

## Law and Literature: A Study of Ngugi's and Micere's *The Trial of Didan Kimathi*

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### Abstract

Literature has always been the lens through which the society is x-rayed to bring out its strengths and weaknesses. 'Laws' are stipulated rules that everybody in a given society must obey and they help in organizing the society. Literature and Law cannot be separated as Literature especially those that have court cases inspire law people and help them to execute and lunch civil, criminal and other cases. This work examines how knowledge derived from literature helps in legal issues. Using *The Trial of Didan Kimathi* by Ngugi Wa Thiong' o and Micere Githae Mugo, this work looks at the effect of Literature on Law, how Literature and Law relate and whether African Literature during colonial period actually depicts Africa as a lawless community through the court system. Marxist theory is used as a theoretical framework for critical analysis of the work. The study finds out that exploitation brings anarchy whereby a radical can hold a whole country to ransom if he feels exploited. This work brings injustice of law to limelight through Literature and concludes again through Literature that Africa had laid down laws before the arrival of the whites as colonizers but the white people neglected these laws, referring to them as barbaric and instituted theirs just to subdue and intimidate Africans. This simply means that Literature and Law are intertwined as they both deal with the society.

**Keywords:** Law, Literature, injustice, exploitation and intimidate

### Introduction

Literature is imaginative and creative writing or works of art which can be in form of written materials or oral. Literature makes people become more sensitive to the realities of the society. Law is concerned with reality and contents of law are passed down through texts. Law looks at rules that guide human beings and their behaviour. According to James Boyd White, law is a culture of arguing and interpreting that is why law can be understood and carried out by only space in which it is made (436). William Page in one of his papers explains that there are two branches of the study of law and literature which are 'Law in literature' and 'Law as Literature' (393). He believes that certain fictions that deal with legal issues and make the cultural context of law richer are useful in law. Turner, J. N. and Williams P. write that Literature and Law are 'The Happy Couple'. In Martin Skop's words:

Literature provides useful guidance in the field of interpretation as well as in the areas of performance and argument. A lawyer must read a text in the same analytical fashion as, for example literary critics. He also must act in a strategic manner, determine what stands 'behind a given text' and be able to use this knowledge. This brings us to functions that Literature can serve in relation to Law. Literature has the ability of cultivating law and lawyers. This process of cultivation by literature also includes improved ability to create a text and interpret it. Literature offers enough means of increasing the perception of narration and telling stories in a persuasive manner'(11)

Looking at how Law relates to Literature, one looks at how literature helps lawyers (how does it help them carry out their legal duties effectively?) and how can the knowledge derived from fiction or literature help in law practice. It is obvious that Literature made Law rich. How literature helps in legal issues is clearly noted by Jeanne Gaakeer as she writes that the law and literature mission is 'to achieve intellectual and aesthetic goals, to improve the ability to interpret and to see things from someone else's perspective' (186). Actually law is monitored by literature and because Literature is about our everyday life, it makes our life better, perfects our laws, makes law just, practical and reasonable.

To buttress this view, Joseph Story writes that the study of law requires 'a full possession of the general Literature of ancient and modern times'.

According to John Wigmore in his article titled 'A list of legal novels' Martin Skop writes that lawyers must not neglect fictions which deal with law because it is their general duty to be cultivated people (12). Skop goes ahead to write that Benjamin N Cardozo believes that Literature educates people. For him (Cardozo), Literature was a tool helping to establish a certain concept of judicial rulings.... Literature shows a judge how to paint a comprehensive picture composed of material elements.' (13-14)

According to Li-Ching both literature and law have human beings and the society as their research structure. 'Literature and Law describe the relation between the law, humans and the society.'(71). He goes ahead to write that

law and literature have the same functions. They both deal with the relationship between human and society'.... Their basic function is to move and change human kind's world. Literature serves the function of education, self expression, compassion, self searching, life, feeling and healing. Literature inspires people's minds. It makes us dream about a beautiful world, ideal societies and human justice. The obligation of law is to limit human's behavior and there are punishments to the people who break the rules. People will remember the punishment and then follow the rules. So, it aims to keep society safe.... If we want to solve the real problem; we will need to know what people are thinking. Even more, we need to have plenty of understanding and compassion towards human beings. We endeavour to discover the outer limit of human behavior. This is the basic function of law and literature. The close relationship between law and literature is revealed in their methods of explanation description, reading and expression.... Both of them explain what they intend to do in order to attain their appropriate goal. (71-72)

