

**WORKER STATUS IN THE GIG ECONOMY; IS IT A MATTER OF  
CLASSIFICATION OR COMING UP WITH NEW LAW?**

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**By**

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**Dedication**

This one's for me.

**Acknowledgement**


I would like to thank God for giving me the strength and wisdom to undertake this project.

I would like to acknowledge the astounding input of my supervisor, Ms. Anne Kotonya. I am greatly indebted to her for the guidance, advise and encouragement that she accorded me.

My deep and heartfelt appreciation goes to my family and friends for their love and support during the time of my studies.

**Declaration**

I, NAPWORA SUZANE NAFULA, do hereby declare that this research is my original work and that to the best of my belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: 

Date: **02/07/2021**

This dissertation has been submitted for examination with my approval as university Supervisor.

Signed:   
ANNE KOTONYA

**Abstract**

When it comes to employment, classification of the workers is usually considered important because it is the class under which a worker falls that will determine the labour rights the worker is entitled to. This dissertation seeks to study the importance of classification and what gaps exist in regulatory framework governing employment in the gig economy sector. It also looks at the various suggestions that have been given by various scholars on how employment in the gig economy can be regulated. Therefore, the dissertation will start by highlighting the importance of classification of workers. Secondly, it will examine the Kenyan employment laws so as to determine what gaps exist in the regulatory framework. Thereafter, it will do a case study of the United Kingdom so as to understand how they have dealt with the issue of classification of online gig economy workers.

**List of acronyms**

CoK - Constitution of Kenya

ERA - Employment Rights Act

ICT - Information and Communications Technology

UK - United Kingdom



**List of cases**

Douglas O'Connor v Uber Technologies Inc., [20 16] C.A. No. 13-03826-EMC (N.D. Cal.).

Bernard Wanjohi Muriuki v Kirinyaga Water and Sanitation Company Ltd and another [2012] eKLR.

**List of legal instruments**

Constitution of Kenya, (2010)

Employment Act (2007)

Employment Act (Amendment)Act

Employment Rights Act (1996)

Labour Relations Act (2007)

## CHAPTER 1:INTRODUCTION

### 1.1 Background of the study

With the advancement of technology, many gig platforms have emerged in Kenya, including taxi ride-hailing apps such as Uber, home-sharing service apps such as Airbnb, and delivery platforms such as Glovo. The Oxford Dictionary defines the gig economy as a labor market characterized by the prevalence of flexible short-term contracts as freelance work as opposed to permanent jobs.<sup>1</sup>

The gig economy labor market is distinguished by three characteristics: the worker is independent, the work is short-term in nature, and the worker is paid by the task.<sup>2</sup> In terms of independence, gig workers have a high degree of control and flexibility in deciding what work to do, when to do it, and, in some cases, where to do it from. The work is of a short-term nature because it is performed on a task-by-task basis, and the client is aware of the employment relationship is for a short duration.

Working in the gig economy provides benefits such as flexible work opportunities, increased labor force participation, and improved livelihood due to access to frequent and decent jobs.<sup>3</sup> However, there are several disadvantages to doing gig work. For example, there are few job opportunities, individuals who use these platforms as a source of income have no benefits, no collective bargaining rights, and their only recourse if they believe their dismissal was unfair is to go to court.<sup>4</sup>

Workers in the gig economy are typically regarded as independent contractors.<sup>5</sup> However, as the digital space has evolved, it has become clear that the workers who use these platforms do not fall neatly into the two categories of workers recognized by Kenyan law: employees and independent contractors. On the one hand, the platforms where they find work consider them

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<sup>1</sup> Oxford Learners Dictionary 6<sup>th</sup> ed.

<sup>2</sup> Mercy Corp , “Towards a digital workforce: Understanding the building blocks of Kenya’s gig economy”, August 2019, 3.

<sup>3</sup> Woodcock J and Graham M, “*The gig economy, a critical introduction*” Polity Press, Cambridge, 2020, 11.

<sup>4</sup> Wambaa I, “An analysis of Uber drivers' employment status in accordance with Kenyan Labour Law” unpublished LLB Dissertation, Strathmore University, Nairobi 2018, 5.

<sup>5</sup> Business and human rights resource centre, *the future of work: litigating labour relationships in the gig economy*, March 2019, 7.

to be independent contractors, whereas some of these workers believe they should be considered employees due to the amount of control these platforms have over them.<sup>6</sup>

Workers want to be legally recognized as employees because only then will they be entitled to rights and protections such as minimum and overtime pay, as well as contributions to social benefits such as health and maternity benefits and retirement benefits.<sup>7</sup> In the absence of such protections, workers are frequently subjected to low pay, labor exploitation, and overall economic insecurity.<sup>8</sup>

According to the explanation above, the gig economy is eroding the traditional concept of employment. This is because traditional employment is defined by permanent or secure employment, labor standards such as minimum and overtime pay, and contributions to social protections such as health and maternity benefits and retirement benefits.<sup>9</sup> As a result, this study attempts to provide an assessment of the regulation governing employment in Kenya's online gig economy, with a view of proposing increased regulatory involvement by the government.

## **1.2 Statement of the problem**

To bring a claim alleging a violation of a specific right, an individual must first demonstrate that they are qualified for the right in the first place.<sup>10</sup> Worker classification is considered important because it is the starting point for determining which rights a worker is entitled to.<sup>11</sup> For example, in Kenya, only workers who are legally classified as employees have access to rights such as annual paid leave, maternity leave, sick leave, among others.<sup>12</sup>

With the rise of the gig economy, there has been some confusion about the type of legal relationship that exists between companies and individuals who agree to perform labor on their behalf. As a result, many lawsuits have been filed against companies that own platforms that provide these services in order to determine the employment status of their workers. For

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<sup>6</sup> Uber South Africa Technological Services v NUPSA W and SAT A WU and others, [2017].

<sup>7</sup> Employment Act (cap 226 of 2007)

<sup>8</sup> Business and human rights resource centre, *the future of work: litigating labour relationships in the gig economy*, March 2019, 7.

<sup>9</sup> <sup>9</sup> Business and human rights resource centre, *the future of work: litigating labour relationships in the gig economy*, Marc 2019, 7.

<sup>10</sup> Shaw A, "Smartphone compatible? Employment status in the gig economy," Published LL.M thesis, University of Glasgow, 2018, 3.

<sup>11</sup> Alamyar F, 'Uber and the future of work: Formal rights, collective action and experiences of work within the platform economy' unpublished thesis, University of Sydney, Sydney, 2017, 29.

<sup>12</sup> Employment Act (Cap 26 of 2007)

example, in *Pimlico Plumbers v Smith*, the Supreme Court of the United Kingdom had to decide whether a plumber who worked for the company was an independent contractor or a worker.<sup>13</sup>

The issue of the employment status of online workers in the gig economy is an emerging issue in Kenya and around the world. As things stand in Kenya, the employment relationship between gig workers and online platforms is unregulated. Given the ambiguity surrounding the gig economy and the various relationships formed through these platforms, it is vital to gain a better understanding of these relationships and explore how they should be regulated by Kenyan employment laws. Therefore, the issue that this study seeks to address is whether there is a need to develop new employment legislation to protect workers in the online gig economy. Hence, this study will investigate the role of classification in protecting the labor rights of gig workers, as well as the issues surrounding the lack of labor protection for workers in online gig platforms, as the basis for proposing a suitable employment regulatory framework for workers in Kenya's online gig economy.

### **1.3 Justification**

Innovations in information and communication technology (ICT) are increasingly being used to drive economic development by providing tailored solutions and transforming how work is done. The new business models that are emerging are key indicators of why, if worker classification is not updated from the traditional view of work, it will eventually lead to violations of workers' labor rights in the online gig economy.

The findings will be useful to regulators because they will help to clarify the problems and regulatory gaps that exist. The findings will also be useful to legislators as they work to develop enabling legislation for the regulation of employment in the online gig economy sector.

### **1.4 Aims and objective of the study**

The purpose of this paper is to examine the role of classification in protecting the labor rights of online gig workers and to argue for the need for regulation of employment in the online gig economy.

The project objectives are:

1. To analyze the role classification plays in protecting the labor rights of gig workers.

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<sup>13</sup> *Pimlico Plumbers Ltd v Smith* (2018), UK Supreme Court.

2. To examine the existing regulatory framework governing employment in the gig economy sector.

### **1.5 Research questions**

1. What role does classification play in protecting the labor rights of online gig workers?
2. What gaps are there in the regulatory framework governing employment in the gig economy sector?

### **1.6 Hypothesis**

In answering the above questions, this research relies on the following assumptions:

1. Classification is important because it is the basis for determining which rights a worker is entitled to.
2. Online gig economy workers do not fit properly in the categories of workers provided for under Kenyan employment law.

