

**Abstract**

Casualisation of labour is an employment practice which is characterized by precarious employment conditions, wherein the employee is denied basic employment benefits accruing to standard/permanent employee. Under this practice, employees are hired on casual basis to perform work of permanent nature directly from the labour market or through a labour broker in a triangular relationship. This employment practice, though not new, has become an anathema in Nigeria. The way and manner Nigerian employers have adopted its practice continues to be of great concern as it has become a dignified labour slavery. Trade unions have been known as the vanguard of employees' rights protection as its main aim is the furtherance of the welfare of workers. Thus, the persistent wailings of Nigerian casual workers particularly in the construction, banking, telecommunication and oil and gas sectors is troubling aside its negative impact on the economy. This paper through doctrinal research method, interrogates the role of trade union in curbing the quagmire of Casualisation in Nigeria. It discusses the anatomy of casualisation of labour in Nigeria by focusing on its evolution, causes, effects and theories. It also examines the meaning, rise and theories of trade unions in Nigeria. It found that trade union as a pressure group has reformatory, educational and oppositional roles in curbing casualisation howbeit, in the midst of certain surmountable challenges like governmental interference and lack of internal democracy. The paper makes recommendations on how trade unions can overcome these challenges.

**Keywords:** Casualisation of labour, trade union, Employment, Nigeria, Worker

**1. Introduction**

Presently, in Nigeria's employment and labour relations practice, one quagmire which is becoming popularly practiced is casualisation of labour.<sup>1</sup> This employment practice is regarded as antithetical to traditional permanent employment relationship.<sup>2</sup> Under the traditional permanent employment relationship, an employer hires an employee (within the context of this paper, worker and employee are used interchangeably) on a standard contract of employment either on probationary basis but usually with an expectation of continuity till retirement with specified benefits accruable to the employee.<sup>3</sup> That an employment is regarded as permanent does not mean that it is meant to or must be so; both parties can lawfully bring to an end a permanent employment either by notice or by operation of law.<sup>4</sup> Several reasons are regarded as justification for the adoption of casualisation of employment.<sup>5</sup> These reasons includes but not limited to the employer's desire to cut cost while maximizing profit, negative economic indicators such as the economic meltdown of 2009 and even the recent experienced economic recession in Nigeria, lack of adequate and up-to-date regulatory framework and lack of political will power to enforce the existing laws.<sup>6</sup> Others are unemployment, underemployment and lack of awareness and egalitarian resistance from the workers aggregate.<sup>7</sup> However, it is apposite to note that casualisation of labour is not a phenomenon exclusively

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<sup>1</sup>P.E Amechi & D. T. Eyongndi, 'Casualisation of Labour in Nigeria and Ghana: What Lessons are there for Nigeria?' 2017-2018, *Nigerian Current Law Review*, 2018, P. 122.

<sup>2</sup>P. O. Kalejaiye, 'The Rise of Casual Work in Nigeria: Who Loses, Who Benefits?' Vol. 8, No. 1, *An International Multidisciplinary Journal, Ethiopia*, 2014, P. 157. Available online at <<https://www.google.com.ng/search?q=Theories+on+Casualisation+of+Labour&oq=Theories+on+Casualisation+of+Labour&aqs=chrome..69i57.13873j0j7&sourceid=chrome&ie=UTF-8>> retrieved 7 September 2018.

<sup>3</sup>D. T. Eyongndi, 'An Analysis of Casualisation of Labour under Nigerian Law' Vol. 7, No. 4, 2016, P. 102.

<sup>4</sup>C. K. Agomo, *Nigerian Employment and Labour Relations Law and Practice*, Lagos, Concept Publications Ltd., 2011, P. 157.

<sup>5</sup>R. A. Danesi, 'Labour Standards and the Flexible Workforce: Casualisation of Labour under the Nigerian Labour Laws'. Available online at <[http://www.ilera-directory.org/15thworldcongress/files/papers/Track\\_4/Poster/CS1W\\_32\\_DANESI.pdf](http://www.ilera-directory.org/15thworldcongress/files/papers/Track_4/Poster/CS1W_32_DANESI.pdf)> Danesi 3/9/18> retrieved 7 September 2018.

<sup>6</sup>A. O. Animashaun, 'Casualisation and Casual Employment in Nigeria: Beyond Contract' Vol. 1, No. 4, *Labour Law Review*, 2007, P. 22.

<sup>7</sup>O. M. Solaja, 'Labour Casualisation and Trade Unionism in Nigeria' Vol. 7, No. 4, *International Journal of Information, Business and Management*, 2015, P. 15. Available online at <[https://www.academia.edu/15416364/LABOUR\\_CASUALISATION\\_AND\\_TRADE\\_UNIONISM\\_IN\\_NIGERIA](https://www.academia.edu/15416364/LABOUR_CASUALISATION_AND_TRADE_UNIONISM_IN_NIGERIA)> retrieve 10 September 2018.

practiced in Nigeria, it is a global phenomenon.<sup>8</sup> Also, casualisation *per se* is not out rightly obnoxious as certain workers are unable to engage in full time standard employment and casualisation could serve as an incubator towards standard employment.<sup>9</sup> However, the challenge with casualisation of labour in Nigeria is the way in which employers exploit it with a parasitic ambience to the detriment of the employees. This is the main grouse of its practice in Nigeria.<sup>10</sup> It is adaptation mode that has exposed Nigerian casual employees to several unpalatable circumstances especially in the unregulated labour sector<sup>11</sup>

