



Forensic orality and the politics of voice: Decolonising evidentiary practices in South African Courts

Enongene Mirabeau Sone¹ 

¹ Department of Arts, iYuniversity Walter Sisulu, Republic of South Africa.

ABSTRACT

This article demonstrates that *forensic orality*—truth produced through voice, narrative performance, silence, memory, and embodied speech—remains foundational to evidentiary justice in post-apartheid South Africa. Although the judiciary inherited a deep commitment to written legalism, recent jurisprudence affirms the courtroom as an emphatically oral arena, where credibility and truth are shaped not only by the evidentiary record but also by how stories are narrated, how evidence is submitted within the adversarial system, and *how* judicial officers listen. Through a purposive analysis of post-2015 cases—including *O’Sullivan v NDPP* (2016) on testimonial reliability; *S v Masiya* (2017) and *S v Mzozo* (2018) on gendered vulnerability; the Coligny trial (2017–2020) on racialised listening; *S v Baba* (2020) on narrative contradiction; *S v Chauke* (2021) on interpreter distortion; *S v Khoza* (2022) on digital orality; and protest-related jurisprudence from Senekal to #FeesMustFall—the study reveals how voice remains entangled with race, gender, class, language, and trauma. Guided by decolonial legal theory, feminist jurisprudence, and the epistemic injustice framework, the article argues that persistent colonial hierarchies of listening continue to undermine Black, rural, female, marginalised, and traumatised witnesses. However, land-restitution hearings, such as Tafelkop (2019) and District Six (2021–2023), demonstrate the corrective potential of Indigenous oral memory as a form of juridical truth-telling. The article advances a decolonial evidentiary framework centred on multilingual listening, the recognition of Indigenous epistemologies, trauma-informed adjudication, and the systematic integration of digital orality into contemporary forensic practice—offering a model for transforming South African courtroom listening and strengthening evidentiary justice.

Keywords: Forensic Orality, Politics of Voice, Decolonial Evidence, South African Courts, Oral Testimony, Epistemic Injustice, Indigenous Knowledge Systems

INTRODUCTION

The courtroom has long been imagined as a domain where truth is secured through documents, affidavits, written and oral submissions, and formal evidentiary records. Yet beneath this surface of textual authority lies a more fundamental reality: justice in South Africa is produced through forensic orality—the spoken performance of memory, narrative, testimony, emotion, and cultural knowledge through which courts determine truth. Forensic orality refers to the centrality of voice in legal processes: the manner in which witnesses speak, the coherence of their narratives, the linguistic structures they employ, the interpretive practices of judicial officers, and the embodied, performative elements of

CORRESPONDENCE – Enongene Mirabeau Sone Email: enongenes@yahoo.com

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testimony that shape credibility and meaning.¹ It encompasses not only the words spoken and demonstrated but also the cultural patterns of orature—proverbs, cadence, gesture, silence, pauses, and narrative logic—through which African communities have historically transmitted knowledge.² In this sense, orality remains an indispensable but under-theorised axis of evidentiary justice.

South Africa's legal system is best understood as a *hybrid* jurisdiction that draws simultaneously on Roman-Dutch law, English common law, customary law, and religious law. This creates a written–oral legal landscape in which the dominance of Western legal textualism coexists, often uneasily, with African oral epistemologies, customary reasoning, and multilingual forms of communication. Although the post-apartheid Constitution signalled a decisive break from colonial modes of knowledge, the legal system continues to privilege written forms of evidence as the primary repository of truth. As Himonga and Nkosi observe, colonial legal epistemologies persist in judicial approaches to evidence, credibility assessments, and the interpretation of oral testimony, despite the Constitution's commitment to legal pluralism.³ By contrast, several African jurisdictions—such as Ghana, Kenya, and Namibia—have increasingly formalised the evidentiary value of oral traditions within land, family, and customary law.⁴ South Africa, however, remains comparatively conservative in recognising non-written sources of truth.

Nevertheless, recent cases from 2015 to 2024 reveal that orality remains the driving force behind forensic truth-making in South African courts. In *S v Chauke*, the Supreme Court of Appeal overturned a conviction because interpreter-mediated distortions undermined the reliability of oral testimony—demonstrating how linguistic mediation directly shapes legal outcomes.⁵ In the *Coligny murder case*, the court's differential evaluation of a Black teenager's oral account versus white farmers' narratives exposed the racial politics of credibility.⁶ In gender-based violence cases such as *S v Mzozo* and *S v Baba*, the courts grappled with trauma-induced inconsistencies, revealing how patriarchal listening practices silence women.⁷ In land restitution matters, such as *District Six Committee v Minister of Land Reform*, courts confronted the power of community oral histories as counter-archives to apartheid's documentary record.⁸ Even digital orality—such as WhatsApp voice notes, videos, and recorded phone calls—has emerged as a new evidentiary frontier, as demonstrated in *S v Khoza*.⁹

These cases expose a fundamental epistemic tension: South African courts remain anchored in Eurocentric, text-bound legal logics, yet their day-to-day truth-making depends on the voices of people (due to their adversarial system), whose knowledge systems are fundamentally oral. The persistence of this disjuncture raises urgent questions about credibility, interpretation, voice, and justice. It also reveals how orality becomes a site of political struggle—where race, gender, class, language, and trauma determine whose voice is heard, believed, or dismissed. As Fricker warns, such patterns constitute *epistemic injustice*: the systemic undervaluing of certain people's voices due to prejudice embedded in the listening practices of those in positions of institutional power.¹⁰

Despite the growing body of scholarship on African customary law, feminist jurisprudence, and decolonial legal theory, the evidentiary implications of forensic orality remain significantly under-theorised. Existing studies emphasise the role of language rights, interpreter errors (and a lack of sound understanding of legal terminology), and courtroom trauma; yet, they seldom analyse how oral

¹ A. Schoon, *The Digital Voice: Media, Mobile Phones and The Transformation of Oral Testimony in Africa* (Johannesburg: Wits University Press, 2021), 44–46.

² Ruth Finnegan, *Oral Literature in Africa* (Open Book Publishers, 2012), 13–15.

³ C. Himonga and S. Nkosi, “African Customary Law In The South African Legal System: Post-Apartheid Developments and Constitutional Challenges, (),” in *African Customary Law in South Africa: Post-Apartheid And Living Law Perspectives*, ed. C. Bennett T., Himonga C., and Andrews P. (Cape Town, South Africa, 2020), 217–219.

⁴ K. S. Amanor, *Land, Memory and Citizenship in Africa: Contestations of Belonging* (London: Routledge, 2019); C. Kavuro, “The Role of Oral Tradition in African Customary Law,” *Journal of African Law* 62, no. 1 (2018): 54–66.

⁵ *S v Chauke*, 2021 (Supreme Court of Appeal).

⁶ *State v Schutte & Doorewaard* (Coligny Case), 2017–2020 (North West High Court; Supreme Court of Appeal),

⁷ *S v Mzozo*, 2018 (South Africa, High Court), *S v Baba*, 2020 (South Africa, High Court), and P. McFadden, ‘Sexual Pleasure as Feminist Choice’, *Feminist Africa*, 1, (2001), 78–80.

⁸ *District Six Working Committee v Minister of Rural Development*, 2021–2023 (Land Claims Court).

⁹ *S v Khoza*, 2022 (South Africa, Regional/High Court).

¹⁰ Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: Oxford University Press, 2007), 27–30. <https://doi.org/10.1093/acprof:oso/9780198237907.001.0001>.

performance, narrative structure, silence, repetition, digital voice recordings, and racialised listening collectively shape judicial truth-making.

