feeling captivating words trigger speaker's appeal to emotions. Jamar (2008) concluded that when speaker's connect their argument to

something most valuable to audience, the speaker tend to persuade the audience more easily.

The second relevance of this theory is it provides guides in selecting units and categories of analysis in legal reasoning. According to Jamar (2008), the application of Aristotle‘s mode of persuasion in analyzing legal documents provides grounds for understanding legal argument asa persuasive discourse. The author found three main importance of the theory which are analysis, synthesis and means of persuasion. Analysis involves breaking the whole into its components for easy understanding; while synthesis involves bringing the pieces of argument together to establish relationship. The means of persuasion refers to how the various modes are integrated together artistically to provide convince-able argument to audience.

Third relevance of Aristotle‘s mode of persuasion to the present study is that it provide analytical framework for analyzing the data into persuasive appeals. In the legal setting, Bose (2020) examined how Aristotle‘s mode of persuasion could be applied in the legal context. Using four speeches (one speech from each) from Wiston Churchill, Martin Luther King Jr, Booker T. Washington, and Edmund Burke, Bose (2020) designed a framework for analyzing legal communication into Aristotle‘s modes of persuasion. In the logos mode, Bose (2020) identified specific techniques such as rhetorical questions, reasons, facts, enthymemes, examples, statistics, authoritative statements and syllogism as useful in achieving logos appeal. Regarding pathos, Bose (2020) identified techniques such as arousing feelings of empathy, anger, sorrow as effective in achieving pathos appeal. On the ethos appeal, Bose

(2020) identified good sense (knowledgeable, competence and clear-headedness of speaker), good moral character, and good-will (sincere, seeking others welfare, and virtuous) as useful in achieving ethos appeal. Based on Bose's (2020) framework for analyzing text into the modes of appeal, the researcher adopted this theory as analytical framework where each element in framework becomes a unit of analysis for understanding each mode of appeal. For instance, facts, reasons, figures and rhetorical questions will be classified as units under logos; while good sense, good moral character and good-will will be regarded as units under ethos (Bose, 2020).

As observed by Mccormack (2014), Aristotle's Rhetoric, as the earliest authoritative analysis of persuasive discourse and argumentative techniques, and the Roman treatises that followed are still applicable to modern procedure and would assist trial advocates in most effectively arguing their position and, thereby, advocating for their clients. Mitchell (2002) argues in terms of the application of the theory in law that the utilization of the three modes of proof, to the extent the applicable evidentiary and procedural rules allow, is likely to lead to the best possible outcome for the persuader as an advocate for his client, as well as the best possible outcome for society as a whole in its pursuit of justice. McCormack (2014) observed that while the value of these skills to an orator, politician, or lobbyist may seem obvious, their value, as well as their applicability, has been the topic of much debate among theorists when applied to persuasion in the courtroom. The present study explores how the persuasive appeals: logos, pathos, and ethos are achieved in the election petition of Ghana during the cross-examination stage.

The empirical and theoretical basis of this study drives to one conclusion in agreement with Hobbs (2008) that the guiding light in any courtroom is the communication that is being exchanged: that is how the information about the case is learned, that is how the two sides of the case are presented, and that is how the decision is made and presented. The court system would cease to exist. Hence, to ensure that the court systems in Ghana continue to be effective and achieve the goal that they are set up to achieve-justice, the present study of communication in the court systems provide evidence of communication styles and persuasive techniques.

Chapter Summary

This chapter has discussed the key concepts that underpin the study as well as related empirical studies. It is noticed that the area of communication style and strategies in litigation communication is still yet to receive maximum attention from the research community. The current study focuses on litigation communication theory and Aristotle‘s theory of rhetoric to address this research gap.

CHAPTER THREE

METHODOLOGY

3.0 Introduction

This chapter presents the methods and procedures used to gather and analyse data to study communication in the legal process, particularly cross-examination of witnesses in the 2012 election petition. Also, the chapter discusses the research approach and design, data collection methods and analytical procedure, as well as ethics and trustworthiness of the study. Finally, the ethical considerations that underpin the present study are discussed in the chapter. The research questions addressed in the study are:

1. What communication styles are used by lawyers to cross-examine witnesses in the 2012 election petition?
2. What persuasive appeals are used by witnesses and lawyers in the 2012 election petition?
3. How did the persuasive appeals used in the election petition facilitate the legal process?

3.1 Research Approach

The present study is based on a qualitative research approach. According to Wimmer and Dominick (2011), qualitative research allows a researcher to investigate a behavior or phenomenon in a natural setting without the artificiality that surrounds experimental or survey research. Davidson, Fossey, Harvey, and Madermott (2002) opined that the primary concern of qualitative research is to engage in subjective meaning interpretation, social context portrayal, and the primacy of lay knowledge. Creswell (2013) postulates that

qualitative research involves rigorous data collection procedures and a rich thick description of findings.

The present study adopted qualitative research as an approach to allow an in-depth understanding of courtroom communication styles and persuasive appeals. This is because qualitative research endorses the ontology of multiple realities and epistemology that knowledge is constructed rather than discovered as an objective reality (Tracy, 2020). Using qualitative approach gives the researcher flexibility to investigate courtroom communication from the standpoint of data gathered from witnesses and lawyers‘ communication in the courtroom. Since qualitative data are in the form of texts, symbols or phrases (Kreur & Neuman, 2006), qualitative approach provides a suitable method for examining the courtroom communication which is mostly in sentences and phrases.

3.2 Research Design

Creswell (2014) defined research design as a specific inquiry within qualitative, quantitative or mixed method approaches and it provides direction for procedures. Cresswell (2013) identified five designs under qualitative research which are ethnography, phenomenology, grounded theory, case study, and narrative design. The selection of a particular design depends on the nature of the research, the research problem and research questions, personal experiences of the researcher, and type of audience for the study (Cresswell, 2014). Informed by these factors for research design selection, the researcher selected case study as the design for the present study.

A case study allows for the investigation of an individual, event, or situation of interest to the researcher (Wimmer & Dominick, 2011). The scholars add that research questions that focus on how and why usually require case study design. The choice of case study design was informed by Merriam and Tisdell (2016) three elements of the case study. First, a case study should be particularistic. This means that the case study should focus on a particular situation, event, or individual(s). Merriam and Tisdell (2016) opined that the single most defining characteristic of case study research lies in the delimiting of the object of study: the case. Second, a case study must be descriptive, thus it requires a detailed description of the topic under study. In the light of a case study being descriptive, Merriam and Tisdell (2016) defined a case study as an in-depth description and analysis of a bounded system. Thick and rich description of data gathered is relevant in understanding a case study. Third, Merriam and Tisdell (2016) asserted a case study should be heuristic. This means that a case study must help people understand what is being studied by providing new insights, perspectives, new meanings, and new interpretations.

Based on the particularistic, descriptive, and heuristic features of a case study, the present study selected the 2012 election petition of Ghana as the particular one to explore communication in the courtroom. This case is particular because there are other petitions which are not selected in this study. This study seeks to provide a rich thick description of communication strategies as used in the petition as a way to provide new insight into courtroom communication in Ghana.

Even though there are other election petitions such as the 2021 election petitions, the choice of the 2012 election petition is informed by two major reasons which are historic and theoretical. Historically, the 2012 election petition marked a leap toward a consolidation of the Ghanaian democratic system. This is because it was the first time a major challenge of election results was peacefully resolved in the barricades rather than through the bullets (Asante & Asare, 2016). Secondly, the 2012 election petition is theoretically found to be the substantial challenge of election results that sought to overturn the election outcome.

According to Erlish et al. (2021), the intensity of election petition case is based on cost-benefit rationality, and informational benefit, as well as the overturning of results. Erlish et al. (2021) theorized that overturning election results is the most important factor that determines an election petition, and this factor is based on the margin of victory, merits of the claim, legitimacy of the claim, and scope of the claim. In comparing the 2012 and 2021 election petitions, Joseph Ackah-Blay, Joy Fm news reporter, described the 2012 election as based on constitutional and legal breaches, while the 2020 election is based on arithmetic supported by logic. In essence, the stated votes paddling of 6622 votes could not annul the 515, 524 votes difference between the winner and the loser (NPP= 51.59% NDC= 47.36%) (Ackah-Baly, 2021). On the other hand, in 2012, the winning party NDC had 50.7% of valid votes while the losing party NPP had 49.3% valid votes thereby giving them a difference of a little above 6000 valid votes (Asante & Asare, 2016). The margin of winning in the 2020 election was a little above the margin of winning in the 2012. In relation to Erlish et al.'s (2012) ideas of overturning election through petition,

the chance of 2012 election petition overturning results was higher than 2020 due to the arithmetic as well as burden of proof.

3.3 Sampling

Sampling is the process of selecting events or persons from a population (Wimmer & Dominick, 2011). A population is the universe of events from which the sample is drawn (Cresswell, 2014). The researcher used purposive sampling. Purposive sampling is a selection of events, entities, or data based on predetermined features of interest to the researcher (Wimmer & Dominick, 2011). The purposive sampling allowed the researcher to select cross-examination that involved the star witnesses. Also, the purposive sampling allowed the researcher to ensure that the lawyers of each of the defendants' and plaintiffs' cross-examination are included in the study. This allowed for diversity and representative sampling. Reinard (1994) argued that the closer the sample data is to the population, the lower the sampling error. Moreover, Cresswell (2007) postulates that 25% of the total population is representative and is regarded as a representative sample.

Based on the official report of the Supreme Court, (Supreme Court Report, 2012, thus Nana Akufo-Addo v John Mahama), the participants in the election petition were 32. Out of the total of 32 participants, 2 witnesses and 4 lawyers belong to the New Patriotic Party, 2 witnesses and 3 lawyers belong to the National Democratic Congress, 2 lawyers represented the President of Ghana (Former President John Dramani Mahama), 3 witnesses and two lawyers represented the Electoral Commission, 3 witnesses represented the independent KPMG, 2 culprits of contempt of court, and 9 judges. Out of the 32 participants,

the researcher used purposive sampling to select the specific witnesses and lawyers for the study. This means that cross-examination of these witnesses were selected for the study.

According to Asante and Asante (2016), a star witness is a person whose evidence on a court case has significant impact on the verdict. They are usually regarded the main witness of a case. Three participants were classified as star witnesses in the 2012 election petition and these are Dr. Mahamudu Bawumia, Mr. John Asiedu Nketia, and Dr. Afari Gyan. Also, three lawyers who largely cross-examined the four star witnesses were selected for the study. These lawyers were Lawyer Tsatsu Tsikata, Lawyer Philip Addison, and Lawyer Tony Lithur. In all, three witnesses and three lawyers were purposely selected for the study because of their immense contribution to the outcome of the court proceeding as well as the large amount of time they had in the cumulative courtroom communication.

3.4 Data Collection Method

Cresswell (2017) indicate that qualitative data collection methods include qualitative observation, qualitative interviews, archival or qualitative documents, and qualitative audio-visual material. In the present study, the researcher used the qualitative archival or documents and qualitative audio-visual materials on the 2012 election petition. According to Cresswell and Guetterman (2019), documents and audio-visual materials provide rich information that could be coded to understand a bounded system in qualitative research. Dewi (2021) identified photos, art objects, video tapes, website home pages, e-mails, text messages, social media texts, or any form of sound as forms

of audio-visual materials. In this study, the researcher used video tapes, social media texts and transcribed documents of the court proceedings as data for the study. The use of these data collection methods ensured the researcher had sufficient information to understand the phenomenon under study (Dewi, 2021).

The researcher collected data on the election petition of 2012. The Supreme Court of Ghana was contacted by the researcher through a formal written document to seek their consent and to ask for the archives of transcribed data of the court proceedings on the election petitions. The requested data was made available to the researcher, and it was discovered that the cross-examination lasted for 44 days of the entire court hearing process. The witnesses cross-examined included Dr. Mahamudu Bawumia, Mr. Asiedu Nketia, Dr. Afari Gyan, and a witness from KPMG. Asante and Asare (2016) identified Dr. Bawumia, Mr. Asiedu, and Dr. Afari Gyan as the star witnesses of the election petition. A star witness is a witness whose evidence contributes significantly to the success of the case in a court of law. Due to the significant role of these three witnesses, the researcher focused on the cross-examination of the three-star witnesses. These reduced the cross-examination from 44 to 42 days because two days were used to handle the contempt of court cases.

The 2012 election was broadcasted live by state-owned and private television and radio stations across the nation and even beyond. Also, social media platforms such YouTube, Facebook and others streamed the court sittings to reach online audience. The data collection was therefore, based on three sources of authentic data: the supreme court, the national media organizations as well as social media handles. Through a written request, the researcher obtained

permission to use the court proceedings on the 2012 election petition. The recorded versions as well as court clerks versions of the 2012 election petition were received and stored in pen-drives and CD file format respectively. The recordings were stored in two disk, thus hard disk and pen-drive to ensure safety of storage.

Also, through formal request to Joy Prime, GTV Govern, and TV3, the researcher was granted access to recorded videos of court sitting on the election petitions. The recorded versions were downloaded from their online clouds where the stations archive their data. The downloaded versions were equally saved in storage disk, and uploaded in google drive for backup.

Finally, the researcher collected available videos of the court sittings on the social media platforms: YouTube and Facebook. The videos were searched through the searched option. The available court sittings were downloaded through save from net application, a YouTube video download application. The collection of these three sources of the same data aided the researcher to triangulate the data and ensure there are no lapses or errors of transcription due to sound effect or bad recording from one source.

3.6 Data Analysis

The researcher adopted content analysis as the data analysis tool. Content analysis in simple terms is ―the study of recorded human communications" (Babbie 2001). It is a procedure for collecting and analyzing the contents of texts which could be ―words, meanings, symbols, ideas, themes, or any message that can be communicated in spoken, written, or visual forms" (Neuman, 2006:322). These include ―books, newspapers or magazine articles,

advertisements, speeches, official documents, films or videotapes, musical lyrics, photographs, articles of clothing or works of arts" and online data, among others (Neuman, 2006:322).

Content analysis involves a coding operation to transform raw data corpus into standard forms (Babbie, 2001:309). Content analysis can be done using either a quantitative or qualitative approach. While qualitative content analysis comprises coding acts for underlying themes in materials and texts that are being analyzed (Bryman, 2004:392), quantitative content analysis entails ~~–th~~e systematic, objective, quantitative analysis of message characteristics" (Neuendorf, 2002:1).