## 2. Casualisation of Labour

There is no generally acceptable nomenclature for casual worker as a review of existing literature on it reveals. They have been described as ‘contingent workers’, ‘nonstandard workers’, ‘dispensable workers’, ‘part-time workers’ as well as ‘contract staff.’<sup>12</sup> They have also been referred to as ‘flexible workers’, ‘non-core worker’, ‘irregular workers’, ‘atypical workers’ and ‘sub-contractors’.<sup>13</sup> With regard to definition, casualisation of labour does not have a universal acceptable definition as various writers have defined it based on their perceptions. Thus, few scholarly definitions would suffice. Solaja<sup>14</sup> posits that:

There is no generally acceptable definition of labour casualisation however; it can be viewed as part of a new era of the management of labour where workers in an organization are casual, temporary, seasonal, contract or a part-time employees. Labour casualisation can take different forms in different countries. Labour casualisation has been one of the prominent means for increasing the proportion of employees in Australia, United Kingdom, Russia and United State of America in the last two decades.<sup>15</sup>

Tamunomiebi and Bagshaw<sup>16</sup> posits that ‘the use of casualisation comprises the strategic replacement of permanent staff with contract and/or agency labour. Casualisation as a practice of labour in which the method of engagement moves from a dominance of permanent and pensionable work to stages of non-pensionable contract work situations, involves engagement of uneven or erratic nature of employment.’ Fapohunda<sup>17</sup> in an encompassing manner captured the gravamen of casualization of labour as follows:

Casualisation is referred to in Europe and the United States as Non Standard Work Arrangements (NSWAs). Casualisation involves a process whereby more and more of the workforce are employed in casual“ jobs. It is the corporate trend of hiring and keeping workers on temporary employment rather than permanent employment, even for years, as a cost reduction measure.<sup>18</sup>

Certain common threads that run through the definitions above can be highlighted. Firstly, casualisation or casual labour is ordinarily meant to be for a short period or from day to day with pay for each day. It is traditionally

<sup>8</sup>A. O. Adewusi, ‘Remuneration of Casual Workers in Selected Foreign-Owned Manufacturing Industries in Southwest, Nigeria’ Vol. 7, No. 22, *European Journal of Business and Management*, 2015, P. 186. Available online at <<https://iiste.org/Journals/index.php/EJBM/article/viewFile/25048/25981>> retrieved 7 September 2018.

<sup>9</sup>Eyongndi, (No. 3) *Op. cit.* P. 104.

<sup>10</sup>F. C. Anyim, N. M. Ufodiana, & D. A. Ideh, ‘From Flexible Labour Market to Precarious Labour: Unhealthy Fate of Nigerian Workers’ available online at <[https://www.academia.edu/9234066/FROM\\_FLEXIBLE\\_LABOUR\\_MARKET\\_TO\\_PRECARIOUS\\_LABOUR\\_UNHEALTHY\\_FATE\\_OF\\_NIGERIAN\\_WORKERS](https://www.academia.edu/9234066/FROM_FLEXIBLE_LABOUR_MARKET_TO_PRECARIOUS_LABOUR_UNHEALTHY_FATE_OF_NIGERIAN_WORKERS)> retrieved 10 September 2018.

<sup>11</sup>Eyongndi, (No. 3) *Op. cit.* P. 103.

<sup>12</sup>Eyongndi, (No. 3) *Op. cit.* P. 103.

<sup>13</sup>E. E. Okafor B. Rasak, ‘Casual Employment- A Nostrum to Unemployment in Nigeria’ Vol. 4, No. 2, *Fountain Journal of Management and Social Science*, 2015, P. 100.

<sup>14</sup>O. M. Solaja, (No. 4) *Op. cit.* P. 17.

<sup>15</sup>Animashaun, ‘Casualisation and Casual Employment in Nigeria: Beyond Contract’ Vol. 1, No. 4, *Labour Law Review*, 2007, P. 18.

<sup>16</sup>M. D. Tamunomiebi & K. B. Bagshaw, ‘Managing Casualisation and Redundancy of Workers: Its Effect and Implication to Sustainable Development in Nigeria Business Environment’ Vol. 4, No. 1, *International Journal of Economics and Business Management*, 2018, P. 72. Available online at <<https://iiardpub.org/get/IJEBM/VOL.%204%20NO.%201%202018/MANAGING%20CASUALIAZATION.pdf>> retrieved 10 September, 2018.

<sup>17</sup>T. M. Fapohunda, ‘Employment Casualisation and Degradation of Work in Nigeria’ Vol. 3 No. 9, *International Journal of Business and Social Science*, 2012, P. 259. Available online at <[http://ijbssnet.com/journals/Vol\\_3\\_No\\_9\\_May\\_2012/31.pdf](http://ijbssnet.com/journals/Vol_3_No_9_May_2012/31.pdf)> Fapunda 3/9/18> retrieved 7 September 2018.

<sup>18</sup>O. A. Orifowomo, ‘Perspectives on the Casualisation of Workers under Nigerian Labour Laws’ Vol. 13, No. 1, *East African Journal of Peace and Human Rights*, 2007, P. 108.

understood to be a viable supplement for permanent employment call in aid during peak periods of work.<sup>19</sup> Its original occupiers are workers who are indisposed from full time employment such as nursing mothers, persons schooling. etc. However, employers have adopted it as a pattern of continuous employment. Some of the vicissitudes that befalls a casual worker in Nigeria includes abysmal low wages, absence of medical care allowances, no job security or promotion at work, no gratuity and other severance benefits, no leave or leave allowance, freedom of association which is often jeopardized, no death benefits or accident insurance at work, no negotiation or collective bargaining agreement. Aside the daily or monthly stipends that is paid to them, casual employees by practice, have no other benefits. They are commonly discriminated from permanent or core employees although they perform the same job or even more. Their situation can be best described within the Nigerian context using the vernacular expression of ‘monkey dey work, bamboo dey chop.’<sup>20</sup>