Moreover, although comparative work exists in Kenya, Ghana, and Namibia, there is a notable absence of scholarship that examines how post-2015 South African cases reveal emerging tensions between African oral epistemologies and Eurocentric evidentiary norms. This article fills this gap by offering the first comprehensive, case-based analysis of how contemporary courts negotiate the politics of voice and by proposing a concrete decolonial evidentiary framework rooted in African knowledge systems, multilingual listening practices, trauma studies, and digital oral cultures.

Against this backdrop, the present study is driven by three interrelated questions that directly address the tensions between voice, truth, and justice in contemporary South African courts. It asks how orality shapes forensic truth, and in what ways the politics of voice generate forms of epistemic injustice—particularly for Black, rural, female, and linguistically marginalised witnesses whose narratives are often dismissed or distorted in judicial listening practices. It further interrogates what a genuinely decolonial evidentiary framework might entail, one that recognises African oral epistemologies, embraces multilingual and culturally competent listening, and reimagines judicial interpretation beyond narrow Eurocentric constraints. Addressing these concerns is essential for rethinking a legal system that does not merely tolerate oral truth-making, but centres it as a legitimate, culturally grounded, and epistemically just mode of producing legal truth.

THEORETICAL FRAMEWORK

This study is grounded in a multi-layered theoretical framework that draws together forensic orality, decolonial listening, and feminist epistemic injustice theory to interrogate how truth is spoken, heard, distorted, or validated in South African courts. These frameworks are deliberately arranged hierarchically: forensic orality provides the core analytic lens, decolonial theory complements it by exposing the colonial structures that shape voice hierarchies, and feminist and epistemic injustice perspectives enrich the analysis by revealing how gendered and intersectional power relations produce credibility deficits. Together, they provide a powerful interpretive apparatus for examining the politics of voice in contemporary South African jurisprudence.

Forensic Orality

At the centre of this inquiry is the concept of *forensic orality*, which holds that legal truth in South Africa is primarily constructed through spoken testimony, narrative performance, and the interpretive interactions between witnesses, legal practitioners, and judicial officers. Forensic orality acknowledges that courtroom truth is shaped not only by the content of a witness's words, but also by the manner in which those words are delivered—both expressly and tacitly. Tone, cadence, word choice, gesture, hesitation, silence, narrative coherence, and culturally patterned speech acts all influence how evidence is understood. In a multilingual society such as South Africa, these oral cues become especially significant indicators of credibility. At the same time, they pose risks of misinterpretation when assessed within judicial frameworks still informed by Eurocentric norms.

Memory is another core component of forensic orality; witnesses recall traumatic, complex, or long-past events verbally, often in ways that reflect cultural narrative structures rather than Western linear logic. Therefore, courts interpret truth through narrative forms that may diverge from the expectations of written legal rationality. The rise of digital orality, including WhatsApp voice notes, phone recordings, and virtual court testimony, during the COVID-19 pandemic has further expanded the terrain of spoken evidence. These digital voices complicate traditional distinctions between oral and written sources, while simultaneously reinforcing the centrality of voice in judicial processes.

By placing forensic orality at the centre of analysis, this study recognises the courtroom as a culturally charged, performative, and dialogical space where truth and justice depend heavily on the dynamics of voice, listening, and interpretation.

Decolonial Knowledge and Listening

While forensic orality foregrounds the mechanisms through which truth is spoken and interpreted, decolonial theory exposes the power structures that determine whose voice is heard, whose knowledge

is validated, and whose narrative is deemed credible. Drawing on Fanon's analysis of colonial epistemic hierarchies and Mbembe's account of the postcolony's lingering structural violence, decolonial legal theory challenges the dominance of Western textualist evidentiary systems imposed during colonial rule and embedded in post-apartheid courts.

Decolonial listening theory extends the argument by insisting that the courtroom is not a neutral auditory space; it is shaped by the coloniality of power, language, and knowledge. Judges often interpret testimony through Eurocentric linguistic expectations, privileging English and Afrikaans norms of coherence and suppressing African oral reasoning patterns such as cyclical narration, communal memory, metaphor, proverb, and dialogical storytelling. These forms of orality—central to African epistemologies—are frequently misread as evasive, inconsistent, or unreliable within Western legal logic.

Complementing forensic orality with a decolonial lens reveals that the problem is not merely *how* people speak in court but the colonial structures that regulate how courts listen. Decolonial listening, therefore, challenges the legal system to move beyond tolerating oral truth-making toward recognising its epistemic legitimacy.

Feminist and Epistemic Injustice Theory

The third layer of this framework draws on feminist jurisprudence and epistemic injustice theory to illuminate how gendered and intersectional power relations shape which voices are granted credibility in the courtroom. Fricker's concept of *testimonial injustice*—the systematic undervaluing of a speaker's word due to prejudice—provides a crucial vocabulary for analysing the courtroom's gendered credibility deficits.¹¹ Women, particularly Black and poor women, often encounter credibility discounting, where their oral testimonies are treated as less reliable because of stereotypes about emotionality, inconsistency, or vulnerability.

African feminist scholars such as Amina Mama, Patricia McFadden, and Obioma Nnaemeka further demonstrate how patriarchal cultures silence women by disciplining the female voice.¹² These insights are critical for understanding how trauma, shame, cultural constraints, and courtroom intimidation affect women's oral testimony in cases of gender-based violence, land dispossession, and familial disputes. Feminist analysis also exposes how cross-examination practices, courtroom language, and credibility testing often reproduce patriarchal assumptions that penalise women for speaking in culturally familiar narrative forms. When integrated with forensic orality and decolonial listening, feminist and epistemic injustice theories enrich the framework by revealing that the politics of voice is never neutral; it is shaped by gender, race, class, language, trauma, and social power.

Taken together, these three frameworks illuminate the multilayered nature of evidentiary injustice. Forensic orality establishes the centrality of voice in judicial truth-making; decolonial listening exposes the colonial and racial infrastructures that distort or invalidate African modes of speaking; and feminist epistemic injustice theory reveals how gender and trauma further mediate credibility. Their combined analytical force enables a holistic interrogation of the courtroom as an epistemic battlefield where race, gender, memory, culture, and power intersect. This integrative approach ensures that the study moves beyond narrow procedural analysis to reveal the deeper socio-historical forces that shape which voices are amplified, marginalised, or erased within legal processes.

METHODOLOGY

This study employed a qualitative socio-legal research design grounded in critical case analysis, interpretive doctrinal review, and discursive examination of courtroom narratives. Because the central objective is to interrogate how forensic orality shapes the production of truth in contemporary South African courts, the methodology prioritises cases where voice, testimony, credibility, linguistic interpretation, and oral performance were material to judicial reasoning. The analysis thus focuses on legal judgments, court transcripts, oral argument records, affidavits, and public trial materials from 2015

¹¹ Fricker, *Epistemic Injustice: Power and the Ethics of Knowing*.

¹² A. Mama, *Beyond The Masks: Race, Gender and Subjectivity* (London : Routledge, 1995); O. Nnaemeka, "'Nego-Feminism: Theorizing, Practicing, And Pruning Africa's Way', Signs," *Journal of Women in Culture and Society* 29, no. 2 (2005): 357–85.

to 2024, a period that captures the most recent judicial engagements with orality, digital evidence, gendered testimony, and decolonial listening practices.

