

CHAPTER ONE

1.0 INTRODUCTORY CHAPTER

1.1 Introduction

It is no secret that due to the continued declining economic fortunes in Zambia, the levels of unemployment are flagrantly on the upswing. This undesirable state of affairs has presented an enormous challenge on the competitiveness of the labour market. Robinson, notes that in many countries, part-time employment has continued to grow when full-time employment has been stagnating or even declining¹. He further stresses that as the decade progresses, it is apparent that forms of employment different from the conventional or traditional full-time norm are assuming increasing importance; and that in all countries part-time work represents the largest component of this loosely defined flexible workforce². This growing workforce falling under part-time employment as noted above is not without challenges. Modern society is overwhelmed with unconscionable and onerous labour conditions of employment in some sectors or establishments. Widespread poverty and high unemployment levels in Zambia have bred a dangerous environment where workers are willing to tolerate severe abuse from employers for fear of losing what little wages they bring home at the end of the month. The unjust treatment of employees is widespread in Zambia³. It is for this reason that this dissertation seeks to add to the body of

¹ Oliver Robinson, *Labour Market Flexibility: The Case of Part-Time Employment in Canada* (Bath: University Press, 1989), 5.

² Robinson, *Labour Market Flexibility: The Case of Part-Time Employment in Canada*, 8.

³ Chris Petrauskis, *Restoring Dignity to Employment in Zambia: Legal and Moral Motivation to Promote the Common Good*, 12.

knowledge on part-time employment. The undertaking endeavours to provide a panacea in as far as part-time employees' vulnerability is concerned.

1.2 Historical background of part-time employment in Zambia

Before delving into the historical aspect of part-time employment in Zambia, it is important firstly to understand the meaning of the term “part-time employment”. It must be magnanimously conceded that it is difficult to arrive at an internationally agreed demarcation between “full-time” and “part-time” employment given the national variations as to what these terms mean. However, a sigh of relief dawns at the advent of the United Nations Convention on Part-Time Work, as it has precisely defined the term in question. According to the Convention in question, a part-time employee is defined “as any employed person whose normal hours of work are less than those of comparable full-time workers⁴”. Paragraph (b) of article 1 of the said Convention provides that the normal hours of work referred to in paragraph (a) may be calculated weekly or on average over a given period of employment. Paragraph (c) further provides that:

the term comparable full-time worker” refers to all part time workers who have (a) the same type of employment relationship; (b) who are engaged in the same or similar type of work or occupation; and (c) are employed in the same establishment, or when there are no comparable full-time workers in that establishment, in the same enterprise, or when there is no enterprise, or when there are no comparable full-time workers in that enterprise, in the same branch or activity⁵.

Having established what is meant by “part-time employment”, we can now proceed to look at the background of this type of employment. It is a fact that part-time employment has been on the increase in most countries and Zambia is not an exception to this development. Various variables

⁴ Article 1 (a) Part-Time Work Convention, 175, 1998

⁵ Article 1 (a) Part-Time Work Convention, 175, 1998

account for such growth of this pattern of work from country to country. However, one major concern and a relatively shared one is that working arrangements such as the one under scrutiny may be less economically secure and less stable than full-time employment⁶. This however, is a matter that shall be ably addressed in chapter three.

In terms of history of this pattern of employment, it may not be too easy an undertaking to forthrightly and lucidly point to the factors that precipitated the emergency of the phenomenon under scrutiny. A lot of views abound invariably in an attempt to explain the accentuation of part-time employment. What is vivid, however with a modicum of unanimity is the understanding that part-time employment attained much prominence in pronouncement on the labour market in the early 1990s. The obligation that arises therefore is to inquire into the factors that gave birth to part- time employment at the time in question.

