

SOCIO LEGAL AND GENDER DIGEST ON WOMEN IN FORMAL AND INFORMAL LABOUR SECTORS

Introduction

The key focus is to examine the extent to which the Employment Act of 2007 and the amendment Act of 2021 as well as other labor related laws have promoted women's participation in the formal and informal economy. In Kenya today 80% of the employment opportunities are in the informal sector. Women contribute 70% of the employees in informal sector. Women are underemployment since they work for a few hours than is necessary for a full-time job in the formal employment. The reduction in working hours make women to have two or more part-time jobs

The employment Act of 2007 has many gaps since it has not addressed the informal sector and the various types of jobs that exist in this sector of economy. The amended version also pays attention to formal sector. The Act and its amended version is not gendered thus, women employment is not promoted. Decent work is highlighted in the Act but there are no well-defined frameworks and strategies to promote its implementation.

Historically, the consideration of women in the labour process in Kenya has been a picture of inequalities and inequities. At the time of independence, women's participation in the paid labour market was relatively low due to various structural, social, cultural and historical factors. This does not mean that women did not work. But the kind of work that they engaged in domestically was not given an economic value. The patriarchal ideologies about labour led to the marginalization and non – recognition of women's labour in the household (which was and still is non – waged) as opposed to the notion that men should be in the public and waged labour sphere. These ideologies in turn led to structural inequalities fueled by lack of opportunities for education, employment and political and social participation by women. Even when women were able to access the waged labour sector, there were (and still are, in certain sectors) ingrained prejudices by employers against women leading to discriminatory practices. This historical

perspective is important in understanding the implications of the concept that not all work is employment related. There are many people/women working who are not employed but whose work has value which should be recognized.

These foregoing inequalities and inequities facing women in the labour sector have led to the dichotomization of women in formal and informal work.

Statistics show that more than 60% of the world's population is in the informal sector. Women, due to their weaker bargaining power, form a larger proportion of these statistics. In many settings, particularly in Low Income countries, women can only take lower quality and lower paying jobs. As a result they have fewer chances to access financial services (e.g. loans, and other credit facilities), education and skills development, collective bargaining forums, decent incomes, property and social protection.

Laws and Policies on Women in Formal and Informal Employment

(to be inserted)

Domestic

Regional

International

Socio – Legal Review of the Laws: Parameters

a. Social Protection

Social security is part of the larger concept of social protection. The African Union Social Policy Framework has defined social protection in this way: *“social protection includes social security*

measures and furthering income security; and also the pursuit of integrated policy approach that has a strong developmental focus such as job satisfaction.”

Kenya in its National Social Protection Policy has defined social protection as:

“The policies and actions, including legislative measures, that enhance the capacity and opportunities for the poor and vulnerable to improve and sustain their lives, livelihoods and welfare, that enable income earners and their dependants to maintain a reasonable level of income through decent work, and that ensure access to affordable healthcare, social security and social assistance.”

Social protection is thus very much a part of the Decent Work Agenda of the ILO.

Social protection is important to enable people to rise above the poverty line or even to eradicate poverty altogether. It is also about offering security in the face of vulnerabilities and contingencies and having access to healthcare as well as working in safety and dignity.

Social security has been defined by the ILO as “the protection that a society provides to individuals and households to ensure access to healthcare and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner.”¹ In Sub-Saharan Africa, the social protection offered to those in both the formal and informal sectors is very low. There is particularly lack of social security for those in the informal sector which is a larger source of income and work for more women than men.² This is despite the fact that social protection can be an effective way of promoting women’s empowerment and gender equality. The design of social protection policy can be done in a way that recognizes the unique social and structural challenges that women face in the labor sector.

The legal regime for social protection and security in Kenya is contained in various sources.