### **3. Development and Categories of Casual Workers in Nigeria**

Eyongndi<sup>21</sup> posits that the scourge of casualization of labour is gaining grounds in an unprecedented proportion in Nigeria, it is possible to get workers as many as 2000 out of which 1500 are casual workers particularly in the oil and gas and banking sectors.<sup>22</sup> The rise of casualization of labour in Nigeria as far as history is concerned, is not precise. However, Danesi<sup>23</sup> traced the origin of casualization of labour in Nigeria to the introduction of the Structural Adjustment Programme (SAP) of General Ibrahim B. Badamosi of 1986 as well as the activities of the International Monetary Fund (IMF), the World Bank (WB) through the terms and conditions they attached to their various loans and aids. These factors led to a sprawl in economic activities in Nigeria.<sup>24</sup> The SAP for instance, was initiated to induce foreign investment but that could only be possible through relaxation of economic policies. At this period, globalization and trade liberalism diffused into Nigeria’s economy. The result was that foreign goods and services kept coming in and were being preferred to the local ones and this created stiff competition which the foreign triumphed. In order to remain in business, most local enterprises had to resort to cost cutting techniques through casualization. The foreign enterprises also resorted to casualization to maximize profits.<sup>25</sup>

Casual workers are primarily of two categories. Those directly hired by the company itself either at peak period such as holiday or when the work load is heavy as supplement labour and relieved thereafter.<sup>26</sup> Under this direct hire category, there is also those that are hired on casual basis not necessarily due to peak period or work load but as ‘normal’ staff with ‘abnormal’ engagement terms requiring them to perform work of a permanent nature. This category can also be described as the core casual workers.<sup>27</sup> A second category of casual workers are those that fall under the triangular employment model whereby a labour broker hires casual employees and sublet them to a firm where they render services.<sup>28</sup> This category is very rampant in such working environments like security outfits, cleaning, mining, banking, etc. This category of casual employment raises a serious issue. It distorts the seemingly settled position of employer-employee relationship and its attendant effects. Where a firm contract the hiring of workers to a labour broker who hires casual workers and send them to work for the firm, the question is, for the purpose of vicarious liability, whose employee is the casual employee? Is it the employee of the labour broker or

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<sup>19</sup>A. O’Donnell, ‘Non-Standard Workers in Australia: Counts and Controversies’ Vol. 17, *Australian Journal of Labour Law*, 2004, P. 13.

<sup>20</sup> This is an expression used in Pidgin English to denote a situation where one person (labourer/worker/subordinate) labours while another (employer/superior/master) takes the benefit. The monkey here relates to the worker/labourer while bamboo is symbolic of the employer/superior.

<sup>21</sup> Eyongndi, (No. 3) *Op. cit.* P. 111.

<sup>22</sup> Okafor & Rasak, ‘Casual Employment-A Nostrum to Unemployment in Nigeria’, *Fountain Journal of Management and Social Sciences*, Vol. 4, No. 2, 2015, 100, E. E. Okarfor, ‘Emerging Non-Standard Employment Relations and Implications for Human Resources Management Functions in Nigeria’ Vol. 6, *African Journal of Business Management*, 2016, P. 7618.

<sup>23</sup>R. A. Danesi, ‘Labour Standards and the Flexible Workforce: Casualisation of Labour under the Nigerian Labour Laws’. Available online at <[http://www.ilera-directory.org/15thworldcongress/files/papers/Track\\_4/Poster/CS1W\\_32\\_DANESI.pdf](http://www.ilera-directory.org/15thworldcongress/files/papers/Track_4/Poster/CS1W_32_DANESI.pdf) Danesi 3/9/18> retrieved 7 September 2018.

<sup>24</sup> *Ibid.*

<sup>25</sup> Eyongndi, (No. 3) *Op. cit.* P. 111.

<sup>26</sup> Sha, D. P., ‘Work Place Rights as a Component of Decent Work Agenda: Experiences and Lessons from Nigeria’ Vol. 5, NO. 1, 2011, *Nigerian Journal of Labour Law and Industrial Relations*, P. 56.

<sup>27</sup> Adewusi, ‘Remuneration of Casual Workers in Selected Foreign-Owned Manufacturing Industries in Southwest, Nigeria’ Vol. 7, No. 22, *European Journal of Business and Management*, 2015, P. 186. Available online at <<https://iiste.org/Journals/index.php/EJBM/article/viewFile/25048/25981>> retrieved 7 December 2018.

<sup>28</sup> *Ibid.*

the contracting firm?<sup>29</sup> The situation is complicated where the casual worker works for the contracting firm for a long period of time and has come to be more identified with it than even the labour broker as it is the case in most instances. However, no matter the length of time, germane issues such as discipline, transfer and promotion of the casual employee are undertaken by the labour broker though his service are rendered to the contracting firm.<sup>30</sup> Under this arrangement, the contracting firm either pays the wages of the casual employee to the labour brokers or pays a percentage thereof to the labour broker and the remaining is handed over to the casual employee which in most instances is equal to what has been deducted. These indices render inadequate the various tests enunciated in delineation of contract of employment from contract for employment.<sup>31</sup> The National Industrial Court (NIC) has acknowledged the existence and practice of triangular employment in Nigeria; it recognized the difficulty in determining the parties thereof with regard to liability and sundry matters in *PENGASSAN v. Mobil Producing Nigeria Unlimited*<sup>32</sup> and *Ayaogo & Ors. v. Mobile Producing Nigeria Unlimited*.<sup>33</sup> The Court adopted the 'modern test' enunciated by the Supreme Court in *Shena Security Company Limited v. Afropak Nigeria Limited & Ors.* It is apposite to reiterate that casualisation of labour is not a new phenomenon but the utilization of casual workers to perform work in a permanent nature as a means of avoiding standard employment contract is new and therein lays the bane of casualisation of labour in Nigeria.

