

Analysing the Legal Framework for Casual Workers Rights in Tanzania: Challenges and Opportunities

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Abstract: *This study examines the legal framework governing casual workers' rights in Tanzania, identifying key gaps and suggesting potential reforms. Through an analysis of existing legislation and case law, the paper highlights how current laws fail to adequately protect casual workers, leading to challenges in employment security and access to justice. The study advocates for legal reforms to provide better protection and recognition for casual workers, contributing to fairer labour practices and social justice in Tanzania.*

Keywords: Casual Workers, Legal Protection, Employment Law, Tanzania, Labour Rights.

1. The Aim of the Paper and its Significance:

As it was once stated by the prominent author of the Novel going in the name of 'Things Fall Apart' the Late Chinua Achebe that, 'A toad does not jump outside in the broad day light unless there is something behind it.' Equally, this paper jumps out in the society aiming to critically analyse the current legal framework surrounding casual workers in Tanzania and propose necessary reforms for enhancing their rights and protections. This article is significant as it sheds light on the overlooked area of casual workers' rights in Tanzania, offering insights into legal deficiencies and proposing practical solutions that can inform policy and legislative reforms.

2. Introduction

The predicament to Casual employees' protection in Tanzania is not new in ears of many. It makes part of the employment laws phenomenon. Historically, the casual employees are said to have no legal protection under employment and labour laws worldwide, Tanzania inclusive. Although it is said that laws are manmade, some philosophical defences propounds that laws are older than man and they are considered God made laws. This would perhaps concur with the proposition by Shivji (1986) that law has no history but a recount of successive laws, their cause and effect within their inner contradictions in relation to employment and labour matters and therefore a proposition is noted. Historically, the British as it was to German Colonial rule in colonial Tanganyika; an employment system was forced labour in nature (Shivji, 1986). Fanuel (2006) reiterates that the forced labour and casual worker share some traits because they both meet at the angle of no freedom of decision and have no enjoyment to freedom just as other real workers so called. Perhaps this might be true to certain extent but these two groups cannot be considered as one thing.

British rule used insightful and sophisticated forced labour in their services. The forced labour was used in community service at least twice a year since or about 1921 (Shivji,

1986). The Native Authority Ordinance made this reality decipherable however, contract labour, Kipande labourers and temporary alien labourers were common (Shivji, 1986). Since the Master Native Ordinance was brutal to employees, it could not survive the environments hence the Employment Ordinance¹ with several amendments to curb at least tolerable working relationship but keeping expression environments not to protect employees but employers (Njuu, 2016). Failure of colonial laws was due to awareness and other developments, which did not please workers especially in areas, which were taken to be the colonial backbone such as mining industry, ports, agriculture, etc. (Njuu, 2016).

Despite the contention that the Employment Ordinance² came with some affordable solutions that was somehow attractive to workers and used after independence but accommodating various revisions so as to contain the growing nature of the society of Tanzania, the then Tanganyika according to Njuu (2016) and Shivji (1986) still the law did not afford any protection to casual employees anyhow. For example the law still did not define and recognise the 'Casual workers' nor did it establish any protection mechanism to this employment typology despite the fact that as workers, they deserved entitlements since the employment shares tie with individual and society survival as reiterated by Maina (1997).

Biblical as the casual workers are, they could not struggle and establish collective arrangements to safeguard themselves due to their disorganisation and nature of their employment according to Shivji (1986). The reality has persisted in the contemporary society. Therefore, employment rights such as strikes, collective bargaining, establishment and joining trade unions by casual worker was and still is impossible. It was revealed in 1939 to 1950 where Casual workers at Tanga harbour waged strike on demand of rising daily wages and other entitlements yet they were threatened to employment replacement while others were victimised (Millulu, 2016). While casual workers'

¹ 1923

² Chapter 366

strike in Dar Es Salaam failed in 1939, a similar and successful strike took place in Tanga due to support from other non - casual employees (Shivji, 1986). In some other industries, labour officers and police force was used to water down any other such struggle arrangements (Shivji, 1986).

Insecurity to Casual employees remained a bequest to post independent Tanganyika whereby the notable employment laws did not recognise, define and establish any mechanism to protect them. The Security of Employment Act³ under section 4 (2) stated categorically the cadre not to be among employees under the law. The Industrial Court Act⁴ did not as well cover the casual employees. This reality was prolonged to 2000s years of the Employment Regime good hope. It is in 2000s a journey that started in 1980s following Tanzania's economic, political and social reform programme to broaden the market forces in the economy in 1980s, new Employment Laws were enacted (Mtaki, 2005). Still the Casual Employment protection dream proved futile.

