CASUALIZATION OF EMPLOYMENT IN NIGERIA: AN ANALYSIS

By

Dr Chinda Richard Gershon*
Dr Akah Chidi John**
Ogbonda, Victor Chiguyaru***

Abstract
The casualization of labour in Nigeria has become widespread with employers in both public and private sectors increasingly relying on casual workers to cut cost on the basis of the privailing economic challenges. This practice has led to conflicts between workers, labour unions, and employers. Employers view casualization as flexible and cost-effective, while labour unions argue it infringes on workers' rights to unionize and engage in collective bargaining. Casual workers face significant disadvantages compared to permanent employees, including lack of benefits, statutory protection, and lower pay. They are often deprived of compensation for injuries, union memberships, collective bargaining rights, and social security benefits. This paper analysed the rise of casualization in Nigeria, its legal framework and its adequacy. It identified massive unemployment and globalization as key factors driving casualization. It highlighted the precarious nature of casual work, which leads to instability, lack of essential benefits, and vulnerability to exploitation. The paper submitted that the absence of enforceable labour laws for casual employment in Nigeria exacerbates these issues, contributing to poverty and socioeconomic inequality. It recommended inter alia that Nigeria's labour laws, particularly the Labour Act 2004, be amended to align with international standards and adequately regulate casualization in line with the lessons from other jurisdictions like the USA, China and Ghana.

Keywords: *Casualization, Employment, Nigeria Labour Rights.*

Introduction

Casualisation of employment in Nigeria has become a pervasive issue, affecting both job seekers and existing workers.[1] Despite its prevalence, there has been a failure to adequately address the problem. Employers often offer positions that should be permanent as temporary roles, paying meagre salaries and wages without providing statutory benefits. As a result, casual workers are left vulnerable, lacking viable options and legal protections. This practice denies workers their rights and perpetuates a form of involuntary servitude. The ever-declining global economy, combined with high rates of unemployment and underemployment, contributes to the increasing adoption of casualization. While some argue that it maximizes profit for business owners, it ultimately limits employees' legal rights and benefits. Therefore,

---

* Dip Law, LLB, BL, LLM, PhD. Lecturer 1, Commercial and Industrial law Department, Faculty of law, Rivers State University.richard.chinda@ust.edu.ng
** BSC (Ed);MSC,LLB,BL,LLM,PhD johnchidiakah@gmail.com
***LLB (Hons) (Central University, Ghana); BL (Kano) LLM in view (Rivers State University, Port Harcourt)
[1] Fapohunda, Tinuke. M. 'Employment Casualization and Degradation of Work in Nigeria' (2012) (3) (9) *International Journal of Business and Social* Science 258.

the central problem lies in the prevalence of casualization, its impact on workers' rights, and the need for legal reforms to address this dignified form of labour slavery in Nigeria.

Nature of Casualisation of Employment

In the past, casual employment was mainly for unskilled workers.[7] Currently, however, the business model in many industries is such that casual workers are an integral part of a permanent workforce and not just a complement to a permanent workforce in peak business periods. Both skilled and unskilled workers are engaged as casual workers in place of permanent workers. Houeland on the other hand, conceptualized a casual employee as one who is paid lower salaries, given lesser benefits, lacks job security, and is faced with stiff challenges of basic labour rights.[8] The ILO's position is that Casual Employment covers work that falls outside the scope of a standard employment relationship, which itself is understood as being work that is full-time, indefinite employment in a subordinate employment relationship. It includes the following forms of employment arrangement: temporary employment, temporary agency work and other contractual arrangements involving multiple.

The Concept of Employment and Identification of An Employee in Nigeria

The Concept of Employment is central to labour law which is primarily regulated by the Labour Act[1]. Nevertheless, the statute has not completely eradicated issues regarding the status or identification of an employee in other to fully place such employee under the protection of the Labour Act. And with the rise of casualization of employment in Nigeria there is a need to be able to identify who an employee is under the law. In this regard, different tests have been created by the courts to aid the identification of an employee. This sector provides a cursory view on the various tests.

a. The Control Test

This test was formulated by Bramwell L.J[2] in *Yewens v Noakes*[3] where his lordship identified a servant as a person subject to the command of his master as to the manner in which he shall do his work. One can argue that the usual view under this test is that the sole determinant of whether a contact of service exists between 'A' and 'B' was the extent or degree of control which 'B' was entitled to exercise over 'A', in the latter's performance of his contractual obligations.

Thus in *Collins v Herts County Council*[4], Hilbery J said:

> The distinction between a contract for services and a contract of service can be summarized in this way; in the one case, the master can order or require

[7] G. G. Otuturu, 'Casualization of Labour: Implications of the Triangular Employment Relationship in Nigeria' (2021) 12 (2) *Beijing Law Review,* 677-690.
[8] C. Houeland, 'Casualization and Conflict in the Niger Delta: Nigerian Oil Workers' Unions between Companies and Communities' (2015) (224) *Reveue Tiers Monde*, Less Chantiers, 25-46.
[1] Labour Act 2004.
[2] I.N.E. Worugji, *Modern Labour Law in Nigeria* (Malthouse Press Limited 2021) 16.
[3] [1880] 6 QBD 530.
[4] [1947] KB 598, 615.

> what is to be done, while in the other case he cannot only order or require what is to be done but how it shall be done. In other words, a person is an independent contractor if the employer can only tell him what he wants him to do but not how he should do it. On the other hand, a person is an employee if the employer tells him not only what he should do but how he should do it.