The negative effects of casualisation of labour transcend the employees though they are the apparent victims. Nigerian casual employees are deprived of various employment benefits when compared to their counterparts in permanent employment. Casual workers are inhibited from exploiting their constitutional right of freedom of association to form and or join trade unions.<sup>34</sup> As a result, casual workers cannot participate in collective bargaining and other harmonious labour activities. This is so in practice even when the NIC has upheld the right of all workers (casual workers inclusive) to unionize.<sup>35</sup> They receive remuneration that is not commensurate with their labour/services they render; they are not entitled to retirement benefits, annual leave and security of employment.<sup>36</sup> They are also deprived of gratuity, medical allowances.<sup>37</sup> These create a labour environment with lack job satisfaction which in turn dampens the spirit of casual workers and render their creative abilities impotent.<sup>38</sup> The effect of this on the economy is that while the bourgeoisies employers maximizes profits, the proletariat employees grow thinner in term of income creating an economic imbalance.

#### 4. Theoretical Framework and Causes of Casualization of Labour in Nigeria

The Neo-liberal theory of economics has been used to justify casualization of labour. This theory is credited to the treatise of Adam Smith in his famous book *Wealth of Nations* published in 1776.<sup>39</sup> He advocated for the abolition of government control of means of production and distribution of goods and services. Free trade (economy) was the best way to attain a nation's economic growth. This theory makes a case for free enterprise which is the cornerstone for capitalism embedded in stiff competition with only the strongest and smartest surviving.<sup>40</sup> The theory sees profit making as the hallmark of all business and economic activities and contends that there should be minimal or no governmental regulation or involvement but private in order to produce more efficient and economically stable government.<sup>41</sup> Neo-liberalism is anchored on free market enterprises, cutting public expenditure for social services,

<sup>29</sup>F. C. Anyim & D. A. Ideh, 'Triangular Employment Relationship, Employment Practices and Opportunities for Career Growth of Agency Workers in the Nigerian Banking Industry' Vol. 4, No. 1, *UDS International Journal of Development*, 2017, Pp. 80-81.

<sup>30</sup>N. I. Ofem G. E. B. Inyang, 'The Principle of Primacy of Facts, A Potent Antidote against Disguised Employment: The Triangular Employment in Perspective' Vol. 5, No. 1, *Nasarawa Journal of Public and International Law*, 2018, Pp. 62-65.

<sup>31</sup>Ofem & Inyang, 'The Principle of Primacy of Facts, A Potent Antidote against Disguised Employment: The Triangular Employment in Perspective' Vol. 5, No. 1, *Nasarawa Journal of Public and International Law*, 2018, Pp. 60-62.

<sup>32</sup> [2013] 32 N.L.L.R (pt. 92) 243.

<sup>33</sup> [2013] 30 N.L.L.R (pt. 85) 121.

<sup>34</sup>Danesi, 'Labour Standards and the Flexible Workforce: Casualisation of Labour under the Nigerian Labour Laws'. Available online at <[http://www.ilera-directory.org/15thworldcongress/files/papers/Track\\_4/Poster/CS1W\\_32\\_DANESI.pdf](http://www.ilera-directory.org/15thworldcongress/files/papers/Track_4/Poster/CS1W_32_DANESI.pdf) Danesi 3/9/18> retrieved 7 September 2018.

<sup>35</sup>*Management of Harmony House Furniture Company Limited v. National Union of Furniture Fixtures and Services Workers*. Suit No. NIC/3/86. Digest of Judgment of National Industrial Court (1979-2006) Pp. 288-289.

<sup>36</sup> Adewusi, (No. 6) *Op. cit.* P. 185.

<sup>37</sup> Tamunomiebi & Bagshaw (No. 15) *Op. cit.* P. 74.

<sup>38</sup> Eyongndi, (No. 3) *Op. cit.* P. 114.

<sup>39</sup> Kalejaiye, (No. 2) *Op. cit.* 178.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

deregulation of the economy, elimination of the whole concept of public or communal good while encouraging privatization of the means of production and distribution of goods and services.<sup>42</sup> Through this theory, employers resort to casualization of labour is easily understood as its main motivation is profit maximization. Thus, when employers casualize, they save cost, boost profit margin, retain the unfettered discretion to hire and fire at will and absolve themselves from compliance with mandatory statutory regulations applicable to permanent employment. This theory explains the way and manner casualization is being practiced in Nigeria.