The selected data were also proceedings that lasted at least over two hours. The transcription of the data, therefore, produced voluminous data that aided the researcher to investigate the phenomenon under study, communication strategies, and styles in the courtroom. The transcriptions were done manually to ensure accuracy and detail capturing of both verbal and non-verbal cues during the cross-examination. The researcher ensured the setting for the transcription was free from noise and social distractions so that he could concentrate and transcribe accurately. Also, the transcription was done in an office space to ensure that academic environment where codes could be generated and later used to aid in the analysis. The researcher cross-checked each of the transcriptions to ensure the language and non-verbal cues were accurately represented. Also, an independent expert was contacted to cross-check the transcription accuracy. This allowed for objective input on areas that

needed clarity. After being satisfied with the data collected and transcribed, the researcher moved to the analytical procedures.

Wimmer and Dominick (2011) suggested two data analysis techniques which are the constant comparative technique and the analytical inductive technique. This study is guided by the constant comparative technique of data analysis. The constant comparative technique was proposed by Glaser and Strauss (1967) and later developed by Lincoln and Guba (1985). This technique is made up of four main steps of data analysis. The first step is the comparative assignment of incidents into categories. This involves comparing units of analysis and finding similarities among the units that fit the category.

Based on this step, the researcher generated units based on the empirical evidence on styles and persuasive strategies. The three main communication styles that were used as units are *hostile style, soft style and conversational styles.* Regarding research question two, the researcher based the analysis on empirical evidence and theoretical guidance from scholars such as Beke (2014), Purdue (2012), Catoto (2017), and many others. Four categories of findings including *questioning strategy, speech-making strategy, impression management, and non-verbal strategy* were adopted for the study. These four categories provided broad categories for combining units of analysis that fit each category on the persuasive appeals used by the communicators in the cross-examination.

The second step in the constant comparative technique of analysis is the elaboration and refinement of categories. This involves writing the rules or prepositions that attempt to describe the underlying meaning that defines the

category (Wimmer & Dominick, 2011). This helps to focus the study and explore the theoretical dimension of the emerging category of system.

Based on this step, the researcher noticed a strategy was largely based on a unit of analysis of sentence(s) to determine the communication. The proposition that governed the analysis was that each unit of analysis included in this analysis was largely dependent on the unit‘s fitness into any of the categories adopted for the study. The selection of extracts for inclusion in the study was based on whether they meet the styles and persuasive strategies units identified in step one. Those that did not fit, and could not form a new uniform unit were excluded from the analysis. The included units were therefore, grouped into categories for easier discussion under themes. For instance, harsh words and repetition in cross-examination were regarded as units that fall in the category of hostile style; while soft words and straight-forwardness units were classified in the soft style category. The use of everyday language such as quoting proverbs, cracking jokes and others were units classified in the category of conversational style. On the persuasive strategies, the classification was quite uneasy because the logos, pathos and ethos could be revealed in speech making, questioning, comments depending on the content of the message. The classification of units were based on the kinds of these specific strategies that were dominantly used for a particular mode of persuasion.

The third step suggested by Wimmer and Dominick (2011) is searching for relationships and meaningful connections among the categories identified. In this step, the researcher ensured that categories were further developed through the subcategories generated from the unit of analysis. For example, the

questioning strategy included subcategories such as leading questions, yes or no questions, probing questions, open-ended questions, and it-would-surprise-you-to-know questions. Through these subcategories for each of the main categories for each research question, the researcher developed a comprehensive finding supported by the data. The last step is to simplify and integrate data into coherent theoretical structures. This involved the researcher providing explanations and summaries with sufficient details to convey the idea of the study which is to understand the communication styles and strategies used in the cross-examination of witnesses in a court of law.

3.7 Ethical Considerations

Wimmer and Dominick (2011, p. 65) stated, ~~"~~the best reason to behave ethically is the personal knowledge that you have acted in a morally appropriate manner". Wimmer and Dominick (2011) identified three main ethical considerations for content analysis-based study. One is the need to avoid fabrication. This involves being real and accurately reflecting the views of the participants in the study. The researcher transcribed the data both manually and computationally through the www.temi.com website. The website was corroborated with the manual transcription to ensure accuracy and corrections in areas of discrepancies. The application tracks the timing as well as some of the nonverbal cues like the manual transcription.

The researcher ensured that the data was proofread, crosschecked by a third party, and tallied with the video data before the beginning of the analysis. Finally, Wimmer and Dominick (2011) called for the avoidance of plagiarism. Plagiarism is claiming authorship of ideas or works that are rightly owned by

others. The court hearing on the election petition is copyrighted by the Supreme court as intellectual property of the parties involved, therefore, any quoting of statements from the data must be duly referenced. To ensure this, the researcher coded the data into identifiable labels. The labels were manually generated by using letters and numbers. The letter part was based on the heading ‗Court Hearing of Election Petition" being labeled by the capital initials (CHEP) followed by a slash (/) and the year of the election petition (2012) and lastly, the day of the election petition hearing such as the number five for Day 5 (5) and the witness in the Dock affiliation, that NPP for New Patriotic Party witness, NDC for National Democratic Party Witness and EC for Electoral Commission witnesses. From this labeling, sample data for the reference of CHEP/2012/5/NPP gives an identification that data is a witness from the New Patriotic Party who was in the dock on the fifth day of the court hearing during the 2012 election petition. These reference styles were manually generated and used to appropriately identify the source of the ideas to avoid plagiarism. From these, the six selected cross-examinations were labeled as follows: CHEP/2012/4/NPP, CHEP/2012/5/NPP, CHEP/2012/23/NDC, CHEP/2012/24/NDC, CHEP/2012/38/EC, and CHEP/2012/43/EC.

Aside from these three ethical considerations, the case study approach requires the application of categorical principles by Immanuel Kant (1948 cited in Cresswell, 2013). First, the researcher ensured that the confidentiality of the witnesses was ensured by not misrepresenting them in the use of the data to buttress findings. The principles of nonmaleficence (free from harm) and beneficence (ensuring benefits) were ensured by avoiding libelous statements

from the data and ensuring that assistance in the research data crosschecking, proofreading and editing are rewarded duly.

3.8 Ensuring Trustworthiness of the Study

Trustworthiness

Trustworthiness is a shared reality of commonality in the constructive process between researchers and readers who use qualitative approach (Norman & James, 2020). In metaphorical manner, Norman and James (2020, p. 26) described trustworthiness as the point where learning assistance professionals and developmental educators as consumers of qualitative research _hang their hats'. This is useful because qualitative research involves multiple methodologies, thick descriptions and detailed narration, and this may compromise the standards of research in favor of the researcher's interpretive lens. Trustworthiness therefore, serves as check to ensure to standards in qualitative research. Lincoln and Guba (1985) identified four determiners of trustworthiness: credibility, transferability, dependability, and confirmability.

Credibility

Shenton (2004) defined credibility as to _seek to ensure that a study measures or tests what is actually intended' (p.64). Credibility could be ensured through techniques such as triangulation, informants checking (member-checking), prolonged engagement, institutional checking and debriefing (Norman & James, 2020). In the present study, the researcher employed triangulation, informants checking, prolonged engagement and institutional checking to ensure credibility. Simply stated, triangulating means using several sources of information or procedure from the field to repeatedly establish

identifiable patterns (Norman & James, 2020). The researcher ensured data triangulation by collecting different data types of the same court proceedings. These different data types included video recordings, audio recordings and transcripts of selected court proceedings for the study. Also, these data types were three authentic sources, thus Supreme court, the national media houses and social media handles (Facebook/YouTube). These three major sources of data allowed the researcher to triangulate the data in order to address discrepancies, fill in lapses in one data type and ensure accuracy and authenticity of the data for the study.

The researcher also ensured theoretical triangulation by adopting two theories for the study namely: Aristotle's modes of persuasion and Beke‘s litigation communication theory. Through these two theories, the researcher guided the analysis to reflect the theoretical underpinning. The researcher ensured investigator triangulation by inviting two experts in the field of communication to code the data for comparison purpose. This independent codes were compared with the researcher‘s personal codes for further adjustments and categorization.

Aside the triangulation, the researcher employed debriefing by relying on the expertise of the supervisor for guidance and correction in the analysis and discussion of findings. Also, the institutional guidelines for preparing thesis was very important in guiding the researcher to comply with University of Education, Winneba, standards for writing and formatting thesis. This enhanced the credibility of the research. Finally, the researcher used approximately three months in the data analysis. This provided ample time for the researcher to

engage in reflexive self-analysis as well as persistent observations of units and their categories.

Transferability

Transferability is the extent to which the findings from one study can be applied to another (Shenton, 2004). According to Shenton (2004), transferability could be achieved through ensuring increasing the number of organisations taking part in the study and where they are based; providing restrictions in the type of people who contributed data; limiting the number of participants involved in the fieldwork; selecting appropriate data collection methods; deciding appropriate number and length of the data collection sessions; and spending quality definite time period for data collection.

The researcher ensured transferability by clearly communicating the methods of data collection, data analysis, sampling procedures and every other detail of the methods required for transferability. The time frameworks and justification for data choice were communicated in the study. Also, the researcher ensured adequate documentation or thick description as a way to ensure readers comprehend how knowledge was constructed through interpretation of the gathered data. Moreover, the researcher‘s role in the study was clearly specified as the person in charge of data collection, analysis and composing of the entire thesis. This ensured restrictions of the type of people who contributed data as well as limited the number of participants involved in the field work.

Confirmability

Shenton (2004) describes confirmability as ‗the qualitative investigator‘s comparable concern to objectivity‘ (p.72). This is the extent to which the results of the study reflects the participants‘ views and responses rather than the

characteristics and preferences of the researcher. Norman and James (2020) identified reliance on accuracy and precision as well as involvement of other researchers as keys to ensuring confirmability. In the present study, the researcher ensured confirmability by following the ethical dimension of avoidance of falsification, fabrication and plagiarism in the study. Through these ethical considerations, the researcher provided accurate presentation of ideas with appropriate bracketing of personal ideas and accurate referencing of ideas of others in the study. Furthermore, the researcher involved other researchers such as supervisors, mentors and colleagues to cross-check the thesis for accuracy and authenticity.

Dependability

Shenton (2004) considered dependability as the extent to which the findings are reliable. This involves using two methods: peer debriefing and member checking. At the peer debriefing, the researcher engaged colleagues master of philosophy students for proofreading, editing and other comments relevant to improving the quality of the work. On the member checking, the researcher made two presentation at the department level where department senior members and staff as well as fellow students had the opportunity to listen to the content of the thesis and make input to the thesis. In the first presentation, the research questions were shaped to reflect the appeals, and the conversational style of communication was further supported with suggested literature from a colleague. In the second presentation, the researcher was guided to add quasi-statistics to aid in communicating the appearance of strategies of communication used in the data. These suggestions were included thereby rendering the thesis outcome more dependable. The final draft of the thesis was

presented to the informant, supervisor, for input and corrections where necessary.

Through these specific strategies, the researcher ensured trustworthiness in the study by establishing credibility, transferability, confirmability, and dependability.

3.9 Chapter Summary

This chapter provided the research methodology for the current study. The study is based on qualitative research with the case study as the specific design. The study used the 2012 election petition as a case and ten cross-examination videos were purposely sampled for the study. The analysis was content analysis with guidance from the comparative analysis technique. The chapter concluded with the research's ethical considerations.

CHAPTER FOUR

FINDINGS AND DISCUSSION

4.0 Introduction

The present study focused on exploring the communication styles and persuasive appeals used by lawyers and witnesses during cross-examination. This chapter presents an analysis of the data gathered to answer the research questions that underpinned the study. Informed by Beke's litigation communication theory, Aristotle's theory of rhetoric, and related reviews, the researcher discussed the results of the study. The analysis of the results was guided by these specific research questions:

1. What are the communication styles used by lawyers to cross-examine witnesses in the 2012 election petition?
2. What persuasive appeals are used by witnesses and lawyers in the 2012 election petition?
3. How did the persuasive appeals used in the election petition facilitate the legal process?

The first research question explored the communication styles of the lawyers in the cross-examination by analyzing the specific visual, verbal, and nonverbal cues combined to exchange information in the courtroom discourse.

4.1 RQ1: What are the communication styles used by communicators to cross-examine witnesses in the 2012 election petition?

This research question addresses the communication styles used by communicators in cross-examination. Three communication styles were found in the data analyzed. These communication styles are hostile style, soft style and

conversational style. Communication style explains the how of communication exchange among communicators' (Chen & Reppen, 2020). In courtroom communication, the exchange between communicators could be intense or soft depending on the nature of the evidence because the witness is being cross-examined to justify the authenticity of the documents (evidence) as substantive documents worth the burden of proof (Versacomp, 2012).

4.1.1 Hostile Communication Style

Regarding the hostile style, the researcher discovered that the lawyers and witnesses engaged in heated, repetitive, hammer-and-tong exchanges in order to discover the truth in the witnesses' testimonies (Versacomp, 2012). For instance, the researcher found in the cross-examination of Dr. Bawumia by the lawyer of the National Democratic Congress party (the second respondent in the 2012 election petition), lawyer Tsatsu Tsikata that the lawyer used repetitive high pitch and serious exchanges to compel the witness to admit that he (Dr. Bawumia) had not asked the President about whether the signature in the pink sheets confirmations was the Presidential candidate's signature. This extract shows the exchanges between the lawyer and the witness of the New Patriotic Party.

Lawyer Tsatsu (02:08): And you indicated that that signature is a signature of the first petition Nana Akuffo Addo. Is that not correct?

Dr. Bawumia (02:16): That looks like his signature. Yes.

Lawyer Tsatsu (02:19): Now, Since you testified, has he confirmed to you that he indeed signed that document? Has he confirmed that with you?

Dr. Bawumia (02:27): No. He has not.

Lawyer Tsatsu (02:28): You haven't asked him?

Dr. Bawumia (02:29): No.

Lawyer Tsatsu (02:30): You haven't asked him. You have not asked him

Dr. Bawumia (02:34): Counsel. Um, you

Lawyer Tsatsu (02:35): Have not asked him to answer my question. Have you asked him, or you have not asked him?

Dr. Tsatsu (02:39): I have not asked. You

Dr. Bawumia (02:39): Have not asked him.

Lawyer Tsatsu: Yes.