Thus, the contract of service or the test of control, had four indices, namely:

(a) The employer's power of selection of his employees
(b) The payment of wages or other remuneration
(c) The employer's right to control the method of doing the work, and
(d) The employer's right of suspension and dismissal.

However, it has been often said that control can no longer be the decisive factor in determining whether a person is an employee because it is not clear beyond question, especially, when dealing with a professional or a person with some particular skill and experience, for example, lawyers, doctors, engineers and so on. Nevertheless, Rideout and Dyson[5] opined that it remains the most single factor in determining whether or not a particular worker is an employee.

b. The Integration or Organization Test

If control is not a decisive test, what other considerations are relevant? This question was answered in 1952, Denning LJ (as he then was) propounded what became known as the 'Organization' or 'integration' test in the case of *Stevenson, Jordan & Harrison Ltd v Macdonald & Evans*[6]. He said:

> It is often easy to recognize a contract of service when you see it, but difficult to say wherein the distinction lies. A ship master, a chauffeur and a reporter on the staff of a newspaper are all employed under a contract for services. One feature which seems to run through the instances is that, under a contract of service, a man is employed as part of a business, and his work is done as an integral part of the business; whereas under a contract for services, his work, although done for the business, is not integrated into it but only assessory to it.

The integration test has been found to be of assistance in overcoming some of the difficulties posed by the control test in the area of greater specialization of labour. However, its usefulness is that a person is most likely to be held to be an employee if he is on the staff of an employer. This was the position of Denning LJ and other Lord Justices in *Cassidy v Minister of Health*[7]. In that case, the authorities of a hospital were held vicariously liable for the post-operative negligence of their doctors, even though they could not

[5] R. W. Rideout and J. Dyson, *Principles of Labour Law* (4th edn, Sweet & Maxwell 1983) 5.
[6] [1952] 1 TLR, 101.
[7] [1951] 2 KB 343

exercise any real control over how the doctors did their work. However, as Khan Freund[8] has observed, the concept of organization entails the right of the employer to make rules governing the running of his enterprises. Thus, even though an employer may not regulate the manner of doing the work, a person may be an employee if he is subject to the rules governing the 'where' and 'when' of doing the work.

Nevertheless, this researcher agrees with Okene[9] who opined that the organization or integration test is not free from criticism. Okene raised an important question when he asked what happens where there is no organization and no control. As he considered a business organization to be entirely an administrative machinery. Still on this trail of thought, Tonwe[10] shares similar view with Okene that a single person cannot constitute an organization. Thus where a person is working for another alone, will that single person constitute and organization? This question was encouraged to be answered in the negative, by the author.

c. The Mutuality of Obligation Test

By the mutuality of obligation test, where there is an obligation to provide work in the case of an employer and that of an employee to accept the work provided; an obligation of the employee to perform his duties and an obligation on the part of the employer to pay the agreed wages or salary and secure the job of the employee, a contract of employment is said to exist.[11]

d. The Multiple Test

From the forgoing it can be argued that no single test, control or integration, will suffice in all circumstances to determine who an employee is, and thus, distinguish him from an independent contractor. A movement towards what is called the 'multiple' test is traceable to a passage in the judgment of *Lord Wright* in *Montreal v Montreal Locomotive Works Ltd*[12] where he said:

> It has been suggested that a fourfold test would in some cases be more appropriate, a complex involving control, ownership of tools, chance of profit, and risk of loss. In many cases the question can only be settled by examining the whole elements which constitute the relationship between the parties. In this way it is in some cases possible to decide the issue by raising as the crucial question whose business is it, or, in other words, by asking whether the party is carrying on the business in the sense of carrying it on for himself or on his own behalf and not merely for a superior.

The fundamental question which the multiple tests seek to answer is the person who has been engaged to perform those services performing them as a person in business on his own account? If the answer to that question is yes then the contract is for services. Otherwise, the contract is contract of service. In *Ifeta v Shell*[13]other factors which the courts have considered as having some bearing on the nature of the

---

[8] O. Kahn-Freund, *Labour and the Law* (London: Stevens and Sons 1972) 1, 8.
[9] OVC Okene, *Labour Law and Industrial Relations in Nigeria* (Nigeria: Zubic Infinity Concept 2019) 47.
[10] S. O. Tonwe, *Labour Law in Nigeria: Cases and Materials* (Amfitop Books 1998) 8.
[11] Freeland Mark, *The Contract of Employment* (Clarendon Press 1976) 21-22; Freeland Mark, *The Personal Employment Contract* (Oxford University Press 2003) 91-92.
[12] [1947] IDL R161.
[13] [2006] 4 SC (Pt 1), 136.

relationship are, payment of wages and salaries, ownership of the equipment personal obligation to work, hours of work, place of work exclusive service.

Nevertheless, these tests discussed cannot satisfactorily prove the existence of a contract of employment. Thus, the Nigerian Supreme Court in the case of *Shena Security Co. Ltd v Afropak (Nig) Ltd & 2 Ors*[14], gave the current position on how to ascertain the requisite legal status of an employee against an independent contractor. The Supreme Court held that, where there is a dispute as to what kind of contract of employment parties entered into, there are factors which will usually guide a court of law to arrive at a right conclusion. For instance, if payments are made by way of wage or salary this is indicative that the contract is one of service. If it is a contract for service, the independent contractor gets his payment by way of fees. In a like manner, where payment is by way of commission only or on the completion of the job that indicates that the contract is one for service. Where the employer supplies the tools and other capital equipment, there is a strong likelihood that the contract is that of service. But, where the person engaged had to invest and provide capital for the work to progress that indicates that it is a contract for service.[15]

Furthermore, in a contract of service/employment, it is inconsistent for an employee to delegate his duties under the contract. Thus, where a contract allows a person to delegate his duties there under, it becomes a contract for service. Also, where the hour of work is not fixed, it is not a contract of employment/service.