Literary writers showcase characters that are calm and wild at the same time like characters in *My African-China* by Ifeoma Odinye. Most characters in the text are untamed while a handful is responsible. They also showcase cases of justice, issues and actions that are against the law and the unfairness of the law in their texts like *The Incorruptible Judge* by Ola Rotimi and cases of injustice like *The Trial of Didan Kimathi* by Ngugi and Mugo, *The Trial* by Kafta Franz and *Mine Boy* by Peter Abraham. These texts on injustice are all about prosecutions and unfair judgement. Many literary texts tell stories that hang around law cases. Literary terms like descriptions, inscriptions and metaphor are found in legal write-ups. Literature and Law deal with people, culture and society, they deal with human stories, narratives and experiences which aim at transforming humanity. Literature helps humanity heal their wounds and make life more meaningful and understandable while law helps to control human behaviours.

Questions to be asked concerning trial texts are: When is it necessary to pronounce death penalty? This takes us to Achebe's *Things Fall Apart*- Is Okonkwo in *Things Fall Apart* supposed to face death penalty, banishment or a lighter punishment? When Ikemefuna's case came up, Ikemefuna was given as a replacement because the case was seen as 'female-ochu' while Okonkwo's case was seen as 'male-ochu'. What is their local People's opinion concerning his action? Actually, if he were to be judged according to White man's law, his punishment would have been lighter as the crime would have been tagged 'man slaughter' but there was no death sentence here probably because punishment for murder in Igbo land in the precolonial period was negotiable hence Ikemefuna's situation. Even those that killed their own people in the war front were 'cleansed' traditionally in those days and were not killed neither were they banished. The female ochu (killing unknowingly) and male ochu (killing knowingly) come into play. Can one be sentenced to death if he only attempted to kill but failed?

Is inciting someone to commit murder a crime? What is the aftermath of someone that is raped? In Akachi Adimorah Ezigbo's *Trafficked*, Nneoma was tricked into prostitution abroad where she was raped repeatedly alongside other girls. In fact, they were used as sex machines. When they return to Nigeria, what becomes their fate? Are those behind their ordeal ever prosecuted? Many literary works awaken people's inner compassion though in Literature, authors are expected to use fictitious names and settings and not otherwise to avoid hurting real people. In Law, one is assured innocent until law proves otherwise, it is prohibited for one defendant to be penalized outside the law without probable reason, strictest penalty should not be given but punishment should be given according to law, there must be a crime then punishment –no crime no punishment, ones guilt or innocence should not be considered when one is unconscious, arresting one because of his bad past records is wrong. According to E. Schmidhauser, Kafka's *Der Prose* it is called 'ex- behavior' trial. The law procedure must be fair and reasonable, which means that 'due process of law' must be observed. Punishment should be conducted in a just way, arresting innocent people encroaches on human rights, arresting people by force without a writ is against human right, searching innocent people's belonging without warnings and Lawyers not being around when their clients are being interrogated are not fair. Nancy Cook is of the opinion that Law and Literature 'help discover and clarify key concerns in the legal arena that could otherwise stay muddled' through the use of texts that are not 'legal'. People's mind are therefore inspired by Literature. Law and Literature have the same objective because they are both concerned with relationships between culture and people.

Looking at the above, this study examines the court system of a particular time in Africa to see if procedure of the trial was fair or whether unjust judgment was given. This was done using *The Trial of Didan Kimathy* by Ngugi and Mugo.

### **Theoretical Framework**

Marxist theory is based on materialist interpretation of historical development. This theory was formulated in 1848 by Karl Marx and Friedrich Engels. For Karl Marx, an ideal society will be corruption free – no exploitation nor class distinction. Man's needs will be satisfied when man provides means of production for it, of course new needs arise by the day and this gives rise to private property and this leads, according to Marx to primitive accumulation. This divides the society into two – the haves and the have-nots. Then, there is the struggle between two classes of people in the society, the struggle between the bourgeoisie (the haves) who are in charge of means of production and proletariat (the have-nots) who labour hard to survive. The relationship between the two classes of people causes conflicts as the bourgeoisie always exploit the masses and it usually leads to revolution by the masses. Social and political institutions become means of coercion and enforcing compliance by the bourgeoisie. The bourgeoisie suppress the awareness of class distinction using the super structure. The proletariat labour hard to survive daily while the bourgeoisie are interested in acquiring more and more properties. This gradually makes the masses to fight or demonstrate or revolt against bourgeoisie and try to seize the means of production. The theory explains this dialectic process and the emergence of the ideal communist state after the revolution in which the oppressed and the exploited take over control of means of production. This is exactly what happens in Peter Abraham's *Mine Boy* and Ngugi and Mugo's *The Trial of Didan Kimathi*. White people, our colonizers in the text under study are the bourgeoisie in charge of means of production and black people's properties. They take over power from the blacks and consider them inferior. Observing this, people like Kimathi form a coalition and decide to get back their power. Doing it gently never worked and so they decide to form a group and opted for revolution.

