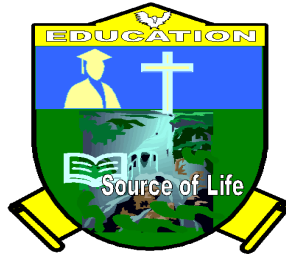


RUAHA CATHOLIC UNIVERSITY



ASSESSMENT ON THE LEGAL CHALLENGES FACING CASUAL WORKERS IN IRINGA
RESEARCH PAPER SUBMITTED IN PARTIAL FULFILLMENT OF REQUIREMENTS FOR
THE AWARD OF THE BACHELOR OF LAWS DEGREE (L.L.B) OF RUAHA CATHOLIC
UNIVERSITY

BY

CASTOR AIDAN NDUNGURU

652/LLB/T/2017

PREPARED UNDER THE SUPERVISION OF

MR. JUSTIN MLAY

AT THE FACULTY OF LAW

October, 2022

CERTIFICATION

I certify that I have read and recommend for acceptance by the Ruaha Catholic University a research paper titled: **Asse on the legal challenges facing casual workers in Iringa**. In partial fulfillment of the requirement for the award of Bachelor Degree of Law (L.L.B) of Ruaha Catholic University

Signed on..... day of.....2021

.....

Supervisor

Mr. Justin M. Mlay

DECLARATION

I, **CASTOR AIDAN NDUNGURU**, do hereby declare that this research is my original work, and where other people's textbooks and materials have been used, I have acknowledged them, and this has been and it is not currently been submitted in any other university.

Date:

Signature:

.....

CASTOR A. NDUNGURU

(Researcher)

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DEDICATION

I would like to dedicate this work to my father Mr. Bosco Ndunguru, Dr Ana Luis Haule for making me who I am today.

“May almighty God bless, give them a long, happy and successful life”

ACKNOWLEDGEMENT

I thank Lord Jesus for all his blessings, strength, knowledge and protection throughout my life. To complete this researcher was not an easy task; I believe it was the result of the combined effort and assistance from the individuals and institution.

I would like to express my deepest appreciation to all those who assisted me in one way or another in order to complete this researcher. I give my special gratitude to my supervisor MR. JUSTIN MLAY who never got tired to read my research, guided and encouraged I from the beginning up to the end of my research, without his assistance this research could not have been completed, May the Lord bless him.

Also, I would like to acknowledge and thank the following people who provided assistance to BOSCO ODDO NDUNGURU, CHRISTINA NDUNGURU for their kindness, love and support they have given me during my academic journey.

Finally, my deepest appreciations are extended to dean of faculty of law at Ruaha catholic university and all members of my family for their moral and monetary support, encouragement and prayers throughout my studies.

ABSTRACT

Basically, this research is intended to analyze the legal challenges facing casual workers in our country by referring to legislation like the employment and labor relation act revised edition 2019 and other relevant legislation, also the research is going to cover the contribution of casual laborers and why there is the need of recognizing and protecting these casual workers in our country? Since the development of science and technology, population growth, and unemployment casual laborers have been increasingly day after day and its protections seems to be challenge able to them even though they contribute a lot to the development of the private sectors and other investments like hotels, restaurants, lounge lodge and guest houses.

This dissertation will be carried out in Iringa as field research, and library based particularly physical library like Ruaha Catholic university and online libraries that will employ legislation, articles, journals and other relevant materials as far the issue of casual workers is concerned.

LIST OF LEGAL INSTRUMENTS

DOMESTIC LAWS

The constitution of the united republic of Tanzania cap 2 of 1977 (RE 2002) as amended from time to time

The employment and labor relation act 2019

The child act 2009

The social security and regulation act 2008

The arbitration act 2020

Law of contract act cap 345 re 2019

INTERNATIONAL INSTRUMENTS

International convenient on political and civil rights 1966

Convention concerning private employment agencies 1997

Resolution concerning employment policies 1996

Convention concerning termination of employment at the initiative of employer 1982

Declaration on fundamental principles and rights at work 1998

Discrimination (employment and occupations) convention 1958

The employment policy convention 1964 (122)

Labor inspection (agriculture) convention 1969(129)

LIST OF ABBREVIATIONS

JUMUIYA YA WAFANYAKAZI TANZANIA (JUWATA)

TRADE UNION CONGRESS IN TANZANIA (TUCTA)

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CHAPTER 1

GENERAL INTRODUCTION

1.1 Background of the problem

Casual worker is a worker on a temporary employment contracts which generally limited entitlements to benefits and little or no security of employment, and the main attribute is the absence of a continuing relationship of any stability with an employer, which could lead to their not being considered employees at all. Casual workers differ from other non-permanent workers in that they may often possess fewer rights and less protection. Or Casual employment ¹ refer to the kind of employment that is performed for a particular period of time which basically the relationship between an employer and employee ends after an end of the employment².

Casual employment refers to the situation in which an employee is only guaranteed work when it is needed, and there is no expectation that there will be more work in the future³. And during the time when the employee is not working for employees there is no active relationship between the two, and neither one has obligations towards the other. Casual worker means a worker engaged by the hour and who may be dismissed or leaves the employer's service at any moment without notice.

Casual laborer of the late 19thc to 20 centuries were dock workers and construction activities employed a lot of casual laborers and part time workers are mostly

¹M. Simpson, *"an analysis of the characteristic of casual employment"* western Australian labor market research center 2011 6

²M.Crotty&G.Davenporty, *"Termination of employment digest"* 2020 277

³ <https://www.mightyrecruiter.com> accessed on January13, 2022

preferred by retirees and students, and nowadays due to unemployment problems and increase of overpopulation many people are hired as casual workers.

Casual employment basically means a worker with casual employment would not be allowed to file personal grievance towards the employer regarding unjustified dismissal during the time when casual employer is not working and they actually compensated for the time actually worked, which means they would not receive paid time off for holidays. The development of science and technology has led to establishment of various investments which actually brings about casual employments where people are recruited and hired for a purpose of performing different activities available in those luxuries' places and social services. Casual employment can be seasonal work contract for fixed period, fixed task and so forth, the difference between casual employment and any other employment depends on the mode of payments and contracts⁴

The development of science and technology together with increase of population has increased the growing of casual workers simply because of unemployment problem, and people are moving from villages to towns to search for jobs and employments opportunities, when they get in to town they find out that the kind of employments available is not permanent as the result they remain as casual laborer which basically they work for hours and sometimes the kind of payments issued to them is very minimal while they work for long hours as finally they become flexible workers⁵. Basically the author speaks about the need of agreements or contracts that will help to protect casual

⁴S. Toms, *"the impact of UK temporary employment industry in assisting agency"* 2012 18

⁵B. Kenny, *"retail worker politics, race and consumption in south Africa"* 2018 107

workers before the court of laws by having contractual agreement it will help to have a sense of defined duties and responsibility that every part is binding to all employer and employee. Basically in the past three decades there has been phenomenal growth in casual employment of which the employment share of such worker grew from 13.3% to 20% of all employees from 1982 to 1989⁶.