- a. The Constitution of Kenya 2010 in article 43 provides for the right of everyone to social security
- b. There is the National Social Protection Policy

¹ https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067588.pdf
accessed 24 December 2021

² *ibid*

- c. The Social Assistance Act 2013
- d. The National Social Security Fund Act 2013
- e. The National Health Insurance Fund Act
- f. The National Health Insurance (Amendment) Act 2021
- g. The Retirement Benefits Act

These pieces of legislation are gender – neutral in their provisions. One significant aspect of social protection for workers is access to healthcare services. For women, access to healthcare is part of the Sustainable Development Goals and the 2019 Political Declaration on Universal Health Coverage. The 1995 Beijing Declaration also provided that women should be able to access equitable, affordable and quality healthcare services. In Kenya, one of the main Agendas of the incumbent government is the Universal Health Coverage (UHC) Agenda which they aim to attain by 2022.

There are various impediments to access to universal health coverage by women in the labor market. According to Vijayasingham et al, “women’s higher unpaid care work, lower income and often limited decision – making power over household resources and their own healthcare, converge to create significant barriers to healthcare.”³ Indeed as an example, in low to middle income countries, 45 million (37%) pregnant women have either no or inadequate access to antenatal care.

In Kenya, the current regulatory framework for financing for healthcare for workers is heavily reliant on employment based financing. This is where contributions are mandated from the employee’s salary. Deductions are made mandatory for all employees. Under the NHIF (Amendment) Act 2021, the law now requires all adults over the age of 18 years, and who are not already registered as dependents under the scheme, to make contributions to the Insurance scheme. This is already problematic in and of itself in a country where almost half of the population is living in abject poverty and most of those are women who are exposed to indigence.

³ Lavanya Vijayasingham, Veloshe Govender, et al ‘Employment based health financing does not support gender equity in universal health coverage’ (2020) BMJ 371

When access to healthcare financing is pegged onto employment status, then it may further reinforce the realities of gender inequalities in employment participation by women. For instance, unpaid care work, which is performed by more than 80% of women globally, is not considered and valued as work that should be paid work. Employment based health financing suggests that healthcare is an employment benefit rather than as the human right that it is. This makes it difficult to enforce from a rights based perspective.

Employment based health financing fails to take into account the women working in the informal sector. In Africa and South Asia, women represent 90% of those who work in the informal sector. Therefore a significant proportion of women are not getting health related social protection. As mentioned earlier in this report, socio-economic and cultural barriers are an impediment to implementing UHC.

The laws therefore need to be more responsive to the gender realities and sensitivities.

New forms and arrangements of work have taken place over the past several years. They have become even more pronounced due to the COVID – 19 Pandemic. These non – standard forms of employment such as platformised work or remote work have been taken up by women – especially young women and migrant workers. Many women prefer flexible work arrangements where they can balance their work and their family responsibilities. However this is at the risk of lower income and higher poverty levels.

The social security laws as they are do not take these risks into account.

For a country with severe financial constraints the question then becomes what kind of social protection strategy would be useful for women in the formal and informal labor sectors. Perhaps a consideration of the key risks that women face in the workplace in which they need social protection cushioning may be able to assist to identify the gaps and the areas for strategic interventions

1. Maternity

The Employment Act 2007 in section 29 provides for maternity (and paternity) leave with full pay for the female employee. She is entitled to three months maternity leave. The Amendment Act of 2021 provides for one month's pre-adoptive leave for those who wish to become parents by way of adoption. The initial proposal in the Bill also envisaged parentage by way of surrogacy but this was not approved by the President. The female employee shall be entitled to return to the job that she held immediately prior to maternity leave or to a reasonably suitable job on terms and conditions that are not less favorable than those which would have applied had she not gone on maternity leave. The female employee shall not be entitled to forfeit her annual leave on account of her taking her maternity leave. This is a common practice with some employers who require that the annual leave be part of the duration of maternity leave.

The Employment Act however does put a condition to the enjoyment of these rights by the female employee. The condition is that she must give not less than seven days' notice in advance or a shorter period as may be reasonable in the circumstances of her intention to proceed on maternity leave and this notice must be in writing.

The length of the maternity leave is still an issue in contention. The contention is whether three months is sufficient enough for the woman and newborn, before she has to return to work. In order to support particularly women in the formal employment sector who have to return to work but still take care of their maternal responsibilities, the Health Act 2017 introduced requirements for employers to have lactation stations in the workplace.