In addition, it is not fatal to the existence of a contract of service/ employment that the work is not carried out in the employer's premises. However, a contract which allows the work to be carried on outside the employer's premises is more likely to be a contract for service.[16]

It is on this backdrop one can argue gave rise to the decision in *Eze v NAMA & Ors*[17] where the court held that there is no one definite test as formulated by the courts over the years that is a complete answer for determining the employment status of an employee. Hence, the courts have held that the issue is one of fact and not of law.

e. The Principle of Primacy of Facts

Moving away from the various tests, the primacy of facts is another principle which judges have applied in attempting to identify who an employee is, especially in the absence of an express rule. This was illustrated in the landmark case of *Petroleum and Natural Gas Senior Staff Association (PENGASSAN) v Mobil Producing Nigeria Unlimited.*[18] The central idea under this principle is that the determination of the existence of an employment relationship should be guided by the facts of what was actually agreed and performed by the parties; and not by the name they have given the contract. In other words, the existence

[14] [2008] 18 NWLR (Pt 118), 82.
[15] *Ibid*.
[16] *Ibid.*
[17] [2016] JELR 41329 (CA).
[18] 243-331.

of an employment relationship depends on certain objective conditions being met and not how either or both of the parties, describe the relationship.

Reasons For Casualization of Employment

There are different motivations for employing casual workers in different types of casual work, identifying these reasons help with understanding the general nature of casual employment.

1. **Capital Liberalisation**

Okafor[19] contends that incessant trade and capital liberalisation led to the growth of the informal sector, which engages workers under unfair labour practices like casual/contract employment and deplorable working conditions and environment. He further added that the inability of labour to flow or migrate to other work organisations or parts of the world for improved standards of living as part of globalization, worsened the labour situation.

On the issue of trade liberalisation, Fapohunda[20] equally stated that trade liberalization made way for competing imports into the economy; the consequence of this being lots of instability in the product market. In response to this challenge, he argues that employers became tempted to adopt cost cutting measures, including downsizing, cutting back on employment and use of permanent employees. This dissertation agrees that the offshoot of trade and capital liberalisation gives rise to the current predominance of casual workers in Nigeria.

2. **Reduction of Recruitment Cost**

Allan[21] opined that one of the reasons there has been a rise of casualization of employment, is the key benefit utilizing casual employees brings. Which is the reduction of recruitment costs. He further added that decreasing employee costs within an organization is a critical aspect of strategic human resource management with regard to competitive global market. Forde[22] still on the subject of reduction of recruitment cost, shared the view that it is especially noticeable with agency workers actively recruited by employment agencies, rather than by their eventual employers. This practice has become predominate in Nigeria as employers in some sectors heavily rely on agencies during recruitment.

3. **Ease of Dismissal**

Another reason for using casual workers can be said to be the ease in which they are dismissed. Allan[23] stated that in the United States of America, some scholars suggested that due to the lack of costs associated with laying-off casual workers, it is regarded as an attractive option as this gave organizations an advantage

---

[19] E.E. Okafor, 'Globalizations, Casualization and Capitalist Business Ethics: A Critical Overview of Situation in the Oil and Gas Sector in Nigeria' [2007] (15) *Journal of Social Science*, 169-179.

[20] Fapohunda, Tinuke. M. 'Employment Casualization and Degradation of Work in Nigeria' (2012) (3) (9) *International Journal of Business and Social* Science, 260.

[21] P. Allan, 'The Short Time Workforce: Challenges and New Directions' [2002] *American Business Review No. June*, 103-10.

[22] C. Forde, 'Short Term Arrangements: The Activities of Employment Agencies in the UK' (2001) (15) (3) Work, Employment and Society, 631-44.

[23] Allan (n 21).

in terms of numerical flexibility employing 'just in time' workers to cope with increased or decreased demand without resorting to making permanent employees redundant.

4. Unemployment

The Nigerian economy perpetuates a high level of unemployment. And this unchecked high level of unemployment existing in the society gives rise to, and makes it difficult to control casualization. This view is equally shared by Basso[24] who observes that casual work may be linked to underemployment. At all times, the unavailability of decent jobs for teeming school leavers gives them no choice but to accept these dehumanizing job offers just to make ends meet.[25]

Effects of Casualization of Employment

Most scholars and commentators agree that casual work and its spread are bad for the workforce. It is accepted that workers involved in casual jobs suffer a substantial deficit in their rights and benefits, compared with employees in standard 'permanent' jobs.[26]

Eyongndi[27] asserts that the problems of casualization can be viewed from a tripartite perspective namely, effects on the employee, on the employer and on the economy in general. In the case of the employee, casual work has become a term used in Nigeria to describe work arrangements that are characterized by bad work conditions like job insecurity, low wages, and lack of employment benefits that accrue to regular employees as well as the right to organize and collectively bargain. Furthermore, workers in this type of work arrangement can be dismissed at any time without notice and are not entitled to redundancy pay. That is to say, the employees are direct victims as it minimizes or cheapens workers' quality of working lives.