1.2 Statement of the problem

It appears that casual workers are not recognized by Tanzanian laws, as the result they are faced with several challenges in such a way that the Employment and Labor Relation act revised edition 2019 is silent⁷. As the result casual workers are denied with several rights and they are non-protected as they may be fired anytime without compensation, access to employment contracts, salaries and remuneration, easy to be exposed to sexual offenses, relief, poor working condition, overcharging, long working hours, and no leaves and even payments when they are on holiday. Therefore, this research aims to analyze the legal challenges, lavish dismissal of workers without reasons for the dismissal, they have no relief, access to join workers union, shortage of wages and salaries, poor working condition, and so forth. Therein casual workers are working without obligations and standards⁸. Generally, the non-existence of the law specifically on the protection of casual workers towards the legal challenges that they are encountering in daily bases as far the right to work is concerned⁹.

⁶R. Blanpain & T. Araki, *"Labour law in motion; diversification of the Labour force terms and condition"* 2005 7

⁷The employment and labor relation act 2019

⁸S. Dasgupta, *"employment security: conceptual and statistical issues"* international labour office 2011 24

⁹ Article 23 of the constitution of the united republic of Tanzania 1977

1.3 Literature review

In the world several authors have written about casual workers but as the matter of the fact none addressed on the safety and working condition and protection of the workers as addressed below.

Chriss¹⁰ addressed that basically the right of work is very important has is very close to the right of life. But in all of his work he discussed nothing about the safety working condition of casual workers together with the problems which they are likely to face during working hours. As the matter of the fact these problems may sometimes endanger their lives.

Since there is no clear relationship between an employer and employee and mostly are not covered by labor legislation particularly the employment and labor relation act.

Magalla & Beno¹¹ argued that casual workers are very important since they give flexibility and management of labor and also, they argued on the consumption of impermanent workers has been intensively growing in Tanzania, this is due to characteristics of such casual workers as they are easily managed, less economical, as there are no monthly payments only daily, hours and Weekly thereof no economic burden for employers. Also, the author comments on the payments of casual workers are made when there is sunset in which such payments shall only last for thirty days to casual workers. The meaning of casual workers provides a clear picture that they are for short term, not regular workers and their future is mostly indeterminate or ambiguous. Basically, by

¹⁰M.P. Chriss, *"Human rights in Tanzania selected cases and materials"*, Rudiger Koln: koppe 1997

¹¹B. Beno B. A. Magalla .*Casual workers in Tanzania, enforceability, achievements and challenges* [2021]

means of uncertainty and ambiguous it elucidates how insecurity their position is in terms of employment contracts, which means their contractual obligations maybe terminated at any time or job description be changed at any time whenever the employer desire to do.

Also, the authors argued that casual workers are not even recognized by Tanzanian's legislation like those that govern employment and labor relation as the results it becomes difficult for them to enforce their disputes since there is no permanent relationship between an employer and employee as their relationships ends after the accomplishment of certain work.

Also the author under page 25 of the article argued that casual workers are paid with low wages and unstable, as they do not enjoy company benefit including housing, paid maternity leave, paid annual leave, coverage for sickness, payment of low wages, excessive working hours, poor working condition and funeral assistance as the result workers are unregulated informal employment which actually express them to violations in regard to their labor rights as provided under ¹², and rights that are provided by employments and labor relation act together with international labor organization¹³.

Maina¹⁴ the author argued that to some extent the right to work is basically connected with the survival of an individuals and the society at whole. And it said to be closed related to right to life which basically it is universal and inalienable, and that being the case the right to work requires Legal protection since non protection of right to work

¹² Article 22 of the constitution of the united republic of Tanzania 1977

¹³ A. Magalla B. Beno, "Casual workers in Tanzania enforceability, achievements and challenges" [2021]. P 25

¹⁴ C.P. Maina, *Human rights in Tanzania. Selected cases and materials* [1977], p.169

may endanger the right to life which is provided under article 14¹⁵ of the constitution of the united republic of Tanzania.

Granier¹⁶ the author on his article The challenges of casual employments contract addressed that casual employment are very important since they are part and parcel of state economy, many employers rely on casual employee in order to keep their operation running during temporary peaks in demand for their product or service to cover short term absence for permanent stuff, casual workers are characterized by the following they do not have to say yes when asked to work, they have no expectation of regular or ongoing employment and also they get paid their annual leave entitlement as an extra 8 percent of their ordinary pay or get paid it out on termination, the author expressed the challenges facing this class f workers including

- (i) Casual workers does not have the correct written contracts
- (ii) Casual Employees does not accruing annual leave in payroll
- (iii) They can be fired anytime depends on how the employer think about their employment on that particular date, in short their employment is not secured.

Apart from all the concerns the author has not suggested any measure that would be helpful in protection of casual labors despite of their contribution to the national economy, the state laws does not even recognize them therefore its protection during working is not covered.

¹⁵ *The constitution of the united republic of Tanzania [1977]*

¹⁶ V. Granier, "The challenges of casual employment contracts [2020]23

In the case of **work Pac Pity Ltd v Rossato**¹⁷ The matter centered was whether or not Mr. Rossato was a casual employee and therefore not entitled to annual leave.

In the case of *Lee v. Showmen's Guild of Great Britain*¹⁸, Lord Denning was on the opinion that an individual right to work is just as important to him as if not more important than his right to property. Several times the courts intervene to protect right to property than right to work which seems to endanger the right of life of an individual which is dangerous to him.

William ¹⁹argued that since the turn of millennium there has been recognition that the standard employment relationship of formal full time and permanent wages employment is becoming ever less the standard relationship, the norm. Given that the SER has been for many for many decade the key vehicle for allocating rights and social protection, its demise posed challenge for the operation of regulatory framework and raised issues of about working condition, rights and benefits. That is due to the rise of nonstandard employments as far casual workers are concerned.

Cabaneros²⁰, the authors argued that the nurses of Philippines are today facing with a lot of challenges and difficulties as far casualization is concerned such as unsecured employments or security of jobs or tenure due to lack of jobs they find themselves working as casual workers which is the same to Tanzanians casual workers who are also experiencing the same problem due to the fact that most of them do not have an employment contracts as the result the remain economically poor.

¹⁷ [2020]FCAFC 84

¹⁸ [1952]2 QB 329

¹⁹ C. William, "*dependent self-employment(theory, practice and policy)* Edward Elgar publishing limited 2019 1

²⁰ A.cabaneros,"a termed employment university of santo Tomas 2014

1.4 Hypothesis

It appears that casual workers are not recognized and protected against unsecured employment by Tanzanian laws,

1.5 Objectives

The research has both general and specific objectives

1.5.1 General objectives

To make analysis on the laws governing employments and how far does the laws recognize and protects casual workers with their challenges during working condition in our country.

1.5.2 Specific objectives

1. To analyze the existing legal framework governing the employments in Tanzania
2. To analyze the effectiveness of the said legal framework governing employments
3. To recommend the way forward on ensuring recognition and protection of casual workers in Tanzania

1.6 Significance of the research

(I) this research is important because it enables the law makers to look again on the loop holes as far the advocates act is concerned since it affects the right to fair hearing that every member of the society is entitled with and together with promotion of equality and fairness within and outside the court.

(II). it enable casual workers to improve their financial status and economy at general during retirement.