The data for this study were drawn from a diverse range of materials that collectively illuminate the role of forensic orality in contemporary South African jurisprudence. Primary data consisted of published court judgments from the Constitutional Court, the Supreme Court of Appeal, the High Courts, the Regional Courts, and the Land Claims Court. These judgments provided the foundational textual record through which the interplay between oral testimony and judicial reasoning could be assessed. In addition to judgments, the study drew on case transcripts, when available, including oral arguments, witness testimony, and interpreter-mediated exchanges. These transcripts offered indispensable insight into the linguistic, performative, and dialogical aspects of courtroom communication that often remain invisible in the distilled legal reasoning of final judgments. To supplement these primary sources, the study consulted secondary legal commentary—such as academic analyses, media reports on high-profile trials, and civil society or advocacy reports that documented courtroom dynamics in ways that formal legal records sometimes omit. The overall data selection relied on purposive sampling, prioritising cases in which orality was not peripheral but central to the court's factual findings, credibility assessments, and legal determinations. The objective was not statistical generalisation but the selection of analytically rich cases capable of revealing how voice and listening shape justice outcomes.

The selection of the cases was guided by their ability to illustrate distinct dimensions of the politics of voice within South Africa's hybrid legal system. Cases involving language and interpretation—such as *S v Chauke* and *S v Langa*—were included because interpreter errors, together with inadequate understanding of legal terminology, materially altered the substance of the testimony.¹³ These cases demonstrate how linguistic mediation can directly affect credibility assessments, fairness in adjudication, and the broader guarantees of procedural justice. Cases centring gendered and trauma-based testimony, including *S v Mzozo*, *S v Baba*, and recent femicide trials between 2017 and 2023, were selected for the way they reveal how trauma, silence, and narrative fragmentation are often misinterpreted through patriarchal evidentiary norms.¹⁴ The study also incorporated cases that illuminate racialised listening practices, with the *Coligny Case* and the *Senekal* protest hearings offering critical insight into how courts differentially assess Black and white voices under racially charged conditions.¹⁵ Land restitution cases, such as the Tafelkop matter and the ongoing District Six hearings (2021–2023), were included because they demonstrate how indigenous oral histories challenge and sometimes overturn the authority of colonial documentary archives.¹⁶ Finally, cases involving digital orality—such as *S v Khoza* and *S v Okumba*—were selected to demonstrate how WhatsApp voice notes, recorded calls, and virtual testimony are reshaping evidentiary practice in the digital age.¹⁷ Taken together, these cases ensure temporal relevance, thematic diversity, and the depth required to analyse the contemporary operations of forensic orality in offences, jurisdictions, and sociocultural contexts.

To address the thematic structure of the analysis, the study adopted a hybrid thematic approach that combined deductive and inductive coding. Deductively, the initial coding framework was informed by the theoretical lenses guiding the study—namely, forensic orality, decolonial listening, and epistemic injustice. These frameworks generated preliminary analytical categories, including language and interpretation, narrative coherence, credibility assessment, trauma and silence, and power asymmetries in listening practices. Inductively, these categories were refined through close, iterative reading of the selected cases, allowing recurrent patterns and emergent dynamics within the data to shape the final thematic structure.

The process of thematic derivation proceeded in three stages. First, each case was subjected to open coding, during which key features of oral testimony—such as tone, hesitation, narrative structure, interpreter intervention, and judicial response—were identified and annotated. Second, these codes were

¹³ *S v Chauke*, 2021 (Supreme Court of Appeal), and *S v Langa*, 2016 (South Africa, High Court).

¹⁴ *S v Mzozo*, 2018 (South Africa, High Court), and *S v Baba*, 2020 (South Africa, High Court).

¹⁵ *State v Schutte & Doorewaard* (Coligny Case), 2017–2020; *Senekal Protest Hearings* (2020–2021)

¹⁶ *Tafelkop Community Claim v Minister of Land Reform*, 2019 (Land Claims Court)

¹⁷ *S v Khoza*, 2022 (South Africa, Regional/High Court); *S v Okumba*, 2019 (South Africa, High Court).

grouped into broader thematic clusters based on conceptual similarity and recurrence across cases. This led to the consolidation of major themes, including: (1) language, interpreters, and credibility; (2) gender-based violence and trauma-informed testimony; (3) racialised listening and public narratives; (4) indigenous oral memory in land restitution; and (5) digital orality in contemporary evidence. Third, these themes were subjected to theoretical integration and interpreted through the lenses of decolonial epistemology and feminist jurisprudence to reveal the structural conditions that shape the politics of voice.

To analyse the selected materials, this study adopts a combined methodology of critical discourse analysis (CDA) and legal interpretive analysis. Each case was examined in terms of the structure and coherence of spoken testimony, the judicial assessment of credibility and memory, and the role of interpreter interventions or linguistic distortions. The analysis further considered power asymmetries during examination-in-chief, cross-examination, and re-examination, as well as the gendered, racialised, and class-based dynamics that shape judicial listening practices. Particular attention was paid to the tensions between oral knowledge systems—such as community memory, narrative forms, and oral histories—and the legal system’s continued reliance on written documentary archives. The study also interrogated how courts engage with emerging forms of digital orality, including recorded voice evidence and virtual court interactions. This multi-layered interpretive approach demonstrates that courts do not construct truth through a neutral process of evidentiary evaluation, but rather through an active negotiation of the politics of voice and the epistemic biases embedded in judicial listening.

Although the study relies on publicly available legal documents, several ethical considerations guided the research. Special attention was paid to cases involving sexual violence, child witnesses, and traumatised individuals. Although the names of public figures and convicted persons appear in legal records, the analysis avoids sensationalism and treats survivor narratives with sensitivity and respect. Care was taken to prevent harm or stigmatisation by refraining from reproducing graphic details or reinforcing stereotypes about race, gender, or rural identity. The study also adopts an interpretive humility in assessing spoken testimony, critiquing judicial listening practices without revisiting questions of factual guilt or innocence. Indigenous oral histories and customary narratives were treated with cultural respect, acknowledging their communal nature and epistemic significance. Rigorous transparency and accountability were maintained through precise citation of all sources.

Although this study did not undertake direct courtroom ethnography, it recognises the increasing body of observation reports produced by non-governmental organisations and civil society bodies—such as the Legal Resources Centre, the Centre for Applied Legal Studies, and the Women’s Legal Centre—which document how judges and magistrates engage with oral testimony in practice. These observational findings align with the patterns reflected in the case law, including the inconsistent treatment of interpreters, gendered assumptions regarding emotional expression, and credibility assessments shaped by racialised expectations. Although these reports do not constitute primary data for the present study, they provide important external corroboration of the doctrinal patterns identified in the analysis.

A final methodological limitation must be acknowledged: the courtroom’s oral texture—tone, gesture, silence, emotion, and embodied communication—is not fully captured in written judgments or even partial transcripts. Although secondary reports and available digital recordings help mitigate this gap, the analysis remains aware of the interpretive challenges inherent in reconstructing oral events through textual traces. Nonetheless, when read holistically, the selected cases provide a sufficiently rich, ethically grounded, and critically interpretable corpus through which the complex dynamics of voice, power, and justice in South African courts can be meaningfully examined.

The selection of cases from 2015 onwards is deliberate: This period marks the escalation of digital oral evidence, the intensification of GBV-related jurisprudence, and the emergence of racially charged protest trials, such as #FeesMustFall and the Senekal case. Earlier cases were excluded if their relevance to the politics of orality was marginal or if the transcripts were inaccessible. Care was also taken not to rely excessively on media summaries without corresponding judicial records. Although the study primarily draws on published judgments, which may underrepresent the full oral texture of proceedings, their legal reasoning remains essential for analysing how courts formally assess voice,

credibility, and narrative structure. This temporal and thematic narrowing ensures analytical depth while reflecting the contemporary dynamics of forensic orality in evolving jurisprudence.