### **1.7 Theoretical framework**

According to John Rawls, justice is defined as fairness.<sup>14</sup> He refers to an original state in where people entered into a contract. He says that in this situation, where there is no division and no man thinks he is better than the other, a contract reached would be equal and, in each man's, best interests. The guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement; they are the principles that free and rational people who are not motivated by selfish interests would accept as defining the fundamental terms of their association in an initial position of equality. These principles will govern all subsequent agreements; they will specify the types of social cooperation that can be established as well as the forms of government that can be established. He refers to justice as fairness in this manner of viewing the principles of justice. He lays out two principles of justice. First, everyone has an equal right to the most comprehensive scheme of equal basic liberties that is compatible with a similar scheme of liberties for others. Second, social and economic inequalities are to be arranged in such a way that offices and positions are open to everyone under conditions of fair equality of opportunity, and they are to benefit the least-advantaged members of society the most (the difference principle).

This point of view will be used in this study to investigate the classification of online gig economy workers. The study will look at the system and its ability to ensure that every

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<sup>14</sup> Rawls J.; A theory of justice; , Cambridge, MA: Harvard University Press, 1971 , 52-55.

individual's interests and rights are considered and protected. The study also considers whether the government should return to its original position and rewrite employment laws to determine their applicability in providing equal protection under the law to all.

### **1.8 Research methodology**

This research will employ two research methodologies. The first type of research methodology will be a case study. This will entail a critical examination of the issue of online gig worker classification in the United Kingdom (UK). The United Kingdom was chosen because it has established a separate class for online gig workers and there have been many cases decided on the issue of classification. The case study's logic is that if the research identifies factors that contribute to positive local outcomes as a result of the UK's legislative framework, the lessons can be implemented in Kenyan labor laws.

Doctrinal research is the second type of research methodology. Because this paper will examine laws, statutory materials, and court decisions, this method was chosen. The research will use this approach to conduct a critical analysis of legal materials to support the hypothesis. It will also identify specific legal rules as well as the principles that underpin them. The research will rely on data from legislation as well as secondary sources such as scholarly works by those who have researched and written about worker classification in the online gig economy.

### **1.9 Literature review**

The employment status of workers in the gig economy is a growing concern in Kenya and around the world. There is a lot of ambiguity when it comes to establishing the type of employment relationship that exists between workers in the online gig economy, the platform, and people who use the app to get services.<sup>15</sup> This is because some of their characteristics are similar to those of employees, while others indicate that they are independent contractors. As a result, determining which rights they are entitled to is difficult.

The Hamilton Report advocates for the establishment of a hybrid category as the default for gig workers. According to the report, neither the online platform nor the clients should be considered employers because they have a triangular relationship with the workers.<sup>16</sup> Therefore, it proposes the formation of a new category known as the independent worker. With

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<sup>15</sup> Corassa E, 'Uber-Relationship with drivers', Institute for Research on Internet and Society, May 29, 2017 - <https://irisbh.com.br/en/uber-relationship-with-drivers/> on 8 December 2020.

<sup>16</sup> Dokko J, Mumford M, Whitmore D, 'Workers and the online gig economy' A Hamilton Project Framing Paper, 2015 - [https://www.hamiltonproject.org/assets/files/workers\\_and\\_the\\_online\\_gig\\_economy.pdf](https://www.hamiltonproject.org/assets/files/workers_and_the_online_gig_economy.pdf) - on 13 February 2020.

the creation of this new category, gig workers would gain rights such as the right to organize and bargain collectively under the National Labor Relations Act and anti-discrimination protections under Title VII.<sup>17</sup>

According to Article 41 (1) of the Kenyan Constitution, everyone has the right to fair labor practices.<sup>18</sup> Workers are protected and have rights under the Employment Act and the Labour Relations Act, both of which were enacted in 2007. According to the Acts, there are two classes of workers: employees and independent contractors. Only the workers in these two categories are entitled to benefits provided for in the Acts. Various studies show that there are rights classified workers enjoy that workers in the online gig economy do not get to enjoy. From previous research,<sup>19</sup> workers in the gig economy do not fit in the categories provided for the law.

Several cases have been argued in various jurisdictions around the world regarding the employment status of workers in the gig economy. In *Pimlico Plumbers v Smith*, the Supreme Court ruled that the plumber, in this case, was a worker, not an independent contractor.<sup>20</sup>

The court addressed the issue of unfair employment in *Bernard Wanjohi Muriuki v Kirinyaga Water and Sanitation Company Ltd and another*. It stated that when examining the employment relationship that existed between the parties, the statutory definitions of an employer and an employee must be considered.<sup>21</sup> These cases are important in this research because they show how the courts have addressed the issue of classification of workers.

Ida Wambaa examined Uber drivers' employment status in accordance with Kenyan law in her dissertation. She discovered that the legislation needed to be updated in order to comply with the 2010 constitution. Additionally, Kenyan labor law is inadequately established to categorize Uber drivers and requires further development. She advocated for separate legislation for

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<sup>17</sup> Dokko J, Mumford M, Whitmore D, 'Workers and the online gig economy' A Hamilton Project Framing Paper, 2015 - [https://www.hamiltonproject.org/assets/files/workers\\_and\\_the\\_online\\_gig\\_economy.pdf](https://www.hamiltonproject.org/assets/files/workers_and_the_online_gig_economy.pdf) - on 13 February 2020.

<sup>18</sup> Article 41, Constitution of Kenya (2010).

<sup>19</sup> Wambaa I, "An analysis of Uber drivers' employment status in accordance with Kenyan Labour Law" unpublished LLB Dissertation, Strathmore University, Nairobi 2018, 34.

<sup>20</sup> *Pimlico Plumbers Ltd v Smith* (2018), UK Supreme Court.

<sup>21</sup> *Bernard Wanjohi Muriuki v Kirinyaga Water and Sanitation Company Ltd and another* [2012] eKLR.



workers who are not employees in the traditional sense but are dependent on others.<sup>22</sup> There has been a proposed Employment Act Amendment Bill since this research was conducted.

### **1.10 Chapter breakdown**

Chapter 1 is an introduction to the problem, the research objectives, the hypothesis, and the questions addressed by this research. It also describes the methodology and a review of the relevant literature. It also includes the theoretical framework that will be used to investigate the research topic.

Chapter 2 discusses the significance of classification and why it is regarded as the foundation for determining which rights a worker has. It also considers the issue of classification of workers in the gig economy.

Chapter 3 focuses on the employment legal framework.

Chapter 4 is a case study. It looks at how another jurisdiction, the United Kingdom, has dealt with the issue of gig economy worker classification.

Chapter 5 presents the study's conclusion and recommendations. The discussions will be based on the findings in chapters 2, 3, and 4.

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<sup>22</sup> Wambaa I, “An analysis of Uber drivers' employment status in accordance with Kenyan Labour Law” unpublished LLB Dissertation, Strathmore University, Nairobi 2018.

## CHAPTER 2 CLASSIFICATION OF WORKERS

### 2.1 Introduction

For as long as there have been employment laws, the question of whether to classify workers as employees or independent contractors has been a source of contention. The rise of the gig economy has exacerbated this problem. The rise of the gig economy has raised questions about what rights people working in the gig economy have. Historically, most gig workers were regarded as independent contractors rather than employees. However, as the gig economy evolves, questions about whether workers in the gig economy are employees or independent contractors have arisen. This is because these workers exhibit characteristics of both employees and independent contractors.<sup>23</sup> Furthermore, some gig workers argue that they should be considered employees rather than independent contractors, as some companies claim.<sup>24</sup> Thus, the purpose of this chapter is to examine the role of classification in protecting the labour rights of gig workers. It begins by explaining the concept of the gig economy. Following that, it will examine the triangular relationship that exists in the gig economy and explain its significance in the issue of worker classification for these specific workers. This chapter will then explain what classification is and highlight its significance. Later, it will look at the issue of worker misclassification and its consequences. It will conclude by investigating the issue of classification in the gig economy and whether a third category of workers is required.

### 2.2 Understanding gig work

The term "gig economy" refers to a labor market in which independent temporary work is prevalent. This work is done on a short-term or task-by-task basis, and payment is made upon completion of the tasks.<sup>25</sup> This type of relationship is also known as 'independent contracting,' 'freelancing,' or 'temporary work.'<sup>26</sup>

Some of the key characteristics of gig work are that the worker has an irregular work schedule, that the worker usually provides some or all of the equipment used directly in their work, that

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<sup>23</sup> Dokko J, Mumford M, Whitmore D, 'Workers and the online gig economy' A Hamilton Project Framing Paper, 2015 - [https://www.hamiltonproject.org/assets/files/workers\\_and\\_the\\_online\\_gig\\_economy.pdf](https://www.hamiltonproject.org/assets/files/workers_and_the_online_gig_economy.pdf) - on 13 February 2020, 4-5.

<sup>24</sup> Uber South Africa Technological Services v NUPSA W and SAT A WU and others, [20 17).

<sup>25</sup> Mercy Corp , "Towards a digital workforce: Understanding the building blocks of Kenya's gig economy", August 2019, 10.