1.7 Research methodology

This research is both field and library based as the methods of data collection. The research is intending to employ primary data source which includes interviews where I am intending to interview 20 casual workers, 6 advocates and 10 lawyers and 10 public servants and in secondary Data source the researcher is intending to use legislation, cases, articles and books and journals, physical library and online library.

1.7.1 Primary data source

This includes labor laws, international laws in related to assessment on the legal challenges facing casual workers here in Iringa

Primary data source will involve interviews and questionnaire in which the researcher is intending to interview 20 casual workers including those working in lounge, guest house, restaurants. And questionnaire of which a list of open-ended questions will be issued to groups of totals of 10 people so forth especially those working here in Iringa Tanzania.

1.7.2 Primary data collection

It is based on field research where by the researcher expects to get a primary data, during the collection of primary data the following tools will be employed:

1.7.2.1 Interview

An interview refers to the formal meeting at which somebody is asked questions in order to find out if they are suitable for a source of study. Therefore under this part the researcher had 20 interviewees as casual workers herein Iringa conducted on April 2022 from 18:00 pm to 22:00 pm around Miami bar, essence pub, twiga bar, and on those

interview the researcher find out that there is no specific law that protect casual workers towards unsecured employments and other legal challenges.

Also the researcher managed to interviewed 5 advocates on April 2022 herein Iringa Tanzania during public working hours, and still three of them argued on the point that it's true that casual workers are faced with many legal challenges that are not yet covered by our legal scheme.

Questionnaire

The researcher also employed questionnaire specifically on open ended questions that will allow parties to elaborate the legal challenges that they are encountering on casualization of workers, each paper consist of six questions that a respondent have to respond to it, and everyone did it independently in tackling those questions relevant to the topic.

1.7.3 Secondary data collection

The researcher was based on library research, where the data collected can be as a primary source, secondary source, and secondary source data collection, the researcher expected to get information from library and particularly Ruaha Catholic university library (Benjamin Mkapa Learning resource Centre) kind of information that are relevant with casual workers' rights and their legal challenge.

The researcher chosen Ruaha Catholic university simply because it's nearest library and easy to access information at any time where a researcher needs them.

1.7.4 Data analysis

The study employed qualitative approach in respect to data extracted through interview and questionnaire which basically relate to the topic of the study. Qualitative means description of terms, facts ideas and the concept of legal challenges facing casual workers in Iringa.

1.7.5 Study area

The study conducted herein Iringa Tanzania where a researcher managed to get a primary data by interviewing different people about the subject matter as far casual workers are concern. The researcher chosen Iringa simply because it's easy to accumulate data related to the topic.

1.8 Scope and limitation of the study

1.8.1 Scope

This study will concentrate only on the assessment on the legal challenge facing casual workers in Iringa, case study hotels, restaurants, lounge and bar.

1.8.2 Limitation of the study

A researcher faced with challenges such as

- (i) Difficulties in accessing materials that are related with the study like physical ones
- (ii) Financial problems simply because it required a researcher to visit different areas to look for information that are connected with casual workers, therefore suppose he was required to have transport costs, stationeries and other costs related to the study.
- (iii) Poor cooperation between a researcher and respondents especially some of the respondents were not ready to answers questions relating to casual employment and their challenges as most of them fear to be dismissed by the employers, therefore there was miss communication between the two particularly in some areas like in grocery, lounge and restaurants

CHAPTER II

THEORETICAL, AND CONCEPTUAL FRAMEWORK ON LEGAL CHALLENGE FACING CASUAL WORKERS

2.1 Introduction

This chapter aimed at providing the definition of the key different concepts that have been applied in this study as far legal problem is concerned including casual workers or labors and casual employment.

2.2 Meaning of Employment

Refers to an agreement between an individual and another entity that stipulates the responsibility payment terms and arrangement, rules of workplace and is recognized by the government or employment refers to the idea that an individual has entered some form of verbal or written commitment with an entity, known the employer under certain stipulation such as payment schedules and others²¹

Or employment refers to the employment relationship is the legal link between employer and employee it basically exists when a person perform work or services under certain conditions in return for remuneration. Under employment there is rights and duties that both employee and employer have set and each party have an obligation to implements it accordingly. There are different types of employments available here in Tanzania²²

- (i) Self-employed or employee

²¹ <https://www.Underemployment.com> retrieved on April 20,2022

²² <https://www.citizensinformations.com> retrieved on April 20, 2022

- (ii) Part-time employees
- (iii) Casual workers or temporary employees
- (iv) Seasonal workers

According to the study I am going to focus on casual employments as far as the conceptual framework is concerned

2.2 The meaning of Casual employment

Refers to a situation in which there is only guaranteed work when it is needed, and there is no expectation that there will be more work in the future, during period when employee is not working for the employer the two parties have no active relationship and neither one has any obligation towards the other²³. Basically casual labor would not be allowed to file personal grievances or complaints towards the employer regarding unjustified dismissal during the time when casual employee is not working and casual employee are actually compensated for a time actually worked. This means that they would not receive paid time off for holidays. Example of casual workers includes those on zero hour's contract, or guaranteed minimum hours contract, self-employed or freelance contracts contractor or sub-contractors arrangements and so forth. Casual employment normally refers to the work of extreme short duration; basically for statistical purpose the international labor organization classed this form of employment as having the duration of no more than 14 days²⁴.

²³ <https://www.mightyrecruiter.com> retrieved on April 20, 2022

²⁴ International Labor organization sectoral activities programme [1993] p.6

2.3 Employment contracts

Is a signed agreement between an individual employee and an employer or labor union which basically establishes both the rights and responsibilities of the two parties the worker and the company²⁵. The functions of employment contract is to regulate the relationship between an employer and employee in terms of duties and responsibility and also to create limits to both employer and employee²⁶

2.4 Contract

Refers to an agreement that may be enforceable through a court action²⁷. or an agreement between two or more people (groups) to do or (not to do) something. Basically the agreement can be enforced by law²⁸ or sometimes it defined as an oral or written agreement between parties in which the parties make mutual promises to each other. The parties must have at least 18 years of age and be mentally capable of entering such an agreement.

2.5 Employee

“Means an individual who has entered into a contract of employment or has entered into any other contract under which individual undertakes to work personally for the other party to the contract and the other party is not a client or customer of any profession business or under taking carried on by the individual or is deemed to be employee by the minister under section 98(3) of the same act”²⁹, Is defined as a person

²⁵<https://www.thebalancecarriers.com> retrieved on April 22 2020

²⁶S. vettori, “the employment contract and the changed world of work” 2016

²⁷ Black law dictionary

²⁸ ibid

²⁹ Section 4 of employment and labor relation act RE 2019

working for another person or business, firm for pay³⁰. Basically employees have the following duties to their employer, taking reasonable care for their own health and safety, cooperate with anything that the employer does to comply with HOS requirements, not intentionally or recklessly interfere or misuse anything provided at the work place, and also to take reasonable care for the health and safety for others who may be affected by the acts or omissions³¹.

2.6 Employer

Refers to any person including the government and an executive agency who employs an employee³². Or Refers to a person or firm that employs workers³³, also an employer is the authority which employs and pays employees for their labor. Normally it may be an individual person or company representing many people³⁴. Actually an employer has the following duties such as define the terms of an employment and drafting contract, and also a party legally liable for work conditions, maintaining labor laws and handling any legal action any employee may pursue³⁵.