Section 72 of the Health Act 2017 requires that employers are to grant all nursing employees break intervals for nursing in addition to the regular times off for meals to breastfeed or express milk. The nursing break includes the time it takes an employee to get to and from the lactation station and is counted as paid working hours provided that such interval is not more than a total of one hour for every eight-hour working period.

Employers are further required under section 71 of the Health Act to establish Lactation stations in the workplace which shall be adequately provided with necessary equipment and facilities including hand washing equipment, refrigerates or appropriate cooling facilities, electrical outlets for breast pumps, a small table, and comfortable seats. The lactation station must not be located in the rest rooms. Employers are further required to take strict action to prevent any direct or

indirect form of promotion, marketing and or selling of infant formula and or breast substitutes within the lactation stations.

Whereas these provisions may be ideal for formal sector employees, the same benefits and investments are not available for informal sector female workers, who may have to either stop working or take their babies to do informal work in precarious situations.

2. Sickness

The question is – what income security measures have been put in place currently for employees who fall sick? The Employment Act in section 30 provides that after two consecutive months of service with their employer, an employee shall be entitled to sick leave of not less than seven (7) days with full pay and thereafter sick leave of seven days with half pay in each period of 12 consecutive months.

The rationale behind sick leave pay is that work should not threaten health and ill health should not lead to loss of income and work. However it should be noted that in the Employment Act section 45, termination of employment related to the employee's capacity is a fair termination.

However the provision is available for employees in the formal sector. Informal sector workers are not covered under this

b. Occupational Safety and Health and Work place Injuries

Occupational safety and health in Kenya is underpinned by the National Occupational Safety and Health Policy 2012. Its main objective is to 'establish national safety and health systems and programmes geared towards the improvement of the work environment.' Gender is not an issue that is considered in the current policy framework. The policy is largely gender neutral and does not specifically address the risks and hazards that women face in the workplace whether in the formal or informal settings. This is despite the fact that there are quite unique occupational safety and health risks and hazards that are gender specific and need gender specific responses. The Policy also does not specifically address the hazards and risks that are faced in the informal sector where many women work. This gender – neutrality of the policies and laws may

exacerbate gender inequalities when it comes to workplace safety and health. Recognizing gender differences at the workplace ensures that there is enhanced safety and health at work. Due to the different gender roles in society (expectations and responsibilities) and even biological differences, men and women are exposed to different physical and psychological risks and injuries in the workplace. These require different strategies of protection and prevention. There is therefore need to develop a national occupational safety and health policies and resource allocation plans that are gender – sensitive as a result of the differences between men and women due to biological makeup, living and social conditions and gender roles. The policy should also give recognition to high risk sectors that are both male and female dominated. There is a prevalence of female workers in certain sectors e.g. the informal sector, agriculture sector, textiles, food production, handicrafts, pharmaceuticals, etc. Risk management and assessment procedures and processes should identify the various risks that women in the workplace both in the formal and informal sector, are exposed to. For example, women who work in the manufacturing sectors and also in the health sector, they tend to suffer more from upper back and upper limb skeletal disorders due to repetitive lifting. A woman who is pregnant would be exposed to greater musco – skeletal risks and injuries. Within the health sector, women healthcare workers are subjected to low remuneration, cardiovascular diseases, musco skeletal disorders, psychosomatic and mental health disorders, cancers, respiratory diseases, etc. The levels of stress and burnout are high as they seek to balance their workload and their family responsibilities. The ILO Convention on Maternity Protection (No. 183) and its Recommendation (R. 191). The Convention provides that pregnant women should not be obliged to carry out work that is a significant risk to her health and safety or that of her child and it also provides for the elimination of the risks that the woman would be subjected to. The Convention provides for additional paid leave for the pregnant woman to avoid exposure to the risk if it cannot be eliminated immediately. The Recommendation sets out the various risks that should be assessed when it comes to pregnant women. The arduous work involving manual lifting, carrying etc.; exposure to biological, chemical agents(e.g. the exposure of women at the Naivasha flower farms to pesticides and herbicides); physical strain due to prolonged periods of sitting, standing, vibration, extreme temperatures, night work, etc. Unfortunately Kenya has not ratified this Convention.