Several factors have been identified as the causes of casualization of labour in Nigeria. Globalization and trade liberalism is one of them. Globalisation and trade liberalism connotes a situation whereby countries adopt flexible economic policies to allow inflow of goods and economic activities.<sup>43</sup> This has led to stiff competition between locally produced goods and foreign goods which enjoy higher local patronage. This higher local patronage of foreign goods over locally produced goods has negatively affect turnover of local industries leading to casualisation of labour as a survival strategy by the local industries.<sup>44</sup> Also, the inherent desire of employers to maximize profit while minimizing cost has been attributed as one of the reasons for casualisation.<sup>45</sup> This is possible because casual workers are practically disentitled from the benefits conferred on standard employers by the law, this means that it is less expensive to casualise than employing full-time workers. Also, the existing legal framework on casualization of labour in Nigeria is obsolete and inadequate.<sup>46</sup> While it may be argued that the Labour Act permits persons to enter into employment relationship for a period as short as three months, either written or orally, which is usually the case with casual employment, the law is silent on the important factors of the relationship. For instance, it does not make provision for the rights of casual workers, the obligations of their employers as it is obtainable under the Ghana Labour Act.<sup>47</sup> Only the Employees Compensation Act 2010 by its definition section (section 73) makes mention of casual or part time employee and their inclusion therein is for compensation for injuries only as was held by the NICN in *Abel v. Trevi Foundation Nigeria Ltd.*<sup>48</sup>. Thus, casualization of labour in Nigeria is regulated majorly by the parties bargaining power which they employer has more than the employee. Also, the high rate of unemployment and underemployment which is currently being experienced in Nigeria has placed employers and employee in a position where the former acts in a manner of 'take it or leave it.' There are more ready and able bodied workers than the work itself; it gives the employer the uncharitable opportunity to pick and choose which worker to hire and in turn treats' them as disposable labour waste.<sup>49</sup>

### **5. Legal Framework and Effects of Casualization of Labour in Nigeria**

Presently in Nigeria, the legal regime on casualisation of labour is lopsided and obsolete. This does not mean that casualization of labour is not recognized in Nigeria. Aside the Employee Compensation Act<sup>50</sup> (ECA), which in defining who an employee is, mention casual/part-time workers as workers, the Labour Act and others are silent.<sup>51</sup> Thus, in giving judicial approval to this definition, the NICN in *Abel v. Trevi Foundation Nigeria Limited*<sup>52</sup> held that by virtue of section 73 of the ECA a contract staff on casual basis is an employee and therefore entitled to compensation. Although section 91 of the Labour Act (LA) in defining contract of employment provides that it could be for a period as short as three months and in writing or oral which is the main form in which causal contract of employment takes, this is all that the law provides. The definition in the LA is materially the same with that contained in the Trade Unions Act, (TUA) and Trade Dispute Act (TDA). The LA does not contain express provisions on the nitty-gritty of the relationship. For instance, the duration of casual employment is not specified, this in a way, would encourage employers to continuously employ on casual basis workers to perform work of a permanent nature, the obligations of the employer in such a relation is not specified but the general standard ones in a permanent employment are subsumed into it which is not the case in reality. Also, the LA does not provide the

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<sup>42</sup>Eyongndi, (No. 3) *Op. cit.* P. 107.

C. S. <sup>43</sup>Ibekwe, 'Legal Implications of Employment Casualisation in Nigeria: A Cross-National Comparison' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, Vol. 7, No. 1, 2016, P. 83.

<sup>44</sup>*Ibdi.* P. 111.

<sup>45</sup>R. Bamidele, *Casualisation and Labour Utilization in Nigeria*. Available online at <<http://www.ilo.org/public/english/iira/documents/congress/regional/lagos2011/1stparallel/session1b/casualisation.pdf> > retrieved 10 September 2018.

<sup>46</sup> Eyongndi, (No. 3) *Op. cit.* P. 114.

<sup>47</sup> Amechi & Eyongndi, (No. 1) *Op. cit.* P. 124.

<sup>48</sup> Suit No. NIC/PHC/55/2013.

<sup>49</sup>Danesi, 'Labour Standards and the Flexible Workforce: Casualisation of Labour under the Nigerian Labour Laws' Available at <[www.ajol.info/indexphd/eajphr/cart/view//39344/7848](http://www.ajol.info/indexphd/eajphr/cart/view//39344/7848)> retrieved 10 September 2018.

<sup>50</sup> Employees Compensation Act, 2010.

<sup>51</sup> Eyongndi, (No. 3) *Op. cit.* P. 109.

<sup>52</sup> Suit No. NIC/PHC/55/2013.

rights of casual workers bearing in mind their peculiarities. Although, section 7(1) of the LA mandates the employer to give within three months of employment to the employee, written terms of employment, as far as casualisation of employment is concerned, this provision is observed more in breach than compliance. The reason is, the LA makes room for both writing and oral employment contract and casual employers usually resort to the later so that they can absolve themselves from the stringent requirements of abiding to writing terms and conditions. However, despite the inadequacies of the legal framework, judicial pronouncements could be used to reasonably savage the situation. The casual employee is susceptible to the control of his/her employer than his/her counterpart in a permanent employment. Thus, the control test enunciated in *Yewen v. Noakes*<sup>53</sup> and applied in *Dola v. John*<sup>54</sup> in permanent employment could be safely applied to it to ensure that the employer does not abdicate from his/her responsibilities towards the employee and third parties. This notwithstanding, it is pertinent that taking into account the rampancy of casualisation, the current legal framework be amended to specifically make provisions with regard to the rights, privileges and duties of casual workers and their employers and enforcement should be taken seriously.<sup>55</sup>

## 6. Role of Trade Union in Curbing Casualisation of Labour in Nigeria

This section of the paper discusses the roles the trade union should play in curbing casualisation of labour in Nigeria. With regard to the importance of trade union, Chianu<sup>56</sup> in a comprehensive manner captured it thus:

Collectively, employees can have considerable power and influence. When this influence is channeled through unions with large memberships, financial resources, technical expertise, and professional leadership it becomes impossible to ignore. Unions offer self-protection to their members from real and perceived exploitation and mistreatment by employers. Unions also offer employees self-expression through strikes, meetings and other activities. The promise of solidarity or togetherness is also a motivation to join unions. Trade unions contribute to the building of more democratic, participatory and equal patterns of development which not only have intrinsic value in expanding human freedom and capacity but are also increasingly recognized as the best route to successful development.