<sup>26</sup> Woodcock J and Graham M, "*The gig economy, a critical introduction*" Polity Press, Cambridge, 2020.

most jobs are compensated on a piecework basis, and that most jobs are usually organized around some form of a web-based platform.<sup>27</sup>

Gig workers find work via the internet and apps. Employers and consumers typically request a service through specific websites or software programs, and they are then matched with a gig worker. The app typically calculates wages (in some cases, the worker can set their own price), verifies that the worker has the necessary skills for the job, and then markets the worker.<sup>28</sup>

The gig economy includes two components: crowd work and work-on-demand via apps.<sup>29</sup> As part of work-on-demand via apps, traditional operations such as transportation, cleaning, and food distribution are sourced through the mobile app network.<sup>30</sup> For example, Lynk. The apps have an intermediary responsible for selecting their workforce and distributing work. Crowd work, also known as crowdsourcing, uses an internet platform to allow access to an endless and unknown number of other firms or individuals in exchange for payment to solve specific problems or deliver certain services or products.<sup>31</sup> These platforms are typically used for jobs that can be completed and delivered online.<sup>32</sup> Examples of this type of work are online freelancing and microwork.

Gig workers, companies, and customers all benefit from the flexibility that gig work provides. Employers have a great deal of leeway in terms of when and how they hire people. Food can be quickly delivered to clients and consumers, allowing them to benefit from the flexibility. Workers allegedly have the freedom to choose what they do, how they do it, when they do it, where they do it, and for how long they do it.<sup>33</sup> For example, a gig worker may have multiple gigs but work on a flexible schedule. A task with an end date is typically assigned to a worker, who is responsible for determining how and when the assignment will be completed. Workers appear to have a say in how much they are paid as well. They can charge for overtime and

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<sup>27</sup> Stewart A, Stanford J, 'Regulating work in the gig economy. What are the options?' The Economic and Labour Relations Review, 2017, 421 - <https://journals.sagepub.com/> - 28 April 2021.

<sup>28</sup> Seen on <<https://www.wgu.edu/blog/what-are-best-gig-economy-jobs-apps1907.html>> 17 October 2020.

<sup>29</sup> De Stefano V, "The rise of the 'just-in-time workforce' on-demand work, crowd work and labour protection in the gig economy" *Comparative Labour Law Journal*, October 2015 4.

<sup>30</sup> De Stefano V, "The rise of the 'just-in-time workforce' on-demand work, crowd work and labour protection in the gig economy" *Comparative Labour Law Journal*, October 2015 4.

<sup>31</sup> De Stefano V, "The rise of the 'just-in-time workforce' on-demand work, crowd work and labour protection in the gig economy" *Comparative Labour Law Journal*, October 2015 4.

<sup>32</sup> Stewart A, Stanford J, 'Regulating work in the gig economy. What are the options?' The Economic and Labour Relations Review, 2017, 422 - <https://journals.sagepub.com/> - 28 April 2021.

<sup>33</sup> Woodcock J and Graham M, "The gig economy, a critical introduction" Polity Press, Cambridge, 2020.

meetings, among other things.<sup>34</sup> Despite this, new data indicates a number of negative outcomes for gig workers, including low pay, precarity, stressful and unsafe working conditions, one-sided contracts, and a lack of job security.<sup>35</sup>

It is important to note that companies that hire a gig worker do not empty the gig worker. Furthermore, the companies that provide platforms for gig economy workers typically serve as connectors, connecting clients and contractors.<sup>36</sup>

Examples of jobs in the gig economy include; being a driver, a consultant, a handyman, a freelance programmer, among others.<sup>37</sup> The development of technology has led to the rise of gig platforms such as Uber, Lyft, Airbnb, Glovo, Lynk, Task rabbit, among others.

### **2.3 The triangular relationship of gig work**

In conventional work relationships, the employer and employee are explicitly linked.<sup>38</sup> However, the gig economy now includes a worker who is not connected to the platform for which he works or the customers who use the platforms to get services.<sup>39</sup> The triangular relationship that exists between the digital intermediary who facilitates the entire process, the worker providing the service, and the end-user of the service often complicates labor regulation.

The worker's relationship with the intermediary is governed by a contract that describes the terms and conditions of the worker's participation in the process, which usually includes granting the intermediary firm the right to supervise, discipline, or discharge the worker or prevent their use of the platform.<sup>40</sup> The worker bears the majority, if not the entirety, of the risk associated with providing necessary equipment and tools, interruptions in service by the

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<sup>34</sup> Seen on < <https://www.wgu.edu/blog/pros-and-cons-gig-economy1808.html#close> > 17 October 2020.

<sup>35</sup> Woodcock J and Graham M, “*The gig economy, a critical introduction*” Polity Press, Cambridge, 2020.

<sup>36</sup> Ashley Chorpenning , ‘*Gig Economy: pros and cons of gig work. Quicken loans*’ 7 March 2019 - < <https://www.quickenloans.com/blog/gig-economy-pros-cons-gig-work> > 17 October 2020.

<sup>37</sup> Seen on < <https://www.wgu.edu/blog/pros-and-cons-gig-economy1808.html#close> > 17 October 2020.

<sup>38</sup> Clare McLeod, ‘*From Linear to Triangular: Redefining Business in the Gig Economy*’ Business Today Online journal, 10 October 2018 < <https://journal.businesstoday.org/bt-online/2018/from-linear-to-triangular-redefining-business-in-the-gig-economy> > 12 May 2021.

<sup>39</sup> Clare McLeod, ‘*From Linear to Triangular: Redefining Business in the Gig Economy*’ Business Today Online journal, 10 October 2018 < <https://journal.businesstoday.org/bt-online/2018/from-linear-to-triangular-redefining-business-in-the-gig-economy> > 12 May 2021.

<sup>40</sup> Stewart A, Stanford J, ‘*Regulating work in the gig economy. What are the options?*’ The Economic and Labour Relations Review, 2017, 425 - <https://journals.sagepub.com/> - 28 April 2021.

platform, irregularities in income flows, deactivation of the service or the relationship, and other factors.<sup>41</sup>

A contract governs the intermediary's relationship with the end-user of its services. The terms and conditions that the end-user must agree with when they log into the digital service or platform are included in this contract. It usually limits the intermediary's obligations and liabilities for any issues that develop throughout producing or delivery process.<sup>42</sup> The business model of the intermediary and how it is defined by regulators determine the relationship between the gig worker and the ultimate user of their services.<sup>43</sup>

## **2.4 Classification of workers**

The legal classification of a worker is significant because it serves as the basis for determining which rights the worker is entitled to. Furthermore, whether a worker is an employee, or an independent contractor affects how the worker is taxed, what benefits they are entitled to under employment policies and laws, and what law protects them.<sup>44</sup>

Employees and independent contractors are the two types of workers. The vast majority of workers fall into one of these two categories. It is critical to correctly classify workers because employment laws apply differently to employees and independent contractors.<sup>45</sup> Some laws, for example, apply to employees but not to independent contractors.

Some factors are supposed to be considered when determining whether a worker is an employee or an independent contractor. They include, among other things, control, integration into the company, service exclusivity, and tool ownership. The employer must ensure that the worker understands whether he or she is an employee or an independent contractor.<sup>46</sup> An

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<sup>41</sup> Stewart A, Stanford J, 'Regulating work in the gig economy. What are the options?' The Economic and Labour Relations Review, 2017, 425 - <https://journals.sagepub.com/> - 28 April 2021.

<sup>42</sup> Stewart A, Stanford J, 'Regulating work in the gig economy. What are the options?' The Economic and Labour Relations Review, 2017, 425 - <https://journals.sagepub.com/> - 28 April 2021.

<sup>43</sup> Stewart A, Stanford J, 'Regulating work in the gig economy. What are the options?' The Economic and Labour Relations Review, 2017, 425 - <https://journals.sagepub.com/> - 28 April 2021.

<sup>44</sup> Ashley Chorpenning , 'Gig Economy: pros and cons of gig work. Quicken loans' 7 March 2019 - < <https://www.quickenloans.com/blog/gig-economy-pros-cons-gig-work> > 17 October 2020.

<sup>45</sup> Hyunjin (Richard) Seung 'What should employers know about classification?' My open court 5 August 2020 - < <https://myopencourt.org/employee-versus-contractor/> > 17 October 2020.

<sup>46</sup> Hyunjin (Richard) Seung 'What should employers know about classification?' My open court 5 August 2020 - < <https://myopencourt.org/employee-versus-contractor/> > 17 October 2020.

employee works for the company's (employer) business whereas an independent contractor usually works for their business.<sup>47</sup>

Employers typically have more bargaining power than employees. Employees are usually protected by employment laws to compensate for their unequal bargaining power. Employment laws, on the other hand, do not protect independent contractors because they control how they do their work and have the freedom to negotiate their working conditions.<sup>48</sup>

## **2.5 Misclassification of workers**

Misclassification occurs when an employer classifies a worker as an independent contractor when in fact the worker is an employee and vice versa.<sup>49</sup> For example, an employer may classify a worker as an independent contractor even though their characteristics indicate that they are an employee. Such misclassification usually leads to a violation of employment laws because of the wrong set of laws being applied to the worker.