Since the year 2000, there are several Employment laws enacted to regulate employment matters in both private and public sectors. Since this study is focused on private sector only where Casual workers are famous at being recruited and notorious at employment rights struggle it does not imply that the Employment and Labour Relations Act (the ELRA) was not legislated for private sector only despite the fact that The Public Servants have their own Act under which their affairs are discharged. The study is merely derived by the area of concentration. The study is as well limited on the Constitution of Tanzania,⁵ Employment and Labor Relations Act,⁶ (the 'ELRA') and Labor Institutions Act⁷ (the 'LIA') as important and basic instruments enacting core employment rights, duties, obligations, standards and protection and disputes prevention and settlements framework. These instruments bind on both private and public sectors but in most cases and as this study focuses on Private sector as said before, the public sector is purposely not discussed due to its employment formalities and treatments as enshrined under Public Service Act⁸ and as seen by Mtaki (2005) and other instruments used in Public service specifically.

The ELRA requires workers to be provided with an employment contract at the very start of employment, except for those who work to an employer for less than 6 days in a month.⁹ Employment contract may be of definite or indefinite period or for a specific task.¹⁰ It must be in writing if it provides that the worker is to work outside the United Republic of Tanzania.¹¹ It must also state the name, age, permanent address and sex of the worker. The contract must also state place of recruitment; job description; date of commencement; form and duration of the contract. Other matters to be stipulated by the contract are place and hours

of work; remuneration, the method of its calculation, and details of any benefits or payments in kind, and any other prescribed matter. However, if these particulars have already been provided for in an employment contract, the employer may not furnish the employee with written statement of employment particulars.¹² The employer must ensure that all written particulars are clearly explained to the worker in a manner understandable by the worker. If there is a change in any of the written particular, the employer is required to revise written particulars in consultation with the worker to reflect changes. The employer must notify the worker about changes in writing.¹³

Further, the employer is obliged to keep employee's written particulars for a period of five years after termination of employment. In case of any legal proceeding between an employer and employee, a written employment contract must be produced. If an employer fails to produce a written contract in any legal proceedings, he is placed on the burden of proving or disproving an alleged term of employment.¹⁴ Every employer has to display a statement of employee's rights in a conspicuous place.¹⁵ Requirements under section 15 (7) of ELRA¹⁶ are reserved for workers who work for more than six days in a month only. As to who is a Casual worker as seen before, features, entitlements and other matters of security are not provided for under this law for their protection anyway. Without prejudice to the provisions of Employment laws, it is suggested that employment must be based on formal contract so as to justify consent by both sides of employment hence clear employment relationship as Majaliwa observes (2011). This environment excludes and is not the case to casual employees and practice. It is also suggested that the worker as is, need to be economically, politically and legally recognized by the employer and get protected considering that working is the right touching individual and the general society (Maina, 1997).

In other places, casual workers are employed on casual employment sham. The reality proves the contrary hence infringements of their rights. Employers use casual law insecurity to exploit the cadre (Pitt, 2011). Whenever Casual workers are to be engaged or assured of the work, employers control the whole process unilaterally. This is more or less a standard form contract that principally establish a one side contract letting the subscriber for this case the casual worker to lock in or bounce the work. It is revealed as well that in some areas, there is no clear distinction between some casual employees' treatments from some other non casual the result of which casual workers start straggles to know and or enforce their employment relationship, rights and privileges purported to be infringed (Nyanduga, 2017).

Casual employment continuity or future offer and acceptance under good or similar terms is a legislative fiasco. This fiasco has become a living challenge in agricultural, mining, transport and industrial investments where jobs are certainly available throughout the life.