Lawyer A: Fair enough. And before you saw that document in the witness box, you were not aware of the existence of that document, is that correct? (CHEP/2012/4/NPP)

This extract shows how the line of questioning of the lawyer moved from soft to hostile. First, the lawyer established a background for his probing question by asking the witness to reminisce whether the witness made a previous comment that the President signed the exhibit. The witness agreed that the signature was the President‘s signature but when the witness was asked whether he contacted the President after the direct examination, the witness attempted to deny it. In that incident, the lawyer used a hostile style with a

serious tone and repetitive high-pitched questioning to get the witness to admit he did not ask the President about the signature for confirmation. The lawyer repeated the question, *–You haven't asked him?"* before the witness finally consented that he has not asked the President for confirmation whether that was the President's signature as he testified in evidence in chief.

The hostile style of communication in courtroom communication is described as the hammer-and-tongs method of going after a witness to make him tell the truth (Purdue, 2012). This is seen in the repetition of the question by the lawyer to make the witness tell the truth. The question of the witness confirming the signature is important because one of the major claims in the evidence in chief (the written evidence of a witness in court) of the complainant was that the election results had pink sheets that were not signed by the first respondent (President Nana Akuffo Addo) (Ayelazuno, 2013). To therefore admit that a pink sheet has been signed by the President but the witness has not done due diligence to verify or confirm if it was the President's signature, the lawyer used hostile style. This shows that the claim of pink sheets not being signed is unsubstantial. But before the truth could be told by the witness, the lawyer has to employ the hostile style to register his seriousness and demand a truthful answer to the question.

The later confirmation of the witness to the yes or no question after the lawyer adopted the hostile style confirms Versacomp's (2012) assertion that the hostile style is a hammer-and-tong method of getting a witness to tell the truth. In essence, through the hostile style, the lawyer coerced the witness, to tell the truth. This question was very important to the lawyer because one of the fundamental irregularities in the 2012 election petition was the complaint about

the lack of signatures of the presiding officers. The witness admitting that he did not ask the President about the signature confirms that the witness is convinced the signature is the President's signature, hence no need for confirmation. The signature of the President on the exhibits validated the position of the defendants that the election was confirmed by both parties as a legitimate reflection of the electorates' choice.

Another use of the hostile style was recorded in the cross-examination of Dr. Bawumia by the lawyer of the President-elect then, H. E. John Dramani Mahama, lawyer Tony Lithur. In this instance, the lawyer questioned the witness about overvoting in one of the exhibits. The witness admitted that there was over-voting because the total number of votes in the ballot box recorded in C3 was not equal to the total valid votes submitted at the end of the polls in C6. The lawyer, however, held that the witness had done wrong mathematical calculations by not adding the valid ballots issued to the voters. This extract covers the exchanges between the two communicators.

> *Witness: there is an issue with over-voting. The total number of valid votes issued minus spoilt ballots.*
>
> *Lawyer: It means that you don't understand the arithmetic yourself. Spoilt ballots are part of issued ballots. They are different from rejected ballots.*
>
> *Witness: No. Spoilt ballots are reissued so they are not added to the valid ballots issued.*
>
> *Lawyer (00:40:02): Dr. Bawumia, you are committing a clear mathematical error here.*

Witness (00:40:30): Council, you are the wrong one.

Lawyer (00:42:30): Dr. Bawumia, this one, you got irredeemable, completely and wrong.

Witness (00:42:59): My lord, your mathematical calculation is weird. You cannot get the total valid votes by adding the total ballots in C4 to the ballots counted. That will be double counting. But the correct station is adding C3 to C4 and that gives you what is in C6 and that is why I say there is overvoting.

*Lawyer (00:43:20): I think my Lords will have to intervene in this matter because this is simple arithmetic, I am surprised you are getting it wrong. (*CHEP/2012/5/NPP)

In this extract, it is clear that words such as *irredeemable*, *completely,* and *wrong* demonstrate the lawyer‘s readiness to out-rightly oppose the answer of the witness as incorrect. This is also characterized by the vulgar diction that is employed in a hostile style to discredit and stretch the witness to admit or tell the truth. Despite the use of hostile style by the lawyer, the witness still defended his position that there was over voting in the pink sheet. The witness also adopted a hostile style of communication by using words such as *wrong* and *weird* to express his position on the inaccuracy of the lawyer‘s demand.

The judges‘ later came in to address the entire exchange by asserting that the electoral thesis of the lawyer seemed not to be real, hence there is the need to await the electoral commission, the second respondent, to clarify things. In the above extract (CHEP/2012/5/NPP), it is noticed that the hostile style may not necessarily result into the witness giving the preferred answers of the

lawyer, especially in instances where such acceptance could affect the position of the witness and reduce the credibility of their case in court. The witness was, therefore, able to establish the fact that there was over-voting in the exhibits even though the lawyer tried to use a hostile style to coerce the witness to admit there was over-voting. The issue of over voting is usually a stronghold of electoral petition cases (Adams, 2016). The tendency to overturn the election results is based on the ability to establish gross election malpractice in the conduct of the election. One of the key areas of concern is voting since it implies that the election was rigged in favor of the President-elect. Beke (2014) argues that the trial stage requires lawyers and witnesses to engage in a discourse that could influence the outcome of the legal process. Establishing that there was no over voting in the election, according to Beke's (2014) theory of litigation communication, is an effective way to influence the legal outcome.

Another instance of hostile style was noticed in the cross-examination of NDC, witness, Johnson Asiedu Nketia, by NPP lawyer, Lawyer Addison. In this exchange, the lawyer queries the witness whether the witness had noticed that the exhibit, the electoral register, used at the named polling station had different names and photographs than what was approved by the electoral commission. The witness did not immediately admit the question was true until the lawyer adopted the hostile style. Here is an extract of their exchanges.

> *Mr. Asiedu: My lord, I am getting confused about the way, the question is asked. Can you elaborate properly?*
>
> *Lawyer: I am saying that the polling station name Asman C. J. Primary School B here with the polling station code E1131B is part of the pink*

sheet. But the name and code do not tally with what the electoral commission issued.

Mr. Asiedu: Yes, My Lord, the polling stations are there. You can go there and check. Even if the polling station codes are not tallying, the physical polling stations are there and it is recorded that election took place there and the polling agents found their way to the polling stations and signed the pink sheets. (CHEP/2012/23/NDC)

From this extract above (CHEP/2012/23/NDC), the witness used the hostile style to reject the lawyer‘s position polling stations‘ codes and names in the pink sheets are not tallying what the electoral commission provided to polling officers. The witness is of the view that if the physical centers were there, the polling codes and names tallying do not matter. This is quite problematic because the case of election petition is based on pink sheets rather than the physical centers (U.S Department of Transformation Law Center, 2012). This is because what transpired in the polling station is valid if the polling station code and name is a valid code and name issued by the Electoral Commission. The witness used the hostile style to indicate that the names and codes of polling stations do not invalid the presence of physical polling centers.

In the cross-examination of the electoral commission by lawyer Addison, the lawyer and the witness engaged in hostile communication when the issue of dates of printing the pink sheets came up. From the cross-examination, the lawyer wanted to establish that the pink sheets were printed at a later date rather than the recommended date of the tendering in of evidence. The witness‘s admission to this query suggest that there had been a tendering in

behind the scenes that were not tendered in the court. Therefore, the two had to engage in a hostile style of communication to elicit the truth as shown below:

Judge: Addison, did you say the date is 9th July 2013?

Lawyer: Yes, 2013

Afari Gyan: Yes, July 9, 2013. That is the day it was printed.

Lawyer: That is the day what? (high pitch)

Afari Gyan: That is the day it was printed. (High pitch)

Lawyer: I am suggesting to you that that is not the day it was printed. Otherwise, ours will also show July.

Dr. Afari Gyan: Giggles (in disapproval)

Lawyer: We printed ours yesterday, it would have shown yesterday's date

(CHEP/2012/38/EC)

From the discussion, the witness did not consent even though he giggled which is proof of consent in some cases (Doak & Doak, 2021). The consent to that question proves that the tendered evidence was either concocted or not valid because the dates are wrong. However, much concession could only be achieved if the lawyer hammers the witness to ascertain the truth (Versacomp, 2012).

In another exchange between lawyer Tony Lithur, and Dr. Bawumia, the two engaged in hostile communication when the issue of malpractice and illegality of a pink sheet popped up. The following excerpt shows their

exchange.

Lawyer: Are you suggesting that this was a deliberate act?

Witness: My lord the pink sheet speaks for itself.

Lawyer: You are saying it was malpractice. Are you suggesting that this was a deliberate act by the electoral commission?

Witness: My Lord, I am saying that the number of all ballots issued to voters is 118 and the total number of ballots recorded is 119 and so I am saying that it is over-voting. I cannot impute motive but I am just telling you what is on the pink sheet.

Lawyer: So is this malpractice?

Witness: It is illegal.

Lawyer: Dr., is this malpractice? You used the word n, to me. Is this malpractice?

Witness: It is illegal.

Lawyer: is this your definition of malpractice?

Witness: this is my definition of illegality. It's not mine, it is CI 75. (CHEP/2012/5/NPP)

In this exchange, while Dr. Bawumia is sticking to his position that over voting is illegal, the lawyer insists that the witness calls that malpractice. The witness, therefore, resorted to the constitutional instrument that backed his position that it is an illegality. In this, the presiding judge explained that illegality is the same as malpractice, and the witnesses identifying in the pink

sheet records of illegality are same as malpractice. This position, however, in the understanding of the lawyer is problematic because malpractice, as the lawyer explained further, is a willful undermining of process and therefore, attracts high burden of proof than illegality. Nonetheless, the judges confirmed that the illegality is the same as malpractice, hence the witness' position is accurate.

This extract contradicts Versacomp's (2012) finding that the hostile style of communication would force witnesses to tell the truth. There is a time when lawyers employ a hostile style of communication purposely to make witnesses relent from their truthful position. In such cases, as the data revealed, the judges become arbitrators to settle the two parties amicably. This explains why Doak and Doak (2021) opined that judges must pay attention to cross-examination because it largely determines the final verdict of the court case.

It is evident from the data that a hostile style is used by lawyers and witnesses to elicit the truth. But in some cases, the hammer-and-tong method does not necessarily lead to the disclosure of truth on the part of the witness. This, therefore, implies that witnesses should be able to stand their ground irrespective of the pressing demands of the lawyers during cross-examination.

From the data, it was discovered that the hostile style of communication, which is said to be slashing, savage, and _hammer-and-tongs' method of going after a witness to make him or her tell the truth (Versacomp, 2012), was effective in making witnesses disclose relevant information in some cases. For instance, when the lawyer of the NDC, lawyer Tsatsu, used a hostile style with

the first witness of the NPP, the lawyer got the witness to answer the question truthfully. Below is the extract,

> *Lawyer Tsatsu (02:35): Have not asked him to answer my question. Have you asked him, or have you not asked?*
>
> *Dr. Bawumia (02:39): I have not asked. You*
>
> *Lawyer (02:39): Have not asked him.*
>
> *Dr. Bawumia: Yes.*
>
> *Lawyer A: Fair enough. And before you saw that document in the witness box, you were not aware of the existence of that document, is that correct?* (CHEP/2012/4/NPP)

In this extract, the lawyer repeated the question *'you have not asked him'* until the witness consented *yes*. The hostile style got the witness to answer the question truly even though it reduced the intensity of the case against the lack of signature of the President to the electoral outcome.

In other cases, the hostile style did not yield the desired results of coercing the witness to consent to the demands of the lawyer. For instance, when NDC lawyer, Tony Lithur, used the hostile style of communication to get Dr. Bawumia to accept that the witness is wrong about the occurrence of over voting in one of the pink sheets. Despite the slashing and hammering of the lawyer, the witness stood on the position of over voting and got the defense of the judges. It was discovered that in cases where the witness is willfully or consciously denying the truth, the use of a hostile style of communication is

effective in pressing the witness to tell the truth (Versacomp, 2002). On the other hand, if the witness is sure of the position of his or her submission, the witness is mostly likely to stand on the truth rather than denying because of the hostile style of communication. Therefore, the hostile style of communication does not always cause witnesses to consent and tell the truth as shown in literature (Purdue, 2012; Versacomp, 2002).

For instance, when lawyer Addison used a hostile style to make the NDC witness, Mr. Johnson Asiedu Nketia tell the truth, the witness first insisted to deviate from the question in his answering, but the lawyer through hostile style got the witness to answer the question as shown below.

Lawyer: The polling station code TB Binyalepe is not on the list of polling stations provided by the Electoral Commission.

Witness: My lord, it will not be on the pink sheet…

Lawyer: Please answer, my question

Witness: yes, it is not on the list of polling stations

The consent that it is not in the list of polling stations was initially denied by the witness because that will mean that foreign polling stations were added to the declared results thereby marring the quality of the declared results. The witness foreseeing the consequence of consenting to the demands of the lawyer attempted to explain that the supervised election occurred at the physical polling stations, so whether the polling station‘s name does exist or not in the polling stations list does not affect the quality of the declared results. This position of the witness was cut short because the lawyer used a hostile style to coerce the

witness to accept that the polling station is not on the list of polling stations provided by the EC.

In a situation where the witness is assured that his or her position on the controversy is true, the use of a hostile style is not effective in getting the witness to tell the truth. For instance, when the lawyer of NPP insisted that there is a mismatch between the polling station code provided by the EC and those submitted by the NDC, the witness equivocally stood his ground that there is no mismatch except the administrative errors that might have occurred in the process of compiling the pink sheets.

4.1.2 Soft Style of Communication

The soft communication style was also used by lawyers in the cross-examination at different times. For instance, in the n cross-examination of Dr. Bawumia by the NDC lawyer, the soft communication style was used in their communication. The extract below confirms an instance of soft style of communication.

Witness: Per addition, the total votes is 119 and C1 is 118 votes. A case of over-voting.

Lawyer: I am suggesting to you that in this case, it is a simple error of lifting what is in the total ballot box and filling them in C1. It is an administrative error.

Witness (smiling): In the previous case, you didn't say it was simply an administrative error. You used an error to claim there was no over-

voting. You and I were not there, we can only go by what is on the pink sheet, my lord, that is it.

Lawyer: (Smiles) In The previous case, I did indicate that people make errors and that is what I tried to show and that was also an error.

Witness: Violations could always be described as errors. But these are violations, malpractices, and irregularities that impact votes. (CHEP/2012/5/NPP).