It has been argued above that trade union is a pressure group within the labour sector and as such, performs various functions towards its members and the society at large. Prominent of these functions are socialization, agitation and welfare. In curbing casualisation of labour in Nigeria, trade unions have the role of sensitization of workers on their basic employment rights under Nigerian law.<sup>57</sup> Most Nigerian workers particularly casual workers in the unregulated sector are unaware of the basic labour rights of a worker.<sup>58</sup> They also seem to be unaware of the duties the law has generally placed on employers towards their employees and the consequences of their breach. This conclusion is easy to come by when one countenance the treatment that characterizes casual employment as discussed in the preceding part of this paper.<sup>59</sup> They have a duty to sensitize the workers on the ills of casualisation of labour as most workers can be regarded to be unaware and have erroneously accepted precarious casualisation as a legitimate form of employment. This knowledge would arm the workers and even enable them to challenge their employers. This can be achieved through regular symposiums, workshops, seminal, public lectures, outreaches, etc. This is much expected of trade unions because as Chianu<sup>60</sup> rightly posits:

Trade unionism improves the conditions of employees, especially the elimination of inhumane practices management may wish to introduce. This is vast welfare gain not only in terms of restoring human dignity to the erstwhile victims of these practices but also in eliminating morally unacceptable gulfs in the life-chances of individuals within the same society.

Also, they can play the role of negotiators with the government and other labour stakeholders towards exploring amicable means to stem the tide of precarious casualisation of labour. The Trade Unions (Amendment) Act, 2005,

<sup>53</sup> (1880) 6 QBD 530.

<sup>54</sup> (1973) 1 NMLR 58.

<sup>55</sup> Ibekwe, 'Legal Implications of Employment Casualisation in Nigeria: A Cross-National Comparison' Vol. 7, No. 1, 2016, P. 83. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*. 2016, P. 83. Available online at <<https://www.google.com.ng/search?q=casualisation+of+workers+in+nigeria+pdf&sa=X&ved=0ahUKEwjWmbiDw57dAhXDxqQKHcxyBKUQ1QIibCgC&biw=1242&bih=529>> retrieved 11 September 2018.

<sup>56</sup> E. Chianu, *Employment Law*, Akure, Bemicov Publishers (Nig.) Ltd., 2004, P. 280.

<sup>57</sup> E. A. Oji & O. D. Amucheazi, *Employment and Labour Law in Nigeria*, Lagos, Mbeyi and Associate Nig. Ltd., 2015, P. 195.

<sup>58</sup> Eyongndi, (No. 3) *Op. cit.* 112.

<sup>59</sup> Tamunomiebi & Bagshaw, (No. 17) *Op. cit.* P. 73.

<sup>60</sup> Chianu, (No. 83) *Op. cit.* P. 279-280.

permits trade unions to conglomerate for the advancement of the interest of its members.<sup>61</sup> Thus, under the auspices of central labour union like it is being done by both Trade Union Congress (TUC) and the Nigerian Labour Congress (NLC) with regard to the increment of minimum wage, they should frontally engage the government and other employers to discuss the quagmire of casualisation with a view to ameliorating its hardships. The hardship of casualization can be ameliorated by the trade unions through agitating for a review of the existing obsolete and inadequate law as well as its implementation after the review. However, where dialogues proves inadequate, trade unions could resort to picketing to compel a recalcitrant employer to come to terms with the horrific plight of Nigerian casual worker who is a victim of a lot of avoidable employment hazards.<sup>62</sup> Moreover, trade unions can also serve as pressure groups to compel the government and its agencies especially Ministry of Labour and Employment (MLE) to enforce the existing lopsided laws. The Employees Compensation Act, 2010<sup>63</sup> contains provision regarding compensation for injuries sustained during work but not too many casual workers are aware of this and whenever there is an accident, the employee bears the brunt. Moreover, it is now settled that the trade union and its member are in an agency relation.<sup>64</sup> Thus, with the authorisation of the members, the union can validly take certain steps on their behalf.<sup>65</sup> The trade unions should rigorously mobilize their members and campaign against anti-union contracts which are characteristic of casual employment. Most casual employers tacitly compel prospective employees to sign agreement to the effect that once they are employed, they would not form nor join any trade union to engage in trade unionism.<sup>66</sup> This they do notwithstanding the provisions of section 40 of the 1999 CFRN which gives workers (subject to certain exceptions)<sup>67</sup> the right to form and join trade unions for the furtherance of their interest.<sup>68</sup> Where an employer of casual employees fails and or neglect to heed to the call by the unions, they can resort to picketing to compel such a recalcitrant employer to comply. For as long as employers continue to de-unionize employees, trade unionism will continue to be undermine to the disadvantage of the employees. This negative posture of casual employers by adopting de-unionization policy would weaken the effectiveness of trade unions as their strength lies in their number.<sup>69</sup> As the vanguard of workers welfare, one would wonder that given the incessant occurrence of injury to casual workers, organized labour has been inactive in exploring litigation with a view to seeking redress possibly through damages. Thus, trade unions or their conglomerate where casual workers limited rights are about to be or have been infringed upon, owed them the duty to seek redress in the court of law. In trade union, the saying is true that an ‘injury to one is an injury to all’ and she thrives on this.