³ Act Number 62 of 1964

⁴ Act number 41 of 1967

⁵ Constitution of the United Republic of Tanzania of 1977, Chapter 2 of the Laws of Tanzania

⁶ Act Number 6 of 2004

⁷ Act number 7 of 2004

⁸ Number 8 of 2002

⁹ ELRA Section 15(7)

¹⁰ Ibid Section 14(1)

¹¹ Ibid Section 14(2)

¹² Ibid Section 15(1) and (2)

¹³ Ibid Section 15(3) and (4)

¹⁴ Op Cit section 15(5) and (6)

¹⁵ Op Cit section 16

¹⁶ Act number 6 of 2004

Further, to casual workers who do it for so long and to those who tend to reveal awareness of their employment rights meet this sleeping lion because the nature of their engagement will have seemed to mature to employment properly so called hence demands for employment rights. For example in agricultural sectors for those who undertake permanent crops or irrigation agriculture, it lapses long. Their employment involve a chain of tasks such as preparing seedbeds, farms, planting, maintaining plants, irrigation, weeding harvesting and so on. Casual remain in farms for so long. It is often that marginalised casual workers opt for sufferings and remain quiet to protect little they earn.

It comes time when casual workers and their masters are in demand to each other much as some are trained professionally to run the employment of service and for service under similar terms of casual work. Sometimes the concern of office memory and trade secrets triggers this carder to be maintained but under furious similar employment terms hence struggles by both sides each other safeguarding its interests. It is revealed that the situation become tenser when some casual employees are trained to undertake technical activities. They are trainees who are kept at casual wages and or zero costs while employers scaring to end their jobs due to the costs ventured into them. Employees also fear of disclosure of production secrets and securities. For the purposes of ethical matters in researches, some twenty one agricultural employees have told the author but won't be disclosed here. To mention, some of the employee and one of the supervisor have disclosed that some casual workers are on the best positions of the companies' sections and therefore are not ready to release them. That once they are released, they have usually been experiencing theft, and unwarranted competitions while tail telling and deserving the state over incompliances in the sector. Further that a good number of causal workers in their areas have all legal elements for permanent employment still they are casually employed. Once these workers have opted to seek justice from the dispute resolving forums, the dilemma as to jurisdiction of the forum to determine as to whether or not the relationship is employment based, or enforceable at equity or else (Pitt, 2011). Before the CMA, impediments as to access justice starts obliging the referrer who has the duty to prove the forum jurisdiction¹⁷ which sometime becomes difficulty to them due to legal ignorance.

So as to be determined as to whether one is employed or not (is a casual worker), a requirement of tests is involved. This is to say, for one to knock doors of temple of justice for redress, he must go as an employee. Likewise, discharging duty to prove tenability of an action before the CMA goes to test Employment relationship under Section 61 of the LIA. If tests prove to the contrary, then dispute cannot be maintained by labor institutions. In the case of *Tanganyika Instant Coffee Ltd v Jawabu W. Mtembei*¹⁸ it was held *inter alia* that, a casual worker is an employee and could get employees entitlements if he satisfies the requirements of section 61 of LIA. The requirements to prove positively are tests of his working mannerism in relation to control or give

direction, who controls the hours of work, whether the employee is part of organization or not. Others include working for an average of at least 45 hours of work per month for three months, dependence on person rendering service, whether the worker is provided for tools of trade or work and whether the person just works for or renders service to one. However, in the light of the decision in *Director of Usafirishaji Africa v Hamis Mwakabala and 25 other*¹⁹ only one of the above elements must be proved. In other words, whenever a worker does not fall under the best definition of an employee according to Smith and Randall (2011) or qualify under the above employment relation tests, he is excluded from statutory employment rights and interests regardless of what they may or may not be under the title he is engaged.

Apart from the casual employees' protection legal lacuna in employment laws, other problems the cadre face, include employments misclassification causing employees working out of agreed terms and hence demand for retroactive benefits and other legal compliances (Brusein, 2005, ILO, 2015). It is suggested by an Australian Court in the case of *Telum Civil (Qld) Pty Ltd v CFMEU*²⁰ that implications for casual employee need to be in agreement so as to keep regularity between them and their employers along with a clear definition of the casual employee. The jurisprudence in the above decision is that as casual employment has categorical approaches, elements and other problems. That, there must be employment contract establishing casual relation definition and terms to bind parties incase their relationship is established.

Generally, the casual employment in Tanzania and many other areas is still lacking necessary statutory protection measures. It is also revealed that in some jurisdictions where statutes enact protective measure to protect casual employees, enforcement becomes difficult hence leaving them meaningless as this study is going to reveal in the forth coming discussions under this paper.