From this exchange, it is clear that the lawyer and the witness engaged in smooth communication where each person is making his point clear to win the confidence of the other. While the lawyer is establishing that it is an *administrative error* by or simply a lifting error, the witness, on the other hand, posits that administrative errors are violations, malpractices, and irregularities that can impact votes. The exchanges did not involve any vulgar and repetitive exchange, rather it was a soft smiling exchange of thoughts on what constitutes voting and malpractice.

Also, lawyer Tsatsu and Dr. Bawumia adopted the soft communication style in discussing issues of who is a polling station agent and the constitutional role of the polling agent. This extract below provides an instance of the soft communication style.

Lawyer Tsatsu: Yeah. You haven't, Dr. Bawumia. You have tried in this court to give certain descriptions of your polling agents, which I want to remind you of before I deal with my questions. You know at some point, you said they were mere observers. Do you recall that?

Dr. Bawumia: Yes. I called them exalted observers.

Lawyer Tsatsu: No, no, no. I'm coming. I'm coming. Oh, okay. At some point, you said they were mere observers. Did you say so?

Witness: Yes, I think so.

Lawyer Tsatsu: You think so. And at a later stage, you described them as exalted observers.

Dr. Bawumia: That's right.

Lawyer Tsatsu: You exalted their status (smiling)

(CHEP/2012/4/NPP)

The lawyer referred the witness to a statement the witness made during the evidence in chief. In the referred statement, the witness described the polling agents as mere observers or exalted observers. The witness consented to this and that is mimicked by the lawyer when he said *you exalted their status.* The answers to these questions provided grounds for the lawyer to question the credibility of the polling agents in defending and reporting valid election results. So, through the soft communication style, the lawyer lured the witness to gain the witness‘ confidence for further questioning (Purdue, 2012; Versacomp, 2012). Kilby (2017) argued that soft communication style aids laywers to gain the confidence of witnesses and make the witnesses feel comfortable to tell the truth in cross-examination.

Furthermore, soft communication style was used by Lawyer Tsatsu to

elicit Dr. Bawumia‘s, the witness, background knowledge of some legal clauses in the consititution. The exchange centered on the Constitutional Instrument 70 (CI 70) and CI 75 clauses. The extract below presents their communication.

Lawyer Tsatsu: Now, Dr. Bawumia, you've been very familiar with CI 70. If I hear, you make references to it. And I just want to draw your attention to its provision. Just to find out whether you were familiar with this provision. I'm not asking for your interpretation, but I just want to know, if are you familiar with this provision because you've made references to C 75. You've been saying that's the basis of some of your allegations. So I just want to show you C I 75, Regulation 19(3). You know CI 75 is a public document.

Witness: (Receives CI 75 and reads it.)

Witness: An appointment and sub-regulations 1 is to detect impersonation, and multiple votes, and certify that the poll was conducted by the laws and regulations governing the conduct of an election.

Lawyer Tsatsu: Okay. Since it referred to an appointment under one and two, please read one and two as well for clarity

Dr. Bawumia: Polling agents, 19(1) my Lords, a candidate for parliamentary election may appoint one agent to attend at each polling station in the constituency, for which candidate it is seeking election. Two, a candidate for Presidential election may appoint one polling agent in every polling station nationwide.

Lawyer Tsatsu: Were you familiar with this provision before? Or Just when I showed it to you, were you familiar with it?

Dr. Bawumia: Reasonably? Yes, my Lord. (CHEP/2012/4/NPP).

From this excerpt, the lawyer provided a CI 75 document to the witness to read certain clauses aloud to the court. The witness read the clauses and he is asked whether he has an idea of the clauses he read before coming to the court. This resort to the constitutional instrument and asking the witness to read provided a ground for the witness to calm down and respond to the follow-up questions. With the soft style of communication, the witness is less tense in the witness box. For instance, Morrison et al. (2019) observe that when soft communication style is used to engaged witnesses with communication difficulties, the witnesses tend to relax and find the court exchange normal. Likewise in Morrison et al. (2019a), the authors found that when lawyers use soft communication style, it provides suggestions of the kind of information or answers expected from witnesses.

Also, a soft communication style was used by lawyer Addison to query Mr. Asiedu Nketia on the polling stations‘ location. In their exchange, the lawyer expressed how the polling stations‘ names and codes provided by the third respondent (NDC) differed from the polling stations‘ names and codes provided by the second respondent (Electoral commission). The lawyer considered this as an election anomaly; while the witness considered it as an inconsistency in recording the exact names and codes of the physical polling stations. This extract below is a sample of their communication.

Lawyer Addison: The code given by you and the name, thus the polling station code does not exist in the least of the polling stations provided by the second respondent.

Mr. Asiedu: My Lord, I disagree with you.

Lawyer: Unique 95.7 mega

Mr. Asiedu: Transmitting live from the capital. This is unique. 95.7.

Lawyer: Yes (CHEP/2012/23/NDC)

In this extract, there is a soft style of communication between the lawyer and the witness in other to establish where the polling stations are located. The two amicably reasoned together to communicate the location of the polling stations without any heated argument. In a soft style of communication, lawyers and witnesses are mostly polite and straight to the point than when it is hostile style of communication (Kilby, 2017; Doak & Doak, 2021; Morrison et al., 2019a)

Another style of communication opined by Versacomp (2012) about courtroom communication is the soft style. Versacomp (2012) described the soft style as a smiling soft-spoken ingratiating method of luring the witness into a sense of security to gain the witness‘s confidence.

Also, the soft style of communication is said to be a smiling, soft-spoken, ingratiating method directed at luring the witness into a sense of security and gaining his confidence (Versacomp, 2012). In the present study, the soft style provided rapport between the lawyer and the witness and it also aided

in easing the tension associated with courtroom communication. This was discovered through the several soft-styles of communication that were used to precede heated arguments on areas of importance to the petitioner‘s or respondents‘ cases in court. One clear observation is that the soft style was more akin to the background line of questioning where the lawyer draws the witness from the known to the unknown. This extract illustrates this:

Lawyer: If anybody said to this court that it was filed within a day; it will be obvious that he is not telling the truth.

Witness: Yes

Lawyer: If any of the none legal team was to testify that the exhibits were done in one day; he will be quailing from the truth

Witness: Yes

In this line of questioning, the witness is drawn through the soft style of communication to a point where the witness will be confident and secure that there is no problem with consenting to the conditional questions posed by the lawyer. The lawyer, however, used this conditional questioning through the soft style to get the witness to establish sufficient support that the claim of pink sheets being added on the day of the election is not realistic.

It was, therefore, discovered in all cases where the soft style was used that the lawyers successfully convinced the witnesses to be confident, secure, and cooperate in the cross-examination process. This, however, provided grounds for the lawyers to question major allegations against the quality of the declared results.

4.1.3 Conversational Style

The researcher discovered that, in most cases, the conversational style of communication was used to cool tension or start a new topic of cross-examination. For instance, the lawyer of NDC, Tony Lithur, and the supreme court judge used the conversational style to calm the tension created by the hostile style of communication between the lawyer and the witness on over voting.

> *Judge: Yes, I see you trawling and trawling. The witness is saying it is a case of overvoting because that is what he can see in the pink sheet. That is all he can do. As he is saying, overvoting cannot be an irregular thing; it must be a malpractice. Once, he stands on that, that is it.*
>
> *Lawyer: With my greatest respect, malpractice imputes willfulness to undermine a process. It carries a higher burden of proof in law.*
>
> *Judge: Yes, he is basing his argument on the pink sheet. That is all he can do. The rest, if it is spiritual (audience laughs), he doesn't know.*

Here, the judge resolved the argument on over voting in the pink sheet by using the conversational style of communication. The conversational style of communication includes mirthful comments that seeks to entertain rather than query witness. For instance, the judge jokingly established that the cause of the over-voting could be *spiritual* and that is beyond the witness' ability to establish. Also, the conversational style of communication showed interpersonal relationship between the judge and the lawyer who regarded themselves as learned colleagues, and thereby communicated in a professionally acceptable way even though with some level of informality. This confirms Congo's (2015)

finding that the conversational style of communication includes the use of professional jargons and slangs that is acceptable among members of similar rank.

Moreover, the conversational style was used by lawyers to address their colleague lawyers on areas of disagreement in the cross-examination. This occurred when lawyers of the New Patriotic Party found Lawyer Tony Lithur's calculation of over voting inappropriate. Lawyer Tony Lithur used the conversational style of communication to address his colleagues. The conversational nature of the exchange is seen in the used of phrases such as *learned colleagues, graphic example,* and *electoral thesis.* For instance, the judge assertion that *we have not gone through the* ***electoral thesis*** *you have gone through* provides a conversational compliment that _satirically' elevates the lawyer and provides the lawyer benefit of a doubt to explain his position further to gain the understanding of the learned colleagues. Through these phrases, the lawyers and judges established a common understanding on the issue of over voting without engaging in any heated argument. The extract below provides details of the conversational style among the learned colleagues.

> *Lawyer: My lord, I am surprised my learned colleagues are not understanding this simple arithmetic. May I just give a graphic example?*
>
> *Judge: Yes, but this is the law.*
>
> *Lawyer: And these are not issues*
>
> *Judge 2: We have not gone through the electoral thesis you have gone through!*

Lawyer: My Lord, well, that is our position, that total ballots cast include valid votes cast, rejected ballots, and spoilt ballots.

Judge 3: Very well, the EC will come and clarify issues

Lawyer: Absolutely. The election has been carried many years, and they will explain to us.

Judge 3: You have done well, but eh, you can't at best be an interim electoral commissioner.

In this extract, the lawyer opined that the judges are not simply understanding the arithmetic of how he arrives at no over-voting in the pink sheet. The judges in response showed that they are lawyers, not election experts and so they have not gone through the electoral thesis. This is jovially presented to disclose the lack of expertise in the area of electoral arithmetic, so that the lawyer could allow the witness to stand by his position. Also, the judge addressing the lawyer as a potential election interim commissioner satirically convinced him to abandon the question for the experts. This made the reservation of the question for the electoral commission the best step. This confirms Morrison's et al. (2019) finding that when witnesses are finding difficulties comprehending legal matters, lawyers could use simple language that could allow witness to relate with the cross-examination. Also, it is possible that the conversational style digress from the main issue to allow witnesses feel at home in tense situations (Kilby, 2017). This is also seen in O'Leary' (2016) discovery that judges and lawyers sometimes remove their wigs and gowns to make witnesses feel comfortable. This is, perhaps, providing what Aristotle called _carthasis effect' in his theory of rhetoric. Carthasis is a process of

releasing and reliefing audience of strong emotions (Mccormack, 2014). Through the use of jokes, slangs and cultural references, the lawyers and judges are able to create carthasis effect which relieves witnesses of emotional tension.

Furthemore, the conversational style of communication was used by opposition lawyers to object input by their colleagues in the cross-examination. For example, in an objection to the NPP lawyer's position on a particular exhibit, the NDC lawyer ended up turning the exchange into a conversation by introducing a nickname the general secretary of the party. In the extract, the use of the nickname, *general mosquito*, by the lawyer created laughter among the audience, thereby turning the exchange into a conversational one. The judge comment that by mentioning of the nickname, general mosquito, the lawyer has *given the Supreme Court's blessing to the name general mosquito,* further entrenches the conversational style of communication which is informal in nature. The extract below presents their exchange.

Lawyer 1: Raise your objection. I will respond to it.

Lawyer 2: It is not in anywhere in the pleading (tendering) before the court. It is not even relevant.

Lawyer 1: My Lord, we've pleaded (tendered) it. We've pleaded it. It is in General Mosquito, (ahh) I am sorry. (Audience laughs)

Judge: You have given the supreme court blessing to the name General mosquito. (CHEP/2012/5/NPP)

Again, the conversational style was used to bring external information about witness in a way to establish rapport with the witness. The researcher

found a conversational exchange between the NDC lawyer and Dr. Bawumia where the two digressed to discussing a news story about the witness on the *Daily Graphic* newspaper. The conversational style was used in a more personal and informal manner to start the conversation (Congo, 2015). This is an extract on their exchange.

> *Lawyer: Dr. let me first congratulate you. I learned in the papers today that you have been asked to return to your job at ADB (Agricultural Development Bank).*
>
> *Witness: I think you should stop reading too many newspapers. (both laugh) (CHEP/2012/5/NPP)*

The information about Dr. Bawumia returning to the banking job was not necessary so in that the media published that the calculations Dr. Bawumia is engaging in the witness box are quite impressive and show his banking experience as an economist. Therefore, the witness also joined the conversation by asserting that the lawyer should *stop reading many newspapers*. The conversational style of communication in the courtroom is very informal, personal, and relaxed exchange among the communicators. Denault and Patterson (2021) found that when witnesses are made to relax and feel emotionally relieved, the witnesses are most likely to provide their best while in the witness box. This confirms Aristotle‘s pathos mode of persuasion which is based on the assumption that effective persuasion engages audience emotions. The lawyers successfully achieved pathos mode of persuasion, thus causing laughter and mirth, through the use of conversational style of communication (McCormark, 2014). Likewise, Mitchell (2002) observes that when the modes

of persuasion are used in cross-examination, the lawyers are mostly effective in persuading the judges and witnesses to influence verdict in favor of the lawyer‘s client.

The conversational style moved beyond building rapport through soft ingratiating words to exploring common knowledge among the lawyers and witnesses to create a familiarity that demystifies courtroom communication (Doak & Doak, 2021). Through conversational style, personal information on witnesses is brought into the courtroom communication to enhance familiarity. This implies that lawyers in courtroom communication go beyond the evidence to know more about the witnesses so that questioning could include lawyers‘ knowledge of the witness even outside the court premises. For instance, lawyer Tony Lithur spoke about the newspaper‘s reportage on Dr. Bawumia and similarly, lawyer Addison spoke about the thirty-four years of Mr. Asiedu Nketia‘s electioneering experience. This, therefore, decontextualized the courtroom discourse thereby, making it more humane and personal to the communicators, lawyers, and witnesses.

Furthermore, the researcher discovered that the communication styles and communication strategies were effective as far as courtroom communication is concerned. The communication styles especially hostile and soft styles were effective in making witnesses reveal relevant truthful and background information. The present study did realize some evidence of Kirby‘s (2017) finding that the hostile style can make witnesses uncomfortable and uneasy during cross-examination. The heated argument in a hostile style ended with smiles from both witnesses and lawyers. But, in some cases, the

witnesses addressed the lawyers to relax as Dr. Bawumia remarked in his response to Dr. Tony Lithur that –*counsel, don't shout*" (CHEP/2012/5/NPP). This implies that witnesses were able to address the situation when a communication style gets them uncomfortable or uneasy. The effectiveness of the communication confirms Beke's (2014) theoretical position that the trial stage should use plain and simple to understand language so that the court-of-public opinion can relate to the case in court. From the simple language used in the communication, the audience could easily grasp the court proceedings and be informed about the legal process.