2.7 Labor matters

Means any matter relating to employment or labor relations³⁶ or means any organized labor strike, material dispute, material slowdown or material stoppage, or collective bargaining or unfair labor practice claim³⁷.

³⁰<https://www.dictionary.com> accessed on May 2, 2022

³¹<http://ohsrep.org.com> accessed on May 2, 2022

³² Section 4 of The employment and labor relations act RE 2019

³³ English dictionary

³⁴<https://www.mightyrecruiter.com> retrieved on May 2, 2022

³⁵ Supra note

³⁶ ibid

2.8 Trade unions

Means any number of employees associated together for the purpose, whether by itself or with other purpose, of regulating relations between employer and their employees or the employers association to which the employers belong, trade unions stated during the last quarter of 20th century to find for workers³⁸. Example of trade unions here in Tanzania includes trade unions congress in Tanzania (TUCTA), Jumuiya ya wafanyakazi Tanzania (JUWATA)³⁹, and so forth. Basically the functions of trade unions are like collective bargaining with the management for securing better work environment for the workers/employees and also providing security for the workers and keeping check over the hiring and firing of worker, and lastly assisting the management in addressing the grievances of workers at appropriate level⁴⁰.

2.8.1 Wages

Refers to the recompense or consideration paid, or stipulated to be paid to a person at regular interval for services. Fixed wages as by the year, quarter or month⁴¹. Basically wages are paid to employees after performing a particular activity stipulated in the contract by the employer⁴²

³⁷<https://lawinsider.com> accessed on May 2,2022

³⁸M.a Bienefield. *"Trade unions and peripheral capitalism: a case of Tanzania 1977*

³⁹A. coulson, "Tanzania: a political economy" 2013

⁴⁰<https://www.yourarticlelibrary.com> accessed on May 2,2022

⁴¹ The English dictionary

⁴²T. Dobbins & p.prowse,"*the living wage: advancing the global movement*" 2021

2.8.2 Casual employment

Refers to the situation in which an employee is only guaranteed work when it is needed, and there is no expectation that there will be more work in the future⁴³. Basically during this period when the employee is actually not working for the employer therein the two parties have no active relationship, and neither one has any obligations towards the other, which normally means a worker with casual employment a worker with casual employment will not be allowed to file personal grievance towards the employer regarding unjustified dismissal during the time when the casual employee is not working⁴⁴.

2.8.3 Remuneration

Means total value of all payments in money or in kind made or owing to an employee arising from employment of that employee⁴⁵.

2.8.4 Arbitration

Is the process in which the disputant parties choose a neutral person to hear their dispute or resolve it by rendering a final and binding decision or award, arbitration is referred to an adversarial, adjudicative process designed to resolve a specific issue submitted by the parties⁴⁶. basically arbitration does not require conformity with legal rules and evidence and the procedures and also there is flexibility in timing and choice of decision makers⁴⁷

⁴³<https://mightyrecruiter.com> accessed on May 12, 2022

⁴⁴ibid

⁴⁵ Section 4 of employment and labor relation act RE 2019

⁴⁶ Black law dictionary

⁴⁷ ibid.

2.8.5 Arbitrator

Refers to a person, or one of two or more persons chosen by parties who have a controversy to determine their differences⁴⁸. Or someone chosen to judge and decide a disputed issue between the two parties⁴⁹. Also arbitrator is defined as a neutral third party, selected by the parties to the dispute, who makes a decision on an issue in dispute⁵⁰. Basically arbitrator after being appointed or chosen to settle a dispute by hearing an arguments from both parties and then rendering a decision at his or her own discretion, not bound by rules of law of equity ⁵¹. In law the decision of arbitrator is binding to both curt of law and parties to the suit, therein it's the duty of arbitrator to issue arbitration award after judgment⁵²

2.8.6 Agreement

Refers to a mutual understanding between two or more parties⁵³. Or it's sometimes defined as a state of agreeing, harmony of opinion, statement, action or character between the parties⁵⁴. Herein this research agreement is used as a means of settling disputes between employer and employee.

⁴⁸T. carbonneau, "*the law and practice of arbitration*: fifth edition 2014

⁴⁹ English dictionary

⁵⁰ Black law dictionary

⁵¹ibid

⁵²E. onyema, "*international commercial arbitration and the arbitrators contract*" 2010

⁵³ibid

⁵⁴ English dictionary

2.8.7 Termination of contract

Is when one party of the contract wishes to end the contract before other party can fulfill the agreement⁵⁵, or terminate means to end, to expire, and to fire an employee⁵⁶

The word termination refers to a place where something ends or is complete⁵⁷.

It mainly include end n time or existence, limit in space or extent, expire or to fire an employee and so forth⁵⁸. Also termination of contract might include remedies such as compensation to the parties in contract if the contract is breached⁵⁹

2.1.1 BAR

Is a location that is licensed to sell alcohol and often, that is all they serve⁶⁰

2.1.2 LOUNGE

Is a similar to a pub, but usually couches and lounge chairs are available where you can sit back and relax through which drinks are served and live music may be played too⁶¹

PUBS

Refers to a short for public house which also serves alcoholic drinks, as the results these locations offer more of home like atmosphere⁶².

⁵⁵<https://summize.com> accessed on May 22,2022

⁵⁶Black law dictionary

⁵⁷ English dictionary

⁵⁸W. Godwin," *the 2017 Fidic contracts*" 2020

⁵⁹J. Stannard & D. Capper,"*Termination for breach of contract*" 2020

⁶⁰<https://www.shackomaha.com> accessed on may 22,2022

⁶¹ibd

⁶²ibdd

2.1.7 CLUBS

A club offers more upbeat atmosphere, these locations are usually spacious and feature a dance floor or a stage. Through which alcoholic drinks are served and may be ordered at a bar within a facility or can be ordered by a server⁶³.

2.1.8 THE INTERNATIONAL LABOUR ORGANIZATION

The international labor organization was established in 1919 by a treaty namely the Versailles peace treaty after the end of World War 1 to reflect the belief that the universal and lasting peace can be accomplished only if it is based on social justice, its main office is located in Geneva in Switzerland, and basically this institution was established to perform different functions such as to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthening dialogue and work relate issues⁶⁴.

⁶³ibid.

⁶⁴ The international labor organization (1998)

CHAPTER III

THEORETICAL LEGAL FRAMEWORK

3.1 Introduction

This chapter is basing on giving out various meaning of terms that are used in this research

3.2 THE CONSTITUTION OF UNITED REPUBLIC OF TANZANIA 1977

According to article 22(I) of the constitution of the united republic of Tanzania ⁶⁵ it provide for right to work of which every individual person is entitled with such particularly right, “*every person has the right to work*” thereof by doing so right to work is something recognized by the state constitution through which equal opportunities should be given to all the workers under such certain circumstances, also article 23(1)⁶⁶ it provide for right of any person without discrimination of any kind is entitled to remuneration consummate with his work. Therefore the act of employers not paying casual workers right on time as well as discriminating them during working hours is against the constitution of our country, doesn’t matter whether they have oral or written contracts is something illegal and against state laws. Therefore the act of discriminating casual worker because they don’t have contracts is against this particular article.