Employers may face several liabilities if they misclassify their workers. An employer who misclassifies their employees may face wrongful dismissal claims, fines and penalties under employment legislation, liabilities for unpaid income tax, and class actions if a group of workers is misclassified.<sup>50</sup> Employers have engaged in misclassification for as long as there has been protective legislation, but the opportunities for organizing work presented by information technology have exacerbated the problem. Excluded workers lack many basic legal rights and claim against their employer.<sup>51</sup>

## **2.6 Classification of workers in the gig economy**

Workers in the gig economy are usually considered to be independent contractors.<sup>52</sup> This is because gig work gives the worker flexibility, allows them to be their own boss, and gives them control over when and who they work for. Although they are considered independent

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<sup>47</sup>Hyunjin (Richard) Seung 'What should employers know about classification?' My open court 5 August 2020 < <https://myopencourt.org/employee-versus-contractor/> > 17 October 2020.

<sup>48</sup>Hyunjin (Richard) Seung 'What should employers know about classification?' My open court 5 August 2020 < <https://myopencourt.org/employee-versus-contractor/> > 17 October 2020.

<sup>49</sup>Kenneth D, 'The problem of misclassification' or how to define who is an employer under protective legislation in the information age' SSRN, 2018, 2.

<sup>50</sup>Hyunjin (Richard) Seung 'What should employers know about classification?' My open court 5 August 2020 < <https://myopencourt.org/employee-versus-contractor/> > 17 October 2020.

<sup>51</sup> Kenneth D, 'The problem of misclassification' or how to define who is an employer under protective legislation in the information age' SSRN, 2018.

<sup>52</sup>Business and human rights resource centre, *the future of work: litigating labour relationships in the gig economy*, March 2019.

contractors by the companies that provide them with a platform, evidence points to an employer-employee relationship in some cases.

By applying available information on the work status of Uber drivers, most cases tend to favour the employee classification. However, their legal status is somewhere between that of an employer and that of an independent contractor.

In the case of *O'Connor v Uber Technologies*,<sup>53</sup> three drivers alleged that they had been misclassified as independent contractors. Uber denied this and maintained that they were not employees because they exercised minimal control over them. The drivers responded that Uber exercised considerable control over the method and means of the provision of the service. The court used the work status tests to determine their classification. The court considered Uber's level of control over its drivers. It discovered that some characteristics imply significant control while others imply minimal control. The explanation, in this case, shows where the confusion comes from.

Gig workers do not appear to fit into either category of workers – they are neither traditional employees nor independent contractors. In some ways, workers in the gig economy differ from independent contractors. Gig workers, for example, perform multiple contracts per day or month for various clients, as opposed to the typical employee. Another distinguishing feature is that, even if their contracts state that there will be no disciplinary action taken against the worker, in practice the worker is controlled based on feedback from clients and customers. If the worker receives negative feedback, they may be barred from using the platform.<sup>54</sup>

Confusion arises from the existence of multiple tests for determining whether a worker is an independent contractor or an employee. The varying factors cause ambiguity and confusion for judges and workers and employers. For example, using these tests, an employer acting in good faith may classify a worker as an independent contractor. A judge may reach the opposite conclusion by weighing the factors differently.<sup>55</sup>

## **2.7 A third category?**

According to Davidov, an intermediate group will bring into the scope of protection, workers who share some of the characteristics of employees. They are covered by some but not all

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<sup>53</sup> *Douglas O'Connor v Uber Technologies Inc.*, [2016] N.D. Cal.

<sup>54</sup> De Stefano V, "The rise of the 'just-in-time workforce' on-demand work, crowd work and labour protection in the gig economy" *Comparative Labour Law Journal*, October 2015.

<sup>55</sup> Pinsof J, "A new take on an old problem: Employee misclassification in the gig economy" 2(22) *Michigan Telecommunications and Technology Law Review*, 2016.

labour and employment laws.<sup>56</sup> Alan and Seth have suggested that a hybrid category called independent worker should be created for workers in the gig economy. Independent workers, whether they work through an online or offline intermediary, would qualify for most of the benefits and protections that employees receive, including the freedom to organize and collectively bargain, civil rights protections, tax withholding, and employer contribution for payroll taxes.<sup>57</sup> Because it is conceptually impossible to attribute work hours to a single intermediary, independent workers would not be eligible for hourly benefits such as overtime or minimum wages.<sup>58</sup>

It is suggested that when dealing with these new work arrangements, the question should not be whether they are similar to traditional employment, but rather whether they are the type that necessitates the application of labor laws.<sup>59</sup> According to Davidov, a purposeful approach should be used because it addresses the issue of “on-demand” work arrangements without the need to invent new solutions.<sup>60</sup>

Valerio argues that creating an intermediate class will not solve the problems in the gig economy.<sup>61</sup> According to him, the gig economy should not be considered a separate labor market category. Rather, it should be considered in light of the parallels it has with other non-standard employment practices.<sup>62</sup> This understanding will aid in the avoidance of unnecessary divisions in the labor discourse. Furthermore, it will facilitate the inclusion of gig economy workers in policies and strategies aimed at improving non-standard labor protection and regulation.<sup>63</sup>

Valerio gives an example of the UK (will be discussed in a later chapter). In the United Kingdom, the labour laws provide for a group of workers who fall within an intermediary

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<sup>56</sup> Guy Davidov ‘The Status of Uber Drivers: A Purposive Approach’ (2017), 4.

<sup>57</sup> A Proposal for Modernizing Labour Laws for Twenty-First Century Work: “The Independent Worker” Discussion Paper (2015-10), 4.

<sup>58</sup> A Proposal for Modernizing Labour Laws for Twenty-First Century Work: “The Independent Worker” Discussion Paper (2015-10), 4.

<sup>59</sup> Chayya S, ‘Towards the creation a fair ride-hailing industry: Should South African labour law regulate the Uber relationship?’ University of Cape Town published dissertation, 2018, 60.

<sup>60</sup> Guy Davidov ‘The Status of Uber Drivers: A Purposive Approach’ (2017), 2.

<sup>61</sup> De Stefano V, "The rise of the 'just-in-time workforce' on-demand work, crowd work and labour protection in the gig economy" *Comparative Labour Law Journal*, October 2015, 29-34.

<sup>62</sup> De Stefano V, "The rise of the 'just-in-time workforce' on-demand work, crowd work and labour protection in the gig economy" *Comparative Labour Law Journal*, October 2015.

<sup>63</sup> De Stefano V, "The rise of the 'just-in-time workforce' on-demand work, crowd work and labour protection in the gig economy" *Comparative Labour Law Journal*, October 2015, 21-22



category namely the worker category. While these workers are entitled to the national minimum wage, annual leave, and anti-discrimination protection, they are not entitled to other important rights such as protection against unfair dismissal, redundancy pay, or the right to request flexible working arrangements.<sup>64</sup> As a result, an intermediate category may be problematic because it allows for disguised employment arrangements, effectively depriving these "workers" of any labor rights.<sup>65</sup>

## **2.8 Conclusion**

This chapter has emphasized the necessity of worker classification. In terms of labor law, the status of gig workers as independent contractors has a variety of implications. Because they are categorized as independent contractors, their legal protection is limited. The accuracy of this classification has been challenged in court, and similar legal action could happen in Kenya. Because of the triangular relationship that exists between the platform firm, the worker, and the end-user, determining the type of employment connection that exists between these platform firms and the worker has become increasingly complex. While a third category may help to resolve some of the issues associated with the gig economy, it may also open the door to sham work connections.

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<sup>64</sup> De Stefano V, "The rise of the 'just-in-time workforce' on-demand work, crowd work and labour protection in the gig economy" *Comparative Labour Law Journal*, October 2015, 21-22.

<sup>65</sup> De Stefano V, "The rise of the 'just-in-time workforce' on-demand work, crowd work and labour protection in the gig economy" *Comparative Labour Law Journal*, October 2015, 20.

## **CHAPTER 3**

### **3.1 Introduction**

This chapter examines various employment laws in order to identify regulatory gaps. The primary sources of law, such as the constitution, the Employment Act, and the Labor Relations Act, will be examined in light of online gig economy workers. In addition, common law tests used by courts to differentiate between independent contractors and employees will be discussed.

### **3.2 Regulatory Framework**

#### **3.2.1 Constitution of Kenya**

The Constitution of Kenya (CoK) specifically states that every person has a right to fair labour practices.<sup>66</sup> It further provides that every worker has a right to fair remuneration, reasonable working conditions, to form, join or participate in the activities of a trade union, and to go on strike. All employment laws must be consistent with these constitutional provisions. As a result, employment laws should be written in such a way that a worker's right to fair labor practices is not violated. It will be easier to ensure workers' constitutional rights are upheld if they are classified correctly under employment laws.