The regulatory framework governing occupational safety and health is found in the Occupational Safety and Health Act 2007 (OSHA) and the Work Injury Benefits Act 2007 (WIBA). The OSHA has the aim of providing for the safety, health and welfare of workers and all persons who are lawfully present at the workplace.

There is an increased push globally to consider the gender issues within workplace safety and health laws and policies. This kind of analysis has not been effectively done in many countries in sub – Saharan Africa, including Kenya. The Policy and the Occupational Safety and Health Act 2007, do not specifically address the safety and health risks that face women in the workplace. For women in the informal sector, there are higher risks to their safety and health, and they are bound to suffer more injuries for which the labor regulatory regime, including the OSHA, does not provide any specific protections. It is worth noting however, that within the Occupational Safety and Health Act of Kenya, workers have the right to refuse unsafe working conditions. Section 14(1) of the OSHA provides that ‘every employee shall report to the immediate supervisor any situation which the employee has reasonable grounds to believe presents an imminent or serious danger to the safety or health of that employee or of other employees on the same premises, and until the occupier has taken remedial action, the occupier shall not require the employee to return to a work place where there is continuing, imminent or serious danger to safety or health.’ This provision is little known and many employees, particularly pregnant women, have not been sensitized to it. Another little known provision is section 76(2) which deals with ergonomics (work design) in the workplace. The OSHA provides that ‘every employer shall take necessary steps to ensure that workstations, equipment and work tasks are adapted to fit the employee and the employee’s ability including protection against mental strain.’ This provision can be used to enforce the protection of women in the workplace who are facing unique hazards and risks. The provision is not couched in a gender sensitive manner, and indeed one perhaps would not immediately see the manner it would protect women. The lack of sensitization and awareness of this provision hampers its enforcement in protecting the rights of women in the workplace.

The Work Injury Benefits Act 2007 aims at providing for compensation for employees for work related injuries and diseases that are contracted in the course of employment. The language of the preamble shows that the Act only focuses on workers who are formally employed. Informal

sector workers are excluded from this regime. It is worth noting that in the schedule of injuries or of dangerous occurrences that are contained in the Schedules of both statutes, there is no mention of gender based injuries and psychosocial injuries, particularly those that are caused by gender based violence in the workplace. Sexual harassment and gender based violence are a significant part of the occupational safety and health discourse. The ILO Violence and Harassment Convention recognize that gender based violence and harassment, even if it affects both men and women, disproportionately affects women and girls. It also recognizes that an integrated and gender – responsive approach which tackles the underlying causes and risk factors and intersecting forms of discrimination and unequal gender based power relations, is essential in ending violence and harassment in the world of work. Kenya has unfortunately not ratified this Convention.

The provisions of both statutes are gender neutral and the work inspection and audit frameworks do not taken into account gender equality as a parameter. Occupational inspections and workplace audits need to take into account three parameters: Hazard identification, Risk assessment and Actions and Procedures in order to minimize the risk.⁴ Hazard identification needs to be gender sensitive to take into account issues such as sex susceptibility to certain bio and chemical hazards, or even certain stressors which expose women to higher levels of work related stress.

It is worth noting that taking a biomedical model approach that focuses on the causal relationship between the hazard and the injury or disease focuses on the curative rather than on the socio-environmental approach which focuses on prevention.

c. The Care Economy (Unpaid and Paid Care Work)

The International Labor Organization has defined care work as those “activities and relations involved in meeting the physical, psychological and emotional needs of adults, children, old and

⁴ Eugino Sorrentino and Rosa Vona, ‘Gender issues on occupational safety and health’ (2016) 52(2) Ann Ist Super Sanita 190

young, frail and able – bodied.”⁵ It consists on the one hand of ‘direct, personal and relational care activities’ and on the other, ‘indirect care activities such as cooking and cleaning.’⁶

Unpaid care work is done without monetary compensation or reward while paid care work is performed for pay or profit. Majority of care work around the globe is unpaid and is done by women. Paid care work is performed by several workers e.g. domestic workers, nurses, doctors, personal care workers, teachers, etc. Unpaid care work is performed mainly by women and girls in household settings. For both paid and unpaid care work it is important to address the working conditions of women in these settings in order to assess the inequalities and inequities that they are subjected to. It is also important to give social, political and economic recognition of care work particularly unpaid care, in order to empower the women working in these settings.