3. The Conceptual definition Problem

Casual/precarious work has appeared in the last two or three decades while most of relevant instruments were adopted before that time hence lacking instrumental definition according to ILO (2016).²¹ This lack of definition has accelerated to various approach from various sources in the cause of their containment in the employment phenomenon (ILO, 2016). It is crucial to note that the term 'casual worker' is synonymous to casual labourer or casual employee and different users have put these terms into use interchangeably while others establishing names convenient to their distinction. In other jurisdictions, the concept uses more than the above terms. For example, India, which is stated to have developed casual workers protection to the great extent, has in addition to the above terms, a daily wages and temporary worker to mean casual worker (Landal, 2016).

¹⁷ Labour Institutions (Mediation and Arbitration) Rule, GN 64 of 2007

¹⁸ High Court Revision number 210 of 2013

¹⁹ High Court of Tanzania; Labor Division, Dar Es Salaam, Revision number 291 of 2009

²⁰[2013]FWCFB- 2434

²¹ ILO (2016)

As to who is a Casual worker, has remained a headache discipline of the industrial relations and the general society. Tautology in the existing knowledge and literatures has been taken to make a definition as to who is a casual worker to remain a position of number of law and industrial relations dogmatists. In fact, the reality needs to turn policy and legislators revisionists. This does position takes us to in nutshells looking on definition problem.

Campbell (2018) defines a casual worker as a worker called in to work only as and when needed. The working hours of a casual employee fluctuate and depend on the magnitude of work. He observes that the employment contract may mention minimum and maximum hours of work. Common casual work engagements do not state duration of work. Whenever an employment contract does not stipulate minimum hours of work and some other arrangements, such contracts are called zero hour contracts (Pitt, 2011). Although casual work seems beneficial both to the employer and employees, such workers are said to have lower productivity, high turnover rate, little job security, a feeling of dissatisfaction and have no benefits like pension or paid leave (ILO, 2016). I beg to differ with this proposition on lower productivity only that it would be from one area to another.

Chalmer and Kalb (2000) are of the position that casual employee or works is an employment of the short term, irregular and uncertain. A note is to be taken in the contents of the elements of the definition.

Furthermore, a casual employee is defined by the European Economic Community to mean an employee with generally limited entitlements to benefit and little or no security of employment as per the content and reflection under Article 2 (2).²²

Besides, a Casual Employee is defined under section 2 of the Employment Act of the Republic of Kenya²³ to mean a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty - four hours at a time. Moreover, the Employment Act of Uganda²⁴ refers to a casual employee as a person who works on daily or hourly basis and waged at the completion of each day's work and he is an employee.

To Tanzania, neither the Public Service Act²⁵ nor the ELRA define casual employee and no any other substantive and procedural labor related law define the cadre. However, the Workers Compensation Act²⁶ does not establish any kind of categories of employees or workers but consider each one to be an employee. Under Section 4 of the Workers Compensation Act²⁷ 'employee' means any person including an apprentice or any other person who is working for another or for the state, receiving or entitled to receive any

remuneration, and any other person who assist in carrying on or conducting business of an employer in any manner.

4. Elements of the Casual Workers in Tanzania

From the definition problem, distinctiveness of the casual employee's elements differ from one source to another depending on an industry or source of employment, need and nature of an area. Employment laws regime and composition of a particular jurisdiction (Mugyabuso, 2012). It is here from some elements of the above cadre in Tanzania like other parts of the world may as well differ from one place to another while found to be similar from those appearing to exist in foreign jurisdictions. That being the case, some features of casual employment and employees are as here under discussed.

Black (2014) provides for an element of the casual employment and not a casual worker. To him, Casual Employment bear without regularity is one of the elements. The occurrence, treatments and control of the casual employment and employees are fully pivoted on the will, whims, manner and conduct of employer; that is unilaterally decided.

Besides, the HRC - UG, (2017) reiterates that the employees under casual work engagement category lack employment contracts and particulars of work to specifically articulate their norms of conducts' parameters of work performance instances, uncertain terms and other necessities which rise and contradict both employer and employees hence need to improve industrial relations between each other. The ILO - MENSFE (2015) refers to this situation as ambiguous employment relation since respective rights and obligations of the parties concerned are not clear and normally rise due to law gaps. Along with that feature, the cadre suffers from minimal or total absence of employment security leading them to live in precarious engagement (The Daily Monitor (2014).