For the purposes of protection, the Constitution does not define who is a "worker." Furthermore, legislation on this subject is insufficient because it guarantees everyone the right to fair labor practices but only protects employees. However, it has been suggested that the ordinary and legal meaning of the term person, which includes both human beings and corporations, be adopted.<sup>67</sup>

#### **3.2.2 Employment Act**

This Act establishes the minimum employment terms and conditions. It establishes the working relationship between an employer and a worker. It specifies the worker's and employer's benefits, duties, and obligations.<sup>68</sup>

The Act defines an employee as a person employed for wages or a salary and includes an apprentice and an indentured learner.<sup>69</sup> An employer is defined as any person, public body, firm, corporation, or company that has entered into a contract of service to employ any

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<sup>66</sup> Article 41 (1), Constitution of Kenya (2010).

<sup>67</sup> Wambaa I, "An analysis of Uber drivers' employment status in accordance with Kenyan Labour Law" unpublished LLB Dissertation, Strathmore University, Nairobi 2018, 14.

<sup>68</sup> The Kenyan worker and the law. Seen on < <http://kituogetheria.or.ke/wp-content/uploads/2016/04/Kenyan-Worker-and-the-Law-final2.pdf> > 23 October 2020.

<sup>69</sup> Section 2, Employment Act (CAP 226 of 2007).

individual, including the agent, foreman, manager, or factor of such person, public body, firm, corporation, or company.<sup>70</sup> A casual employee is defined by the Act as a person whose terms of engagement provide for his payment at the end of each day and who is not engaged for more than twenty-four hours at a time.<sup>71</sup> A contract of service is defined as an agreement, whether oral or written, expressed or implied, to employ or serve as an employee for a period of time, which includes a contract of apprenticeship and indentured learner ship but excludes a foreign contract of service.<sup>72</sup>

Thus, the only people covered by this Act are employees, casual employees, and apprentices. Once again, workers' rights in the online gig economy are unprotected under this Act.

### **3.2.3 Labour Relations Act**

This Act is primarily concerned with employee and employer freedom of association, as well as the right to collective bargaining. The Act establishes legal guidelines for the formation of trade unions and employer organizations, as well as their functions.<sup>73</sup>

The Labour Relations Act, like the Employment Act, defines an employer and an employee. A contract of service is defined as an agreement, whether oral or written, expressed or implied, to employ or serve as an employee for a set period of time, and includes an apprenticeship contract and an indentured learnership contract.<sup>74</sup>

Employees, apprentices, and indentured learners are the only people who have the right to strike and enter into collective bargaining agreements under this Act. Although the constitution guarantees every worker the right to form, join, or participate in the activities or programs of a trade union, this is not the case.<sup>75</sup>

The definition of an employee provided for is too broad, making it difficult to determine whether online gig economy workers can be considered employees under the Act.

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<sup>70</sup> Section 2, Employment Act (CAP 226 of 2007).

<sup>71</sup> Section 2, Employment Act (CAP 226 of 2007).

<sup>72</sup> Section 2, Employment Act (CAP 226 of 2007).

<sup>73</sup> The Kenyan worker and the law. Seen on < <http://kituochasheria.or.ke/wp-content/uploads/2016/04/Kenyan-Worker-and-the-Law-final2.pdf> > 23 October 2020.

<sup>74</sup> Section 2, Labour Relations Act (No. 14 of 2007).

<sup>75</sup> Article 41 (2), Constitution of Kenya (2010).

### 3.2.4 Employment Act Amendment Act

The Employment Act (Amendment) Act, 2019, seeks to align the Act with the Kenyan Constitution and current employment law trends. This Bill was introduced in Parliament for consideration and amendment.

According to the Amendment Act, an employee is defined as “a person who works in the service of the employer under an express or implied contract of service, under which the employer has the right to direct and control the details of work performance and excludes contract for services.”<sup>76</sup> This new definition of an employee emphasizes the degree to which an employer has control over an employee. The degree of control distinguishes an employment relationship from other types of relationships, such as independent contractors.

A contract for service is defined in the Amendment Act as a contract for a specified piece rate of work. Piece rate work refers to any type of employment in which a worker is paid a fixed piece rate for each unit of product produced, regardless of the time devoted to its completion.<sup>77</sup>

The Bill includes provisions for night work. Work performed between 10:00 p.m. and 6:00 a.m. is referred to as night work. An employer may only require an employee to work at night if both parties agree. An employee in this situation may be compensated with a shift allowance or a reduction in working hours. Additionally, the employer is required to provide transportation to and from work at the start and end of each shift.<sup>78</sup>

The Amendment Act provides that employees may apply for a change in the terms and conditions of employment relating to the times and places where they are required to work. Nonetheless, the grounds on which an employer can refuse the request are provided.<sup>79</sup>

Overtime work is also provided for in the Bill. Overtime is defined as any hours worked in excess of the normal working hours. Before an employee can work overtime, an overtime agreement must be in place. The agreement shall – prohibit an employee from working more than 12 hours per day, require overtime pay to be 1 ½ times the regular hourly rate, and pay for rest days or public holidays at twice the regular hourly rate.<sup>80</sup>

These provisions may apply to workers in the online gig economy who are considered employees by the platforms where they find work. Their work terms, however, must be precise

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<sup>76</sup> Employment Act (Amendment) Bill, 2019.

<sup>77</sup> Employment Act (Amendment) Bill, 2019.

<sup>78</sup> Employment Act (Amendment) Bill, 2019.

<sup>79</sup> Employment Act (Amendment) Bill, 2019.

<sup>80</sup> Employment Act (Amendment) Bill, 2019.

in order to avoid confusion. Some of these provisions will be nearly impossible to apply to online gig economy workers who are considered independent contractors. For instance, in the case of overtime, how would it be determined that the worker worked overtime when the worker has the option of choosing a time that is suitable for them to work.

### **3.3 Employment status**

#### **3.3.1 Independent contractor**

The definition of an independent contractor is not defined in either Acts. According to the Black Law Dictionary, an independent contractor is a person who is entrusted with a specific project but is free to do the assigned work and choose the method for accomplishing it.<sup>81</sup> An independent contractor works for another person on their terms and methods. They are bound by contract terms and do not receive statutory benefits.

A contract for service is usually issued to an independent contractor. A contract for service implies that the person is self-employed and that the work is completed on their terms. It also implies a lack of control, as the worker is not integrated into an employer's workforce for purposes of acquiring certain rights and responsibilities.<sup>82</sup>

Independent contractors are not subject to labor laws and do not have access to certain statutory protections and benefits that employees do, such as leave, work injury compensation, collective bargaining, overtime, and the minimum wage.

#### **3.3.2 Employee**

Both the Employment Act and the Labour Relations Act define an employee and an employer in the same way. An employee is someone who works for a wage or a salary, and this includes apprentices and indentured learners.<sup>83</sup> An employer is defined as any person, public body, firm, corporation, or company who or which has entered into a service contract to employ any individual, including the person's agent, foreman, manager, or factor.<sup>84</sup>

An employee is typically hired under a service contract. A contract of service is defined by the Employment Act as an agreement, whether oral or written, expressed or implied, to employ or serve as an employee for a period of time, and includes a contract of apprenticeship and

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<sup>81</sup> Garner Black H, Black's Law Dictionary, 2252.

<sup>82</sup>Employed or not? Comparing employees and independent contractors. Seen on < <https://www.oraro.co.ke/2018/06/27/employed-or-not-comparing-employees-and-independent-contractors/> > 23 October 2020.

<sup>83</sup> Section 2, Employment Act (CAP 226 of 2007).

<sup>84</sup> Section 2, Employment Act (CAP 226 of 2007).

indentured learnership.<sup>85</sup> A service contract usually establishes and responsibilities between the parties to an employment relationship. A contract of service also entails an employee performing work with specific rights and duties for a set remuneration.<sup>86</sup>

Certain factors are considered when determining whether or not an employment contract exists. They are as follows: the degree of control exercised by the employer; whether the worker's interest in the relationship included any prospect of profit or risk of loss; whether the worker was integrated into the employer's organization, whether the worker was carrying on the employer's business; the provision of equipment; the incidence of tax; and the parties' perspective on the relationship.<sup>87</sup>

### **3.4 Tests**

When determining whether a relationship falls into either of these categories, employee or independent contractor, Kenyan courts typically apply English common law tests. These tests are discussed in detail further below.

#### **3.4.1 Control test**

The test concerns the institution's or company's ability to exert control over an individual's actions. Questions arose as to what constituted control in the case of *Ready-Mix Concrete vs. Minister of Pensions*,<sup>88</sup> which has been followed in several Kenyan judicial precedents. The court stated that "control includes the power of deciding the thing to be done, the means to be used in doing it, the time when and the place where it shall be done."

In *Motorola v Davidson*, the court ruled that control did not have to be exercised directly.<sup>89</sup>

#### **3.4.2 Integration test**

The test is based on the fact that under a contract of service, an individual is employed as an integral part of the business, whereas under a contract for service, an individual's work is one for their business.<sup>90</sup> The court held in the case of *Maurice Oduor Okech v The Chequered Flag Limited*, that an independent contractor could be integrated into the employer's business, such

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<sup>85</sup> Section 2, Employment Act (CAP 226 of 2007).

<sup>86</sup> Employed or not? Comparing employees and independent contractors. Seen on < <https://www.oraro.co.ke/2018/06/27/employed-or-not-comparing-employees-and-independent-contractors/> > 23 October 2020.