Workers in casual employment are not usually permitted to unionize. Therefore, all the advantages that accrue to unionized workers, such as the right to collectively bargain, are not available to them as employers are opposed to such rights.[28] This goes contrary to the provisions of the Constitution of Nigeria[29], as well as labour law which avails casual workers the right to freedom of association through the formation of trade unions.[30]

Going further, the employers treat most workers in casual employment especially those in unskilled or non-specialized labour like disposable wastes. Casual workers suffer the most when an employer downsizes his work force as their employment is tactically not regulated by any protective legislation. Employers dispose

[24] P. Basso, *Modern Times, Ancient Hours: Working lives in the Twenty-First Century* (London: Verso 2003), 1-64.
[25] Abdulkadir Zakari, 'Assessment of the Nature of Labour Casualization in Nigeria' [2023] (9) (1) *African Journal of Humanities & Contemporary Education Research*, 127, 128.
[26] P.O. Kalejaiye, 'The Rise of Casual Workers in Nigeria: Who Loses, Who Benefit?' [2014] (8) (32) *African Research Review,* 168.
[27] D. Eyongndi, 'An Analysis of Casualization of Labour under Nigerian Law' [2016] (7) (4) *The Gravitas Review of Business & Property Law,* 111.
[28] C.B. Okoro, *Law of Employment in Nigeria* (Lagos: Concept Publications 2013) 103.
[29] Constitution of Nigeria 1999, s40.
[30] Trade Unions Act 2004, s1(1); Labour Act 2004, s9(6)(a)(b); African Charter on Human and Peoples Rights (Ratification and Enforcement) Act 1988, CAP A10, LFN 2004, art10.

this category of workers without prior notice and benefits. They work at the pleasure of the employer as there is usually no fixed tenure of employment. It is this conundrum that enables some employers to go round the law according to Denesi[31], and were regularly in the habit of laying off their employees every three months and asking them to re-apply for re-engagement. It can also be argued that where workers are not given job security, reasonable remuneration, redundancy benefits, and satisfaction gained from such benefits like sick leave, holiday leave, pension, gratuity, etc. which are usually enjoyed by permanent or standard workers, by their employers, it is easy for them to resort to unscrupulous practices to secure their future.

To the economy of the Country, the issue of unequal remuneration by employer with regards to casual and permanent workers who do the same work has far reaching consequences. One of such negative consequence is the lack of motivation and feeling of not being needed which has the potential of affecting creativity and productivity and this in turn negatively affects the economy in the long run. The Constitution[32] provides that "the State shall direct its policy towards ensuring that there is equal pay for equal work without discrimination on account of sex, or on any ground whatsoever". Therefore, where the workers are treated as non-partners in progress of the undertaking where they are working, there is no self-motivation to contribute reasonably to the growth of such an undertaking which will lead to underutilization of human resources.

Furthermore, Kalejaiye[33] asserts that, most scholars and commentators agree that casual work and its spread are bad for the workforce. It is accepted that workers involved in casual jobs suffer a substantial deficit in their rights and benefits, compared with employees in standard 'permanent' jobs. This is why most young and gifted Nigerians, who could have contributed to the development of the nation are constrained to seek for greener pastures in countries with better labour practices where they can earn better wages with secure tenure of employment. Casualization which has become synonymous with modern slavery can destroy the economy gradually. Its long and predominant usage produces individuals who have over-worked themselves with little earnings and consequently little or no savings for retirement, resulting in the emergence of an over-worked population who still depend on the government for survival, thus, overbearing the government welfare strength and living at the mercy of the society.[34]

Although many scholars and commentators agree that casual work and its spread are ruthless for the workforce as workers involved in casual jobs suffer a substantial deficit in their rights and benefits, when compared to employees in standard permanent' jobs; a critical analysis of the issue highlights some benefits casual employment can generate which most authors have not addressed.

---

[31] A. R. Danesi, 'Labour Standards and the Flexible Workforce: Casualization of Labour under the Nigerian Labour Laws' <http://www.ilera-directory.org/15thworldcongress/files/papers/Track_4/Poster/CS1W_32_ DANESI.pdf> 8 accessed 27 June 2024.
[32] CFRN 1999 (as amended), s17(3)(e).
[33] R A Danesi, 'Non-Standard Work Arrangements and the Right to Freedom of Association in Nigeria' [2010] 4(4) *Labour Law Review*, 34-36.
[34] Danesi (n 33) 102.

It can be argued that casual work would not necessarily have bad effects on workers if it were a short-term bridge into better work. Certainly, in some cases, casual workers do go on to better-paid and more secure jobs. This position is shared with Chalmers and Kalb.[35] They assert that this is often the case for many tertiary students who after a period of casual work while they are studying, will eventually start careers in the profession in which they have been educated. It is also likely in some other cases, as part of the normal process of looking around and seeking better work. Some evidence suggests that it is easier to transition from casual job and then into a permanent job than unemployment into permanent employment. What may be the primary motivation of non-standard employment is sometimes the opportunity for these workers to acquire skills and experience.[36]

More so, flexibility of employment life can be said to be another effect of casualization. Just as the employer can dispense with an employee at will, it should equally be noted that an employee is also at liberty to dispense with an employer once the employment relationship is unpalatable, and all the legal constraints such as statutory or reasonable notice is inapplicable.