Moreover, the cadre is featured with some control and manner of doing some works or tasks without necessarily subjecting him to any other kind of employment contract depending on the industry. The Indian case of *Shri Birdhichan Sharma v First Civil Judge Nagpur and others*²⁸ expresses the position similar as revealed in Tanzanian practice. Casual employees' control is much prevailing in construction and mining industries and rarely or total absent of control in agricultural sectors and transportation.

In addition to that, employees are characterized by reasonable expectation of ongoing employment unless they are instructed to the contrary as held in the Australian case of *Cori Ponce v DJT Staff Management Services Pty LTD, T/A Dallys' Traffic*.²⁹ In the contemporary Tanzania, expectation stands so, save for in specific projects such as construction in which the project duration by nature has

²²EEC, (1991)

²³Chapter 226 of 2007

²⁴Employment Act of the Republic of Uganda of 2006

²⁵Public Service Act Number 8 of 2002

²⁶Cap 263 R.E 2015

²⁷Ibid

²⁸(1961) AIR 644.

²⁹T/A Daly's Traffic [2010] FWA 2078 (Roe C, 15 March 2010)

specifically given to rich its maturity. The maturity of the project lapses with the lapse with the casual work. This is more or less similar to the same workers coming from landless families and with seasonal functions regularizing their contracts with employment continuity expectations. In some instances, little industrial trainings, insufficient hours of work and fluctuation in earning are advocated (Garhwali, 1981). The cadre is in some areas collectively trained so as to ensure their employment continuity and thus unnecessary employing or engaging casual employee on temporary basis (Gillfillan, 2018). That is, in some areas, Casual employees are confined to such casual elements although they are trained and exposed to works with other employment nature other than casual.

More and above, casual workers are not committed to payment of the government taxes emanating from their employment, little or tempted commitment to job due to precarious or unstable employments they are engaged in (The Daily Monitor, 2014). They enjoy no trade union services such as collective bargaining and other protection services making the employer to undertake all processes to hire and fire unilaterally while reserving rights to treat casual employees as he wishes.

5. Legal issues and challenges met by Casual Workers in Tanzania

Employment rights in Tanzania, is both inherent and constitutional (Shivji, 2004). The constitution provides for under articles 22 and 23 Rights to work under equal terms, proportionate remuneration with work and in accordance with the measure and qualification of an employee according to Shivji (2004). Along with that, Article 20 of the Constitution establishes freedom of association.

Equally, Section 9 of the ELRA³⁰ provides for employees' rights and freedom of association, however, this law refer to employees whereas a casual worker is not an employee under the law hence not entitled to employees' rights, established under the employment laws and constitution. Therefore, a reflection is that section 9 of the ELRA is contrary to Article 20 while Section 15 (7) of ELRA contradicting article 23 of the Constitution³¹ when it comes to casual employment. From the nature of these instruments, Casual workers' rights and interests such as freedom of association and enjoyment of collective representation and agreement, employment contracts, particulars of work, and so on are not enforceable under the law. The area of engagement and entitlements rises much doubts as to whether all workers are employees and the vice versa, and this probability has never been accorded right answer in the light of Millulu (2013) and casual employees have been the victim to the problem. This situation has as well produced the problem to access justice in courts/tribunals since their right are not enshrined under the laws while a number of employees lacking contracts hence contradictory bases of complaints.

Employment complains need to base on employment contracts and the law. Contracts of employment are of their own style and have never been simple to form under the ELRA. It is here from the journey to demand enforcement of employment rights may base. These rights are enforceable in labour institutions only. According to the decision of the High Court of Tanzania in *Cable Television Network Ltd v Athumani Kuwinda and 3 others*³² read together with Section 86 of ELRA the complaint is first to be mediated in the CMA whereas the referrer is obliged to prove the jurisdiction of the forum when so needed.³³ Since the dispute must be employment based, a casual worker must prove that he is maintainable under the forum, which is difficult to complainants due to law ignorance.

While some casual workers seek for redress in ordinary courts whereby they stumble by finding that the action is labour based hence want of jurisdiction, others go nowhere and some seek for public and political leaders' intervention. As said before, Casual workers enjoy no trade union rights even where employment continuity has been common in some areas, working and getting paid weekly and sometimes monthly in other places. Rights such as secured under social security arrangements and agency shopping when they may need workers union services as unionas non - members is not applicable. Agency shop agreement by paying such prescribe fees so as to ensure fair representation in the ambit of rule 58³⁴ could have been an alternative to those in need of collective services yet stands impossible as they are not recognised as employees.