<sup>87</sup> Employed or not? Comparing employees and independent contractors. Seen on < <https://www.oraro.co.ke/2018/06/27/employed-or-not-comparing-employees-and-independent-contractors/> > 23 October 2020.

<sup>88</sup> *Ready Mix Concrete vs Minister of Pensions* [1968] 2 QB 497

<sup>89</sup> *Motorola Ltd v Davidson, Melville Craig Group Ltd* [2001] IRLR.4

<sup>90</sup> *Stevenson, Jordan & Harrison v Me Donald and Evans* (1952) 1 TLR 101.

as adhering to the dress code, reporting time, and having an employment card, while still being an independent contractor. The courts in this case went beyond the traditional test of integration. It considered the parties' engagement in order to determine whether it is a contract for or of service.<sup>91</sup>

### **3.4.3 Economic reality test**

This test was developed in the case of *Market Investigations v. Minister of Social Security*.<sup>92</sup> The test determines whether the worker is working on their own account. It considers factors such as control, whether the worker provides her own equipment, whether she hires her own help, what rate of financial degree she runs, and whether the worker is responsible for investment and work management.<sup>93</sup> This test requires that the employer bear sole responsibility for any profits or losses that the company may incur.

### **3.4.4 Mutuality of obligation**

In this test, the parties make commitments to maintain the employment relationship over some time. That a contract of service entails service in return for wages, and, secondly, mutual promises for future performance. The arrangement provides the parties with a sense of stability. The challenge is that in the absence of mutual promises for stable future performance, the worker, as in the case of casual workers, ceases to be classified as an employee.<sup>94</sup>

### **3.4.5 Multiple test**

Kenyan courts have recognized that in many cases, the issue will be resolved by examining the entirety of the various elements that comprise the parties' relationship. This test requires that all relevant factors be considered in order to determine the nature of the relationship. According to some English cases on the subject, courts should “identify the essential nature of the contract” and “the question in every case should be what the true agreement between the parties is.”<sup>95</sup>

## **3.5 Conclusion**

The following are some of the gaps in existing legislation that have been identified as a result of the above review. First, there is no substantive law governing employment in the gig economy sector. As a result, there is no definition of who a gig worker is or what labor rights

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<sup>91</sup> *Maurice Oduor Okech v The Chequered Flag Limited* [2011] EKLR.

<sup>92</sup> *Market Investigations v Minister of Social Security* (1969) 2 QB 173.

<sup>93</sup> Bell A, *Employment Law in a Nutshell* 2003, 2nd ed London: sweet and Maxwell.

<sup>94</sup> *Stanley Mungai Muchai v National Oil Corporation of Kenya* (2012) EKLR.

<sup>95</sup> *Stanley Mungai Muchai v National Oil Corporation of Kenya* (2012) EKLR.

they are entitled to. Currently, gig workers are classified as independent contractors. However, none of the employment laws define who an independent contractor is or what rights they have.

Another significant issue is that, while the Amendment Act seeks to align the Act with the Kenyan Constitution and current employment law trends, it lacks provisions that directly protect workers in the gig economy. Furthermore, only employees are covered by the Amendment Act. This means that these laws will not apply to gig workers as long as they are still considered independent contractors.

Based on this analysis, it is clear that there is a need for current jurisprudence to evolve in order to respond to the new forms of work that are being created in modern-day Kenya as a result of technological advancements.



## **CHAPTER 4: CASE STUDY OF THE UNITED KINGDOM**

### **4.1 Introduction**

This chapter presents a brief case study of the UK's current legal position on workers in the gig economy. The United Kingdom was chosen because it has had a substantial influence on Kenyan labor law. It has also set precedent on the question of whether online gig economy workers should be categorized as employees or independent contractors. The discussion is based on a review of their legal documents, including statutes, regulations, and case laws, as well as scholarly writings. The structure of this chapter is as follows - the scope of legal protection afforded to distinct groups of workers is investigated first. Following that, recent case law will be reviewed.

### **4.2 Legislations**

In the UK, they have The Employment Relations Act,<sup>96</sup> the Working Time Regulations,<sup>97</sup> and the National Minimum Wage Act<sup>98</sup> which all apply to a special category of persons known as "workers". Most of the rights in the Employment Rights Act (ERA) were for the protection of employees, however, these rights were extended to persons who fell within the newly introduced worker category.<sup>99</sup> The scope of ERA's application does not apply to independent contractors.<sup>100</sup> Workers are entitled to benefits under the ERA; however, they are limited. The court stated in *Byrne Bros (Formwork) Ltd v Baird* that "the aim behind including limb b workers in the definition of a worker was to extend the benefits of protection to workers who are in the same need of that type of protection as employees - workers who are considered as liable, and are required to work excessive hours, regardless of their formal job status."<sup>101</sup> It went on to say that the desired distinction must be made between workers whose degree of dependency is substantially the same as that of employees on the one hand, and contractors who have a sufficiently arm's-length and independent position to be viewed as capable of looking after themselves in the relevant respects on the other.<sup>102</sup>

The ERA defines an employee as an individual who has entered into or works under a contract of employment.<sup>103</sup> A contract is defined as a contract of service or apprenticeship or express or

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<sup>96</sup> Employment Relations Act ( 1999), England.

<sup>97</sup> Working Time Regulations ( 1998 ), England.

<sup>98</sup> National Minimum Wage Act (1998), England.

<sup>99</sup> 'Fairness at Work' Research Paper 98/99 (November 1998), 29.

<sup>100</sup> Simon Deakin & Gillian S Morris Labour Law 6 ed (2012), Hart Publishing, Oregon, 131

<sup>101</sup> *Byrne Bros (Formwork) Ltd v Baird* [2002] ICR.

<sup>102</sup> *Byrne Bros (Formwork) Ltd v Baird* [2002] ICR.

<sup>103</sup> Section 230, Employment Rights Act (1996).

implied, oral or in writing.<sup>104</sup> According to the ERA, all employees are classified as workers and have certain employment rights and legal duties. Thus, an employee has access to all rights that a worker has and in addition, they are afforded protections against unfair dismissals;<sup>105</sup> statutory sick leave;<sup>106</sup> adoption;<sup>107</sup> statutory maternity;<sup>108</sup> paternity;<sup>109</sup> shared parental leave;<sup>110</sup> minimum notice periods for termination of employment;<sup>111</sup> the right to request for flexible working;<sup>112</sup> time off for dependants<sup>113</sup> and statutory redundancy pay.<sup>114</sup> In an employment relationship, there must exist mutuality of obligation between the employer and the employee.<sup>115</sup>

The worker category was created to recognize the shift from traditional employment.<sup>116</sup> A ‘worker’ is defined as an individual who has entered into or works under a contract of employment or any other contract (express, implied, oral, or in writing).<sup>117</sup> This ‘worker’ undertakes to do or personally perform any work or services for another party. The other contracting party’s status is not by virtue of the contract that of a client or a customer of any profession or business undertaking carried on by that party to the contract.<sup>118</sup>

Individuals who qualify as "workers" are entitled to limited employment rights. These rights include - a right to the national minimum wage; protection from unlawful deductions from wages; protection from excessive working hours;<sup>119</sup> health and safety at work; certain collective rights;<sup>120</sup> and equal pay.<sup>121</sup> British law is more progressive in this regard as a result of the introduction of the worker category in the UK and the provision of rights to this

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<sup>104</sup> Section 230, Employment Rights Act (1996).

<sup>105</sup> Part X, Employment Rights Act (1996).

<sup>106</sup> Section 88, Employment Rights Act (1996).

<sup>107</sup> Section 75A, Employment Rights Act (1996).

<sup>108</sup> Section 71, Employment Rights Act (1996).

<sup>109</sup> Section 80, Employment Rights Act (1996).

<sup>110</sup> Section 75E, Employment Rights Act (1996).

<sup>111</sup> Section 86 - 87, Employment Rights Act (1996).

<sup>112</sup> Section 80F, Employment Rights Act (1996).

<sup>113</sup> Section 57A, Employment Rights Act (1996).

<sup>114</sup> Section 135, Employment Rights Act (1996).

<sup>115</sup> Deakin S and Gillian M, *Labour Law*, 6<sup>th</sup> ed, Hart Publishing, Oregon, 2012, 153.

<sup>116</sup> Balaram B, Warden J, and Wallace-Stephens F ‘*Good Gigs- A fairer future for the UK’s gig economy*’ (2017), 37.

<sup>117</sup> Section 230 (3) (a), Employment Rights Act (1996).

<sup>118</sup> Section 230 (3), (b) Employment Rights Act (1996).

<sup>119</sup> Deakin S and Gillian M, *Labour Law*, 6<sup>th</sup> ed, Hart Publishing, Oregon, 2012, 174.

<sup>120</sup> Deakin S and Gillian M, *Labour Law*, 6<sup>th</sup> ed, Hart Publishing, Oregon, 2012, 175.