## **7. Factors Inhibiting the Effectiveness of Trade Unions**

From the discussion above, it is obvious that the effectiveness of trade unions in the fight against casualisation of labour in Nigeria is being hindered by both external and internal factors. This section of the paper examines some of these factors. Principal amongst these factors is the lack of a robust regulatory framework. We have *explicated* (Note: replace) above that the labour legal regime on casualization of labour in Nigeria is not only obsolete but inadequate. The reason is, despite the fact that all or most of our labour laws were made in the 1970s and 1980s (with the exception of the ECA 2010), even the subsequent amendments have not directly focused on the issue of casualization of labour. The result is that while casualization of labour continues to grow exponentially in Nigeria, the laws do not have adequate provisions on it. Regrettably, since the enactment of our labour legislation such as the Labour Act (LA) 1974 Cap. L1 LFN 2004, Trade Unions Act (TUA) 1973 Cap. T14 LFN 2004, and Trade Disputes Act (TDA) 1976 Cap. T8 LFN 2004 which are the major labour laws; there has been no significant effort towards amending them to cater for casualisation. Although sections 7 (1) and 91(1) of the LA recognizes casualization as well as section 73 of the ECA for the purposes of entitlement to compensation for injuries, this is all that there is. Thus, the legal status and rights of casual employees are not expressly provided but left to legal conjectures. This makes it difficult for trade unions to have a cogent legal basis to approach the court. They are constrained to hope and trust in the goodwill of the Court through judicial activism which is not guaranteed. When the Nigerian legal framework on casualisation is compared to that of Ghana, this quagmire becomes more obvious. The Ghana Labour Act No. 651 of 2003 is a revolutionary legislation as far as casualisation of labour in Ghana is

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<sup>61</sup> This assertion is supported by the definition of trade union in section 48(1) of the Trade Unions Act 1973 Cap. T 14 LFN 2004.

<sup>62</sup> See Leadership Newspaper, 10<sup>th</sup> July, 2018, Casualisation: Labour Disrupts Business Activities at MTN Offices in States. Available at <<https://leadership.ng/201>> accessed 16 October 2018.

<sup>63</sup> See generally sections 7, 8, 9, 10, 11, 17, and 18 Employees Compensation Act 2010.

<sup>64</sup> A. Emiola, (2012) *Op. cit.* P. 408.

<sup>65</sup> Oji & Amucheazi, (No. 112) *Op. cit.* Pp. 211-212. See also section 5 Trade Union (Amendment) Act 2005.

<sup>66</sup> Agomo, C. K., *Nigerian Employment and Labour Relations Law and Practice*, Lagos, Concept Publications Ltd., 2011, Pp. 278-279.

<sup>67</sup> Oji & Amucheazi, (No. 112) *Op. cit.* Pp. 197-198.

<sup>68</sup> *Ibid.*

<sup>69</sup> Eyongndi, (No. 9) *Op. cit.* P. 87.

concerned.<sup>70</sup> Section 78 of the Act defines a casual worker as a worker who is engaged on a work which is seasonal or intermittent and not for a continuous period of more than six months and whose remuneration is calculated on a daily basis. This definition is more encompassing than that contained in section 91 of Nigeria's Labour Act. A temporary worker on the other hand means a worker engaged for a continuous period of not less than one month and is not a permanent worker or employed for a work that is seasonal in character.<sup>71</sup> Section 8 and 9 respectively contains provisions specifying the general rights and duties of employers and workers.<sup>72</sup> In addition to the general rights of the employee, the Act bequeaths certain special rights to casual workers due to their peculiarities. Examples of such rights are entitlement to public holiday pay due to public holiday and right to double remuneration for work performed on a public holiday,<sup>73</sup> right of access to necessary medical care, and right to overtime payment.<sup>74</sup> This is in recognition of the fact that casual and temporal workers are susceptible to various employment abuses necessitating special protection.<sup>75</sup> By virtue of section 78 of the Act, the duration of casual employment is not more than six months. Section 74(2) further contain more rights that inures a casual employee to wit equal pay for work of equal value for each day worked in that organization; entitlement to be paid for overtime work by his or her employer; access to any necessary medical facility made available to the workers generally by the employer.<sup>76</sup> Thus, armed with this kind of egalitarian legal framework, trade unions can prosecute the war against casualisation of labour but this is not the fate of trade unions in Nigeria.

Also, incessant governmental interference in trade union management is another inhibition to the effectiveness of trade union fight against precarious casualisation of labour in Nigeria. Often, government through its agents and agencies interferes in the affairs of trade unions. This interference which is largely with a view to weaken the trade union functionality, often results in hindering their effectiveness in core trade union activities. During the tenure of President Olusegun Obasanjo, the Adams Oshiomole's led Nigerian Labour Congress (NLC) was perceived as becoming too powerful as it continued in aggressive agitations against the government and other employers with unfriendly labour policies, the response of the government was by amending the TUA. This subtle interference was what gave birth to the Trade Unions (Amendment) Act 2005 which decentralized NLC by creating Federation of Trade Union.<sup>77</sup> The sublime rationale for the amendment notwithstanding that the government has the power to so do, was to weaken the growing powers of the NLC and reduce it to a toothless bull dog that at best can only bark and not bite.<sup>78</sup> Abiala<sup>79</sup> pungently captured the unsavoury state of unhealthy governmental interference in trade unionism thus:

There is an ongoing conspiracy to terminate the life of labour in this country or at least to render it disabled, ineffectual and perennially sick. The attempt by the National Assembly, the Federal Government and its coordinate State Government in a conspiracy with Nigeria Employers Consultative Association (NECA) is to remove labour and minimum wage from the exclusive legislative list of Nigeria Constitution and to banish it into the concurrent list. We must do all to stem the tide of absolute deregulation of labour matters which may leave the labour movement in Nigeria fragile, weak, and unable to synergise towards workers welfare and aspirations.