Non - recognition of casual employees and inconsistency of the employment laws with the Constitution provisions on the employment rights related matters and maintaining gaps making the cadre run short of protection of its rights is also a noted challenge making the Labour Laws provisions discriminatory and precarious. The use of employment presumption tests approach in determining employment relationship by the casual workers (for this case) whose dispute is based on employment relationship, may not be favorable to them when demanding for their recognition and protection against their employers for equitable redress. It is because some matters do not qualify for test. For example, an application of the 'Control test' is a lesson learnt in the case of *Cassidy v Ministry of Health*³⁵ in which the court found *inter alia* that the owner of the ship may employ the master under a clear contract of service and yet the owner has no power to tell him how to navigate his ship. Such challenges may lead courts to establish endless positions and hence develop more confusion.

Employees' poor knowledge on the employment laws, infliction of fear to employees, perspective litigation technicalities when they opt to seek for redress before the temple of justice have remained a notable shortcomings. This challenge has made workers opt for losing their rights while others loitering out to seek for administrative justice.

³² High Court of Tanzania ,Labour Division Dar Es Salaam-Labour Revision number 94 of 2009

³³ Ibid rule 15 GN number 64 of 2007

³⁴ Employment and Labour Relations (Code of Good Practice)

Rules, GN No. 14 of 2007

³⁵[1951]2 KB 343

³⁰ Ibid

³¹ Ibid

For ensuring protection, employees who are among expectation of the society and keeping contractual promises and protective rules must be prioritized (Davies and Freedland, 1983). It is useful to encourage and apply the necessity for mutual obligations between employers and casual employees. So as to establish a binding legal obligation to enable an employer continue to afford laborers' future employments, the guidelines which must not be in the control of the employer but legislation need be established.

6. Casual Employee Protection in Uganda

The Employment Act of Uganda³⁶ provides for who is a casual employee. The Employment Regulations³⁷ made under the Employment act provides for under regulation 39³⁸ that casual employees may be employed for a maximum of four months. This is if he is not engaged so continuously otherwise he shall cease to be a casual employee and all rights and benefits enjoyed by other employees shall apply to him. This is different from the piecework employee who according to the provision to regulation 40³⁹ he may be engaged for a maximum period of three months unless he is engaged on contract. The Human Rights Activists in Uganda observes that casual employees are more or less other employees in terms of their security and other rights only that their sufferings is their ignorance of human rights with which employers take advantage of. Therefore, according to these activists, the security as rising and stated in the contracts and other entitlements covered by Section 25 and 59 of the ELRA which both raise the basis of employment rights, must be casual employees entitlements without fear.

According to Industrial National Coordinating Council of Uganda, Casual works arrangements are designed and have the effect of depriving workers of the protection due to them via employment relationship (The Daily Monitor, 2014). It is featured with *inter alia* low pay, short contracts, temporary work or labour broking among others (The Daily Monitor, 2014). The workers under this type of employment enjoy no working conditions, which are regulated and recorded in accordance with the law. The most affected areas of employment are factories and industries. It is further stated that most of the casual employees are not secured with retirement or termination funds socially secured (The Daily Monitor, 2014). Apart from the above precarious employment, the government still raises voice to employers to issue with Casual employee's contracts their terms of engagement to stop abusing their rights according to the Monitor of Uganda (2018 - 2021). The minister in charge of Gender and Labour in Uganda in response to the National Organisation of Trade Union alert revealed this over the presence of many employers denying workers their benefits (The Monitor, 2018 - 2021). This employment typology is usually denied of employment written particular and contracts contrary to the employment laws of Uganda (UG - HRC, 2017). As per these findings, casual employment in Uganda appears to have remained in papers and

impracticable due to different reasons according to the New Vision reporter (2018).

7. Casual Employee Protection in Kenya

The general law of contract and principles of common law govern employment engagements in Kenya (Mywage, 2018). This situation therefore reflects employment as individual relationship between parties basing on their needs (Mywage, 2018). Casual employee is one of the experienced employment typology in Kenya others being contract for an unspecified period of time, Contract for specified period of time and piecework employment (MyWage, 2018). A casual employee is paid at the end of the day and his relationship with his employer lasts for 24 hours only.