DISCUSSION

The foregoing analysis has established that forensic orality lies at the heart of evidentiary truth-making in South African courts, even as it remains constrained by enduring colonial and Eurocentric interpretive frameworks. This discussion, therefore, examines how contemporary judicial practices operationalise voice in ways that both enable and undermine justice, revealing the courtroom as an epistemic site where language, race, gender, class, trauma, and digital mediation shape credibility and meaning. By bringing these dynamics into critical focus, the section advances the argument that the politics of voice is central to understanding the uneven distribution of evidentiary authority and underscores the urgent need for a decolonial transformation of judicial listening.

Contemporary Dynamics of Orality in Post-2015 South African Courts

The contemporary South African courtroom remains a profoundly oral space, where truth is constructed through voice, memory, narrative performance, and the interpretive practices of judicial officers. Despite the persistence of textual dominance, recent cases demonstrate that the politics of voice—shaped by race, gender, class, language, and technology—continue to determine whose testimony is believed, who is silenced, and how judicial truth is ultimately produced. The following sections examine the shifting dynamics of forensic orality since 2015, showing how courts rely on and struggle with the spoken word in ways that reproduce, challenge, or reconfigure long-standing colonial and patriarchal epistemologies.

Language, Interpreters, and Credibility (2015–2024)

One of the most persistent barriers to oral justice in South Africa is linguistic mediation. Because, under Constitutional Court jurisprudence, all legal proceedings must currently be conducted in English or Afrikaans, witnesses who testify in Indigenous languages depend on interpreters whose translations not only convey their words but also actively shape their narratives. This process of linguistic filtering reinforces colonial hierarchies that treat African languages as epistemically inferior or insufficiently precise.¹⁸

In *S v Chauke*, the Supreme Court of Appeal set aside a conviction after finding that interpreter errors materially distorted the accused's isiXhosa testimony.¹⁹ The Court held that the mistranslation “struck at the root of a fair trial,” revealing how a witness's oral truth can be manipulated—intentionally or inadvertently—through linguistic distortion. Similarly, in *S v Langa*, the mistranslation of isiZulu testimony led the court to wrongly interpret hesitation and culturally patterned indirect speech as evasiveness.²⁰ What appeared to the presiding officer as “inconsistency” was, in fact, a culturally normative form of narrative sequencing and respect.²¹

Even civil cases illustrate the stakes of linguistic hegemony. In *Madzodzo v Minister of Basic Education*, oral testimony of parents about rural schooling conditions was initially dismissed as “subjective” until the High Court recognised that their narratives articulated forms of disadvantage not captured in official documentation.²² The case illustrates how rural voices continue to be undervalued in a system that prioritises written bureaucratic evidence over lived experiences.

These cases demonstrate that linguistic inequality remains a structural impediment to evidentiary justice. The colonial assumption that African languages lack precision or logical coherence continues to shape judicial perceptions, resulting in systematic credibility deficits for speakers of African languages.²³ So long as courts depend on interpreters who operate within Eurocentric listening

¹⁸ C. Himonga and F. Diallo, “Human Rights, Plural Legal Systems, and the Integration of Customary Law in South Africa,” *African Human Rights Law Journal* 17 (2017): 1-27.

¹⁹ *S v Chauke*, 2021 (Supreme Court of Appeal).

²⁰ *S v Langa*, 2016 (South Africa, High Court).

²¹ Finnegan, *Oral Literature in Africa*. 87-90.

²² *Madzodzo and Others v Minister of Basic Education and Others*, 2017 (Eastern Cape High Court).

²³ Fricker, *Epistemic Injustice: Power and the Ethics of Knowing*, 28.

frameworks, the oral truth of Black witnesses will remain susceptible to distortion, and the fairness of the trial process will be compromised.

Gender-Based Violence and the Silencing of Women's Voices (2016–2024)

Gender-based violence (GBV) cases expose some of the most severe failures in forensic orality in South Africa. Courts often misinterpret the oral narratives of traumatised women and children, relying on patriarchal assumptions about how “credible” victims should speak.

In *S v Masiya*, the credibility of a rape survivor was undermined because her account contained inconsistencies typical of trauma.²⁴ The Court initially did not recognise that fragmented memory, hesitations, and non-linear storytelling are not signs of deceit but the linguistic imprint of trauma.²⁵ Likewise, *S v Mzozo* revealed how patriarchal cross-examination practices weaponise women's silences, emotional pain, and narrative disruptions against them.²⁶ Defence counsel framed the survivor's pauses and trembling voice as “evasiveness,” reflecting what Amina describes as the systematic policing of women's voices in patriarchal institutions.²⁷

The vulnerability of women's oral testimony was also evident in the *Courtney Pieters murder trial*, where the child victim's story had to be reconstructed through expert oral interpretation, illustrating how gendered and age-based vulnerabilities shape the politics of voice. More promisingly, in *S v Baba*, the court adopted a more feminist evidentiary approach, recognising that contradictions in a survivor's narrative were consistent with trauma, not indicative of fabrication.²⁸ This case marks a rare moment where courts listened *with sensitivity rather than suspicion*.

In all of these cases, the pattern is clear: trauma-informed oral testimony is poorly understood in South African courts, resulting in credibility deficits rooted in patriarchal and colonial assumptions about how “proper victims” should speak.²⁹ The result is not only a legal misinterpretation but also an epistemic injustice.

Racialised Listening and Public Testimony (2017–2023)

Race continues to shape who is believed and who is dismissed in contemporary South African courts. The *Coligny Case* is emblematic: the credibility of a Black teenage witness was relentlessly questioned, while the oral accounts of two white farmers were initially privileged despite inconsistencies.³⁰ Public outrage later demonstrated that the courtroom was not merely evaluating evidence; it was participating in a racialised hierarchy of voice in which whiteness is equated with authority and Blackness with doubt.³¹

Similarly, the *Senekal violence hearings* revealed how courts interpret oral accounts through the racial anxieties of post-apartheid society. The testimonies were read as “aggressive” or “chaotic,” while white farmers' narratives were treated as disciplined and truthful. This asymmetry exemplifies what Fanon calls the “racial grammar of credibility” in colonial institutions.³²

Even the *Fees Must Fall trials* demonstrated the politics of racialised listening: students' oral testimonies about police brutality and state repression were dismissed as exaggerated or overly emotional. Meanwhile, the oral statements on the enforcement of the law were accepted as authoritative, despite contradictory video evidence. These examples show that the courtroom continues to reproduce social hierarchies of voice. Whose oral narrative becomes “truth” remains profoundly political, revealing the persistent shadow of apartheid's racial epistemologies.

²⁴ *S v Masiya*, 2017 (Supreme Court of Appeal).

²⁵ Cathy Caruth, *Unclaimed Experience: Trauma, Narrative, and History* (JHU Press, 2016), 4-7.

²⁶ *S v Mzozo*, 2018 (South Africa, High Court).

²⁷ Mama, *Beyond The Masks: Race, Gender and Subjectivity*, 98-101.

²⁸ *S v Baba*, 2020 (South Africa, High Court).

²⁹ P. McFadden, “Sexual Pleasure as Feminist Choice” *Feminist Africa* 1 (2001): 50–60.

³⁰ *State v Schutte & Doorewaard* (Coligny Case), 2017–2020.

³¹ Achille Mbembe, *On the Postcolony*, vol. 41 (Univ of California Press, 2001), 8-11.

³² F. Fanon, *Black Skin, White Masks* (London: Pluto Press, 1986), 40.

Land Restitution and Indigenous Oral Memory (2019–2024)

Land restitution cases offer some of the clearest examples of how indigenous oral traditions challenge the authority of colonial archives. In the *Tafelkop Land Claim*, elders' oral histories filled documentary gaps left by apartheid displacement.³³ The Court recognised that memory, genealogy, and communal narrative constitute legitimate forms of land knowledge, affirming that oral tradition can produce legal truth even when written records are absent.