Moreover, trade unions like every other human organization are plagued by internal insurrection which is inimical to its functionality. Divide and rule is one managerial pattern adopted by some trade unions. Crisis in trade unions ranges from leadership tussles to jurisdictional scope as explicated in the case of *The Registered Trustees of Community Health Workers v. Medical and Health Workers Union*<sup>80</sup> and stiffen its effectiveness. Cases of factionalism are not unheard of with trade unions in Nigeria. Alluding to this despicable but not hopeless and helpless situation, Abiala<sup>81</sup> opined that:

The challenge of unity and determination to collectively stand and survive the tide is the business of leadership of our trade unions (and of course the proactive response of

<sup>70</sup> Ghana Labour Act, NO. 651, 2003, Section 1.

<sup>71</sup> *Ibid* Section 175.

<sup>72</sup> Section 8 and 9 Ghana Labour Act No. 651, 2003.

<sup>73</sup> *Ibid*. Section 77(1) and (2).

<sup>74</sup> *Ibid*. section 74 (1) and

<sup>75</sup> Amechi & Eyongndi (No. 1) *Op cit*. P. 128.

<sup>76</sup> *ibid*. P. 129.

<sup>77</sup> See section 8(1)(2)(3) Trade Unions (Amendment) Act 2005 which amended section 34 of the Principal Act.

<sup>78</sup> E. O. Abiala, *Trade Union Movement and National Development: Memoirs of Labour Struggle*, Ibadan, St. Paul's Publishing House, 2012, P. 50-51.

<sup>79</sup> Abiala, (No. 40) *Op. cit*. P. 122.

<sup>80</sup> [2008] 4 SCM 145.

<sup>81</sup> Abiala, (No. 40) *Op. cit*. P. 123.



membership). The cliché is more apt and extant now, than ever before, ‘solidarity forever’ ‘for the union makes us strong’. Again, proactive, open and informed labour leadership and a paradigm shift in approach towards a wedlock of workers welfare and national development would avail the labour necessary relevance and recognition in national discuss.

However, it is worthy to note that these inhibitions despite their enormousness; are not insurmountable. The strength of trade unionism is traceable and discoverable from its unity and it is anchored on the pillar of together we stand, divided we fall.

## **8. Conclusion and Recommendations**

Casualisation of labour is neither a new phenomenon nor exclusive reserve of Nigeria. In itself, it is not evil as it serves as a route to gainful employment and certain workers are incapable of being employed in permanent employment hence; casual employment becomes their only alternative. Thus, the way and manner in which Nigeria employers both in the private and public sectors have resorted to casualisation of labour is what has become worrisome. They have resorted to casualisation to the disadvantage of employers. Thus, employer insatiable appetite and consumption of casual labour is catalyzed by various factors. Some of these factors include but are not limited to high rate unemployment and underemployment making more workers available than available work thereby giving the employers an opportunity to choose and pick and or treat workers with an attitude of take it or leave it, obsolete/inadequate legal framework which does not provide comprehensive protection and benefits to casual workers, globalization and trade liberalism which led to influx of foreign goods with concomitant competition with locally produce goods, the former enjoying more preference, employers desire to minimise cost while maximizing profit, etc. Thus, casualisation is now a harsh reality in Nigeria and has come to stay. However, while it is not desirable that it be eradicated, it cannot be allowed to continue in the way and manner it is presently being practiced. Thus, trade unions as one of the stakeholders in the labour sector and the vanguard of employees’ welfare protection and promotion has several roles to play to curb precarious casualisation as its unabated practice is a threat to egalitarian unions owing to its anti-unionism posture. Thus, the trade union has to be alive to its opposition (through picketing and strike actions where necessary), socialization of workers, negotiation with the government and employers association towards curbing precarious casualisation of labour. However, certain factors inhibit the functionality of trade union in effectuating these roles. These factors include unhealthy government interference in trade unionism, internal disagreement and obsolete/inadequate legal regimes to aid a seamless prosecution of the task.

Thus, to ensure that trade unions effectively perform the above identified roles based on the findings above, it is hereby recommended that: Trade unions should peacefully engaged employers, particularly, in the private sector where there is reported precarious dominance of casualisation of labour with a view to dissuading them from continuing. However, where the response is not positive, they should not hesitate to picket on such employers in a bid to compel them to comply. Besides, the High Court of the Federal Capital Territory, Abuja in *Federal Government of Nigeria & Anor. v. Adams Oshiomhole & Anor*<sup>82</sup> held that ‘the Nigerian workers have a fundamental right to assemble or mass protest through the NLC in opposition to a Government policy such as the imposition of the N1.50K fuel sales tax if they consider it inimical to their interest’. If not casualisation, one wonders which other employment practice would be more inimical to workers’ interests given its enormous negative effects justifying vociferous protest. Trade unions should jealously embrace and guard internal democracy in the management of its affairs which will enable them to remain united and forge ahead towards the advancement of their members’ welfare. Trade unions should engage in rigorous sensitisation of their members through such media like symposiums, workshops, public lectures, trainings on the ills of casualisation of labour and the limited rights accorded them by the law. Trade unions should engaged the government as consumer and regulator of labour to ensure that gainful employment opportunities are made available so as to stem the tide of unemployment and underemployment which is the main cause of casualization of labour. Trade unions should take advantage of the innovative provisions of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 which allows the National Industrial Court to apply international labour instruments and standards in Nigeria (and section 40 of the same constitution) to initiate class actions against employers engaged in unabated precarious casualisation of labour in Nigeria particularly, denial of casual workers right to form and or join trade union.

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<sup>82</sup> [2004] 1 NLLR (Pt. 2) 326 at 336, Paras.E-G, p. 337, Paras. F-G.