⁶⁵ The constitution of the united republic of Tanzania 1977

⁶⁶IBD

3.3 THE EMPLOYMENT AND LABOUR RELATION ACT 2019

Basically this legislation was introduced in order to safeguard the interests of employers and their employee, in terms of defining the legal rights, duties and obligation that every person is entitled with like

This particular law is the major law that defines and governs the relationship between employer and employee in both aspects and all the necessary requirements for the relationship between both of them. However this law does not defined and recognizes casual workers as the result of denying several rights that are supposed to be entitled to casual workers in row. Therefore by not recognizing casual workers in this act it has caused a lot of legal challenges to them, like denial of Leaves, poor wages, casual workers are working even without contracts which eventually brings difficult for them to attain their basic needs that are even provided by the constitution and other legislations. By not recognizing casual workers in our country it has also caused low productivity growth, job insecurity, fewer wages and more works, presence of corruptions, and absence of knowledge, denial of access to joins trade unions and so forth.

Casual workers only enjoys those basic rights which are entitled to every employee such as provided under the employment and labor relation act basically under part II of the same provision.

3.4 THE SOCIAL SECURITY REGULATION ACT 2008

This law was enacted for the purpose of regulating the social security sector for both informal and formal sectors. Basically the major aims and functions of institution is

provided under section 4 of the same act⁶⁷, of which among the functions is to extend the social security coverage to areas which have not been covered such as in rural areas,” *despite the fact that casual workers do not have formal contracts, most with unambiguity and uncertainty terms casual workers provide great advantage to the employers in terms of management, costs, flexibility, availability and other related factors*”⁶⁸. Therefore casual workers are denied with access to some rights like engaging in social institution simply because they don’t have employment contracts which would allow them to have certain pensionable service at the end of their employments or during retirement. Therefore despite the fact that casual workers are essential character towards the growth of national economy but our legislation does not recognize and protect them towards various circumstances that can arise during working. Simply because the same legislation it just recognizes employee once they have been employed in public services⁶⁹.

3.5 CHILD ACT 2019

This legislation was enacted for the purpose of defining rights of the child together with its duties and responsibilities that he she as a child is entitled with and shall have to perform in accordance with the child act particularly (part vii) ⁷⁰, which normally deals with the employment of the child, through which a child has a right to work, prohibition of exploitative labor, prohibition of night work, forced labor, right to remuneration, according to these part it doesn’t matter whether an individual’s is employed as casual

⁶⁷ Social security and regulatory authority act 2008

⁶⁸A. Magalla &B. Beno, *Casual workers in Tanzania: enforceability, achievement and challenges* (2021)

⁶⁹ Section 3 of public service social security fund act No 2 Of 2018

⁷⁰ The child act RE 2019

worker regardless to his age is entitled to remuneration and also it prohibit manner that might be against the rights of child as far the issue of employment is concerned. Therein a child has right to sue once he she is denied with his or her basic right.

Also this particular legislation limits hazardous employment to a child whether he she is working as casual worker or not, such kind of hazardous employments include working in bars, hotels and places of entertainment which is strictly prohibited as provided under the same legislation⁷¹. Therefore this particular provision protects children's rights towards some employments which are dangerous to them.

3.6 THE ARBITRATION ACT 2020

Basically this law was enacted for the purpose of regulating issue of conflicts arising in working places are even in business purpose once the parties are in conflict between each other, through which arbitration can be used as a means to settle their disputes pertaining individuals for example resolving conflicts that are happening at work through which parties to the conflict whether employer and employee, by having this legislation it assures individuals that there is a room for them to appoint an arbitrator who will facilitate the resolution of a conflict between employer and employee and so forth, doesn't matter whether an individual is employed as a casual worker or by public service. Or sometimes they may agree through having agreements and resolve their issues pertaining their dispute of which at the end of the day an arbitrator has to issue an award to the parties so that if one party is not satisfied with the decision issued therefore he may appeal his claim before the court of law and if the matter is about labor matters

⁷¹The Arbitration act 2020

therefore it shall be filled in the High court under labor division, which basically shall require an employee to have a necessary documents like employment contracts and so forth. And usually this has been a challenge to casual workers simply because most of them do not have it as the result it have been be difficult to prove on their validity of their employments before the court of law.

3.7 LAW OF CONTRACT ACT CAP 345 RE 2019

Since contracts are very important in employments simply because it establishes duties and responsibility two both parties between employer and employee, so far even if when a conflict arises it becomes easy for the parties to resolve, simply because they may bring or submit the copies of contract seeking for compensation which is quite difference when one part employed as casual worker do not have such a particular copy of contract as a locus standi and proof before the court seeking for compensation of loss incurred by the other party, therefore it is very important for casual workers to have it.

3.8 INTERNATIONAL INSTRUMENTS

The following are the legal international instruments labor matters

3.8.1 INTERNATIONAL COVENANT ON POLITICAL AND CIVIL RIGHT 1966

This is one among the international instruments that deals with political and civil rights of the individuals such as both derogable and non derogable rights like right to life, right to work and so forth. According to article 8(b) of ⁷²which prohibit forced and compulsory labor, therefore herein it protects individuals from forced labor, but under the aspect of casual workers this legislation does not speak anything though it only speaks general

⁷² International covenant on political and civil right 1966

about the right that both individuals are supposed to have during their life time. However the same legislation provide for right to work through which every individual person have right to work which normally does not speak as to whether they are supposed to get paid or other means.

3.8.2 CONVENTION CONCERNING PRIVATE EMPLOYMENT AGENCIES 1997

The international labor organization introduced this form of convention for the purpose of promoting good environment for workers in working places especially enhancement of rights of the employees. This organization has been there since the end of World War 1 particularly the Versailles peace treaty with the major aim of supervising standards of employments in private agencies. Through which the private agencies have to act upon towards that particular standards in private employments, since a state is a signatory to that kind of multilateral agreement therefore it's an obligation for them to implement these agreements either after exercising domestication or monism depending on the policies of the state⁷³. Therefore the states have an obligation to implements such terms expressed under that multilateral agreement, failure to work upon the implementation therefore it can lead to introduction of sanctions.

3.8.3 RESOLUTION CONCERNING EMPLOYMENT POLICIES 1996

However this kind of convention was also introduced by the international labor organization with the same goal of promoting standards and rights in employments aspects, through which the organization promoted the mode of resettling problems arising in employments and set out some standards that member states after ratifying

⁷³<https://refworld.org.com> accessed on May 15, 2022

they are under obligation to act upon implementations of that treaty, whatever any kind of employment is issued or announced it should follow the international standards for the purpose of creating good environmental condition for the employees within a country. It doesn't matter whether people are employed as casual workers or else, but it shall have to adhere with that particular standards

3.8.4 CONVENTION CONCERNING TERMINATION OF EMPLOYMENT AT THE INITIATIVE OF EMPLOYER 1982

This treaty is actually based on the termination of contracts of employments with the consultation between employer and employee with referring to the needs and demands of all the parties responsible in that particular contract, the international labor organization enacted this treaty for the purpose of promoting welfare between employer and employee even though always the employees have been seemed as they are discriminated in employments, which therefore it addresses on fairness between the parties concerned under the employments contractual terms that every member state has to make sure the procedures and code of conduct apprehended. However the concern of this treaty to the member states is to allow them to have good room for agreement as to when will the contract end and what would be the factors for termination of the employments between the concerned parties, therefore casual workers are appeared to be mistreated following this kind of unsecured employment as their employments may end at any time since they don't have contracts which therein it is difficult for them to claim their benefits and enjoy other universal rights.