After independence, Zambia adopted a left wing economic policy (socialism)⁷. The economy was to a larger extent run by central planning under which private companies were nationalised and incorporated into large state owned conglomerates⁸. The government's goal was to be self-sufficient and it sought to do this through import substitution. In the beginning, the plan worked well and the economy grew steadily. At the time, the Zambian economy as always was dependent on the production of a single commodity called copper and it represented an important source of government revenue. The country was able to sustain a high rate of real growth from independence in 1964, until about 1974, when it suffered a major external shock in the form of

⁶ Petrauskis, *Restoring Dignity to Employment in Zambia: Legal and Moral Motivation to Promote the Common Good*,12-17

⁷ Fashoyin Tayo, *Policy Reforms and Employee Relations in Zambia*, International Labour Organisation (Harare: 2008), 2

⁸ Tayo, *Policy Reforms and Employee Relations in Zambia*, 1-3

drastic fall in the copper prices⁹. Thereafter, copper prices remained weak and unstable, a problem compounded by high prices of imported fuel that raised import costs. Consequently, a real Gross Domestic Product per capita collapsed¹⁰. De Beer stresses that Zambia is a prime example of an African state that ran up a massive debt¹¹. In those years the price for copper was artificially inflated and as such Zambia could afford to borrow the cheap petrodollars with their low interest rates. However, when the demand for copper plummeted as did its price on the world market, Zambia rapidly found itself unable to service the debt it had incurred. As a panacea to the huge economic recession that Zambia and other developing countries faced, the Breton Wood institutions namely the World Bank and International Monetary Fund, came up with Structural Adjustment Programmes (hereinafter referred to as SAPs) in 1979 as the blue print or path way to economic recovery. The two institutions blamed the poor economic performance of poor countries on the way resources were allocated. Proponents of SAPs argued that economic challenges of developing countries were largely as a result of too heavy government involvement in the economy which turned the economy into a massive bureaucratic “mess”, one which was inefficient and unproductive. The thrust of the argument therefore was that the governments were overspending on the public sector, and that the direct controls and the subsidies were counter- productive¹². The effective need therefore, was for government to reduce the role of the public sector, and remove direct controls and subsidies. The implementation of the said programmes was a condition precedent to the acquisition of loans by

⁹ Frik, Debeer, *Introduction to Development Studies* (Oxford: Oxford University Press, 2000), 251

¹⁰ De Beer, *Introduction to Development Studies*, 253

¹¹ De Beer, *Introduction to Development Studies*, 257

¹² Benjamin Wisner, *Power and Need in Africa: Basic Human Needs and Development Policies* (London: Earthscan, 1998), 50

developing countries to inject into their attenuated economies. These SAPs had four fundamental or core objectives according to which they were shaped. These were¹³:

(a) Liberalisation of the economy: This meant governments' ceasure in regulating the labour market and instead aim at promoting the free movement of capital and opening up of national economies to internal and international competition;

(b) Privatisation of public services and companies;

(c) Deregulation of labour relations and cutting social safety nets; and

(d) Improving competitiveness.

It is beyond doubt that the four objectives of the SAPs are interwoven in more ways than one. These measures forced countries on a path of deregulated free market economies. The practical and inevitable ramifications of the implementation meant the government had to lower social expenditure by reducing the number of jobs in the public sector and by lowering wages. Many public workers were laid off. The government had to shrink its recruitment policy into the civil service. As a direct consequence of privatisation of the previously state owned companies especially the mines, the private owners had to lay off huge number of workers. Households now had to pay for education and health. Reduction in subsidies meant that families had to pay more for basic foodstuffs¹⁴. This was the birth of the private sector as an alternative engine and supplement to government in the growing of the economy. These imposed hardships created pressure and an insatiable desire for wage paying jobs in order to make ends meet for the

¹³ Michael Todaro, *Economics for A Developing World: An Introduction to Principles, Problems and Policies for Development* (London: Longman, 1977), 80

¹⁴ De Beer, *Introduction to Development Studies*, 257

majority of the Zambian people who found themselves as victims of the programmes either through redundancy or were just unable to find jobs. The bargaining power of a hungry man are virtually impaired and overly readiness in picking whatever was available provided a huge catching base for private sectors in finding cheap labour. The private sector being profit driven, found it cheaper to hire labour on part-time basis and pay such workers commensurate to the work done. Since these employees do not spend as much time as full-time employees at the place of work, a conception was born that these workers are not covered under the protective labour legislation. We can therefore, see the nexus between the capitalist economies as propagated by the two Breton Wood institutions and the emergency of the private sector which began to thrive on the voluminous unemployment rate and offered people to work on part-time basis as a way of curbing overheads. According to the report by the Zambia Congress of Trade Union, it notes that a lot of companies closed down as the government decided to introduce the SAPs 1991. The report further notes that Zambia suffers from high unemployment and under employment hugely due to the imposed SAPs by the World Bank and International Monetary Fund¹⁵. Seshamani, notes that trade liberalisation has had a direct causal link to poverty through the manner in which it has affected wages and employment, taxes and government spending through the distribution of goods and services¹⁶.