The care economy is greatly expanding globally and also in Kenya due to the number of people who now need care. The COVID – 19 pandemic also increased the number of people who need care in home settings where the care is largely unpaid when it is being done by relatives. Two main sectors that have attracted the attention of regulators and policy makers globally are the health sector and the domestic work sector. In the health sector globally, 70% of the healthcare workforce are women and nursing is the most feminized of the health sector. The challenges that women face in these sectors (healthcare and domestic) are ‘gender segregation and segmentation, poor working conditions, low remuneration, gender pay gaps as well as an increased risk of violence and harassment.’⁷

In Kenya, unpaid work is a common feature in many households. It is done in the form of caring for the sick and elderly relatives, children, household chores such as shopping, cooking, fetching water, firewood, etc. The COVID – 19 pandemic brought this largely unnoticed economy to the fore. What the pandemic revealed in a greater measure is that due to cultural patriarchal norms the agency of women and girls has not been fully realized and therefore unfair work has been normalized. There is an unconscious bias towards assigning certain roles to women and girls

⁵ ILO, ‘Care Work and Care Jobs for the Future of Decent Work’ (2018) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633166.pdf p. 6

⁶ ibid

⁷ ILO, ‘Securing decent work for nursing personnel and domestic workers key actors in the care economy’ (International Labor Conference, 110th Session, 2022) https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_839652.pdf p. 25

which are highly disadvantageous to them socially, politically and economically. They tend to be excluded from opportunities to engage in decent paid work, education, political life and even self-care activities. The pandemic increased the unpaid care work among women and girls. Currently, women provide more than three quarters of unpaid work and women make up more than two thirds of the paid care work force.

The government has not invested sufficiently in public services that would enable women to spend less time doing unpaid work. These services are in education, social services and health. Access to time saving utilities, facilities and technologies are very limited e.g. clean running water, energy (e.g. electricity or solar), washing equipment, quality and safe childcare services, affordable healthcare, etc. This means that women have to make up for the shortfall of these services through unpaid care work. Statistics provided by Oxfam from a study they conducted in Kenya before the COVID – 19 Pandemic showed that women spent around 5 hours a day on care activities. If time spent on other activities such as supervising children while cooking are counted, women spend around 11 hours a day on care activities. The COVID – 19 pandemic exacerbated the situation.

However there are some laudable interventions that have taken place. In September 2020, Tharaka Nithi County launched the first low cost crèche in Chuka open air market to enable female traders to conduct their business without worrying about their children. Also in 2020, the government through the Ministry of Labor and Social protection allocated Kshs. 10 billion to give unconditional cash transfers of Kshs. 8,000 a month to help cushion vulnerable households. This second intervention may not be sustainable in the long run. However, the first intervention of funding low cost crèches would be a sustainable and welcome intervention that can be included in the social and economic plans and budgets at the county level.

In Kenya there are over 1 million domestic workers. The 2019 census revealed that women make up 50.2% of the working population (9.89 million). The fact that domestic work (both paid and unpaid) largely takes place behind closed doors in private household settings; the workers (mainly women and girls) are susceptible to abusive, exploitative, undignified and inhumane treatment.

They are also in some cases subjected to overwork/excessive hours of work with no rest or leisure, underpayment, forced confinement, inadequate accommodation, physical and sexual assault and no social protection (in terms of health insurance or maternity protection). Another issue with regard to domestic work (particularly unpaid domestic work) is that the time and effort that is spent is not normally given an economic value.

What legal protection is given to women in the formal and informal sector in the care economy?