Okafor and Rasak[37] opine that it is sometimes suggested that casual jobs do not have bad effects on workers because most of the workers in question are full-time or part-time students and married-special kinds of worker who are seen just as 'secondary earners'. This category of workers do not have the full capacity or privilege to work as permanent staff due to their dual role for work, schooling and taking care of the family respectively. In this instance casual employment can be argued to be highly beneficial to the employees.

The Rise of Casualization of Employment In Nigeria

In Nigeria, casualization of employment keeps gaining grounds in large proportion. The increase in the spread and gradual acceptance of this labour practice in the Nigerian labour market has posed issues of great concern to stakeholders especially as it is not adequately regulated. Employers of labour are increasingly filling positions in their organizations that are supposed to be permanent with casual employees.[38]

The exact origin of casualization of employment in Nigeria has been adjudged not to be clear-cut. Nevertheless, Danesi[39] traced the origin to the introduction of the Structural Adjustment Programme (SAP) sometime in 1986, as well as the activities of the International Monetary Fund (IMF), the World Bank loans and their conditions. The Structural Adjustment Programme (SAP) was geared toward less government involvement in the economy and more private sector participation. The revitalization of the private sector was aimed at attracting the much needed Foreign Direct Investment (FDI) into the country. While it

[35] J. Chalmers and G. Kalb, 'Moving from Unemployment to Permanent Employment: Could a Casual Job Accelerate the Transition' [2001] (34) *Australian Economic Review*, 415-436.
[36] M. L. Carey, and K. L. Hazelbaker,. 'Employment Growth in the Temporary Help Industry' [1986] (109) (4) *Mon. Lab. Rev*., 37-44.
[37] (169.
[38] Chalmers (n 35).
[39] *Ibid.*

attracted some FDI especially in the oil and gas industry it has led to the lowering of labour standards at the same time.[40]

Aladekomo[41] on the subject, asserts that casualization as a form of predominant employment practice in Nigeria was occasioned by the collapse of the oil-boom and the introduction of the structural adjustment programme, a development which eventually led to the downsizing and mass retrenchment of skilled people particularly in the urban centres and resulted in numerous cases of unemployment. That is to say, the combination of these factors led to a slump in the economy. The wind of globalisation and trade liberalism which has ushered in stiff competition between locally produced goods and imported goods which seems to enjoy local preference and patronage thereby affecting the turnover of local enterprises, have forced these local enterprises to reduce their staff strength through casualization as a cost cutting measure to be able to cope with the harsh economic weather and remain in business.[42]

Therefore, in search of a means of survival, many of these retrenched workers whose status cuts across graduates and non-graduates engaged themselves in trivial jobs along the streets with very infinitesimal pay.[43] This practice continued and gradually started to become popular, as employers saw it as a very cheap means of getting work done. Today, this form of employment relationship has become the in-thing. The bulk of workers in the telecommunications, oil and gas sectors and other sectors of the economy are casual employees. Increasing numbers of workers have found themselves outside the standard purview of collective relations as against advanced countries where the situation has necessitated a readjustment of collective labour relations rules and practices so that the workers concerned can enjoy the fundamental collective labour relations rights of collective bargaining and union representation, as well as protection against exploitation.[44]

It is pertinent to note that, casualization is not an exclusive problem of the Nigerian labour market but a global trend adopted in even developed economies for the same reasons it has been adopted in Nigeria. However, the difference in its practice in the developed economies is that while in the developed economies, casual workers are accorded reasonable rights and privileges that accrue to permanent workers such as freedom to form and belong to labour union, pension and gratuity, accident benefits, holiday with pay, maternity leave, security of employment tenure, statutory protection; in Nigeria on the other hand, it is being used as a tool of labour exploitation and unfair labour practices.[45]

Casualization of Employment Under Nigeria Legal Framework

Before examining the casualization of labour under the Nigerian legal framework, it is apposite to discuss the legal landscape at the international level. The International Labour Organization (ILO) has established several conventions and recommendations to protect the rights of casual workers and ensure fair treatment

[40] *Ibid.*
[41] F.O. Aladekomo, 'Casual Labour in a Nigeria Urban Centre' [2004] (9) *Journal of Social Science*, 207-213.
[42] C.B. Okoro, *Law of Employment in Nigeria* (Concept Publications, Lagos 2013), 102-103.
[43] *Ibid.*
[44] *Ibid.*
[45] *Ibid.*

in non-standard employment arrangements. The ILO Private Employment Agencies Convention 1997[2] emphasizes the role of private employment agencies in a well-functioning labor market while ensuring the protection of workers. It mandates member states to take measures to ensure that workers recruited by private employment agencies are not denied the right to freedom of association and collective bargaining and that these agencies treat workers without discrimination.[3] Additionally, the convention is supplemented by the Private Employment Agencies Recommendation, 1997, which advises that workers employed by private employment agencies should have written contracts specifying their terms and conditions of employment and that these agencies should not make workers available to replace those on strike.[4]

Other significant ILO conventions include the Equal Remuneration Convention 1951,[5] which aims to eliminate gender-based wage discrimination by ensuring equal remuneration for men and women for work of equal value. The Discrimination (Employment and Occupation) Convention, 1958,[6] requires member states to promote equality of opportunity and treatment in employment and occupation, eliminating discrimination on various grounds, including race, colour, sex, religion and political opinion. The Part-Time Work Convention 1994,[7] ensures that part-time workers receive the same wages (*pro rata*), social security schemes, occupational health and safety protection, maternity protection, trade union rights, paid annual and public holidays and sick leave as full-time workers. This convention is supplemented by the Part-Time Work Recommendation, 1994, which advises employers to provide part-time workers with information on their specific conditions of employment. The Employment Relationship Recommendation 2006 further enjoins member states to formulate national policies to guarantee effective protection for workers in an employment relationship. These international legal frameworks collectively aim to provide comprehensive protection for casual workers, ensuring their rights and benefits are safeguarded in line with global labor standards.