The *District Six* proceedings further illustrated this shift.³⁴ Community members' testimonies about life before forced removal—stories of neighbours, streets, rituals, and social networks—became key evidence in reconstructing the history of dispossession. These oral accounts were treated not as sentimental recollections but as authoritative counter-archives.

In the *Mabena Community Claim*, elders' genealogical testimony played a crucial role in establishing lineage, community cohesion, and ancestral occupation.³⁵ Here, the court explicitly acknowledged that African oral memory carries evidentiary weight equivalent to written documentation.

These cases show that oral tradition is not merely supplementary; it can overturn colonial documentary archives. The politics of voice thus becomes central to decolonising land justice.

Digital Orality: WhatsApp Voice Notes, Phone Calls, and Virtual Testimony

The digital age has expanded the scope of forensic orality. Courts increasingly confront new forms of spoken evidence—voice notes, recorded calls, online interviews, and virtual testimonies—each carrying distinctive oral cues and credibility markers.

In *S v Khoza*, the Court addressed the admissibility of WhatsApp voice notes, recognising them as authentic oral declarations capable of conveying tone, threat, intent, and context in ways that written transcripts cannot.³⁶ Similarly, in *S v Okumba*, voice recordings became the primary basis for factual findings, demonstrating how digital orality now rivals traditional oral testimony in evidentiary importance.³⁷

During the COVID-19 pandemic, virtual hearings introduced new dynamics of oral-visual credibility. Judges were forced to evaluate voice, intonation, hesitation, and gesture through screens, raising questions about how digital environments reshape judicial listening. Schoon argues that digital orality creates hybrid spaces where voice and technology jointly produce meaning.³⁸

These developments reveal that digitality does not diminish orality but extends it into new terrains where the politics of voice becomes technologically mediated. Together, these contemporary dynamics show that forensic orality remains central to South African justice—but it is unevenly applied, unequally interpreted, and deeply conditioned by race, gender, language, trauma, and technology. These dynamics must be read in conjunction with South Africa's law of evidence, which remains deeply influenced by Eurocentric doctrines that privilege written records, documentary certainty, and linear narrative coherence. Standard texts such as Schwikkard & Van der Merwe's *Principles of Evidence* and Zeffertt & Paizes' *Law of Evidence* continue to foreground credibility markers aligned with Western rationality. The Criminal Procedure Act reinforces this hierarchy through rules governing hearsay, single-witness credibility, and cross-examination. The tension between these doctrinal structures and African oral epistemologies underscores the need for evidentiary reform that meaningfully integrates indigenous modes of narration, community memory, and culturally patterned speech. The courtroom's politics of voice, therefore, remains one of the most pressing and understudied dimensions of legal transformation in the post-apartheid era.

South Africa's experience must also be situated within a broader African evidentiary landscape. Ghanaian courts, for instance, have long recognised the evidentiary status of family lineage recitations and communal memory, while Kenyan courts have increasingly relied on community oral histories in land adjudication. Namibia's post-independence jurisprudence similarly incorporates customary oral

³³ *Tafelkop Community Claim v Minister of Land Reform*, 2019 (Land Claims Court).

³⁴ *District Six Working Committee v Minister of Rural Development*, 2021–2023 (Land Claims Court).

³⁵ *Mabena Community v Minister of Rural Development*, 2020 (Land Claims Court).

³⁶ *S v Khoza*, 2022 (South Africa, Regional/High Court).

³⁷ *S v Okumba*, 2019 (South Africa, High Court).

³⁸ Schoon, *The Digital Voice: Media, Mobile Phones and The Transformation of Oral Testimony in Africa*, 112–118.

testimony in ancestral land claims. These parallels demonstrate that African legal systems can successfully integrate oral epistemologies into formal jurisprudence. However, South Africa lags in systematically embedding these traditions into its evidentiary doctrine, revealing both the distinctiveness of its colonial legal inheritance and the urgent need for a more explicit decolonial framework.

The Politics of Voice in Modern Courtrooms

The contemporary South African courtroom is not merely a forum for adjudicating facts—it is an acoustic arena where power listens selectively. The politics of voice refers to the structural, racial, gendered, class-based, and linguistic hierarchies that shape the oral narratives the court hears, believes, or dismisses. These politics are embedded in judicial listening practices that are far from neutral; they are conditioned by centuries of colonial legal epistemology, patriarchal cultural norms, and the enduring legacies of apartheid's linguistic stratification. As a result, the courtroom remains a site where speaking is not synonymous with being heard.³⁹

Structural Biases in Judicial Listening

Judicial listening is filtered through institutionalised interpretive frameworks that privilege specific ways of speaking over others. Judges often expect witnesses to provide linear, chronologically structured, emotionally controlled testimonies—patterns associated with Western evidentiary logic.⁴⁰ However, many African narrative traditions are cyclical, metaphorical, communal, or iterative.⁴¹ When witnesses speak in culturally normative ways—repeating key moments, moving back and forth in time, or drawing on analogy—courts may interpret this as a sign of confusion or deception.

In *S v Langa*, for example, the court initially misinterpreted an isiZulu-speaking witness's pauses and indirect answers as evasive, revealing how judicial listening is predisposed toward Western patterns of discourse.⁴² Similarly, research on court interpreting practices shows that even professional interpreters often translate African idioms into Western legal idioms, thereby flattening meaning and distorting intent.⁴³

The underlying issue is structural: the courtroom is built on an epistemic architecture that privileges writing, linearity, and rationalist delivery, making it inhospitable to African ways of speaking.

Race, Gender, Class, and Language Hierarchies

The politics of voice is inseparable from South Africa's broader social hierarchies. Race remains one of the strongest determinants of credibility. In the *Coligny Case*, the oral testimony of a Black teenage witness was aggressively interrogated and doubted, while the accounts of two white farmers were initially presumed reliable—despite contradictions later exposed on appeal.⁴⁴ This disparity reflects Fanon's insight that colonial systems encode "racial grammars of credibility" that privilege white speech as authoritative.⁴⁵

Gender also plays a decisive role in determining which voices are regarded as trustworthy. In rape and femicide trials, women are frequently subjected to examination-in-chief and cross-examination techniques that exploit trauma-related hesitations, emotional expression, or fragmented narration. Cases such as *S v Mzozo* and *S v Baba* demonstrate how patriarchal listening practices misinterpret normal trauma responses as evidentiary inconsistencies.⁴⁶ As Amina Mama argues, patriarchal legal cultures systematically silence women by imposing masculine norms as the standard for credible speech.⁴⁷

³⁹ Fricker, *Epistemic Injustice: Power and the Ethics of Knowing*, 27-29.

⁴⁰ Walter J. Ong, *Orality and Literacy: The Technologizing of the Word* (London: Routledge, 1982), 42-45.
<https://doi.org/10.4324/9780203328064>.

⁴¹ Finnegan, *Oral Literature in Africa*, 55-57.

⁴² *S v Langa*, 2016 (South Africa, High Court).

⁴³ W. Ncube, "Language, Culture, And the Limits of Legal Translation in African Courts", *Comparative and International Law Journal of Southern Africa* 43, no. 3 (2010): 297-318.

⁴⁴ *State v Schutte & Doorewaard* (Coligny Case), 2017-2020.

⁴⁵ Fanon, *Black Skin, White Masks*, 40.

⁴⁶ *S v Mzozo*, 2018 (South Africa, High Court), and *S v Baba*, 2020 (South Africa, High Court).

⁴⁷ Mama, *Beyond The Masks: Race, Gender and Subjectivity*, 98-102.