On the Domestic front the following laws and policies apply:

- a. The Constitution of Kenya 2010
- b. The Employment Act 2007 (EA)

Section 3(1) of the EA provides that the Act applies to all employees who are employed under a contract of service. There are no gendered aspects of the Act. It is mostly gender neutral legislation.

The Act also applies to both oral and written contracts of service. Many domestic workers do not have written contracts of service. The EA however requires that if a contract of service is for a period of working days which amount aggregately to three months or more then that contract needs to be in writing. The Act also has provisions as to the terms and conditions that should be contained in the contract of service and requires that there be clear consent that is signified by the employee either through signing or imprinting the thumb or one of the fingers if they are unable to sign. In order to ensure that real consent is obtained and thus protecting the autonomy of the employee, the EA requires that if an employee is illiterate and they cannot read the written contract, it must be explained to them in a language that they understand.

Section 4 of the Act gives protection against forced labor. Forced or compulsory labor has been defined as ‘any work or service which is extracted from any person under the threat of any penalty, including the threat of a loss of rights or privileges, which is not offered voluntarily by the person doing the work or performing the service.’ Many domestic workers are subjected to forced and compulsory labor where they are denied

rest time, or are kept within the confines of the household where they work. Any employer who violates this right is liable upon conviction to a fine not exceeding five hundred thousand Kenyan shillings or a term of not exceeding two years imprisonment or both.

Section 5 of the EA gives protection against direct and indirect discrimination within the workplace and section 6 prohibits sexual harassment in the forms of quid pro quo and the creation of hostile working environment. Sexual abuse and violence against domestic workers is rampant in Kenya. However these exact statistics are difficult to compile because many cases are not reported. Most domestic workers are not aware of their rights, and are not unionized. They may have the perception that the costs of commencing litigation against the employer are prohibitive and they would thus opt to either quit their jobs (even without being paid their terminal dues) or persevere in their circumstances so that they can keep earning a living. The EA provides for a reporting system for sexual harassment in the workplace through the requirement for a sexual harassment policy. However, the requirement for the policy is only when there are 20 or more employees in the workplace. This type of environment is more geared to organization based where there are many employees. However domestic workers normally work in private households where the law has not made provisions for any formal reporting mechanisms in such cases. Sexual harassment incidents are therefore likely to remain unreported.

The Sexual Offences Act also has provisions which are meant to offer protection against sexual harassment. Section 23(1) of the Act provides that ‘any person who being in a position of authority or holding a public office who persistently makes sexual advances or requests which he or she knows or has reasonable grounds to know are unwelcome is guilty of the offence of sexual harassment.’

With respect to remuneration and the protection of their wages, the EA provides in section 17(1) that every employer shall pay the entire amount of wages earned or payable to an employee in respect of the work done by the employee. The highest minimum wage that a domestic worker is to be paid within Nairobi, Mombasa and Kisumu is Kshs.

13,572.90.⁸ However, many domestic workers are being underpaid and sometimes their wages are withheld or subjected to unlawful deductions. Enforcement of these provisions is a major challenge especially in an economy which is in crisis such as the Kenyan one. Strict enforcement of these provisions may lead to many employers being unable to employ domestic workers as they cannot afford the minimum wages. This will in turn lead to a cycle of poverty with many women having no jobs or steady source of income.

The right to leave

The right to rest and leisure

The right to fair treatment including fair dismissal

Labor institutions and agency work

Social protection –

Freedom of association and collective bargaining

The Labor Relations Act in section 4 provides for the right of every employee to participate in the formation of a trade union and to join or leave a trade union. In section 5 no employer shall discriminate against an employee for seeking to exercise their rights under the Act. In particular, no person shall require an employee or a person seeking employment not to be or to become a member of a trade union or to give up membership of a trade union; or to prevent an employee or person seeking employment from exercising their rights under the Act or to dismiss or in any way prejudice an employee or prospective employee because of their participation in the activities of a trade union.