### **Crime, Punishment and Rule of Law in *The Trial of Didan Kimathy***

In *The Trial of Didan kimathi* by Ngugi wa Thiong o' and Micere Githae Mugo, the colonial masters usurp power and then impose colonial laws; as a result many innocent blacks are implicated and indicted and this runs contrary to reason and native conscience. They build up a means whereby they decide who to punish and who not to without obeying the rule of 'no crime, no punishment' and the rule of 'due process of law'. The rule of 'due process of law' is a global principle relating to human rights protection. (81)

In view of this, it is certain that if there is no Law, there won't be punishment, so people can go free of whatever crime they commit, therefore creating chaos. Then if there is no crime, there won't be any punishment, but it is quite unfortunate that people are being arrested for nothing – without committing any crime.

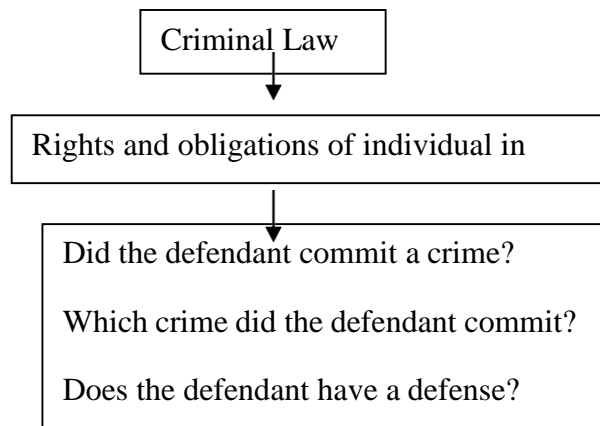
Just as it happened in *The Trial* by Kafta Franz, Joseph K was arrested one morning on his 30<sup>th</sup> birthday without committing any offence. He hired a lawyer without knowing his offence. People tell him how corrupt the court is, that once one gets to the court, one can never be free whether guilty or innocent. After one year of fruitless effort trying to defend himself, he started to plead guilty of what he did not know. He was later killed. The trial of law was harsh on him as he was innocent. But the opposite happened in Ola Rotimi's *The Incorruptible Judge* where the judge is upright, fair and ideal is his verdict. In fact, the judge celebrates integrity.

It is obvious that there is discrimination between the blacks and the whites in the text under study and this is an African country and Africans are maltreated in their own home land. In the courtroom for instance white ladies are beautifully dressed as if they are going for a show with fans 'fanning their faces'(23) and their men well dressed as well have their pistols around their waists but 'As the Africans enter, it should be a study in contrast with their torn clothes and tattered shoes.....Sticks or anything that might suggest a weapon are removed from them... In the court, black and white sit on separate sides. It is as if a huge gulf lies between them.'(23)

Every law is located in time and space as every country has its own. But the law we are talking about here is the one imposed on blacks in Africa just to cause fear in blacks and make them nervous and uncomfortable. The text depicts a kangaroo court where whites make up laws that benefit them and force them down on the throat of innocent blacks who are fighting for freedom. They want the whites to leave Africa as whites intimidate them and kill them. Asking somebody to leave your property for you, I believe is not a crime because according to *Criminal Law* by The Open University of Hong Kong ...crime is 'an act committed in violation of a law prohibiting it, or omitted in violation of a law ordering it... Generally, the government must enact a criminal law specifying a crime and its elements before it can punish an individual for criminal behaviour'(3)