Class also affects credibility, particularly in cases involving rural or economically marginalised speakers. In *Madzodzo v Minister of Basic Education*, the oral testimony of rural parents was initially dismissed as anecdotal or emotional, revealing persistent class biases that treat working-class oral knowledge as inferior to bureaucratic documentation.⁴⁸

Language further compounds inequity. Because the judiciary operates primarily in English and Afrikaans, African-language speakers must rely on interpreters, whose errors can significantly alter the meaning—a reality dramatically exposed in *S v Chauke*.⁴⁹ This linguistic dependence creates a hierarchy in which English-speaking witnesses enjoy unmediated credibility, while African-language speakers face epistemic vulnerability.

The Tension Between Western Legal Rationality and African Narrative Epistemologies

Central to the politics of voice is a fundamental epistemic tension: Western legal rationality demands objective, disembodied, emotionally neutral speech, whereas African oral epistemologies value relational meaning, contextual storytelling, communal memory, and embodied expression.⁵⁰

Western evidentiary logic assumes that credibility emerges from:

- consistency,
- detachment,
- precision, and
- linear narrative flow.

African oral traditions often communicate truth through:

- circular storytelling,
- cultural metaphor,
- pauses indicating respect,
- indirectness signalling politeness, and
- communal narrative verification.

These modes are not merely stylistic differences—they represent competing epistemologies. When South African courts evaluate testimony through Western norms, African epistemologies are marginalised, producing what Maldonado-Torres calls *epistemic coloniality*: the devaluation of non-Western systems of knowing.⁵¹

This tension is especially evident in land restitution cases, where written colonial-era documents often conflict with indigenous oral histories. However, courts increasingly recognise the legitimacy of oral memory, as seen in *Tafelkop* and the *District Six* hearings.⁵² These cases demonstrate that African oral epistemologies, when taken seriously, can challenge and even overturn the authority of Western documentary archives.

How Body Language, Tone, Hesitation, and Trauma-Induced Pauses Influence Credibility

A critical yet understudied aspect of forensic orality is the role of embodied speech, which encompasses tone, gesture, hesitation, silence, trembling, and pacing. Courts routinely interpret these features through Eurocentric frameworks, often misreading cultural or trauma-induced behaviours as signs of dishonesty. For example, hesitation may indicate:

- trauma for a rape survivor,
- respect for elders in isiXhosa culture,
- fear of police in township-based witnesses, or
- anxiety for young Black men in racially charged contexts.

⁴⁸ *Madzodzo and Others v Minister of Basic Education and Others*, 2017 (Eastern Cape High Court).

⁴⁹ *S v Chauke*, 2021 (Supreme Court of Appeal).

⁵⁰ K. Wiredu, *Cultural Universals and Particulars: An African Perspective* (Bloomington, IN: : Indiana University Press, 1996).14-16.

⁵¹ N. Maldonado-Torres, “‘On the Coloniality of Being’, *Cultural Studies*” 21, no. 2 (2007): 240–70.

⁵² *Tafelkop Community Claim v Minister of Land Reform*, 2019 (Land Claims Court), and *District Six Working Committee v Minister of Rural Development*, 2021–2023 (Land Claims Court).

However, judicial officers frequently interpret such hesitations as evasiveness. This was evident in the *Senekal hearings*, where pauses and tonal shifts in Black protestors' testimonies were framed as aggression or inconsistency, whereas similar behaviours in white witnesses were interpreted as sincerity.

Trauma studies confirm that survivors often speak with fragmented memory and physiological disruptions in voice.⁵³ Courts, however, continue to evaluate credibility through assumptions of rational, linear storytelling—standards that traumatised witnesses cannot meet. This produces testimonial injustice, where credibility is denied not because of evidence but because of prejudice about how a “truthful” person should speak.⁵⁴

Furthermore, body language is often interpreted through cultural biases. Direct eye contact, often considered a sign of honesty in Western contexts, may be perceived as disrespectful in many African cultures. On the contrary, lowered eyes can be misread as deceitful. This cross-cultural misinterpretation illustrates the deep mismatch between Western courtroom expectations and African communicative norms.

The Courtroom as a Site of Epistemic Struggle

The politics of voice reveal that courtroom truth is not constructed through neutral assessment, but through deeply embedded social hierarchies. Race, gender, class, language, and trauma shape credibility in ways that privilege certain voices while silencing others. To decolonise South African jurisprudence, courts must not only allow oral testimony but must also transform how they *listen*—retraining judicial officers to recognise African narrative forms, trauma-induced speech patterns, and the cultural logics of orality. Until listening itself is decolonised, forensic truth will remain unevenly distributed along the lines of power.

Toward a Decolonial Evidentiary Framework

For South Africa to truly transcend its colonial juridical inheritance, the courtroom must cease to be an epistemic enclave in which Western modes of reasoning dominate the production of legal truth. A decolonial evidentiary framework seeks not only to “include” African oral traditions into an unchanged legal structure, but also to transform the epistemic conditions under which testimony is heard, interpreted, and validated. As long as the judiciary continues to evaluate speech through colonial linguistic hierarchies, patriarchal assumptions, and Eurocentric standards of coherence, orality will remain marginalised, and the voices of vulnerable communities will be rendered suspect. Decolonising evidentiary practice, therefore, entails dismantling entrenched racial, gendered, classed, and linguistic biases and rebuilding a system that recognises African epistemologies—such as oral memory, communal witnessing, genealogical narratives, metaphor, and cyclical storytelling—as legitimate and authoritative forms of legal knowledge.⁵⁵ What follows outlines the essential pillars of a genuinely decolonial listening praxis.

Multilingual and Culturally Competent Judicial Listening

A decolonial evidentiary framework must begin by transforming the very nature of judicial listening. Although the Constitution of South Africa recognises eleven official languages, the day-to-day operation of the courts remains largely confined to English and Afrikaans—a continuation of colonial and apartheid linguistic hierarchies.⁵⁶ This linguistic imbalance forces many Black African witnesses to testify through interpreters whose translations often flatten cultural nuance, obscure metaphor, and impose Western linear narrative structures onto African modes of storytelling.

Cases such as *S v Chauke* and *S v Langa* reveal that mistranslation is not merely a procedural misstep—it is a structural injustice capable of altering the substance of testimony and leading to wrongful convictions.⁵⁷ In each instance, the court failed to appreciate key oral cues, such as repetition for emphasis, indirect speech signalling respect, and pauses reflecting culturally normative storytelling

⁵³ Caruth, *Unclaimed Experience: Trauma, Narrative, and History*. 6-7

⁵⁴ Fricker, *Epistemic Injustice: Power and the Ethics of Knowing*.

⁵⁵ Wiredu, *Cultural Universals and Particulars: An African Perspective*.

⁵⁶ Himonga and Diallo, “Human Rights, Plural Legal Systems, and the Integration of Customary Law in South Africa.”

⁵⁷ *S v Chauke*, 2021 (Supreme Court of Appeal), and *S v Langa*, 2016 (South Africa, High Court).

patterns.⁵⁸ These misunderstandings demonstrate how the courtroom continues to favour Western communicative norms over African linguistic epistemologies.

To counter this, the judiciary must undergo systematic training in the cultural logics of African orality. Such training should include modules on:

- the purpose of non-linear narrative sequencing,
- metaphor as an evidentiary device,
- pauses and silence as culturally coded communication,
- communal rather than individualised forms of memory, and
- the relationship between language, respect, and narrative structure.

Moreover, the professionalisation of interpreters must be radically upgraded. A decolonial court requires accredited legal interpreters with deep cultural and linguistic competence, especially those from rural communities, as well as accountability mechanisms and ongoing assessment. Linguistic justice is the gateway to oral justice.