3.8.5 DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK 1998

Basically until January 2019 there were 1379 ratification of these conventions representing 92 percent of the possible number of ratification, the aims of establishing this convention is to set some standards that are in relation with the employments as to the member states. The convention came out with the idea that social justice is essential to universal and lasting peace⁷⁴.

Basically it is important to ensure equity, social policies and eradication of poverty, therefore there must be conducive environment for it so as to eradicate poverty. The International Labor organization(ILO) aimed to eradicate poverty by introducing strong policies that will be favorable in working condition and avoiding poverty since exploitation may lead to increase of it which is against the major aim of setting such standards. Firstly people have right to work through being employed or by employing themselves and else there are standards that these people have to be treated with during employments in both public and private sectors. Due to the fact that many people are working in order to improve their living standards and together with attainment of wealth which will increase development of individual and nation income⁷⁵. Despite all the fact but casual workers are still not enjoying some universal rights which are due to lack of contracts.

3.8.6 DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION 1958

Basically according to article 1 of the convention the term discrimination means any distinction, exclusion or preference made on the basis of race, color, sex, religion,

⁷⁴<https://www.ilo.org/declaration.com> accessed on may 2,2022

⁷⁵<https://www.ilo.org> accessed on May 15, 2022

political opinion national extraction, or social origin which has the effects of nullifying or impairing equality of opportunity or treatment in employment or occupation⁷⁶. Therefore this convention is against discrimination in pursuing employees or in employment areas based on these factors which are basically wrong and misconduct once a state is a signatory of international labor organization or sometimes it can apply as international customary laws⁷⁷. Therefore the employments opportunities shall be announced and treated without considering race, color, political ideology and so forth. The act whether casual workers are discriminated against an access to the national social institutions simply because they don't have an employment contracts it is unfair and against this convention. Therein any measure affecting an individual who is justifiable suspected of, or engaged in activities, prejudicial to the security of the state shall not be deemed to be discrimination provided that the individual concern shall not be deemed to be discrimination. Provided that the individual concerned shall have the right to appeal to a competent body established in accordance to the competent of national practice⁷⁸.

3.8.7 THE EMPLOYMENT POLICY CONVENTION 1964 (NO 122)

Basically the international labor organization established this convention to the member states with the purpose of stimulating economic growth and development raising levels of living and actually with aim of meeting manpower requirements, which actually through ensuring there is work for all who are available and seeking for work, and also

⁷⁶ Discrimination (employment and occupation) convention 958 [G.N NO 111]

⁷⁷ ibd

⁷⁸ Article 4 discrimination (employment and occupation) convention 1958 (NO 111)

such work is as productive, and there is freedom of choice of employment so that it will be easy for each workers to qualify for whether he or she is casual or permanent employees before the public service or other sectors. Therefore the act of mistreating casual workers simply because they don't have employments contracts is something which is against this convention in row as the matter of the fact Tanzania has ratified this treaty and its implementation to casual workers especially securing their employment is poor as the result of poor living standards and poverty, because individuals work for the purpose of gaining benefits.

3.8.8 LABOUR INSPECTION (AGRICULTURE) CONVENTION 1969 (NO 129)

This is another convention that was established by the international labor organization (ILO) for the purpose of improving the life standard of individuals in agricultural aspects simply because mostly of the third world countries depends on agriculture as the means of improving their life standards and wealthy, of which Tanzania is one of the countries depends much on this sector,

Therefore it appeared there is a need of introducing and strengthening policies relating agriculture as far the issue of employment is concerned, simply because many people depends much on it. Therefore this convention came up with the view that there is a need of having inspections to those employees employed under agriculture sector⁷⁹.

For the purpose of promoting wealthy and economic growth thus why the international labor organization have come with these policies in order to facilitate it. Finally the member states have to adhere to these principles and policies.

⁷⁹ Article 3 of labor inspection (agriculture) convention 1969

CHAPTER IV

DATA ANALYSIS AND PRESENTATION

4.1 Introduction

This chapter presents findings and analysis by discussing The Legal challenges facing casual workers in Tanzania, those casual workers includes employee works in lounge bar guest houses lodge and so forth.

A researcher managed to interview 20 casual workers who are working in hotels, lounge, bars and guest houses, 10 employers who are employed in public and private sectors and also 10 advocates. And their answers were the following pertaining to the topic concerned.

This field and library based research has succeeded to prove the facts that casual workers are mainly faced by a lot of legal challenges such as even the employments and labor relation act does not recognize casual workers are encountering different legal challenges like long working hours with low wages, denial access to employment contracts once they tends to seek for employment contracts it becomes the end of their employment by being fired or sacked by their employers.

4.2 ANSWERS FROM CASUAL WORKERS

Firstly the answers of these casual workers during field research on both interview and questionnaire where the following, 70% of the casual workers argued that they are doing good job which makes easy for their employers to run their business but the challenges that they are facing is that once they employment is unsecured apart from

working hard and flexibility they can be fired any time depending on what his her employer feels for that day, as 3 of them shared an experiences that prior before working at Twiga bar at Ilala they have fired at seven different bars and lounge simply because of denial of love interest from their managers, which finally led them to lose their job and even being discriminated by employers, something which is against the standards of international labor organization⁸⁰. Since they don't have contracts in written form then it is difficult to prove whether they were really employed or not by their employers, and also depending on the nature of employment their employers may any time decide to fire them once new beautiful ladies arrive which actually is discrimination which is based on physical traits including beauty, and once you're not beauty depending on the interest of employers you can at any time lose your job.

Secondly the other arguments that these casual workers among 70% argued that they at risk simply because the nature of employment does not guarantee them to have pensionable services since most of them are working without an employment contracts which is against the social services legislations which require them to be employed in public services. Therefore the practice of not having contract is a bit challenges as the result it appeared that the current laws on pensionable service is discriminating them to have an access to it.

Another argument they shared is long hours of working and low salaries, mostly of them appeared to work for almost 18 hours per day while they are paid TSH 100,000/= _ 150000/= per month of which sometimes are a lot of reduction from that salaries which

⁸⁰<https://www.ilo.org.com> accessed on may 15,2022

they find themselves even receiving half of the amount mentioned, also from that amount they receive they are supposed to run life here in towns such as Iringa as concerned which finally brings difficult to improve their economy and finally it becomes difficult for them to run life while at the other hand there is a chain of independents who depends on them on them so as they can survive which therefore is quite complicating in relation to increase of expenditure and living in our country especially in rural areas. And 30% of the casual workers feared to cooperate with the researcher because of the nature of their job as they may be fired any time depending on the wishes of the employers.