The present study identified three communication styles that were used by lawyers to cross-examine witnesses in the 2012 election petition. These styles are hostile style, soft style, and conversational style. The study, therefore, confirms the findings of Versacomp (2012) and Purdue (2012) on the use of soft style and hostile style of communication in courtroom communication. The present study adds to their findings on styles of communication in cross-examination by discovering that the conversational style which is more personal and friendly is also used in courtroom communication. The present study also established that communication styles employed either led to the achievement of the goals of the cross-examination which were to substantiate the evidence, add more evidence or question the credibility of the witnesses. In all these goals, the communication styles used by the lawyers appealed to the emotions as well as the reasoning of the witnesses, thereby fulfilling Aristotle's modes of persuasion, thus logos and pathos. The communication styles effectively aided in establishing whether the electoral process was just or otherwise. This confirms Orozco-Henriquez et al. (2010) assertion that electoral justice is the

cornerstone of democracy because it safeguards the legality of the electoral process.

The communication styles occurrence in the entire data under study were 273 occurrences. These numbers were based on the researcher‘s analysis of the instances of communication exchanges that could be deemed as hostile, soft, or conversational based on the operational definition given to each of the styles in the literature. Table 1 provides a summary of the number of occurrences of the communication styles in the selected data. The occurrences were based on clear instances of communication exchanges that could be categorized as hostile, soft, or conversational style.

Table 1: Occurrence of communication style in the selected data.

Communication Style	**Frequency**
Hostile Communication Style	37
Soft Communication Style	121
Conversational Style	116
Total	**273**

Source: Author's construct

From the table, the hostile communication style occurred 37 times because it was usually used in instances where the lawyer considered it necessary to repeatedly _hammer-and-tong' as Versacomp (2012) will put it, to get the truth from the witness. Even though some of the instances showed the witnesses conceding and disclosing the truth, in instances where the witness was certain that his or her position was the truth, the hostile style did not successfully convince the witness to change his or her answers. The soft style appeared 121 times because it was usually the case of lawyers to use the soft style to make the witness secure and confident to disclose relevant information (Purdue, 2012; Reppen & Chen, 2020). The use of the soft style was, therefore, more rampant than the other communication styles. Purdue (2012) opined that when witnesses are persuaded by soft style, they tend to disclose relevant information unconsciously.

The conversational style appeared 116 times. This was so because the lawyers used the conversational style to establish personal knowledge with the witness and that made the witness feel relaxed in telling the truth to the lawyer. In the conversational style, references to personal information about the witness were usually noticed. The conversational style was more noticed in cases where

the lawyers provided extra information outside the courtroom to back their case (Murison, 2013). Therefore, the three communication styles were useful for achieving different purposes.

The literature has established that cross-examination involves substantiating the burden of proof presented in court to support a case as well as questioning the credibility of the witnesses who are in court to validate the evidence in the hearing of court case (Purdue, 2012; Whalen & Fondren, 2011; Versacomp, 2012). Therefore, the effectiveness of the styles and communication strategies was determined based on what has been established in literature and how the styles and strategies aided in achieving the goals of cross-examination. Hyland-wood et al. (2021) argue that effective communication strategy achieves the purpose intended by the speaker

4.2 RQ2: What persuasive appeals are used by witnesses and lawyers in the 2012 election petition?

This research investigated the persuasive appeals used in the cross-examination in the legal process. The three persuasive appeals focused on were logos, ethos and pathos appeals.

4.2.1 Logos Appeal Appeal to reasoning

The researcher found that laywers and witnesses used questioning, speech-making, figures and evidentials to appeal to the reasoning of audience and judges especially. The researcher discovered that the questioning strategy was the dominant communication strategy used by communicators in the courtroom to exchange information that appeal to reasoning. Regarding the question types, it was noted that different questioning styles such as _I suggest it

to you‘, _wh-questions‘, _yes or no questions‘, _modal verb questions‘, and _would it surprise you to know questions‘ were used to appeal to the reasoning in order to persuade in the communication. In legal case based study, Jamar (2008) found that questions, especially rhetorical questions, are effective in establishing the logos mode of persuasion because the questions call for witnesses to synthesize information in a logical manner. Likewise, Bose (2020) found that questions in legal communication probes the mind of hearers thereby appealing to their reasoning. The specific type of questions used in the cross-examination provided evidence of how questions could achieve logos appeal in cross-examination.

_I suggest to you‘ is a questioning technique that lawyers use to predict the answer expected from a witness. It is akin to what Bose (2020) and Jamar (2008) called syllogism. It provides a promise that what the lawyer is most probable, and should be endorsed by the witness emphatically. The *I suggest to you questions* were usually used by lawyers to engage witnesses in instances where the evidence has to be contested. As opined by Purdue (2012), the purpose of cross-examination is to render the evidence in chief unsubstantial. For instance, lawyer Tsatsu used *I suggest to you question* to elicit a yes answer that the signature is the first respondent‘s (His Excellency Nana Akuffo Addo) signature. This is appeal to reason because the witness would have to be convinced that whatever the lawyer is asking him to consent is reasonably true. The laywer‘s use of suggestion speaks of authoritative knowledge, and therefore, the witness is expected to accept the suggestion as true (Purdue, 2012). The extract below shows their exchange.

Lawyer: I suggest to you that the signature on the pink sheet is the signature of the first respondent. Am I right?

Witness: It looked like it.

Lawyer: Have you asked him?

Witness: Not yet (CHEP/2012/4/NPP)

The lawyer used the *I suggest it to you* question to guide the witness to accept that the signature is his flagbearer‘s signature. Then *I suggest to you* questioning put it directly to the witness with no opportunity for circumlocution in answering. This is usually followed by probing if the witness tries to deny the truth. It is logos appeal because, according to Bose (2020), the I suggest to you part becomes the premise that necessitates the conclusion that witness should consent to the reasoning of the lawyer. Despite its effectiveness in sometimes coecing witnesses (Kilby, 2017) to agree to lawyers‘ position, the extractr above showed that witnesses could also reject concession to the suggestion of the lawyer in the question.

Also, the lawyers used yes or no questions to elicit background information that will inform further questioning. In such questioning, the witness is expected to provide straightforward yes or no answers with each option attracting the follow up question. Therefore, yes or no questions functioned as a leading question to build an argument between the lawyer and the witness. These questions appeal to reasoning because the witness is expected to answer based on his or her understanding of the background information that guided the yes or no question (Jamar, 2008; Purdue, 2012).

For instance, the NDC lawyer, Tsatsu used yes or no questions to elicit information from the witness. *And according to the tenets of your faith, If You don't tell the truth, you are defying that holy book. Is that not correct? (*CHEP/2012/4/NPP). This yes or no question elicited information about the witness' faith in the sacred book (Qur'an) as proof of the witness' allegiance to witness the truth. The question appeals to the reasoning of the witness who is expected to either accept his belief in the holy scripture or deny. A yes or no answer is based on his reasoning on the premise of the question. Bose (2020) observes that syllogism is an effective means in cross-examination especially when the premises are made of questions. The questions, according to Jamar (2008), probes the minds of hearers.

Also, the yes or no questions appealed to reasoning of witnesses by guiding the witness through the line of questioning of the lawyer. Line of questioning is the strand of questions that are asked on a particular issue of interest in the cross-examination (Purdue, 2012). The strand of questions serve as premises upon which a convincing conclusion is drawn at the end of the line of questioning. The lawyer used yes or no to guide the witness through the line of questioning. This extract shows:

> *Lawyer Tsatsu (02:00): I do. You did not immediately recognize that. That's correct. And then, and then you, you recognized it.*
>
> *Dr. Bawumia (02:07): Yes, I did. (*CHEP/2012/4/NPP).

The witness answered yes to the question to confirm that he did not immediately recognize the signature of the President on the pink sheet.

According to Asare and Asante (2016), one of the major irregularity raised by the petitioners to support their case in court was th evidence that their Presidential candidate, His Excelleny Nana Akufo-Addo, did not sign the pink sheets as the constitution demands in every election. The lawyer, therefore, using yes or no questions in his line of questioning to elicit a consent that the President signed the pink sheet invalided the petitioners burden of proof that the President did not sign the pink sheet.

Also, in the cross-examination of the first witness for NDC, the lawyer used a yes or no question to interogate the witness. The witness was handed an exhibit (pink sheet), and the lawyer used a yes or no question to ascertain if the witness had gotten the right document. The witness affirmation was important to the lawyer because the line of questioning of the lawyer was on mismatching of polling stations names and codes in some selected polling stations. After the affirmation of the witness provided the lawyer a logical basis to continue the line of questioning on the issue of what the NPP lawyers tagged ‗*concocted polling station names and codes.*' This excerpt shows their communication:

Lawyer: Do you have it?

*Witness: Yes, my Lord. (*CHEP/2012/23/NDC)

The lawyers also used wh-questions to elicit information from witnesses. Wh-questions are questions that contain what, where, who, when or how in the question structure (Doak & Doak, 2021). These questions usually asked for specific answers from the witnesses. For instance, lawyer Addison used the wh-question to ask NDC's first respondents to provide the number of pink sheets submitted through the affidavit. The witness provided the answer by stating 5,

316 affidavits as the total number of pink sheets submitted to the court. According to Baker (2013), figures provide support for logical persuasion. Moreover, Aristotle in his supra notes conversely recognized that legal audiences would not always have a high legal acumen, sound analytical abilities, or a tendency toward fairness. Therefore, the use of specific strategies such as figures, proverbs, cultural references among others will aid in achieving logos appeal.

The stating of the total number of exhibits tendered by the witness provide a weight of pink sheets that are contested by the petitioners. This affirms Erlish's et al. (2021) idea that in overturning election results, the weight of evidence must be sufficient to establish that the margin of victory is not wide enough for confirm a winner. Likewise, Ayelazuno (2013) found that the absolute majority basis for declaring a winner is flawed because it gives advantage to ethnic groups with large electorates to determine the winner. Nadeau et al. (2021) conclude that when the winning-losing gap is not wide enough, the election victory tends to be poorly accepted by the electorates because of the fear that it has been rigged in favor of the winner. Therefore, the wh-question on the exact exhibits tendered was to enhance the lawyer's logical appeal of the quantum of evidence at the disposal of the court. The extract below provides the wh-question and the response of the witness, Dr. Afari Gyan.

> *Lawyer: Now, can you tell the court, how many Witness affidavits you filed in this court?*
>
> *Witness: My Lord, we filed 5,316 affidavits*. (CHEP/2012/23/NDC)

In the cross-examination of the first respondent of the electoral commission, Dr. Afari Gyan, the NPP lawyer, Philip Addison, used the wh-question to elicit information on the content of the printouts. McCormack (2014) opines that the use of logos is based on the assumption that a persuader's audience will be largely rational, in this context the jury and the audience in the court. The question on how many printouts the Electoral Commission could produce in a day set to provide evidence of the extent to which the dates must differ if the Electoral Commission is not able to print all the pink sheets the same day. This answer provided a basis for the lawyer to conclude that the differences in the dates of the pink sheets indicate manipulations the Electoral Commission agreed that all the pink sheets were printed on the same day. The new dates pink sheets could therefore, be said to be an intrusion to the original polling stations pink sheets issued by the Electoral Commission. The following extract presents their exchanges:

> *Lawyer: And could you tell the court what's the daily printouts that you mentioned or printed?*
>
> *Witness: Yeah. A daily printout will contain the information, the same information, as you would find on a register, the name of the past, and the polling station code. (CHEP/2012/43/EC)*

Aside from the specific information gathered through the use of the wh-question, the lawyers also used the wh-question to elicit information on details of the electoral register compilation process. This formed part of logos mode because the petitioners argued that the compiled register was not exactly what the National Democratic Party members used in the election because there were

issues of inconsistencies in naming and coding of the polling stations. For instance,

Lawyer: *Were there any differences in the people who were registered, Dr. Afari Gyan, categories of people?*

> Witness: *well, yeah. Um, some of the persons who applied for registration did not have fingers at all. They did not have fingers at all. And we classified this group of people as persons who are suffering from permanent trauma, (CHEP/2012/43/EC)*

In this excerpt, the lawyer is eliciting information on the registration process, especially the biometric verification process. The answer of the witness reveals that some of the registered voters could not be physically verified because they did not have the fingers to do that. This answer provides a basis to support the evidence of proof by the first respondent that some electorates voted without biometric verification, and this could be considered a violation of the electoral process. It is a logical appeal because if the number of people who voted without verification is outrageous, it simply means the Electoral Commission will have to confirm how so many electorates did not fingers to be verified. The answer to the question provided logical justification that the biometric verification was compromised at the polling stations thereby, allowing electorates who may not be legibly registered to vote in the election.

The questioning strategy was effective in eliciting background information, specific answers as well as details that could aid the line of questioning of the lawyer in the cross-examination process. Through this, the questioning aided the lawyers to provide logical evidence to support their case

in court. As Beke (2014) argued in his litigation communication theory, the trial stage is based on the ability of the lawyers to establish a compelling evidence that could influence the verdict in their favor.

The yes or no and wh-question were used as leading questions to elicit vital background information from a witness. For instance, the NDC lawyer used a leading question in the following excerpt.

> *Lawyer Tsatsu: you, you tried in this court to certain descriptions of your polling agents, which I want to remind you of before I deal with my questions, you know, at some point, you said they were mere observers. Do you recall that? (CHEP/2012/4/NPP)*

This is a leading question because it provides the basis for the lawyer to start engaging the witness on the issue of polling agents not signing the pink sheets at the polling stations. The answer of the witness to this question provides details to the lawyer as to whether polling station agents did their job as stipulated in the constitution or not. The witness answered yes to the leading question and called for further questioning in that line. The lawyer provides the constitutional instrument C. I. 70 where the duties of the polling agent in an electoral process are spelled.out The lawyer successfully established that the polling agents are not mere observers as described by the witness, rather the polling agents are part of the electoral process and their views on the electoral outcome are valuable to the conduct of a free and fair election. The follow-up questions such as *Now, Dr. Bawumia, you, you, you've been very familiar with CI 70*? indicate the lawyer has used the first question to lead the series of questions in that line of questioning. Reppen and Chen (2020) found that

leading questions are useful for eliciting background information. This forms a logical appeal because it provides basis for the lawyer to appeal to the reasoning of the witness regarding the witness‘ understanding of CI 70.