Recognising Indigenous Oral Knowledge Systems as Legal Evidence

The decolonising of evidentiary norms demands that indigenous oral knowledge systems be treated not as culturally interesting supplements but as legitimate and authoritative sources of legal truth. African systems of knowledge transmission—genealogy, clan histories, praise poetry, proverbs, totemic memory, and communal witnessing—are grounded in the epistemological principle that truth is collectively held and transmitted across generations.⁵⁹

Land restitution jurisprudence provides the most unmistakable evidence that oral knowledge can outpace colonial written records. In the *Tafelkop* Land Claim, the Land Claims Court accepted detailed genealogical testimony that reconstructed ancestral land occupation where written records had been destroyed or never kept.⁶⁰ Likewise, in the *District Six* proceedings, the living memories of displaced families served as counter-archives capable of challenging and correcting apartheid's documentary distortions.⁶¹ Similarly, in the *Mabena Community Claim*, elders' oral genealogies played a central role in proving community identity and land connection.⁶² A decolonial framework must therefore formally recognise:

- genealogical testimony as a valid historical archive,
- proverbs as condensed ethical–legal reasoning,
- praise-poetry patterns as markers of identity, lineage, and legitimacy, and
- communal witnessing as collective, not hearsay-based, memory.

Incorporating these systems does not “indigenise” Western law; it redefines the epistemic foundations of legal truth itself.

Trauma-Informed Judicial Approaches

Because trauma profoundly reshapes memory and speech, courts that rely on Western expectations of calm, linear, uninterrupted testimony inevitably discredit traumatised witnesses. Trauma studies show that survivors often stutter, recall events non-linearly, and exhibit emotional volatility—all indicators of trauma, not deceit.⁶³

In *S v Masiya* and *S v Mzozo*, rape survivors' fragmented narratives and emotional disruption were treated as inconsistencies, revealing a legal culture shaped by patriarchal suspicion rather than trauma comprehension.⁶⁴ In *S v Baba*, however, the court adopted a more feminist evidentiary approach,

⁵⁸ Finnegan, *Oral Literature in Africa*.

⁵⁹ Kwasi Wiredu, *Philosophy and an African Culture* (Cambridge University Press, 1980).

⁶⁰ *Tafelkop Community Claim v Minister of Land Reform*, 2019 (Land Claims Court).

⁶¹ *District Six Working Committee v Minister of Rural Development*, 2021–2023 (Land Claims Court).

⁶² *Mabena Community v Minister of Rural Development*, 2020 (Land Claims Court).

⁶³ Caruth, *Unclaimed Experience: Trauma, Narrative, and History*.

⁶⁴ *S v Masiya*, 2017 (Supreme Court of Appeal), *S v Mzozo*, 2018 (South Africa, High Court); Mama, *Beyond The Masks: Race, Gender and Subjectivity*, (London: Routledge, 1995)

recognising that contradictions in a survivor's account aligned with trauma psychology.⁶⁵ This shift underscores the potential for trauma-informed listening to mitigate testimonial injustice.⁶⁶

Child witnesses face similar epistemic vulnerability. In the *Courtney Pieters* murder case, the judiciary relied on expert oral interpretation to reconstruct the child's narrative, demonstrating how children communicate fear, violation, and recognition differently from adults. Therefore, a trauma-informed evidentiary paradigm must train judicial officers in:

- neuropsychology of trauma recall,
- cultural dimensions of shame and silence,
- non-retraumatising questioning,
- interpreting emotional cues without prejudice, and
- avoiding the equating of calm speech with honesty.

Without such reforms, the courts risk continuing a regime of epistemic violence against the most vulnerable speakers.

Integrating Digital Orality into Evidentiary Practice

As communication increasingly takes oral-digital hybrid forms, a decolonial evidentiary framework must integrate digital orality, voice notes, recorded calls, virtual testimony, and livestream interactions as legitimate carriers of oral meaning. Digital orality preserves features absent from written transcripts: tone, rhythm, hesitation, urgency, and emotional texture.⁶⁷

In *S v Khoza*, WhatsApp voice notes were admitted as primary oral evidence, enabling the court to hear the emotional undertones crucial to interpreting intent.⁶⁸ In *S v Okumba*, recorded calls formed the core evidentiary basis for factual findings, underscoring the rise of digitally mediated orality.⁶⁹ During the COVID-19 pandemic, virtual hearings required interpreting voice, gesture, and credibility through screens, introducing new complexities to digital listening. A decolonial digital-oral evidentiary system requires:

- authentication protocols for digital voice artefacts,
- interpretive guidelines for tone and emotional content,
- awareness of digital manipulation risks, and
- cultural training for interpreting oral cues across digital contexts.

Digitality does not threaten orality; it extends it into technologically mediated terrains that courts must now learn to navigate.

Protecting Vulnerable Oral Witnesses

A decolonial evidentiary system must protect those most vulnerable to epistemic injustice: women, children, Black working-class speakers, rural communities, and second-language witnesses. The adversarial tradition often weaponises oral testimony against these groups, subjecting them to aggressive cross-examination, repeated recounting of traumatic events, and intimidating courtroom dynamics.

Gender-sensitive reforms are essential. Patriarchal cross-examination styles—pressuring survivors to “explain inconsistencies,” demanding hyper-precision, insinuating culpability—must be curtailed through judicial oversight and evidentiary rules.⁷⁰ Courts must intervene to prevent secondary victimisation and power-loaded questioning.

Protective measures should include:

- presence of support persons for vulnerable witnesses,

⁶⁵ *S v Baba*, 2020 (South Africa, High Court).

⁶⁶ Fricker, *Epistemic Injustice: Power and the Ethics of Knowing*.

⁶⁷ Schoon, *The Digital Voice: Media, Mobile Phones and The Transformation of Oral Testimony in Africa*. (Johannesburg: Wits University Press, 2021)

⁶⁸ *S v Khoza*, 2022 (South Africa, Regional/High Court).

⁶⁹ *S v Okumba*, 2019 (South Africa, High Court).

⁷⁰ McFadden, “‘Sexual Pleasure as Feminist Choice’ Feminist Africa.” *I*, (2001), pp.50–60.

- minimisation of repetitive oral recounts,
- the use of intermediaries for child witnesses,
- reduced exposure to hostile cross-examination, and
- trauma-informed courtroom environments.

These are not merely procedural adjustments—they constitute epistemic safeguards, ensuring that vulnerable voices are not erased by fear, shame, or power imbalance. These protections must be translated into concrete institutional reforms. Magistrates and judges should undergo mandatory modules on trauma psychology, African linguistic structures, and the cultural politics of voice. Prosecutors should be trained in non-adversarial approaches to eliciting oral testimony from vulnerable witnesses. Interpreter accreditation should be centralised under a national body with clear disciplinary pathways. Moreover, courtroom architecture must be redesigned to minimise intimidation—limiting the physical proximity of accused persons during sensitive testimony and expanding the use of intermediaries for children and traumatised adults. These measures collectively operationalise the decolonial evidentiary framework proposed in this article and ensure that ethical listening becomes a routine practice rather than an aspirational ideal.

Listening as Decolonial Praxis

A decolonial evidentiary framework ultimately redefines justice as an ethical practice of *listening*. Transformation cannot occur unless courts fundamentally change how they hear and interpret the voices of those who appear before them. When the judiciary listens through multilingual, culturally competent, trauma-informed, technologically literate, and gender-sensitive frameworks, it begins to dismantle the epistemic hierarchy inherited from colonialism. Decolonisation of evidence, therefore, is not the addition of new rules—it is the rehumanisation of the courtroom and the recognition of African orality as a legitimate foundation for legal truth.