In the text, we are not told about the laws of the country but the laws enacted by the whites. According to the judge in Nyeri District, Didan Kimathi had a firearm, a 'revolver without a license, contrary to section 89 of the penal code'.(3)Of course, this law was made by the whites without the consent of the blacks who they met in Africa when they (whites) came down to colonize them. All the laws made by these whites were used to intimidate and silence the blacks because in the court, white men came to the court with their pistols tied on their belts round their waists. 'Men swagger in with pistols belted around their waist'.(23) Does it mean that they all have license to carry guns about while blacks are not even allowed to get near the court with ordinary sticks. If this is law, then it is partial and one-sided. Just like what happened in Peter Abraham's *Mine Boy* where blacks in South Africa are made to work in the mine while their white colonizers enjoy in luxurious offices. Blacks suffer intimidation in their own country and at last Xuma, a mine boy organized a revolution and he was jailed by the whites for protesting. Laws in a democratic society according to *Criminal Law* are '...created by people and are founded in religious, cultural and historical value system'.(4) It is obvious that laws in *The Trial of Didan Kimathi* are not religiously, culturally and historically derived.

*Criminal Law* by The Open University of Hong Kong, has this diagram in their book: (6)



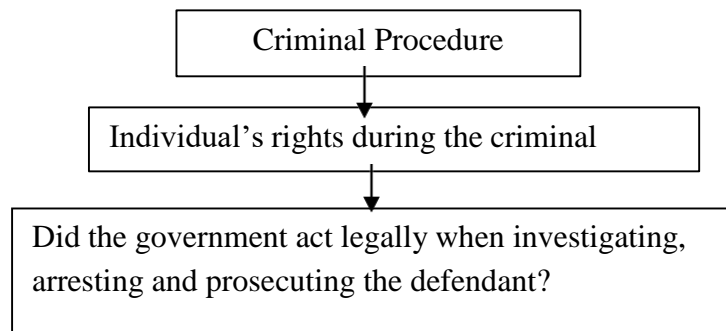
From the above diagram, it is obvious that blacks had no rights and obligation in their homeland under the colonial rule. The play opens in the courtroom where Kimathi, not yet found guilty but is chained and the white judge is seen forcing him (kimathi) to accept or plead guilty to the crime he did not commit. 'Dedan Kimathi is brought in under heavy guard, with chain on his feet and chain on his hands. He is pushed into the witness box by Waitina who is flanked by first and second soldiers'. (24) According to Kimathi, he is fighting for his motherland, freedom against man's inhumanity to man, oppression, wickedness and evil and so does not see it as a crime. He simply asks the whites to leave them alone.

In the court, Kimathi calls their court 'An imperialist court of law... a criminal judge, in a criminal court, set up by criminal law: The law of oppression. I have no words. (25) This shows that Africans had their own laws then. In the Nyandarua Forest, an African, Kimemia said that they have rules that must be obeyed by people. In his words: ... But once rules have been set... They must be obeyed. They have belief, culture and tradition like if one kills a brother or one that is related to him, the blood might turn against him and cry for vengeance from the earth.'(72) Remember, these are radicals in the forest and not the actual leaders of their community but they still have rules (law) guiding them in the forest, how much more the community leaders.

Kimathi insists that the judge has no right to judge him with the laws that blacks do not have a hand in. Blacks do not partake in making the laws and so should not be under such laws. Kimathi says, 'By what right dare you a colonial judge sit in judgment over me?... I will not plead to a law in which we had no part in the making.'(25). This exhibits wickedness and intimidation on the part of white people. Kimathi goes ahead to say that there are 'two laws; two justices. One law and one justice protect the man of property, the man of wealth, the foreign exploiter. Another law, another justice, 'silences the poor, the hungry, our people.'(25-26).

To the masses, Kimathi did not commit any offense as blacks are fed up with white's wicked laws and man's inhumanity to man, 'as they had ceded their land and their lives' (33). Kimathi has no lawyer to defend him, he is not given the opportunity to express himself through a lawyer in the court. Kimathi has no lawyer to help protect him from the wicked and unfair verdict and the use of force to assault him. The soldier turned to judge, Bwana Shaw Henderson told Kimathi that he is 'left with no alternative but to proceed with prosecution, taking the accused to be his own defender'. (80) A judge is not supposed to conduct the trial individually but Henderson (a soldier), armature judge who is not supposed to give a final verdict, did as he overrules without anybody's consent.