But the conditional question, thus questions that were hypothetical in nature were objected to by opposing lawyers. For instance, lawyer Addison in objecting to the conditional questions of lawyer Tsatsu stated that *Now, if you had been aware of that letter if you had been aware,* is speculative and does not fit in cross-examination where evidence is the basis for questioning.

Reegarding the use of questions to appeal to reason, the researcher found that the *I suggest it to you questions, yes or no questions, Wh-questions*, and *leading questions* effectively appealed to witness and audience reasons; while the conditional sentences did not appeal to the reasoning of the audience nor witness because the conditional questions were objected in the court of law.

The next strategy that was used by the lawyers in the cross-examination process to engage in logos appeal is the *speech-making strategy*. The speech-making strategy provides a comment, summary, or statement to the jury or witness in most cases to explain legal discrepancies or issues that arise during the cross-examination (Purdue, 2012). The speech making could be in the form of an objection to the opposition's lawyer‘s position on a particular issue. The speech-making provided logos appeal because it provided analysis, synthesis and means of persuasion. According to Jamar (2008), the logos mode provides analysis, synthesis and means of persuasion. Analysis involves breaking the whole into its components for easy understanding; while synthesis involves bringing the pieces of argument together to establish relationship. The means of

persuasion refers how the various modes are integrated together artistically to provide convince-able argument to audience.

In the data, it was discovered that the lawyers used the speech-making strategy to appeal to the witness and audience reasoning on issues of concern. For instance, the lawyers of the petitioners interrogated the lawyer Tsatsu when he started using speculative questions to cross-examine their witness. Lawyer Tsatsu appealed to reasoning by arguing that the questions asked were targeted to the witness in the witness box not his lawyers. The attempt of the lawyers to answer or object the questions is not lawful, hence must be stopped. The extract below shows their exchanges.

Lawyer 1 (Addison): Now, if you had been aware of that letter… if you have been aware of that letter…

Lawyer 2 (Tsatsu): You know, if you want to answer my questions, you can go into the witness box. But I'm not going to have… I'm not with the greatest respect…

Lawyer (Addison): We object to that.

Lawyer 2 (Tsatsu): I'm not going to object to the other side, trying to coach them, in the witness. I'm not gonna have that. Yeah, because that's, what's happening. I'm beginning a question and I hear speculation and so on. It's not right. It's not right. Lawyer 1 (Addison): Finish the question then. Yes. Now that's it. Speculate yeah, but not allowed to sit down and say special resume. You'll sit, and resume your seat.

Lawyer 2 (Tsatsu) : Yes. Now, you know, if you had been aware of that letter, Dr. Bawumia,

Lawyer 1 (Addison): Object.

*Lawyer 2 (Tsatsu): What are you objecting to? This is no trial. So that even if your question is, if you do, I have to finish the question and I would want to advise all counsel, if you have any objection, let your learned colleage finish and you object. Rather than you raise your voice in disapproval or not. This is not fine. (*CHEP/2012/4/NPP)

In this extract, the NPP lawyer objected to the conditional questioning approach adopted by the NDC lawyer to question the witness. The NDC lawyer used speech making strategy to make a statement on why he is not accepting that objection. The NDC lawyer advised that all counsel (lawyers) should allow the cross-examining lawyer to finish asking the questions before they can object. The NDC lawyer added that the use of such objection is limited to the trial stage of the legal proceeding rather than cross-examination, hence he (the NDC lawyer) is not ready to accept such objection. It is succinct through the speech-making that the NDC lawyer synthesized the reasons. The provision of reasons reasonably convinced the court to allow him continue his line of questioning. Jamar (2008) argues that synthesis is effective in ensuring logos persuasion in court proceeding.

Another instance of the use of speech-making is found in the interaction between lawyers of NPP and lawyers of NDC when the former objected to the tendering in of pink sheets that were found to be in another color. Through the speech making, the NPP lawyers stated that the rejected form is not consistent

with other forms because a*ll the forms should be in blue ink. But part of it is in carbon copy, not blue ink.* This implies that the lawyers used the speech making as a strategy to provide logical reasons for rejecting the form proposed by the third respondent, NDC.

> *NPP Lawyers: We are objecting to the condition form of Atebubu. All the forms should be in blue ink. But part of it is in carbon copy, not blue ink. It makes the document doubtful.*
>
> *NDC lawyers: there is no difference between admissibility and authenticity. (*CHEP/2012/38/EC)

Speech making as a strategy was also used by the judges to address controversies during the cross-examination. For instance, one of the judges made a statement that: *Lawyer Lithur, the witness has made his point clear by stating that there is over-voting in the pink sheet. What you need to do is to explain to us how that is not true rather than making denying the case of over voting* (CHEP/2012/24/NDC).

The charges also used speech-making to clarify issues of contention among lawyers and witnesses. In cases where the lawyer is in a heated argument with a witness regarding a position that the witness is not deeming right, the judge usually provides an explanation to resolve the controversy. In one such case, the judge intervened to explain the meaning of irregularity as the same as malpractice. This was because the witness asserted that irregularity and malpractice are the same. This extract shows their communication.

Lawyer: My Lord, I wanted to make a distinction between malpractice and illegality because malpractice connotes willfulness and carries a higher burden of proof in law than irregularity.

Judge: Yes, I see you trawling and trawling. The witness is saying it is a case of over voting because that is what he can see in the pink sheet. That is all he can do. As he is saying, over voting cannot be an irregular thing, it must be malpractice. Once, he stands on that, that is it.

The use of speech-making provided opportunities for legal experts, lawyers, and judges, to explain legal matters to the witnesses and court audience by extension. This fulfills Beke's (2014) theory of litigation communication which stipulates that litigation communication should be simple and open enough for all and sundry to understand. Through the communication strategy of speech making, legal experts, and by extension litigation communicators, can dissect legal concepts and situations for witnesses and audiences to decipher. This meets the persuasive appeal of reasoning. In this vein, Aristotle thus argues that ~~–a~~n audience of untrained thinkers" is that which persuaders should prepare to face rather than erring on the side of treating an audience as if it were fully rational (McComark, 2014, p. 132).

This study reveals the position of legal theorists that logos mode is largely used in legal proceedings as a predominant mode of appeal. Kadoch (2000) found that logos seems to be the most widely promoted, accepted, and sought after mode of proof in legal argument. In consent, McComark (2014) addes that stemming from the emphasis on logical appeals that has saturated the

profession, some legal theorists have argued that legal rhetoric has transcended classical rhetoric in favor of a logos. Nonetheless, this form of discourse relies on the notion that a litigator's audience, largely consisting of the judge and jury, is one that is _curious', circumspect, overwhelmingly attentive to relevant evidentiary factors, and possessed of judgmental standards that we would ordinarily associate with good reasoning. Despite its dominance, the persuasiveness of Oliver Wendell Holmes's (1881) assertion that –[t]he life of the law has not been logic: it has been experience," provides grounds for other appeals in legal discourse.

4.2.2 Pathos Mode: Appeal to Emotion

Regarding emotional appeal, the researcher found that communicators in the courtroom used nonverbal expressions such as sad facial expressions, intonation, and pauses to communicate their emotions. Therefore, using Aristotle's modes of persuasion aids in understanding how reasons, emotions, and credibility are balanced to achieve effective communication in the litigation process. Purdue (2012) and Catoto (2017) found that *impression management, and non-verbal cues* are useful in expressing emotion.

Impression management in the form of cultural reference was used by the lawyer of the Electoral Commission as he cracks a joke with the NPP witness. The lawyer referred to the article in the daily news that tagged Bawumia as returning to his banking job because of the lengthy mathematical calculations Bawumia was engaged in during the course of the petition. The witness responded cordially by chiding the lawyer to stop reading so many newspapers. Jamar (2008) found that using stories, imagery and feeling

captivating words trigger speaker‘s appeal to emotions. The use of story of the witness in a newspaper is consistent with Jamar‘s (2008) finding that stories are potent in persuading audience emotionally. The following extract shows their exchange.

> *Lawyer: Dr. let me first congratulate you. I learned in the papers today that you have been asked to return to your job at ADB*
>
> *Witness: I think you should stop reading too many newspapers. (both laugh) (CHEP/2012/5/NPP)*

This cultural reference is using what is known commonly to both communicators as a way to establish rapport with the witness. The tense that comes with sitting in the witness box could be minimized or deflated through such cultural reference. The lawyer‘s intent to create some mirth and get the witness respond emotionally was achieved as both communicators laughed over the matter.

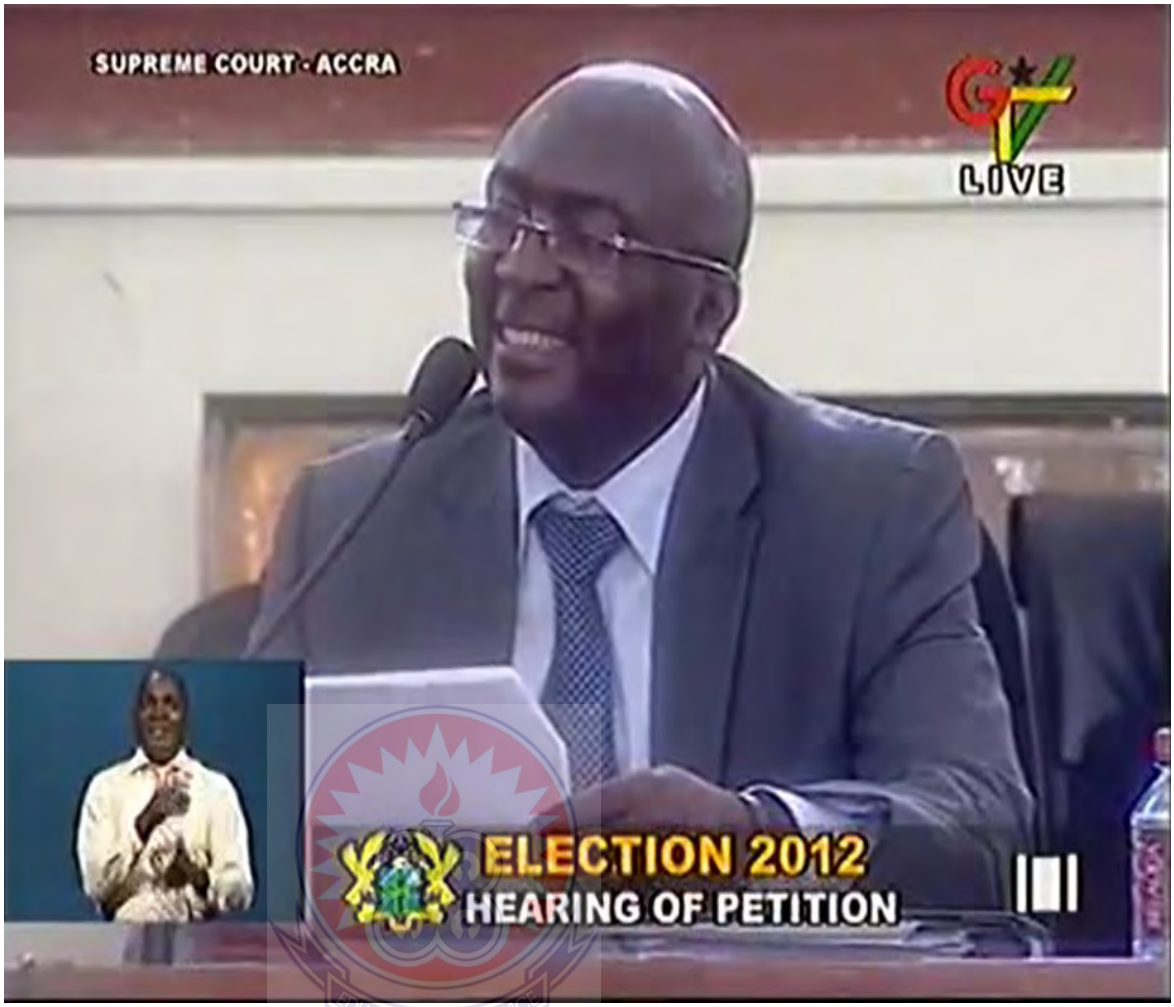
Also, by using a cultural reference of a watchman and a thief, Dr. Bawumia explained why the Presidential candidate of NPP did not blame the polling agents for the election malpractice, but rather considered filing a petition. This is consistent with Jamar‘s (2008) discovery imagery could be an effective pathos appeal. In using of the imagery of a watchman and a thief, the witness allegorically painted a picture of petitioners being watchmen and the defendants being thieves, but in an emotionally friendly manner. No wonder, Jamar (2008) concluded that when speaker‘s connect their argument to something of most valuable to audience, the speaker tend to persuade the audience more easily emotionally. This excerpt presents the exchange.

Dr. Bawumia: I said to you yesterday, if your watchman allows someone to steal or you are able to steal from somebody's farm, even though there is a watchman, you don't blame the watchman but you blame the one who did the stealing.