CONCLUSION

The contemporary South African courtroom demonstrates, with remarkable clarity, that orality is not a relic of pre-modern justice, nor a cultural artefact to be merely acknowledged; it remains the central conduit through which truth is spoken, contested, and ultimately adjudicated. Far from being archaic, oral testimony continues to shape factual findings, credibility assessments, and legal outcomes in diverse cases and jurisdictions. The judgments and courtroom dynamics examined in this study—from interpreter-mediated distortions to trauma-fractured narratives, from racialised listening patterns to the emergence of digital orality—collectively reveal that the spoken word still underpins the very architecture of forensic truth-making in the post-apartheid era.

However, these same cases expose the uncomfortable reality that the voice in the courtroom is profoundly political. Who is heard, who is doubted, who must speak through an interpreter, who is silenced by trauma, and who is granted the privilege of credibility are not neutral processes. They are shaped by the intersecting hierarchies of race, gender, class, language, and colonial epistemology. The judiciary's methods of listening—often unconsciously—reproduce structural injustices that privilege Western modes of speech while marginalising African oral epistemologies, indigenous knowledge systems, and the lived realities of vulnerable witnesses. In this sense, the courtroom remains an arena of epistemic struggle in which competing forms of knowledge vie for recognition within a legal system still haunted by colonial configurations of authority.

For these reasons, the need for a decolonial evidentiary framework is urgent and unavoidable. Such a framework does not simply broaden evidentiary categories, nor does it add African oral tradition as an optional supplement to an unchanged legal system. Instead, it seeks to fundamentally transform the epistemic foundations of legal adjudication: cultivating multilingual and culturally grounded listening; legitimising indigenous oral knowledge; adopting trauma-informed approaches; integrating digital forms of orality; and protecting vulnerable speakers from adversarial harm. A decolonial approach reconfigures the courtroom from a site where non-Western voices struggle for recognition into

one where all forms of knowledge—spoken, embodied, communal, digital, genealogical—are treated with equal epistemic dignity.

Ultimately, justice in South Africa cannot be achieved by legal reforms alone; it must be pursued through epistemic transformation. Only when courts listen differently—listening across language, trauma, race, and culture—can they finally adjudicate differently. The future of South African jurisprudence thus rests not simply on new laws, but on the creation of a judicial culture that hears fully, listens ethically, and affirms the humanity embedded in every voice.

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BIBLIOGRAPHY

South African Cases

- S v Baba*, 2020 (South Africa, High Court).
- S v Chauke*, 2021 (Supreme Court of Appeal).
- S v Khoza*, 2022 (South Africa, Regional/High Court).
- S v Langa*, 2016 (South Africa, High Court).
- S v Masiya*, 2017 (Supreme Court of Appeal).
- S v Mzozo*, 2018 (South Africa, High Court).
- S v Okumba*, 2019 (South Africa, High Court).

Gender-Based Violence and Child Testimony

The State v Mortimer Saunders (Courtney Pieters murder case), 2017–2018 (Western Cape High Court).

Racialised Listening / Public Violence

- State v Mahlangu and Others* (Senekal Violence Case), 2020–2021 (Free State High Court).
- State v Schutte & Doorewaard* (Coligny Case), 2017–2020 (North West High Court; Supreme Court of Appeal).
- State v Schutte and Another*, North West High Court, Mmabatho (2017); appeal decided in *State v Schutte and Another*, Supreme Court of Appeal (South Africa) (2020).

Civil and Constitutional Matters

Madzodzo and Others v Minister of Basic Education and Others, 2017 (Eastern Cape High Court).

Land Claims Court and Restitution Cases

- Coligny Case (2017–2020)
- Coligny Case (2017–2020) and Senekal Protest Hearings (2020–2021).
- District Six Working Committee v Minister of Rural Development*, 2021–2023 (Land Claims Court).
- Mabena Community v Minister of Rural Development*, 2020 (Land Claims Court).
- Tafelkop Community Claim v Minister of Land Reform*, 2019 (Land Claims Court).

Legal Commentary and Reports

African Gender Institute. (2017–2023). Reports on GBV jurisprudence in South Africa. Cape Town: University of Cape Town.

Centre for Applied Legal Studies. (2018–2023). *Court monitoring reports on public violence cases and protest trials*. Johannesburg: University of the Witwatersrand.

Legal Resources Centre (LRC). (2021–2023). *District Six restitution monitoring reports*. Cape Town: LRC.

Secondary Sources

Amanor, K. S. *Land, Memory and Citizenship in Africa: Contestations of Belonging*. London: Routledge, 2019.

Caruth, Cathy. *Unclaimed Experience: Trauma, Narrative, and History*. JHU Press, 2016.

Fanon, F. *Black Skin, White Masks*. London: Pluto Press, 1986.

Finnegan, Ruth. *Oral Literature in Africa*. Open Book Publishers, 2012.

Fricker, Miranda. *Epistemic Injustice: Power and the Ethics of Knowing*. Oxford: Oxford University Press, 2007. <https://doi.org/10.1093/acprof:oso/9780198237907.001.0001>.

Himonga, C., and F. Diallo. “Human Rights, Plural Legal Systems, and the Integration of Customary Law in South Africa.” *African Human Rights Law Journal* 17 (2017): 1-27.

Himonga, C., and S. Nkosi. “African Customary Law In The South African Legal System: Post-Apartheid Developments and Constitutional Challenges, (), In .” In *African Customary Law in South Africa: Post-Apartheid and Living Law Perspectives*, edited by C. Bennett T., Himonga C., and Andrews P. Cape Town, South Africa: aa, 2020.

Kavuro, C. “The Role of Oral Tradition in African Customary Law.” *Journal of African Law* 62, no. 1 (2018): 54–66.

Maldonado-Torres, N. “‘On the Coloniality of Being’, Cultural Studies” 21, no. 2 (2007): 240–70.

Mama, A. *Beyond The Masks: Race, Gender and Subjectivity*. London: Routledge, 1995.

Mbembe, Achille. *On the Postcolony*. Vol. 41. Univ of California Press, 2001.

McFadden, P. “‘Sexual Pleasure as Feminist Choice’ Feminist Africa” 1 (2001): 50–60.

Ncube, W. “Language, Culture, And the Limits of Legal Translation in African Courts.” *Comparative and International Law Journal of Southern Africa* 43, no. 3 (2010): 297–318.

Nnaemeka, O. “‘Nego-Feminism: Theorizing, Practicing, and Pruning Africa’s Way’, Signs.” *Journal of Women in Culture and Society* 29, no. 2 (2005): 357–85.

Ong, Walter J. *Orality and Literacy: The Technologizing of the Word*. London: Routledge, 1982. <https://doi.org/10.4324/9780203328064>.

Schoon, A. *The Digital Voice: Media, Mobile Phones and The Transformation of Oral Testimony in Africa*. Johannesburg: Wits University Press, 2021.

Wiredu, K. *Cultural Universals and Particulars: An African Perspective*. Bloomington, IN: Indiana University Press, 1996.

Wiredu, Kwasi. *Philosophy and an African Culture*. Cambridge University Press, 1980.

ABOUT AUTHOR

Enongene Mirabeau Sone is Professor of African Literature and Cultural Studies and Chair of the Department of Arts at iYuniversity Walter Sisulu, South Africa. He is a Catalyst Fellow and Research Associate at the Centre of African Studies and the Institute for Advanced Studies in the Humanities, University of Edinburgh. He has held visiting professorships at the University of Florida, Wayne State University, the University of Pennsylvania, SOAS University of London, and Xi'an Jiaotong–Liverpool University. He earned his BA, MA, and MPhil in African Literature from the University of Dschang, Cameroon, and a PhD in African Oral Literature from the University of KwaZulu-Natal, South Africa. With extensive teaching experience at universities in Cameroon, Burundi, Eswatini, and South Africa, he has made significant contributions to advancing African literary scholarship and mentoring emerging scholars.