The situation that had befallen Zambia and continues to do so following the implementation of the SAPs is an exact antithesis of the term “development” as defined by Todaro¹⁷. He stresses

¹⁵ Zambia Congress of Trade Union Publication, *A Report on the Public Sector Reform Programmes and Privatisation*, (Lusaka: 2001),12

¹⁶Venkatesh Seshamani, *Trade Liberalisation and Its Impacts: Zambian Case Studies* (Lusaka:2008), 5

¹⁷ Todaro, *Economics for A Developing World: An Introduction to Principles, Problems and Policies for Development*, 85

that development is a multidimensional process involving changes in structures, institutions, and attitudes as well as the acceleration of economic growth, the reduction of inequality, and the eradication of absolute poverty¹⁸. He points out that development must represent the entire gamut of changes by which an entire social system, tuned to the diverse basic needs and desires of individuals and social groups within that system, moves away from the condition of life widely perceived as unsatisfactory, and moves towards a situation or condition of life regarded as materially and spiritually 'better. Susan George, in her consideration of the effects of the SAPs, stresses that the World Bank and the International Monetary Fund work together to keep the third world "in line"¹⁹". She points out that the International Monetary Fund is an enforcer of the status quo with its adjustment programmes contributing to the acceleration of unemployment, malnutrition and ecological breakdown prevalent in many African and Latin American Countries. She warns "we are all passengers in the Titanic although some of us are travelling first class"²⁰.

As earlier pointed out, the mischief seems to lie in the fact that the primary labour laws are conspicuously silent on the phenomenon of part-time employment. The question therefore to be asked is whether the silence of the labour laws in Zambia can sufficiently lead to the conclusion that these employees are outside the purview or the precincts of the labour laws. To address this question in a manner that transcends all forms of biasness and subjectivity, one must look as far back as the 1960s when Zambia got independence. What is clear is that at the time when the laws in question were being couched, Zambia had a controlled economy and the government was

¹⁸ Todaro, *Economics for A Developing World: An Introduction to Principles, Problems and Policies for Development*, 85-87

¹⁹ Susan George, *A Fate Worse Than Debt*, (London: Grove Press, 1990), 58

²⁰ George, *A Fate Worse Than Debt*, 58-60

almost the sole employer of the labour force. The labour laws therefore were modelled in consonance with the type of the economy prevalent (socialist perspective) without any prognosis regarding future exigencies. What is clear is that the labour laws that we have at the moment are reminiscent of the socialist era where the labour market was an exclusive and preserved sphere of the government as a sole player. While the lack of foresight by the legislature then as to the future outlook of the labour market is regrettable and blameable, what is important to notice is that the problem we have at the moment in dealing with this class of “employees” is symptomatic of a slow moving legislature grappling with the need to respond to the exigencies of a dynamic society.

1.3 Statement of the problem

The current social order where capitalism has broken every form of insulation the less privileged would enjoy in a welfare society presents a severe challenge in our society today. Free market capitalism has emerged as the dominant economic paradigm of the 21st century founded on the idea that the unregulated private sector maximizes economic growth with benefits that begin to trickle down or spread to all members of society. Admittedly, it is a complex matter to pinpoint with certainty and exhaustively the factors that have led to the emergency of the somewhat ruthless labour market. It is, however, possible to analyse the laws of Zambia that guide the functioning of the Zambian society, economy and politics that have given rise to the birth of the wealthy elite and sustenance of the majority²¹. In this regard, the study focuses on part-time employees as an identified class of employees that has suffered abuse in terms of poor wages, lack of terminal benefits, social security and other entitlements such as leave days, sick pay, and