<sup>121</sup> Deakin S and Gillian M, *Labour Law*, 6<sup>th</sup> ed, Hart Publishing, Oregon, 2012, 176.

category.<sup>122</sup> It has been argued, however, that categorizing these persons as workers might lead to abuse. As a result, it has been suggested that the purpose of a third category should be to provide partial protection to those who are not employees.<sup>123</sup>

In the UK, an independent contractor is someone who is not under the control and direction of another.<sup>124</sup> They are fully self-employed and work under a contract of service.<sup>125</sup> An independent contractor is not covered by employment laws ‘because businessmen dealing with each other at an arm’s length should not be responsible for each other’s economic and physical security.’<sup>126</sup> Their services fall under contracts for service. Contracts for service are governed by commercial contract rules.<sup>127</sup>

### **4.3 Recent case law developments in the UK**

The UK courts have dealt with cases on the issue of employment status in the gig economy. This section examines the most recent ruling made by UK ‘s Supreme Court in the matter of Uber BV and others v Aslam and others.

The case eventually ended up at UK’s Supreme Court. The Tribunal was required to determine whether Uber drivers, whose work is arranged through Uber’s smartphone app, work for Uber under worker contracts and so qualify to be recognized as workers or whether, as Uber claimed, the drivers are not entitled to these rights because they work as independent contractors, executing services under contracts made with passengers through Uber as their booking agent.<sup>128</sup>

The majority of the Supreme Court’s judgment was predicated on the fact that the drivers are workers, not independent contractors because they are dependent on and subjugated to Uber. The Supreme Court acknowledged that Uber drivers had a significant amount of autonomy and independence in their work. The court, on the other hand, looked at the degree of control Uber and drivers have over the services they provide to passengers. The Court upheld the

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<sup>122</sup> The Commission of the European Communities green paper: Modernising Labour Law to Meet the Challenges of the 21st Century (2006),15.

<sup>123</sup> The Commission of the European Communities green paper: Modernising Labour Law to Meet the Challenges of the 21st Century (2006),16.

<sup>124</sup> Deakin S and Gillian M, *Labour Law*, 6<sup>th</sup> ed, Hart Publishing, Oregon, 2012, 145.

<sup>125</sup> Chayya S, ‘Towards the creation a fair ride-hailing industry: Should South African labour law regulate the Uber relationship?’ University of Cape Town published dissertation, 2018, 38.

<sup>126</sup> Deon L, ‘Regulating the scope of employment in the gig economy; Towards enhanced rights at work in the age of Uber’ 5, LSE Law Review, 2020, 195.

<sup>127</sup> Deon L, ‘Regulating the scope of employment in the gig economy; Towards enhanced rights at work in the age of Uber’ 5, LSE Law Review, 2020, 195.

<sup>128</sup> Uber BV and others v Aslam and others (2021) UKSC.

Employment Tribunal's decision, that, despite, their freedom to choose when they worked, they worked as drivers for Uber because of the control Uber has over them.<sup>129</sup>

The Supreme Court emphasized the following five findings that were made by the Employment Tribunal; First, Uber sets the payment provided to drivers for the work they completed, and the drivers had no opinion in the matter (other than by choosing when and how much to work). Uber also set the amount of its own "service fee," which it deducts from the fares paid to drivers.<sup>130</sup> Secondly, Uber sets the contractual terms under which drivers provide their services. Not only must drivers accept Uber's standard written agreement, but the terms under which they transport customers are also dictated by Uber, and drivers have no say in the matter.<sup>131</sup> Thirdly, in as much as the drivers have the freedom to choose when and where to work, their option over whether to accept requests for rides is controlled by Uber once they are logged into the Uber app. The court also stated that control is exercised by monitoring the driver's rate of acceptance (and cancellation) of trip requests, with warnings, logged off the system, and deactivation as consequences.<sup>132</sup> Fourthly, the court noted that Uber has extensive control over how drivers deliver their services. Even though drivers offer their vehicles, Uber vets the kind of vehicles that may be used. Furthermore, Uber owns and controls all of the technology that is used in the service, and it is utilized to exert control over drivers.<sup>133</sup> Lastly, the court noted that Uber restricts communication between passenger and driver to the minimum necessary to perform the particular trip and actively works to prevent drivers from forming any kind of relationship with passengers that could last longer than a single journey.<sup>134</sup> Taking all of these elements into account, the Supreme Court concluded that Uber's transportation service, which is provided to passengers via the Uber app, is very tightly defined and controlled.<sup>135</sup>

The court also noted that the service is designed and organized to provide a standardized service to customers in which drivers are seen as basically interchangeable and Uber, rather than individual drivers, benefits from consumer loyalty and goodwill. According to the court, the driver's inability to provide a unique service or determine their rates meant they had little or no ability to better their economic position through professional or entrepreneurial skills. In

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<sup>129</sup> Uber BV and others v Aslam and others (2021) UKSC.

<sup>130</sup> Uber BV and others v Aslam and others (2021) UKSC, 94.

<sup>131</sup> Uber BV and others v Aslam and others (2021) UKSC, 95.

<sup>132</sup> Uber BV and others v Aslam and others (2021) UKSC, 96.

<sup>133</sup> Uber BV and others v Aslam and others (2021) UKSC, 97.

<sup>134</sup> Uber BV and others v Aslam and others (2021) UKSC, 97.

<sup>135</sup> Uber BV and others v Aslam and others (2021) UKSC, 101.

practice, the only way the drivers can boost their earnings is to work longer hours while adhering to Uber's performance standards.<sup>136</sup>

Another factor the court considered was whether the contract was conclusive on its own. The Supreme Court stated that a written contract should not be used as the sole criterion for establishing whether someone qualifies as a "worker."<sup>137</sup> It upheld the approach of looking beyond the terms of any written agreement to determine the "true agreement" as "a purposive approach to the problem".<sup>138</sup> The true agreement will frequently have to be evaluated in light of all of the circumstances of the case, of which the written agreement is only a part.<sup>139</sup> Furthermore, there are no legal presumptions that a contractual document contains the entirety of the parties' agreement, nor is there an absolute rule that terms set out in a contractual document represent the parties' true agreement simply because an individual signed it.<sup>140</sup> The court concluded that it is necessary to consider the individual's objective situation as well as all of the circumstances of his or her work. While the wording of the contractual documents is important, it is not conclusive.<sup>141</sup>

The Supreme Court denied Uber's appeal, ruling that the Employment Tribunal was correct in concluding that the driver met the definition of a worker by logging into the app.<sup>142</sup> Furthermore, the court rejected Uber's claim that it was merely a booking agent because the Act governing booking agents required booking agents to have a direct relationship with the customer rather than through the driver, as Uber claimed.<sup>143</sup>

#### **4.4 conclusion**

The definitions in the UK Act are far broader than those in our Kenyan legislation. Our statutes only recognize employees employed under contracts of service who are governed by labor laws. The other dichotomy is that of independent contractors, who are not defined by statute but are treated as such under common law.

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<sup>136</sup> Uber BV and others v Aslam and others (2021) UKSC, 101.

<sup>137</sup> Uber BV and others v Aslam and others (2021) UKSC, 83.

<sup>138</sup> Uber BV and others v Aslam and others (2021) UKSC, 78.

<sup>139</sup> Uber BV and others v Aslam and others (2021) UKSC, 84.

<sup>140</sup> Uber BV and others v Aslam and others (2021) UKSC.

<sup>141</sup> Uber BV and others v Aslam and others (2021) UKSC.

<sup>142</sup> Uber BV and others v Aslam and others (2021) UKSC.

<sup>143</sup> Uber BV and others v Aslam and others (2021) UKSC.

Unlike in Kenya, the UK Act expressly states that any provision in a contract purporting to contract out of the UK Employment Act is void.<sup>144</sup> To that end, the Supreme Court ruled that provisions in the contracts between Uber and the drivers that purported to exempt the Uber drivers from employment laws were ineffective, because it is for the courts, not the parties, to determine the legal effect of a contract and whether it falls within one legal system or another. Although our Kenyan legislation does not contain similar provisions that prohibit contracting out, the Kenyan courts have taken a similar approach of looking beyond the terms of a written contract.<sup>145</sup> In *Kenneth Kimani Mburu & Another vs. Kibe Mugai Holdings*, Rika J ruled that he was not bound by the label given by the parties to a written contract or its contents.<sup>146</sup>

Worker as a separate legal category does not exist in Kenya. This category ensures that workers who fall between these two distinct categories do not lose their employment rights. This dissertation contends that a similar approach should be considered in Kenya in order to protect workers in this category.

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<sup>144</sup> Kashindi I, and Aringa A, *Employment Laws in the 'Gig' Economy'—Analysis and possible implications of the UK Supreme Court's February 2021 Uber judgment*, 15.

<sup>145</sup> Kashindi I, and Aringa A, *Employment Laws in the 'Gig' Economy'—Analysis and possible implications of the UK Supreme Court's February 2021 Uber judgment*, 15.