Another diagram from *Criminal Law* by the Open University of Hong Kong (6)



Kimathi's rights are not protected during the proceedings. The white judge gets a lawyer to defend Kimathi(79).When Kimathi refuses his lawyer, he proceeds without attorney for Kimathi. Apart from Kimathi, other black people's rights are not respected as a black woman is arrested in the court for no reason 'she is pushed out of the court room where Gatotia chains her' (70) for doing nothing.

During investigations, the judge, Shaw Henderson goes to the prison to convince Kimathi to plead guilty in the court. "Frustrated in his (judge) efforts to make Kimathi cave in, there's a note of desperation in his flattery and sudden inward lookingness'.(35). He begs Kimathi to plead guilty and have his life ...telling him 'you can name your price'.(35). Kimathi knowing his evil plans tells him that he does not commit any criminal offense but only fighting 'To end slavery, exploitation, modern cannibalism...'(36). He gets angry and swears to deal with Kimathi. 'I, Shaw Henderson, will break you.' (36) Is a judge supposed to bribe the accused to plead guilty?

After he left, another group of people- bankers' delegation comes in to force kimathi to plead guilty. The banker tells him to 'confess. Repent. Plead guilty. Co-operate...(40) kimathi still insists that he did not commit any crime and so has got nothing to confess. Then come the African business executive, politician and a priest come to convince Kimathi to plead guilty. The business executive tries to convince Kimathi that the whites are no more discriminating and have come to understand blacks and appreciate them. His words:

They (whites) have said: no more racialism. No more colour bar... Is this not what we have been fighting for?... We can now buy land in the white highlands. White highlands no more. It's now: willing seller, willing Buyer.(45)

All these people come to convince Kimathi to accept committing the crime he did not commit. Kimathi asks the priest if it is wrong before God to fight exploitation. At last, the judge, Shaw Henderson comes back again asking Kimathi the where about of other group members like Stanley Mathenge, Matenjagwo. On refusal to tell him, the judge slaps him and threatens to send him to jail and have him killed there. Kimathi asked him-'Already sentenced, am I? How is that for even hundred British justice? (54). 'Henderson strikes him again and again, using hands, legs, gun and swearing as he strikes'(55).Kimathi was taken to the torture chamber as ordered by Henderson, where he is given 'Hardcore's electric treatment' (57) The action indicates that Kimathi is forced to accept what he does not want because the whites want him killed. This is against the rule 'actions of force' which actually is not represented in the courtroom. Actions of force were used badly. Henderson gives weak Kimathi a paper to sign and surrender to the whites, Kimathi still refuses to sign. Of course this type of treatment cannot be given to a white. White man's government did not act legally when investigating kimathi's case all because he is a black that wants oppression, humiliation and enslavement of body, mind and soul to come to an end.

Kimathi is accused wrongly of possessing a firearm. They give him a bad name to hang him. Actually, the whites want him to stop fighting for his people's freedom and arrested him for that and Kimathi in

the court says that ‘In the court of Imperialism! There has never and will never be justice for the people.’(82)

At last the judge sentences him to death by hanging. The judge says:  
...you are sentenced to die, by  
hanging. You will be hanged by  
the rope until you are dead.(84)

Is death sentence not too hard for such an offense as purportedly committed by Kimathi?

### Conclusion

In *The Trial of Dedan Kimathi*, the judicial system is seen as defective as ordinary judicial procedure is thwarted by the so called judge and his cohorts. This definitely brings chaos and disorder in the whole system as whites believe that they are gods and so, untouchable. Whites are never found guilty of anything irrespective of the fact that they are foreigners. In this case, there can never be fair justice as Kimathi rightly noted. I strongly believe that law and literature share a lot in common as storytelling, justice, arguments for legal or fictional purposes are seen in both disciplines. It is obvious that law cannot do without literature as literature deals with the real happenings in the society as it imitates the society. This work shows vividly the unfairness and the inability of an imperialist government to handle black people’s cases. It shows the desperateness, despondency and helplessness of people in the face of a wicked, malicious and nefarious government as ordinary citizens or the masses realize that there is no help from anywhere.

Finally, through Literature the researcher observes that even though African laws are not stated in the text but it is obvious that blacks had laws before the arrival of white men because even in the forest, Kimathi made some laws guiding them, so how much more the entire community. Literature also shows us that the local people’s laws are pushed aside by the whites to introduce their laws against blacks. This work concludes that through Literature we are able to learn that there is convincing circumstantial evidence that there was existing indigenous judicial system among the people before colonization. Therefore, Literature and Law cannot be separated as both deal with the society directly.

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