²¹ Petruskis, *Restoring Dignity to Employment in Zambia: Legal and Moral Motivation to Promote the Common Good*, 6

access to training or what is known as human resource development. The mischief here lies in the interpretation and circumspective inquiry as to whether part-time employees are covered under the existing protective labour legislation. A comprehensive and precise response to this matter can indeed ameliorate the abuse that part-time employees suffer at the hands of their employers. Ideas that challenge the polarized position of key stakeholders and groups can lead to a shift in attitude, policy shift and spark the promulgation of legislation that clearly and precisely addresses the difficulties faced by this class of employees. Such a shift if well harnessed can inevitably lead or point towards the middle ground for the benefit of all. Progressive labour laws that encourage and foster social equality are fundamental to improving the longevity and quality of lives enjoyed during retirement and possibility of families escaping the poverty trap. It is in a desperate climate like this that labour laws become highly important for the protection of the basic human rights and promotion of human dignity.

1.4 Purpose of the study

The purpose of this study is to establish whether part-time employees are sufficiently protected under the current labour legislation. This shall be achieved by seeking to understand the class of employees to whom the labour laws apply and the meaning of the term “employee” in the primary labour laws.

1.5 Scope of the study

This study acknowledges the diversity of the topic as it touches on all labour codes to do with employment. A study of that magnitude is beyond the scope of this work. The study in question focuses primarily on the Employment Act, the Industrial and Labour Relations Act and the Minimum Wages and Conditions of Employment Act. It must also be stated clearly that it is not

every provision that shall fall under consideration in the above mentioned Acts of parliament, but only those that have a bearing or are able to illuminate the discourse.

1.6 **Research questions**

Answering or addressing certain questions shall be critical to decisive tackling of the subject matter. Questions pertinent to the subject matter include:

- Who is an employee?
- Do Zambia's labour laws provide protection to part-time employees?
- What is the standard practice in other jurisdictions, particularly the United Kingdom on how this class of employees is treated?

1.7 **Rationale**

The rationale of the study is to ameliorate or arrest the abuse or exploitation of part-time employees. This shall be so by either establishing that they are equally covered under the current labour laws, but what may be lacking is awareness and liberal interpretation of our labour laws; or indeed recommending the promulgation of laws that specifically and expressly address this particular class of employees or amending the labour laws so as to provide for this class of employees.

1.8 **Hypothesis**

Part-time employees have the same statutory employment rights as any other employees and as such they are entitled to the same right of pay as full-time employees. They are not to be

excluded from human resource development programmes organised by the employer on account that they are part-time employees. Further, they are entitled to social security such as pension and compensation in case of occupational accidents that they may be involved in at work. Additionally, part time employees are eligible employees for purposes of forming trade unions. A part-time employee can only be treated less favourably if there is an objective justification for doing so. This means that the employer has to show that treating the part-time employee less favourably is necessary and the right way to realise a genuine aim of the business. Part-time employees cannot be treated less favourably just because they are part-time employees. The test as to whether a part-time employee is being treated less favourably is an objective one and this would be done by comparing one to an equivalent full-time worker. The comparable full-time employee or worker must be someone doing a similar job and on the same type of contract (contract of employment). In most jurisdictions, the labour legislation applicable, does not define part-time or full-time employment, rather this is generally, a matter of agreement between the employer and employee.

1.9 Methodology

Qualitative research methods shall be employed in the undertaking of this research. Data will be gathered through consultation with academicians in labour matters, Judges, who from time to time are faced with litigation on labour matters, especially the Industrial Relations Court which is a specialized court in matters of employment. Further, precedents, legislation, books and other publications capable of illuminating and invigorating the study shall be utilized.

1.9 Conclusion

This particular chapter has dealt with a number of components essentially analogous to the research proposal in terms of structure. However, additionally and more importantly, the chapter has attempted to address the historical aspect of part-time employment in Zambia. It has been established that part-time employment in Zambia attained prominence in the early 1990s following the extempore implementation of the SAPs. As we have already cogently observed, one of concomitant effects of these programmes was the skyrocketing of the unemployment levels thereby exposing society to vulnerability and poverty trap.