Also most of them as 60% percent of the casual workers interviewed is un access to employment contracts denies them even to get paid by their employers as their under belief that employees will not do anything since they don't have contracts which difficult for them to prove before the court of law demanding for their claim to be employed and when they demand for contract from their employers they find themselves being fired anytime and they have nowhere to go complaining for their payments which is against the constitution of the united republic of Tanzania and the employment and labor relation act and together with the standards of international labor organization that require employees to get remuneration after performing certain activity given under the instructions of the employers⁸¹. Therein casual workers are working by promises and not contractual agreements as required by law despite the fact that its nature of employment is only for a short period of time though they contribute greatly to financial

⁸¹ The employment and labor relation act 2019

stability of employers and national level. As they only enjoy the universal rights such as right to work as provided under article 23⁸². Also 30% percent were not ready to give their opinions as far the places like twiga and Essence pub are concerned, while 10 percent argued that all thing are well as the issue of casualization is concerned.

Thirdly despite of long working hours and low wages, causal workers encounter another challenge which is dangerous working condition which it becomes easy for them to be exposed to sexual assault done by employers and customers, like sometimes.

Casual workers only enjoys its universal right but despite the fact that they are somehow humiliated by their employers in working places and it has proved that casual workers are even not recognized by our laws despite the fact that they contribute greatly to the growth of national income but still they basically oppressed. Casual workers argued that casual workers are very important since they give flexibility and management of labor and also, they argued the consumption of impermanent workers has been intensively growing in Tanzania, this is due to characteristics of such casual workers as they are easily managed, less economical, as there are no monthly payments only daily, hours and Weekly thereof no economic burden for employers. Also, the author comments on the payments of casual workers are made when there is sunset in which such payments shall only last for thirty days to casual workers. The meaning of casual workers provides a clear picture that they are for short term, not regular workers and their future is mostly indeterminate or ambiguous.

⁸² The constitution of united republic of Tanzania 1977

In the case of *Lee v. Showmen's Guild of Great Britain*⁸³, Lord Denning was on the opinion that an individual right to work is just as important to him as if not more important than his right to property. Several times the courts intervene to protect right to property than right to work which seems to endanger the right of life of an individual which is dangerous to him. That is a bit challenging to casual workers.

Another challenge that casual workers are complaining about is healthy insurance card, simply because even if they get an accident during working they are supposed to afford for their healthy as the result they remain poor economically, simply because their employment is unsecured.

Also other casual workers who didn't want their names to be mentioned before the public as argued that workers find themselves engaging in adultery so as to get money that will help to have their basic needs that will enables their families to get basic needs simply the kind of job that they are doing is not profitable as intended by many of them. Since they may be fired any time once depending on employer wishes.

Venkateswar⁸⁴ the author argued that the development of science and technology has led to increase of casual labors in India simply because most of works are done by machine and the population is very high there as the result many people try to find an alternative ways to get employment such as by working as casual workers in different places such as hotel, lounge and restaurants as the result of an increase of the number of an organized

⁸³ [1952]2 QB 329

⁸⁴ S. venkateswar, "globalization and the challenges for development in contemporary India" springers 2019 33

sectors. Also the author argued that the export oriented IT sector is suffering due to low wage and productivity as the result of those legal challenges like unsecured employments.

Mkenda⁸⁵this books set out to investigate the impact of globalization in Tanzania labor market in which the author pointed out challenges such investment reforms and privatization, public sectors reforms and employment, and under this circumstances he came out with the challenges facing casual workers in our country such that job insecurities due to denial of access to employment contracts among casual workers in different aspects such as hotels, lounge guest houses and restaurants as the result by anytime they may find themselves losing their employment.

Rwegoshora ⁸⁶the author argued on the scope and risk coverage of casual workers where he pointed out that coverage should be extended to casual workers, family workers, domestic employees and those unemployed in agricultural sector and those employed in informal sector which basically issues like what are the needs that are to be covered by social security scheme? Identification of the groups not covered by legal scheme of social security and what resources needs to be available in order to improve social protection? Apart from his explanation but the issue of casual workers is not yet addressed in terms on how can they protected legally in terms of having contracts and having an access to allowances during retirement which cause them to remain financially poor apart from hard working and easy to control them.

⁸⁵ B. Mkenda, *"the impacts of globalization on the labour market(a case study of Tanzania)* 2006 23

⁸⁶Rwegoshora & M. Hossea, "social security challenge in Tanzania 2016 200

4.3 ANSWERS FROM EMPLOYERS

Also, during interview 10% of the employers admitted the fact that casual workers are truly working under difficult conditions as sometimes they wish to help them in order to improve their living standards but you find the policies are not friendly for the implementation of such ideas that are basically remain as theory.

Also 50% of advocates admitted that our Tanzanians legislation on labor matters especially casual workers are concern have to be reviewed in order to improve our laws governing employments so that casual workers could enjoy the right to work as provided under the constitution of the united republic of Tanzania since it appeared that the court is much determined on right to property rather than a right to work itself which brings difficult for the casual workers⁸⁷.

Also, three workers who were employed as casual workers in Miami bar and club refused to give their complaints concerning what are their legal challenges facing them following the attribute of fear to lose their jobs.

Also, other casual workers argued that casual workers argued that they are really working very hard but what they receive is not equally measured with the efforts they are using as the result at the end of the employment they remain financially poor, as they expected to improve their economy after working years.

Casual workers contribute greatly in running those lounge bars, guest houses and so forth as in terms of flexibility easy to manage, most of the owners are taking loop hole in our

⁸⁷The constitution of united republic of Tanzania 1977

laws to exploit them sometimes you may find an employer dismissing them once it appears that they are claiming for their remuneration using the advantage that they don't have employment contracts

4.4 Answers from advocate

According to **advocate Faraja Msuya**, he argued that we as a country we're already have laws that govern labors matters like the employment and labour relation act, the social security service act, the constitution of the united republic of Tanzania 1977, and so forth. Therein it has defined the universal rights and duties of employers and employees, and the mode of dispute settlement between employers and their employees of which it is legally provided in the constitution that labor matters will be handled by the commission and arbitration and if failed then it will be forwarded to the high court under labour division for further settlement, here because most of casual workers do not have employment contracts as they are not permanent workers it becomes difficult for them to prove the claims. As the result they ended up being financially poor. The challenges for casual workers is that kind of employment is unsecured that why they meet with different challenges unexpectedly

Also **advocate Kagoma** argued that it is true that there are laws ha regulate labor matters but it is somehow discriminative simply because it only considers those people with permanent employment as far contract for service and contract of service is concern as he argued that why should casual workers not given employment contracts despite their highest contribution to the employers and country wise, as he suggested that law makers and legal practitioners shall have to review employments laws in order to suit casual

workers simply the work very hard even in a difficult condition but the kind of laws we have is not favorable to them as they continue suffer economically and being subjected to adultery so as to survive.

CHAPTER V

CONCLUSION AND RECOMMENDATION

5.1 CONCLUSION

Generally from the findings, I conclude that casual workers are not even recognized by the Tanzanians laws despite the fact that they contribute greatly to the development of national income despite they are easy for management flexibility and cheap and less cost fully. There is a need of legally recognizing and protecting them.

According to⁸⁸, the authors are in the opinion that casual workers have to be protected on legal bases in terms of economic security, labor market security, job healthy and safety healthy security at work, skill security time security and so forth apart from universal rights that casual workers are enjoying like right to work.