Judge (Atubga): Let's distinguish between the procedure at vice Presidential debate and court procedures, you see here is a very different place. Let's do it as this place demands. (CHEP/2012/5/NPP)

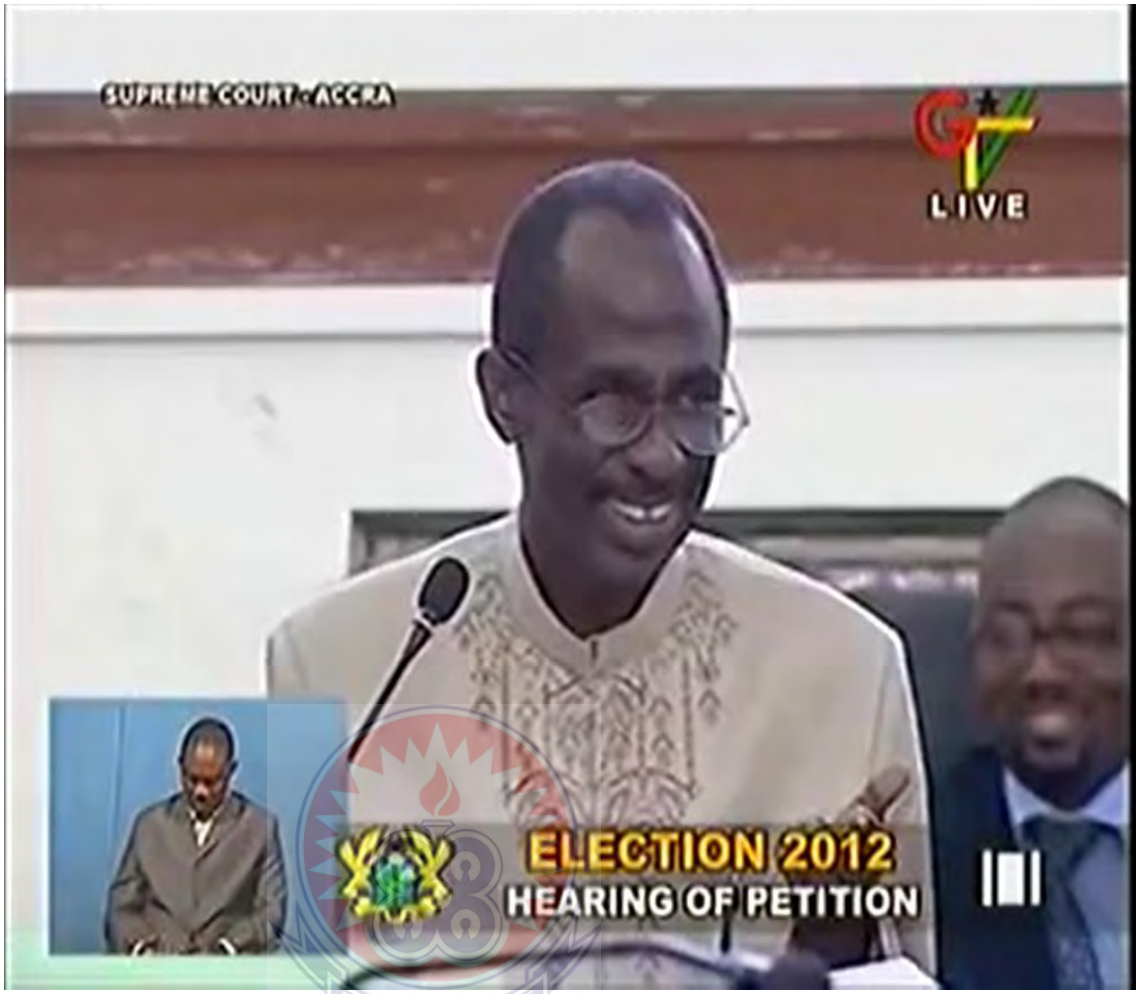
The cultural reference though well understood, the judge has to explain to the witness through speech making that the procedure for communicating in the law court is different from the procedure for communicating in political debate where the witness is an expert. Also, Denault and Paterson (2021) found that nonverbal communication cues are relevant in establishing truth and persuading through emotions of the witness. Doak and Doak (2021) identified the nonverbal cues and their interpretation of cross-examination. In the present study, the researcher discovered that smiling was a common nonverbal cue expressed by most of the witnesses. The smiling mostly was to establish perplexity, humor, or disapproval of the communication. To show these, the following screenshots of the cross-examination of the witnesses are added.

Figure 1: Dr. Bawumia smiling during cross-examination



Source: CHEP/2012/4/NPP

Figure 2: Mr. Asiedu Nketia smiling during cross-examination



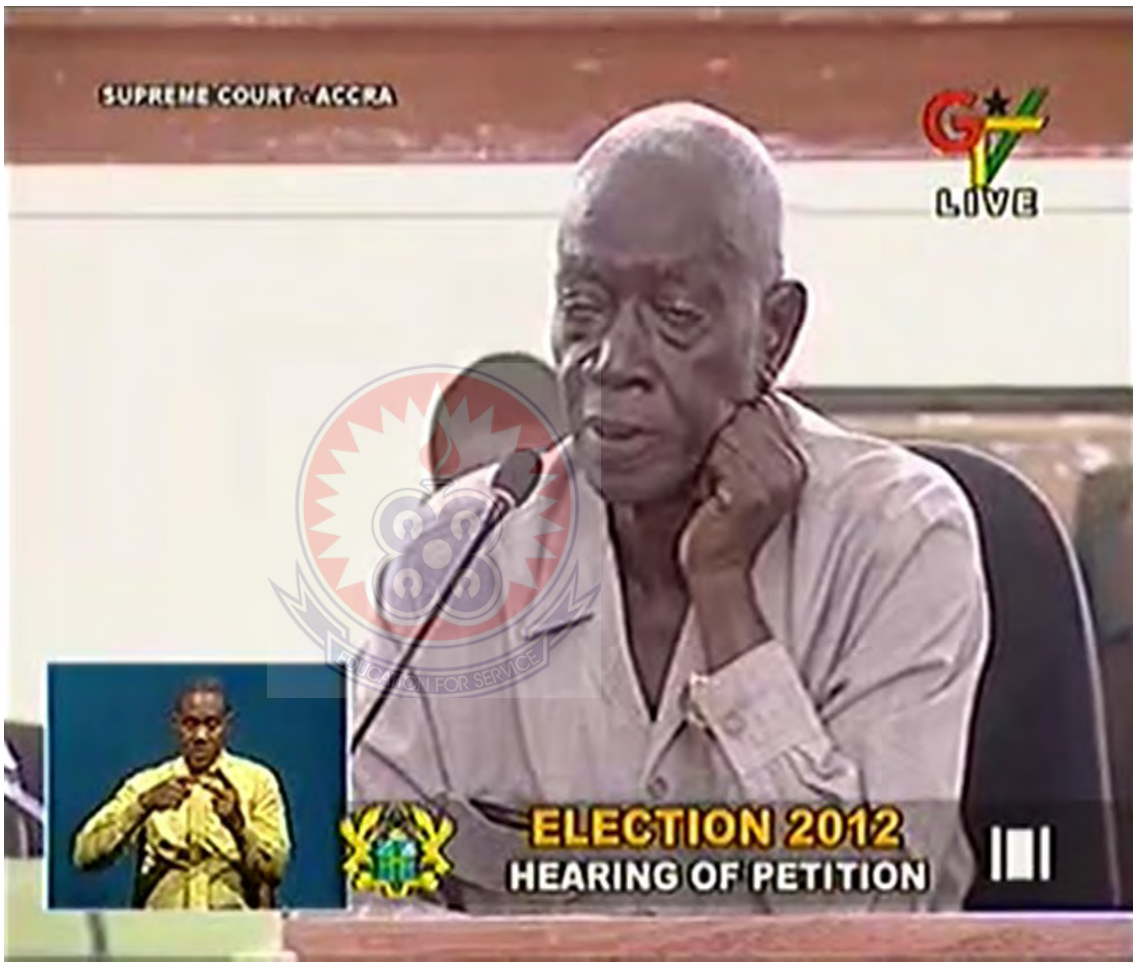
Source: CHEP/2012/23/NDC

From these pictures, the witnesses are spotted smiling. In the case of image 1, Dr. Bawumia was smiling in disapproval of the lawyer‘s statement. In image 2, Mr. Asiedu Nketia was smiling in agreement with the lawyer‘s insistence that there is no way the polling station code is part of the list of polling stations provided by the electoral commission.

In other cases, the witnesses used sitting posture, hand gestures, facial expressions, and the pitch of the sound to demonstrate their true feelings, and the authenticity of the information provided. According to Doak and Doak

(2021), the nonverbal cues are said to be relevant in ascertaining the truth in cross-examination. For instance, Dr. Afari Gyan in answering questions regarding the polling station inconsistencies kept his hand to his cheek. Image 3 demonstrates this.

Figure3: Dr. Afari Gyan during cross-examination



Source: CHEP/2012/38/EC

Non-verbal communication cues were effective in achieving the emotional dimension of Aristotle's theory of rhetoric. They revealed the true emotions of the witnesses as well as provided extra information to confirm the certainty, uncertainty, or credibility of the witnesses (Denault & Paterson, 2021; Doak & Doak, 2020; Reppen & Chen, 2020). In short, nonverbal

communication cues are an important communication strategy during cross-examination, however, they reside with the communicator, the witnesses, or the lawyers. Moreover, the nonverbal cues could be conscious or unconscious expressed by the witnesses.

The emotional appeal is seen to be the authentic persuasive appeal because as Crawford (2012, p. 32) puts it ~~"n~~on verbal cues do not lie." McComark (2014) established that emotional appeal gives credibility to other appeals (logos and ethos) in courtroom communication. Legal decision-making is enriched and refined by the operation of emotions because they direct attention to particular dimensions of a case, or shape decision makers' ability to understand the perspective of, or the stakes of a decision for, a particular party (Kadoch, 2000). No wonder, Melissa (2012) concluded that efforts to exile affective emotional appeal could lead to a damaging outgrowth of historic dichotomizing which produces legal judgments that are shallow, routinized, devaluative, and even irresponsible. Emotional appeal adds color to legal discourse, and its appeal is considered genuine and effective compared to other modes of appeal (Catoto, 2020; Crawford, 2012; Purdue, 2012). In the present study, emotional appeal as a persuasive technique was carried out through the use of impression management, cultural references, and non verbal cues.

Melissa (2012) observes that everyday experiences is a sign that emotions can influence the decisions people make, much as the outcome of our decisions can influence the emotions we experience. Pathos appeal is persuasion based on stirring the emotions of audience. As McComark (2014) opined that judgments when people are pleased and friendly are not the same as when they

are pained and hostile. Beyond emotions influencing decisions, emotions are found to be effective in making analogical reasoning. McComark (2014) put it that emotion is thus ―what releases the legal imagination to see relevant similarities and therefore permits the final leap to judgment."

4.2.3 Ethos Mode - Appeal to Credibility

The study discovered that witnesses and lawyers engaged in ethos appeal using source-characteristics or attributes such as credibility, good-will, personalization among others. Regarding ethos appeal, Purdue (2012) identifies impression management as a communication strategy that focuses on personalization, proverbial statements as well as a cultural reference. It was discovered that the use of personalization, proverbs, and cultural reference was minimal, even though these strategies aided in establishing credibility of the communicators. Personalization was used by lawyers as a communication strategy to question the integrity of the witnesses. Through personalization, lawyer Tsatsu questioned the credibility of Dr. Bawumia on his understanding of legal issues. This extract shows:

Dr. Bawumia: They would've gone to, they have to exist legally, not physically. They did not exist in our books because the polling station codes did not match the codes on the EC register.

Lawyer: You know, Dr. Bawumia, I would respectfully suggest that when you are talking legally, you need to be a little bit cautious because you are not the expert on what is legally correct. Do you see what I mean? So, you answer that those polling stations were not legally in existence. Is that your answer? My

answer is that my Lords, the polling stations are identified on every C in the sheet only.

The lawyer suggested that the witness should be cautious when speaking legally because the witness is not an expert in that area. This is personal because it deals with the credibility of the witness to provide substantial information in favor of his case in the legal proceedings. According to Doak and Doak (2021), personalization seeks to interrogate the credibility of the witness to provide truthful information. Purdue (2012) argued that cross-examination seeks to achieve three main things: reduction of evidence in chief, questioning the credibility of the witness, and adding new evidence to support the case in court. The personalization, therefore, seeks to tag the credibility of the witness. This is because Jamar (2008) discovered that using rank, good-will, expertise, image and common ground enhances speaker's credibility

Another instance of personalization occurred when the lawyer of the electoral commission, Tony Lithur, argued that the witness is not being honest in his answers. The claim of dishonesty on the part of the witness also provides evidence that the witness lacks credibility in terms of personal values of honesty and truthfulness. This implies that the evidence presented by the witness is not likely to be an honest report of what happened in the electoral process. Here is the exchange between the lawyers.

Lawyer 2: How long will this go on? The witness says it is not 1. How long will this go on?

Lawyer 1: I am not quilling away from that. I suggested to him that he is being ***dishonest****. I am not agreeing with him. I am saying he is not telling the truth and that is permissible under cross-examination. (CHEP/2012/5/NPP)*

Similarly, lawyer Tsatsu, in the course of his questioning, demanded that the witness should provide honest answers to the questions. The call for honest answers means that he is demanding that the witness should maintain his integrity and pledge to tell the court the truth. It is impression management because the lawyer is ensuring that the witness remembers the need for credibility in courtroom communication. This is in line with Aristotle's theory of rhetoric where the ethos mode of persuasion focuses on the credibility of the speaker. Hence, the lawyer calls on the witness to be honest in answering the cross-examination questions.

Lawyer Tsatsu: Dr. Bawumia, there is no disconnect. Let me just put my question again and try and give me a truthful, direct answer. Okay. Before you came to this witness box, you admitted, you were not aware of that letter being sent. (CHEP/2012/4/NPP)

Also, lawyer Tony Lithur used personalization to question the judge's disagreement that the mathematical calculation of the lawyer is not accurate. The lawyer questions their lack of understanding of simple arithmetic. As he puts it, *–My lord, I am surprised my learned colleagues are not understanding this simple arithmetic. May I just give a graphic example?"* Even though the judges did not say much, they replied *"Yes, but this is the law."* This implies that the lawyer is moving beyond the expertise of the judges, hence their kind reminder.

Aside from the personalization under impression management, the lawyers used cultural references in some instances. According to Nadeau et al. (2021), cultural references are the use of information that has to do with the daily way of life. It is the shared knowledge, beliefs, values, and others that are used to aid understanding in courtroom communication (Whalen & Fondren, 2011). For instance, one of the judges explained to a lawyer that the calculation challenges occurring is as a result of a lack of understanding of the electoral computation process. In the judge‘s words, *we have not gone through the electoral thesis you have gone through?* The use of the words –electoral thesis" speaks of the judge‘s metaphorical allusion to electoral knowledge or expertise. This is a cultural reference because the lawyer is familiar of thesis, thus the use of thesis is a shared knowledge between the judge and the lawyer. This created effective appeal to the lawyer‘s credibility as not having adequate knowledge in the field of election, since the judge is aware the lawyer has no such thesis in electoral process.