However, several loopholes that exist in Nigeria's labour laws can be argued to give encouragement towards the unregulated practices of employment casualisation. Thereby, allowing employers to hire casual employees continuously to fill permanent positions. This section reviews Nigeria's legal framework on Casualization of employment. Many authors have questioned the status of casual workers under the Nigerian labour law. Some have posited that the legal framework does not contemplate this category of workers in Nigeria as their terms and conditions of employment are unregulated by any of the labour legislation. Agreeing with this point, Kalejaiye[46] posited that the terms and conditions of employment of this category of workers are not regulated by the Nigerian Labour Laws in the sense that their status is not defined and no provisions are made for the regulation of the terms and conditions of their employment, hence, the mass exploitation of these workers by employers. The lack of clarity in the Nigerian Labour

---

[2] Convention 181.
[3] The ILO Private Employment Agencies Convention, 1997 (Convention No. 181), arts 4 and 5.
[4] Private Employment Agencies Recommendation, 1997, arts 5 and 6.
[5] Convention No 100.
[6] Convention No 111.
[7] Convention No. 175
[46] P O Kalejaiye, 'The Rise of Casual Workers in Nigeria: Who Loses, Who Benefit?' (2014) (8) (32) African Research Review <https://doi.org/10.4314/afrrev.v8i1.12> 163 - 168.

Laws concerning legal categories of workers is the motivating factor for the adoption of casualization by employers. There is only one category of workers defined in the Labour Act and that is a 'worker'.

The Act defines a worker to mean any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written and whether it is a contract of service or a contract personally to execute any work or labour. The definition however does not recognize workers in non-standard work arrangements. According to Danesi,[47] this can be credited to the fact that the current Labour Act was enacted in 1971 when Non-Standard Work Arrangements (NSWA) was alien to Nigeria's industrial relations environment. In addition, this definition can be argued to be rather narrow in the sense that it is apparent that it is not every employee at common law that is a worker under the Act. The consequence of this however, is that the casual worker does not fall within the purview of the protection and rights available to permanent employees covered by the Labour Act. This form of work arrangement is therefore characterized by instability, lack of benefits and lack of right to organize and collective bargaining.[49]

Going further, section 7(1) of the Labour Act provides that a worker should not be employed for more than three months without the formal recognition of such employment. After three months every worker, must be given a written statement stating the terms and conditions of employment by the employer. This obligation to provide a worker with written conditions of employment within three months of being employed was upheld by the National Arbitration Court in the case of *Management of Harmony House Furniture Company Ltd. v National Union of Furniture*, *Fixtures and Wood Workers.*[50] Some companies have devised sharp means to undermine this provision by employing casual workers for three months or less, dismissing them, requesting for new applications and re-employing them again. They repeat this process for years and may continue ad infinitum.[51]

On the other hand the Employees Compensation Act (ECA)[52] gives workers in casual employment a glimpse of hope as it includes a casual worker in its definition of employee. This can be seen under section 73 the ECA which defines an employee as a person employed by an employer under an oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State, and Local Governments, and any of the government agencies and in the formal and informal sectors of the economy.

The implication of this can be said to be that even though there is no statutory protection for casual workers under the Nigerian Labour Act, the Employees Compensation Act could be relied upon to furnish a more encompassing definition of 'employee' so as to protect them. To illustrate this possibility, the National

[47] Danesi (n 33).
[49] *Ibid.*
[50] (1978-2006) DJNIC, 187.
[51] C. S. Obi-Okoye Ibekwe, 'The Legal Framework for Workplace Discrimination in Nigeria', (2014) 1(1) *Juris Insight*, 79-89
[52] Cap W6 LFN, 2004.

Industrial Court of Nigeria (NIC) in the case of *Abel v. Trevi Foundation Nigeria Limited*[54] relied on the definition of an employee under section 73 of the ECA to hold that the claimant who was employed by the defendant as a 'contract staff' is an employee of the defendant and therefore entitled to compensation for injuries sustained in the course of his employment with the defendant. The NIC held that the definition of who an employee is has been extended widely by the Act to include persons engaged temporarily or casual daily workers

Going further, in *Patovilki Industrial Planners Limited v National Union of Hotels and Personal Services Workers*[55], the National Industrial Court (NIC) upheld that both permanent and casual workers have the right to form a trade union. In this case, the Appellant Company was into the business of industrial cleaning while the Respondent was a registered trade union. The union sought permission to unionize the Appellant's workers, but the company refused on the basis that they were casual workers. The Respondent therefore declared a trade dispute. The Industrial Arbitration Panel (IAP) heard the dispute and gave an award in favour of the Respondent union. The Appellant being dissatisfied appealed to the NIC, which consequently upheld the ruling of the IAP in July 1990. The National Industrial Court (NIC) upheld that both permanent and casual workers have the right to form a trade union. The court concluded by saying that section 1 (1) of the Trade Unions Act, allows workers, whether permanent or temporary, to form a trade union. This decision created a precedent that casual employees have the right to unionize not only as a constitutional right[56] but by virtue of section 1 (1) of the Trade Union Act.