A casual worker being a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty - four hours at a time,⁴⁰ should not be confused and used interchangeably with a piece of work employee. The Court of Appeal of Kenya in the case of *Krystalline Salt Ltd v Kwekwe Mwakele And 67 Others*⁴¹ re confirms the difference and alerts on not confusing it with the piece of work more especially when contract such group of people, reinforcing their emoluments under Section 18 and when the issues of notice and termination rise under Section 35 of the same law however both the casual and piece worker may become contract worker by default. Example, a piece worker once works for three consecutive months he automatically become a contract employee and enjoys all rights tenable under the contract hither (Tubey, 2015).

On the other hand, according to section 37 (1) (a) and (b)⁴² where a casual employee works for a period or a number of continuous working days in the aggregate to equivalent of not less than one month or performs work which is not expected to be reasonably completed in a number of days amounting in the aggregate to the equivalent of three months or more he shifts to term contract in the forma case or contract of service in the latter case. A Casual employee is also secured on conversion circumstances.⁴³ For example, entitlements such as notice of termination length 28 days as per the requirements of Section 35 (1) (c)⁴⁴ is mandatory at this juncture.

Generally, it pleases a number of Employment stakeholders in Kenya to the extent that labour laws have covered the casual workers for their protection with a reservation observation that, existence of law is one thing and its implementation is another. To both Uganda and Kenya, generally Casual employee's protection initiatives are notable.

A Reflection of three Jurisdictions in nutshell

⁴⁰Section 2 of Chapter 226 of 2007 Revised Edition 2012.

⁴¹[2017]e KLR Civil Appeal number 79 of 2015; Court of Appeal of Kenya.

⁴²Op cit Employment Act of Kenya

⁴³Op cit Employment Act of Kenya, Section 37

⁴⁴Ibid

³⁶ Op cit

³⁷ 2011

³⁸ Ibid

³⁹ Ibid

Casual employees are unavoidable in Tanzania like in other jurisdictions. Due to the employment's nature, employers enjoy. There is a need to shift them from habitual precarious life and environments by policy and law modification that will establish clearly legal parameters of their conduct and protection and friendly ways under which they can enforce their rights and other safety. Casual workers need not to be precluded from necessary entitlements as enjoyed by employees. The elements of working style by some casual workers in the meaning and intent of employment laws on the grounds of the duration of employment; and casual relationship existing or deem to exist between them and their employers, qualify to subject them to labour laws protection. Some other casual workers work for so long but under casual employees umbrella so long as they are employed according to Apple and O'Higgins (1971).

It is crucial to define and clearly establish implications for casual employments and apply them whenever needs come as this essential need was reached in an Australian case of *Telum Civil (QLD) Pty v CFMEU*.⁴⁵ This saves as to establish and stabilise their rights and keep away from unwarranted confusions. Forums also need to handle the matters before them *ex abundantia cautela* and where necessary, whenever the dispute is casual in nature, forums be empowered to determine rights at equity.

In some other jurisdictions, casual employees' complaints are also the employment complaints and mostly found bearing casual employment labels but statutorily recognised. This may be learnt in the Australian court decision in the case of *Williams v Mc Mahon Mining Services Pty LTD*.⁴⁶ In this case, the court among other things, found that William was not a casual employee despite his contract of employment stating that he was hence entitled to all employment rights during termination.

As the same position could have probably been so in Tanzanian, the case management could have proved difficulties, as there could be the need to first test employment relationship between the referrer and the respondent, under Section 61 of the LIA while the referrer obliged to prove the CMA's jurisdiction. This situation could determine the result handsome results. Casual workers are employees though different from ordinary employees. Labour laws have established labour disputes resolution framework. It is not clear as to whether or not these laws have ousted inherent powers of the High court.⁴⁷ It is because laws consider a casual employee as not being an employee. Inherent powers of the High Court are limited to procedures when the written law establish jurisdiction of the forum. The position was so established in the appeal case of *Tanzania - China Friendship TextileCo. LTD v Our Lady of the Usambara Sisters*.⁴⁸ Following this position of the law, it is the right time government policy and laws to reveal as to where the casual workers may demand their rights without any doubts whereas the same could have been possible under the basis on inherent powers of the High

court of Tanzania hence enhancement of enforcement of the Casual Employees rights enforcement.

8. Conclusion

In conclusion, this paper underscores the need for legislative reforms to protect the rights of casual workers in Tanzania. It highlights the gaps in the current legal framework and advocates for specific changes to ensure fair treatment and access to justice for casual workers, aligning with international labour standards.

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