According to McComark (2014), Aristotle recognized the inherent truth that people believe good men more fully and more readily than others. McComark (2014) indetified factors that could aid in accounting for speaker‘s credibility. Some factors that juror could use to determine the credibility, or weight to be given an attorney‘s position, include the rate of speech; professional status, social status, or job title, the persuader‘s –confidence in presentation as exhibited through eye contact, body posture and gestures, facial expressions, and speaking style (such as tone, volume, speed, and accent) (Catoto, 2020).In another instance, the judge in defense of the witness‘ position on a controversy over the case of over voting in the pink sheet used cultural

reference. As shown in the extract below, the judge argued that the witness is basing his argument of over-voting on the numbers shown in the pink sheet, but as to whether it was a spiritual means that caused the over-voting, the witness cannot establish that. The witness can only base his argument on the available information on the pink sheet. The judge mentioning spiritual cause alludes to his belief that spiritual means could be used in electioneering. Moreover, the use of the word _spiritual' makes the entire argument beyond the powers of the court because courts only work on evidence rather than speculations or transcendence reality.

Judge: Yes, he is basing his argument on the pink sheet. That is all he can do. The rest, if it is spiritual (audience laughs), he doesn't know. (CHEP/2012/5/NPP)

McComark (2014) argued that the persuader's intelligence and trustworthiness as well as the persuader's similarities to the juror in the areas of race, gender, religious belief, and socioeconomic status could influence credibility. McComark (2014) generally classified these factors of ethos appeal as _source-characteristic attributes'. From the analysis, it is evident that personalization and cultural references were used to question the credibility of witnesses, thereby persuading through ethos.

The following table provides a numerical figures of the use of the these strategies in the data studied.

Table 2: Occurrence of communication strategies in the selected data.

Communication Strategy	**Frequency**
Questioning Strategy	645

Speech Making Strategy	451
Impression Management	213
Nonverbal Cues Strategy	300+
Total	**1108**

Source: Author's construct

4.3 RQ3: How did the persuasive appeals used in the election petition facilitate the legal process?

The use of persuasive appeals, thus logos, pathos and ethos contributed to effective cross-examination between the lawyers and the witnesses. This is evident in the specific strategies that were used to engage in each persuasive appeal. For instance, questioning and speech making were used to engage in appeal to reasoning. This facilitated the legal process in that the questioning strategy was effective based on the type of questions used for the questioning. The *I-suggest-it* to you questions were able to pitch the questions in a way that makes the witness disclose relevant information. The yes or no questions elicited relevant background information in a specific manner.

The use of these persuasive appeals confirms Baker's (2013) finding that certain rhetoric such as technical manuals lean more on the logos appeal because of the emphasis on precision, clarity, logic and unambiguity; while others such legal documents and project management documents require a balance of the three modes of appeal. In the present study, the researcher noticed that the blend all the three modes of appeal made the cross-examination effective in achieving its goal of questioning burden of proof or discrediting witness' credibility (Whalen & Fondren, 2011). Therefore, the use of different questioning strategies made the cross-examination convincing enough to audience.

However, lawyers had to press in some cases for witnesses to provide specific answers to the yes or no questions. The wh-questions equally served different purposes but mostly elicited further explanation from witnesses, eliciting specific information from the witness, and many more. The conditional questions were usually objected to by opposition lawyers because the questions appeared speculative. Nevertheless, all the questioning strategies put together were effective based on the line of questioning of the lawyer. Line of questioning is the use of a series of questions to investigate or validate a particular piece of evidence in the case in court (Versacomp, 2012; Reppen & Chen, 2020). For instance, lawyer Tsatsu used a line of questioning to elicit deals with specific issues such as allegations of lack of polling agents' signatures, lack of NPP Presidential candidate's signature on the pink sheets, overvoting, and then the issues against missing polling station quotes. Similarly, lawyer Andison used a line of questioning to examine evidence on the cases of inclusion of new polling stations, voting, and many others.

In the speech-making strategy, the lawyers and judges provided explanations on legal terms. Moreover, speech-making provided opportunities for judges to address legal contention during cross-examination. Therefore, speech making communication strategy aided in addressing issues of contention and provided legal explanations. Through speech-making communication strategy, the need for providing understandable information in litigation communication is achieved (Beke, 2014).

The impression management strategy was effective in questioning the credibility of the witnesses. The personalization of questions and speeches to

witnesses sought to achieve this purpose. As lawyer Tsatsu put it, *–I don't think my learned colleague has the right to attack the witness for saying he does not have a certificate in law.*" The cultural reference also aided the lawyers to build familiarity with the witness beyond the available evidence.

Finally, non-verbal cues were also used by lawyers and witnesses to ascertain the truth in the cross-examination. The observation showed in some cases that non-verbal cues indicated the disapproval of the witnesses to lawyer's position on issues. Also, nonverbal cues perverted to indicate the certainty or uncertainty regarding the answers provided. The nonverbal cues tend to reveal the emotional dimension of the witnesses during the cross-examination than the words alone.

Therefore, the communication style, as well as persuasive appeals, functioned to make the cross-examination fruitful. The effectiveness of each style and communication strategy differed depending on the situation, the context, and even the witness in question. But in all, the communication styles and persuasive appeals were effective in achieving the purpose of cross-examination.

The researcher discovered that the use of questioning, speech-making, impression management, and nonverbal cues were major communication strategies employed during the cross-examination of the witnesses. Each of these strategies included specific ways such as questioning strategies encompassing all question types that were used in the communication.

The questioning strategy was highly used because cross-examination is known to be largely interrogative in mood (Reppen & Chen, 2020). The use of

wh-questions in the present study elicited specific information and background information from witnesses. This confirms the finding of Reppen and Chen (2020) who discovered in their study of cross-examination in TV series that wh-questions are useful in eliciting background and specific information from witnesses. As Reppen and Chen (2020) noted that wh-questions are usually minimal because they offer witnesses opportunities to explain further thereby giving witnesses a chance to win the jury‘s approval. The present study found that the use of wh-questions called for more explanation from the witnesses and that led to the jury siding with witnesses over the lawyers in most instances. Moreover, wh-questions caused witnesses to display the communication challenge –acquiescence" which is the tendency to answer questions in the affirmative despite the content of the question (Morrison et al., 2019).

Also, speech making strategy involves the lawyer providing sufficient background information to a question to aid the witnesses in understanding his or her line of questioning for a set of questioning. Speech making in the present data was found to be used in reminiscing the witness‘s mind on direct examination statements, summarizing the lawyer‘s point of view, introducing new evidence or exhibits, or explaining perspective to the judges. Through the speech-making communication strategy, the lawyers explained the order of cases as well as their views and understanding of legal proceedings. This confirms Farley et al. (2014) assertion that plain language was used by judges/lawyers to explain case orders as well as understanding and views in the court cases.

The persuasive appeals were effective depending on what they sought to elicit from the witnesses. For instance, the question strategies both yes or no, wh-question and I suggest it to you questions elicited relevant information that aided the proceedings. The nonverbal cues contributed to ascertaining the credibility and emotional expressions of the witnesses. The present study confirms Catoto's (2017) findings that personalization, speech-making, cultural references, tonal semantics, and many others contribute to the trial stage of Beke's (2014) litigation communication theory. Likewise, I suggest to you, would it surprise you that questions, rhetorical questions, and proverbial statements contributed to the realization of Beke's (2014) ideas of story models as part of the trial stage in his litigation communication theory?

The pre-trial stage surfaced in lawyers referring to evidence found outside what is filed in the courtroom. For instance, lawyer Andison played evidence of Mr. John Asiedu Nketia corresponding with a media house that the election was free and fair and so the petitioners have no case. The communication styles and communication strategies contributed to making the trial stage of Beke's (2014) litigation communication theory practicable in the cross-examination of the witnesses. The communication was so understood in the court of public opinion that a reporter argues that terms like ―Bawumia Pink Sheets", Amicus curiae, and contempt became terms of the market women. This, however, prompted some public officials such as Mr. Kwadwo Owusu Afriyie, General Secretary of NPP, and Hopeson Adorye, members of the communication team to fall victim to the contempt of court. The post-trial stage was characterized campaign for peace in the nation. The 29th of August, 2013

was declared a holiday as a way to contain the declaration of the verdict without public uproar.

Summary

In sum, the present study has found that hostile communication style, soft communication style, and conversational style of communication were used in the cross-examination of witnesses in the 2012 election. Also, the lawyer's employed communication strategies such as questioning, speech-making, impression management, and nonverbal cues to achieve the persuasive appeals of logos, pathos and ethos. The communication styles and communication strategies aided the communicators to have an effective and productive cross-examination.

4.4 Chapter Summary

This chapter presented the analysis and discussion of the data collected for the presented study. The results indicated that soft style, conversational style and hostile style were used by the communicators to achieve different communicative purposes in the legal proceeding. Also, different persuasive appeals such as logical, emotional and ethical appeals were employed by the communicators in the cross-examination process of the 2012 election petition.

CHAPTER FIVE

SUMMARY, CONCLUSION, AND RECOMMENDATIONS

5.0 Introduction

This study focused on examining the communication styles and persuasive appeals used in cross-examination of witnesses in the 2012 election petition. The research revealed the communication styles, persuasive strategies and how the persuasive strategies facilitated the legal process. This chapter provides summary of findings, conclusions, and appropriate recommendations.

5.1 Summary of Findings

The present study explored the communication styles and persuasive appeals used in cross-examination during the 2012 election petition. Previous studies have established that litigation communication is a distinct new branch of study within forensic or legal communication that focuses on communication in and outside the legal process (Beke, 2014; Crawford, 2014; Purdue, 2012; Versacomp, 2012). Litigation communication has especially focused on making communication within and without the courtroom accessible and understandable to the public so that what is termed the _œourt of public opinion‘ could appreciate the justice system‘s authenticity and credibility (Beke, 2014). This linking of communication in the courtroom with the public, thus the overall populace in a geographical location has made litigation communication an interesting field of study. Nonetheless, the available evidence has demonstrated that there is little knowledge of the communication styles and strategies used in courtroom communication (Crawford, 2014; Purdue, 2012; Versacomp, 2012).

Therefore, the present study explored the communication styles and persuasive appeals used in the legal process. The study was informed by Beke's litigation communication theory as well as Aristotle's theory of rhetoric. Using selected data from six days of the election petition in 2012, the researcher analyzed the data through the theoretical lens of litigation communication and Aristotle's theory of rhetoric.

5.2 Summary of Main Findings

The following main findings were discovered to answer the research questions that underpinned the study.

First, the researcher discovered that lawyers employ a hostile style, soft style, and conversational style in the cross-examination of the witnesses in the election petition. The present study has confirmed the hostile and soft style used in cross-examination and the conversational style as a personal friendly style of communication that is distinct from the first two identified in the literature. The presence of each style of communication in the cross-examination achieved unique purposes. While the hostile style caused witnesses to consent to lawyers' demand for a desirable answers; the soft and conversational style provided opportunities to lawyers and witnesses to establish rapport as well as relax for more probing questions in the cross-examination. The use of the hostile style appeared minimal compared to the soft style and the conversational style. But in all, the styles of communication aided the lawyers to achieve effective cross-examination of witnesses, that is discrediting the burden of proof and witness' credibility.

Second, the researcher discovered that lawyers used persuasive appeals such as logos through questioning, speech-making; pathos through impression management, and non-verbal cues and then ethos through cultural reference personalization to cross-examine witnesses and persuade audience. These appeals employed by the lawyers aided them to elicit relevant information from the witnesses to further confirm the authenticity of the case or otherwise. The logos appeal was effective in aiding lawyers and witnesses to exchange relevant information that could influence the judgment of the jury. Through interrogation and speech making strategies, communicators in the legal process used the logos persuasive appeal to present their evidence or question the validity of the evidence. The logos appeal was predominant throughout the cross-examination because witnesses and lawyers engaged more in questioning and speech making than other modes of persuasion. The ethos appeal was largely achieved through the use of personalization and cultural reference.

This persuasive appeal though was not predominantly used its appearance provided a basis to critique the credibility of the star witnesses in the witness box. Through ethos appeals, the lawyers were able to discredit the witnesses and expose witnesses‘ position as weak and unfounded. This was important because one of the purpose of cross-examination is to question the witness‘ credibility so that the case could go in favor of the lawyer‘s client. Through ethos appeals, lawyers questioned the intelligence, honesty and truthfulness of witnesses. The pathos appeal was also used to achieve balance between reasoning and reality. Through non verbal cues as well as impression management, lawyers successfully engaged witnesses in emotional persuasion

where the truth could be discovered. This was effective because it got the attention of jury as well as the primary audience in the court.

Finally, the present study established that communication styles and persuasive appeals were effective in helping lawyers elicit relevant information from witnesses to either approve or disapprove of the case. The verdict on the petition was largely determined by the cross-examination process, hence the communication style and strategies that aided the lawyers to establish the evidence in court were not substantial enough to mar the outcome of the election. The present study has offered maiden evidence on the communication styles and persuasive appeals in the cross-examination of witnesses.

5.4 Recommendations

Based on the findings of the present study, the researcher recommends the following for consideration:

Firstly, research in litigation communication should consider exploring nonverbal cues as a communication strategy influencing the truthfulness, credibility, and honesty of witnesses. This is because nonverbal cues were found to be coupling the verbal cues in ways that either exposed the truth or confirms the witnesses‘ position. Therefore, further studies on nonverbal communication could help provide evidence that will aid legal decisions on election petitions or other cases in court.

Secondly, there is a scarcity of communication theories that provide insight into the litigation communication phenomenon. Therefore, the researcher recommends that further studies could consider building theories and models to enhance litigation communication.

Thirdly, the researcher recommends further comparative studies on the communication styles and strategies for the election petitions in Ghana. A comparative analysis of election petitions at the national or continental level could promote understanding of communication in the courtroom.

Fourthly, the researcher recommends that witnesses could be provided legal communication coaching and professional programs that will aid them in successfully communicating their position in the courtroom, especially during cross-examination.

Finally, there is the need for lawyers to avoid the personal attack of witnesses in cross-examination because it hampers the litigation process by deviating from the substance of the case to the person behind the case.

5.5 Conclusion

The present study has established that communication styles and strategies used in the cross-examination of witnesses are effective. There is, therefore, a need for lawyers and witnesses who may be undergoing cross-examination to consider adopting these effective communication styles and strategies and applying them rightly to achieve the purpose of cross-examination in their favor. It is vital also that lawyers and witnesses, especially upcoming lawyers be provided professional training on communication styles and strategies. The study concludes that effective communication in the cross-examination of witnesses requires the adoption of effective communication styles and strategies.

5.6 Limitation of the Study

The present study is first limited to the data drawn from the election petition of the 2012 general election in Ghana. The findings are based on the content analysis of the 2012 election petitions.

The second limitation is that the study is not generalizable in that findings were based on the case of 2012 general elections.

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