Sullivan & Lavelle⁸⁹ they are speaking about employment in terms of job stability, working time zero hours on call social actors and state functions towards employment, basically on what state should do in order to protect labors from that aspect regardless of casual workers or whatever. But the state should set up laws that are favorable to the workers so as to enhance stability within the country in both aspects such as socially politically and economically.

Bogg & Freeland⁹⁰ are on the opinions of contract of employment in detail as they are under argument that there is difference between agreement and regulations that are both applicable to employer and employee. It has to work for the benefit of all in terms

⁸⁸F. Macphail & p. Bowles, *"improving the economic security of casual workers in B"* 2008

⁸⁹M. Sullivan & J. Lavelle, *"zero hours and on call work in Anglo Saxon countries"* springers 2019

⁹⁰A. Bogg & M. Freeland, *"the contract of employment"* oxford 2016

of disputes and other labour matter through which casual labors are quite not discussed which one of the challenges as far employment contract is concerned.

Also **Webb**⁹¹ argued that casual workers are encountered with different challenges that need to be addressed in United States of America like long hours of working without overtime payments and other relief. Therefore there is a need of addressing these issues so that to protect casual migrant workers in both aspects particularly legal basis.

Also, **Rat**⁹², the author is in the opinion that there is gaps in legal scheme that it become challenge to casual workers simply because if denial of casual workers to join social security service institution simply because they have no contracts of employment as the result it become difficult for them to access these institution and finally it becomes difficult to uphold retirement allowances from these particular institutions.

Rubery & Wilkinson⁹³the author argued that the policies and nature of contracts of employment should be fair to the parties between employer and employee so as to emphasize effectiveness in working places, safety and fairness.

5.2 Why should casual workers need to be protected by law?

According to 80% of casual labors interviewed they argued that there is a need of protecting casual workers in order to maintain good relationship between employer and employee and also to promote financial stability to casual laborers.

⁹¹J.Webb, "the migratory casual worker" Washington 1937 26

⁹²C.Rat, "*Gaps in access to social protection for casual workers*" publication office of the European union 2018

⁹³J. Rubery & F.wilkinson, "*Employer strategy and the labour market*" oxford 1994 69

5.3 RECCOMENDATION

There is a need of reviewing our laws that governs labor matters simply because it bring difficult for casual workers to prosper economically since they are even recognized by our statues as well as it becomes difficult for them to demands for remunerations after being denied by the employers simply they don't have employment contract.

Also the courts are much concerned with protection of property rather than a right to work and ensuring equality between an employer and employee which is a bit challenging. Thus there is a new of reviewing that will help casual workers to improve their living standards. There is a need of reviewing salaries scale and wages that are supposed to be paid to these casual workers and other employers simply because life is very expensive particularly in rural areas where people are supposed to pay for every service herewith a need of reviewing the employment and labor relation act of 2019 simply because it has be strengthened more particularly on working conditions that these employees are facing with especially casual workers as they offer great and potential service to the employers.

There is a need of setting legislation that will governs casual workers having necessary terms such as a necessary requirement for employers to offers employment contract to the employees⁹⁴.

⁹⁴A. Sikulamba," *legal aspect of employment contract and dispute settlement scheme in Tanzania*" 2003

REFERENCES

BOOKS

Sikulamba A, “Legal aspect of employment contract and dispute settlement scheme in Tanzania” 2003

Bogg A. & Freeland M. “*The contract of employment*” oxford 2016

Webb J. “*the migratory casual worker*” Washington 1937 26

Rat C. “*Gaps in access to social protection for casual workers*” publication office of the European Union 2018

Rubery J & Wilkinson F. “*Employer strategy and the labour market*” oxford 1994 69

Macphail F& Bowles P, “*Improving the economic security of casual workers in B*” 2008

Sullivan M &Lavelle J, “*Zero hours and on call work in Anglo Saxon countries*” springers 2019

Mkenda B, “*the impacts of globalization on the labour market (a case study of Tanzania)* 2006 23

Rwegoshora &Hossea M, “social security challenge in Tanzania 2016 200

Venkateswar S. “*Globalization n and the challenges for development in contemporary India*” springers 2019 33

Simpson M, “*An analysis of the characteristic of casual employment*” western Australian labor market research center 2011 6

Crotty M. &Davenporty G, “*Termination of employment digest* 2020 277

Toms S, “*the impact of UK temporary employment industry in assisting agency*” 2012 18

Kenny B, *“Retail worker politics, race and consumption in south Africa”* 2018 107

Blanpain R & Araki T, *“Labour law in motion; diversification of the labor force terms and condition”* 2005 7

Dasgupta S. *“Employment security: conceptual and statistical issues”* international labor office 2011 24

William C, *“Dependent self-employment: theory, practice and policy: Edward Elgar publishing limited 2019 1*

Cabaneros C, *“A termed employment university of Santo Tomas 2014*

Vettori S, *“The employment contract and the changed world of work”* 2016

Bieneffeld M.A. *“Trade unions and peripheral capitalism: a case of Tanzania 1977*

Coulson A, *“Tanzania: a political economy” 2013*

Onyema E, *“International commercial arbitration and the arbitrators contract” 2010*

Godwin W, *“The 2017 Fidic contracts” 2020*

Stannard J. & Capper D, *“Termination for breach of contract” 2020*

Dobbins T. & Prowse P, *“The living wage: advancing the global movement” 2021*

Carbonneau P, *“The law and practice of arbitration: fifth edition 2014*

Chriss M.P, *“Human rights in Tanzania selected cases and materials”, Rudiger Koln: koppe 1997*

Magalla A & Beno B, *“Casual workers in Tanzania, enforceability, achievements and challenges [2021*

Maina C.P, *Human rights in Tanzania. Selected cases and materials [1977], p.169*

Granier P, “The challenges of casual employment contracts [2020]23

The international Labour organization sectoral activities programme 1993 p.6

CASES

LEE V Showmen’s Guild of Great Britain [1952] 2 QB 329

Workpac Pty Ltd v Rossato [2020] FCAFC 84

DICTIONARIES

English dictionary

Black law dictionary

LAWS

The constitution of the united republic of Tanzania

The employment and labour relation act 2019

Social security regulation act 2008

Arbitration act 2020

Child act 2009

Law o contract act

International instrument on political and civil right 1966

Convention concerning private employment agencies

Resolution concerning employment policies 1996

Convention concerning termination of employment at the initiative of employer 1982

Declaration at fundamental principle and right at work 1998

Discrimination (employment and occupation) convention 1958

The employment policy convention (no 122) 1964

Labour inspection agriculture convention (no 129) 1969

WEBSITES

<https://www.europafound.com>

<https://www.mightyrecruiter.com>

<https://www.underemployment.com>

<https://www.citizensinformation.com>

<https://www.thebalancecarries.com>

<https://www.dictionary.com>

<https://www.ohsrep.com>

<https://www.lawinsider.com>

<https://www.yourarticlelibrary.com>

<https://www.summize.com>

<https://www.shackomaha.com>

<https://www.refworld.org.com>

<https://www.ilo.org/declaration.com>

<https://www.ilo.org.com>