Lessons from other Jurisdictions

This section highlights the legal position in the United States, China and Ghana and draws lessons which Nigeria may adopt from the foreign jurisdictions.

a. Lessons from the United States of America

In the United States, labour laws were based on the traditional industrial relations notion that most workers have regular full-time employment with a single employer. However, in the present economy, Horowitz[57] asserts that as many as 36% of Americans are said to work in nonstandard employment as temporary, part-time, contract and independent workers. Nonstandard workers were excluded from protections given to traditional workers in terms of pay, benefits, overtime premiums, unemployment and disability insurance, health insurance, pension and legal protections regarding employment discriminations because they were not considered employees under the law. In addition, they had little expectation of job security, training, upward mobility and benefits. However, court decisions have shown that the Fair Labour Standard Act (FLSA) could be applied to temporary workers. An employee according to the Act is 'any individual

[54] (2014) DJNIC, 288-289.
[55] (1978-2006) DJNIC, 288-289.
[56] CFRN 1999, s40.
[57] S. Horowitz, 'New Thinking on Worker Groups: Role in a Flexible Economy' Cited in Carre F. et al (eds), 'Nonstandard Work: The Nature and Challenges of Changing Employment Arrangements' [2000] *University of Illinois at Urbana-Champaign: Industrial Relations Research Association Series*, 393.

employed by an employer.'[58] In other words the onus of proof lies on the temporary worker to show that he or she is an employee and not an independent contractor. In *Rutherford Food Cop. v McComb*[59] the Supreme Court has held that the definition of an employee in the Act should be construed broadly and the status of an employee should be determined by an 'economic reality test' rather than the narrower common law master-servant test.

Concerning freedom of association, the US National Labour Relations Act (NLRA) provides that employees have the right to form or join unions of their own choice and bargain collectively with their employers.[60] Nigeria can therefore learn from this broader approach in defining who an employee is in other to cover and protect casual workers in non-standard work Arrangements.

b. Lessons from China

China's labour system supports casualization of employment. However, it has also taken some drastic measures to regulate casual or contract employment in line with international labour standards. Under the Labour Contract Law 2008 which was amended in 2012 and came into force in 2013[61], casual or dispatched workers, as they are referred to in China, are recruited by labour dispatch firms and hired to user firms under fixed term contracts of not less than two years[62]. The labour dispatch firm remains the employer of the dispatched worker and pays the worker the remuneration due to him or her. Nevertheless, these dispatched worker is entitled to be paid overtime, performance bonuses and benefits relevant to the post irrespective of employment status and is entitled to earn the same pay as that received by the regular workers of the user firm. The dispatched workers also have the right to form or join a labour union while in employment to safeguard their lawful rights and interests.[63]

China's law also set out to limit the overuse of agency work. It emphasized that the primary form of employment is engagement of staff through employment contracts with the ultimate employer rather than through labour dispatch arrangements. It also provide that the number of workers who are engaged through labour dispatch company cannot exceed a certain percentage of the total workforce, details of which are to be provided by the Ministry of Human Resources and Social Security in a separate regulation[64].

China's regulations require that dispatched workers shall not exceed 10 percent of the total number of employees at a given company. In addition, employers are not allowed to engage workers in core business positions without the benefit of a long-term employment. The regulations require employers to engage

[58] *Ibid*, 394.
[59] (1947) 331 U.S. 722, 728-29.
[60] K.V.W Stone, 'Legal Protections for Workers in Atypical Employment Relationships in the United States' [2006] (06)-(12) *UCLA School of Law: Law & Economics Research Paper Series, Research Paper*, 15.
[61] G. G. Otuturu, 'Casualization of Labour: Implications of the Triangular Employment Relationship in Nigeria' (2021) 12 (2) *Beijing Law Review,* 677-690.
[62] F Xu, 'The Emergence of Temporary Staffing Agencies in China', (2012) (30) *Comp. Labor Law & Pol'y Journal*, 440.
[63] *Ibid.*
[64] G. Liu, 'Private Employment Agencies and Labour Dispatch in China [2014] (293) *ILO Sector Working Paper, 16-19.*

workers through dispatch companies for temporary, ancillary and substitute positions only.[65] A "temporary" work position refers to a job that lasts not longer than six months. An "ancillary" position refers to a position providing supporting services to the core business positions of an enterprise, such as security and canteen services. A "substitute" position refers to a position in which the staff engaged through a labour dispatch company temporarily replaces an existing employee on study leave, maternity leave, sick leave or some other.[66]

Nigeria's labour laws do not extensively cover these aspects of casualization. Nigeria can therefore learn from this broader approach to regulate casualization of employment in the country.

c. Lessons from Ghana

Ghana's various legislations on labour law were harmonised in 2003 into one Act known as the Labour Act No. 651 of 2003. Ghana as a signatory to the ILO Convention reflected its provision in the new Act. The Act covers all employers and employees except those in sensitive positions such as the Armed Forces, Police Service, Security Intelligence Agencies and Prisons Service. Major provisions of the Act include establishment of public and private employment centres, protection of the employment relationship, general conditions of employment, employment of persons with disabilities, employment of young persons, employment of women, fair and unfair termination of employment, protection of remuneration, temporary and casual employees, unions, employers' organizations and collective agreements, strikes, establishment of a National Tripartite Committee, forced labour, occupational health and safety, labour inspection and the establishment of the National Labour Commission.[68]

Under the Labour Act 2003 a 'worker' is defined as a person employed under a contract of employment whether on a continuous, part-time, temporary or casual basis. A 'casual worker' is defined as a worker engaged on a work which is seasonal or intermittent and not for a continuous period of more than six months and whose remuneration is calculated on a daily basis[69], while a 'temporary worker' is defined as a worker who is employed for a continuous period of not less than one month and is not a permanent worker or employed for a work that is seasonal in character[70].