<sup>146</sup> *Kenneth Kimani Mburu & Another vs. Kibe Mugai Holdings* [2014] eKLR

## **CHAPTER 5: CONCLUSION AND RECOMMENDATION**

### **5.1 Introduction**

The goal of this study was to examine the significance of worker classification and how Kenyan employment laws can be improved so that workers in the online gig economy are adequately protected.

The problem for this paper was introduced in Chapter One. It introduced the topics that would be covered in the paper. The second chapter examined the significance of worker classification and the classification issue in the gig economy. The third chapter examined Kenyan constitutional and statutory provisions to determine where gaps in the law exist. The fourth chapter was a case study of the UK's position on the issue of worker classification in the online gig economy. This chapter will summarize the preceding discussion and conclude with some recommendations to better protect workers in the online gig economy.

### **5.2 Findings**

Given that the theoretical framework of this paper is access to justice, it is necessary to examine how the system has ensured that every individual's right, in this case, the gig economy worker's, has been considered and protected. The classification of workers is important because it determines what labor rights a worker has. Therefore, when a worker is misclassified, some of his or her labor rights are violated. These workers are classified as independent contractors on the platforms. Some employees, however, claim that the platforms misclassified them and that they are, in fact, employees. This is due to the level of control they have over them. Authors such as Davidov and Kruger have proposed that a new category be created for workers in the gig economy because their characteristics do not fit entirely into the independent contractor category. Valerio, on the other hand, is opposed to the creation of a new category. According to him, adding another category may not solve the problem because the issue of employment status and misclassification extends beyond the boundaries of the gig economy.

The study found that, while there is a constitutional and statutory foundation for worker protection, there are several gaps in the law. The following employment laws were examined in the study: The Employment Act, the Labour Relations Act, and the Employment Act (Amendment) Act. The laws mentioned above do not define an independent contractor. Furthermore, the provisions outlined in these laws only apply to employees. The Employment Act (Amendment) Act defines an employee in a more specific and detailed manner. It also includes provisions such as overtime, flexible time, and part-time employment, among others. These provisions can only protect gig economy workers who are classified as employees.

Otherwise, the Employment Act (Amendment) Act does not protect or provide for any other gig workers. According to a previous study, separate legislation should be enacted for those who are not employees in the traditional sense but are dependent. This was not considered in the legislation.

In the UK there are three categories of workers that is an ‘employee,’ ‘independent contractor’ and the ‘worker’. The ‘worker’ category was analyzed, and it was suggested that perhaps Kenya could incorporate a similar category for persons who show the characteristic of both an independent worker and an employee.

### **5.3 Recommendations**

- a. Modernize employment and labor protections to reflect today's realities.

There must be an acknowledgment that labor laws must shift away from providing greater protection only to those working in traditional occupations. The current Employment Act and Labour Relations Act became law in 2007. This was before the emergence of the gig economy in the country.

It is obvious that the law was enacted primarily to protect traditional employees. This means that workers who were not covered by both Acts are left vulnerable. Thus, it is critical to update all laws governing employment relationships in order to accommodate all types of workers, both traditional employees and the new breed of workers that have emerged as a result of the gig economy.

- b. The Employment Act Amendment Act should be amended to include gig workers.

It is my recommendation that the Amendment Act should contain provisions that are specific to gig workers. It is clear from the analysis in Chapter 3 that gig workers have not been fully considered. Thus, it will be critical to have a law that clarifies the employment aspects of the gig economy. As more people migrate to the gig economy, classifying all gig workers as independent contractors will result in an increasing number of workers being unprotected by labor laws.

- c. Create a new category of workers.

Based on the preceding analysis, it is clear that gig workers do not fall into the categories of workers defined by the law. Creating a new category will help to ensure that their labor rights are protected. Furthermore, when developing the new class, it will be critical to try to predict



how the gig economy will evolve in the future so that those factors are also considered when developing the new class.

## **Bibliography**

### **Books**

1. Bell A, *Employment Law in a Nutshell* 2003, 2nd ed London: sweet and Maxwell.
2. Deakin S and Gillian M, *Labour Law*, 6<sup>th</sup> ed, Hart Publishing, Oregon, 2012.
3. Woodcock J and Graham M, “*The gig economy, a critical introduction*” Polity Press, Cambridge, 2020.

### **Journal Articles**

1. Stewart A, Stanford J, ‘*Regulating work in the gig economy. What are the options?*’ *The Economic and Labour Relations Review*, 2017
2. Rawls J.; *A theory of justice*; , Cambridge, MA: Harvard University Press, 1971.
3. De Stefano V, "The rise of the 'just-in-time workforce' on-demand work, crowd work and labour protection in the gig economy" *Comparative Labour Law Journal*, October 2015.
4. Kenneth D, ‘*The problem of misclassification’ or how to define who is an employer under protective legislation in the information age*’ SSRN, 2018.
5. Pinsof J, “A new take on an old problem: Employee misclassification in the gig economy” 2(22) *Michigan Telecommunications and Technology Law Review*, 2016.
6. Guy Davidov ‘ *The Status of Uber Drivers: A Purposive Approach*’ (2017).
7. Balaram B, Warden J, and Wallace-Stephens F ‘*Good Gigs- A fairer future for the UK’s gig economy*’ (2017).
8. Deon L, ‘ *Regulating the scope of employment in the gig economy; Towards enhanced rights at work in the age of Uber*’ 5, *LSE Law Review*, 2020.

### **Reports/working papers**

1. Dokko J, Mumford M, Whitmore D, ‘*Workers and the online gig economy*’ A Hamilton Project Framing Paper, 2015
2. Corassa E, ‘*Uber-Relationship with drivers*’, Institute for Research on Internet and Society, May 29, 2017.
3. Business and human rights resource centre, *the future of work: litigating labour relationships in the gig economy*, March 2019.
4. A Proposal for Modernizing Labour Laws for Twenty-First Century Work: “*The Independent Worker*’ Discussion Paper (2015-10).
5. *Fairness at Work*’ Research Paper 98/99 (November 1998).

6. The Commission of the European Communities green paper: Modernising Labour Law to Meet the Challenges of the 21st Century (2006).

### **Dissertations**

1. Wambaa I, “An analysis of Uber drivers' employment status in accordance with Kenyan Labour Law” unpublished LLB Dissertation, Strathmore University, Nairobi 2018.
2. Shaw A, “Smartphone compatible? Employment status in the gig economy, “ Published LL.M thesis, University of Glasgow, 2018.
3. Alamyar F, ‘Uber and the future of work: Formal rights, collective action and experiences of work within the platform economy ’ unpublished thesis, University of Sydney, Sydney, 2017.
4. Chayya S, ‘*Towards the creation a fair ride-hailing industry: Should South African labour law regulate the Uber relationship?*’ University of Cape Town published dissertation, 2018.

### **Internet sources**

1. <https://www.flexjobs.com/blog/post/what-is-the-gig-economy-v2/>
2. <https://www.wgu.edu/blog/pros-and-cons-gig-economy1808.html#close>
3. <https://www.quickenloans.com/blog/gig-economy-pros-cons-gig-work>
4. <https://journal.businesstoday.org/bt-online/2018/from-linear-to-triangular-redefining-business-in-the-gig-economy>
5. <https://myopencourt.org/employee-versus-contractor/>
6. <http://kituochasheria.or.ke/wp-content/uploads/2016/04/Kenyan-Worker-and-the-Law-final2.pdf>
7. <https://www.oraro.co.ke/2018/06/27/employed-or-not-comparing-employees-and-independent-contractors/>

### **Legislation**

1. Employment Relations Act ( 1999), England.
2. Working Time Regulations ( 1998 ), England.
3. National Minimum Wage Act (1998), England.
4. Employment Rights Act (1996).
5. Labour Relations Act (No. 14 of 2007).

6. Employment Act (Amendment) Bill, 2019.
7. Employment Act (CAP 226 of 2007).

### **Case law**

1. Pimlico Plumbers Ltd v Smith (2018), UK Supreme Court.
2. Bernard Wanjohi Muriuki v Kirinyaga Water and Sanitation Company Ltd and another [2012] eKLR.
3. Uber South Africa Technological Services v NUPSA W and SAT A WU and others, [2017].
4. Douglas O'Connor v Uber Technologies Inc., [2016] N.D. Cal
5. Walker v The Crystal Palace Football Club Ltd (1910) 1 KB 87
6. Ready Mix Concrete vs Minister of Pensions [1968] 2 QB 497
7. Motorola Ltd v Davidson, Melville Craig Group Ltd [2001] IRLR.4
8. Stevenson, Jordan & Harrison v Me Donald and Evans( 1952) 1 TLR 101.
9. *Maurice Oduor Okech v The Chequered Flag Limited* [2011] EKLR.
10. Stanley Mungai Muchai v National Oil Corporation of Kenya (2012) EKLR
11. Market Investigations v Minister of Social Security (1969) 2 QB 173.
12. Byrne Bros (Formwork) Ltd v Baird [2002] ICR.
13. R (on the application of IWGB) v Central Arbitration Committee (2018).
14. Uber BV and others v Aslam and others [2015].
15. Uber BV, Uber London Ltd, Uber Britannia Ltd v Aslam & Others (2017).