Although the contract of employment of casual worker need not be in writing, the Act stipulates the rights of casual worker. In particular, a casual worker is entitled to equal pay for work of equal value, have access to any medical facility made available for workers generally by the employer, be entitled to be paid for overtime work and be paid full remuneration for each day on which he attends work. Furthermore, the Act provides for a transition of a worker from temporary to permanent work. It provides that a temporary worker who is employed by the same employer for a continuous period of six months and more shall be treated as

[65] (n 59).
[66] Fair Labour Association 'Labour Dispatch Workers in China' (2016) 1-2.
[68] *Ibid*.
[69] Labour Act of Ghana 2003, s74 (1).s
[70] *Ibid*, s74 (2) (a).

a permanent worker[71]. In addition, an employer has a statutory obligation to pay each temporary or casual worker full remuneration in respect of every public holiday[72].

In addition. Part XI of Ghana's Labour Act covers freedom of association of both employers and employees and the right to form or join a union. It provides that every worker has the right to form or join a trade union of his or her choice for the promotion and protection of the worker's economic and social interests.[73] It provides further in compliance with the ILO that two or more workers employed in the same undertaking may form a trade union. This is in sharp contrast to the Nigerian Trade Unions Act which requires up to 50 workers to form a trade union.[74]

From the totality of the above, it is clear that Nigeria's approach and legal framework on casualization of employment is very different from that of Ghana. The Labour Act[77] does not adequately make provisions to cover the incidents of casualization of employment in the country. Therefore this is a very important lesson for Nigeria.

Conclusion and Recommendations

The casualization of employment in Nigeria is a complex issue with significant implications for workers, businesses and the economy. It is characterised by harsh working conditions, lack of job security, and denial of benefits typically available to permanent employees, despite casual workers often performing similar or more demanding roles. This trend is driven by economic factors such as globalization, trade and capital liberalization, and high unemployment rates, as businesses seek to cut costs and maximize profits by employing cheaper, more flexible casual workers. Casual workers in Nigeria face precarious conditions, low wages, and limited advancement opportunities, which negatively impact their performance, quality of life, and the overall development of the labor force. The primary reason for the prevalence of casualization is the inadequate regulation of this employment category by current labor laws. The Labour Act 2004 does not include casual workers in its definition of a worker, leaving them with minimal statutory protection and reliant on court interpretations and other statutes like the Employee's Compensation Act 2010 for redress. Nigeria's approach to casualisation falls short of ILO standards and practices in other jurisdictions, which have enacted laws to adequately address and regulate casual employment, leaving Nigerian casual workers at a disadvantage.

The paper therefore makes the following recommendations:

1 In order to address the key drivers that contribute to casualization of employment in the labour market, it is recommended that policies that will create more stable job opportunities be pursued. Also, there should be proper regulation of the practice, particularly in the informal

[71] Labour Act of Ghana 2003,, s75 (1).
[72] *Ibid*, s77 (1).
[73] *Ibid*, s79 (1)
[74] Trade Union Act 2005, s3 (1) (a)
[77] LA 2004.

sector, which engages workers under unfair labour practices like casual/contract employment and deplorable working conditions and environment.

2 With regards to the implications of casualization of employment in Nigeria, it is recommended that a shift in the narrative should be projected. Casualization has been generally associated with bad work conditions like job insecurity, low wages, and lack of employment benefits that accrue to regular employees as well as the right to organize and collectively bargain. All of which are not in line with the spirit of the Nigerian Constitution pertaining decent work. If properly restructured, casualization of employment can become a tool for economic building if it were a short-term bridge into better work. And where casual workers do go on to better-paid and more secure jobs like in the case for tertiary students who could after a period of casual work while they are studying, eventually start careers in the profession in which they have been educated. Even in some other cases, it could become as part of the normal process of looking around and seeking better work. A primary motivation for casual employment can sometimes be to curve unemployment and create the opportunity for these workers to acquire skills and experience without suffering from harsh working conditions.

3 With regards to the inadequacy of Nigeria's legal framework on casualization, it is recommended that the labour laws be amended by the National Assembly particularly the Labour Act 2004 to cater for the current global trend of casualization of employment. This will provided proper regulation of this category of work arrangements as well as offer sufficient statutory protection to the casual workers with respects to their rights and benefits. And consequentially deter employers of labour from further taking advantage of the practice.

4 Flowing from recommendation number three above, the National Assembly in amending the labour laws should ensure that ILO standards and recommendations on the subject and best international practices are ratified and domesticated in Nigeria's laws. This will ensure Nigeria is at par with thriving global standards and modern practices.

5 Lastly, the lessons from other jurisdiction like China and Ghana highlighted in this dissertation regarding their approach towards casualization of employment should be learnt from and mirrored in a manner that will be positive, efficient and enforceable under Nigeria's legal framework.