In order for domestic workers to effectively advocate for their rights in the workplace, they need to have a collective voice. However, many domestic workers fear joining unions because they may not get employed or may be dismissed if their employer finds out that they are members of a trade union. Many also do not know of their rights to join and participate in a trade union, and they do not have information as to how trade unions can represent them in advocating for their rights in the workplace. In Kenya, the KUDHEIHA (Kenya Union of Domestic Hotels, Educational Institutions, Hospitals and Allied Workers) union has been the only trade union that domestic workers can join.

⁸ Regulation of Wages (General)(Amendment) Order 2018

On the international level, the ILO formulated the Domestic Workers Convention.⁹ The Convention was put in place in recognition that domestic work is invisible and undervalued and mainly carried out by women and girls who are vulnerable to discrimination and abuses of human rights. There was also the recognition that in developing countries where there are limited resources, the opportunities for employment are limited and therefore domestic work constitutes a significant proportion of the workforce, even if it is marginalized.

The Convention requires member states to take measures to promote and protect the human rights of domestic workers particularly on issues such as: the right of freedom of association and the right to collective bargaining, the protection against forced and compulsory labor, worst forms of child labor, discrimination, sexual harassment and violence. The Convention also requires Member states to put in measures to ensure that factors such as the age, time spent at work, remuneration, terms of the contract, accommodation, etc are taken into account and laws put in place to protect domestic workers on these fronts.

The Convention is a good move towards the enhanced protection of domestic workers and its ratification would mean that in Kenya, it would automatically form part of domestic law. However, Kenya has to date, not ratified this important Convention. This leaves domestic workers, particularly women, under the general protective provisions of the Employment Act and other labor laws, without recognition of the specific needs and interests of domestic workers that need to be addressed legally.

Other ILO Conventions that are relevant to the issue of domestic work are the Minimum Age Convention and the Worst Forms of Child Labor Convention. These are important in terms of setting out the minimum age of work for children and for the protection of children against exploitative and abusive forms of labor that breach their fundamental and human rights.

⁹ ILO Domestic Workers Convention, 2011 (No. 189)
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189

c. Financial Inclusion and Access to Control and Ownership of Resources

As the statistics show, the majority of workers in the informal labor sector are women. Informal enterprises are hampered in their growth and one of the reasons could be the challenges faced by women in accessing financial services. One of the main goals of any policies and laws that are formulated with respect to financial inclusion of women is to accelerate their participation in the labor market in order to enhance their social economic and even political empowerment. In SDG Target 5A states are called upon to ‘undertake reforms to give women equal rights to economic resources as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources in accordance with national laws.’

Women are limited in their access to formal financial services e.g. loans from the bank. This is due to various factors, including the inability to provide the appropriate collateral that is needed to take out the credit facilities. Most banks would seek for collateral in the form of title deeds to property which women may not have, or not have in their names (perhaps the titles are in the names of spouses or partners). Women would then be disadvantaged because of social stigma and exclusions as a result of widowhood, separation and divorce from their spouses. Commercial banks are also biased towards formal businesses which are predominantly male dominated leaving out the informal businesses which are female dominated.

The benefits of financial inclusion for women are that they can accumulate assets that they can use to generate income in order to manage various financial risks and fully participate in the economy of the country. In Kenya, most women are asset poor and therefore leverage on social networks as assets.

On its own however, financial inclusion will not necessarily result in gender equality in the labor sector. There needs to be equal access to needs – based financial services e.g. insurance, credit, payments, savings, and financial education.

Financial inclusion and inclusive finance are both ways that women get access, control and ownership of resources which is critical for the achievement of gender equality. Access to work (and decent work at that) whether in the formal or informal sector gives a pathway to financial inclusion and resources. Decent and reasonable work enables women to get remuneration that would enable them to obtain assets. The access to a steady source of income enables them to get

access to credit and financial services. There is intersectionality between access to financial services and access to assets such as land, inherited resources, secure housing and control of resources.

The current labor regulatory framework does not seem to specifically target the financial inclusion of women and their access to resources. However, the argument is that access to decent working conditions where there is decent pay for work done is an enabler to get a decent income; and where discrimination is eliminated and there are provisions that give social protection to women is a pathway to enhancing financial inclusion for women.

The Ministry of Public Service and Gender, under the State Department of Gender formulated the ‘Women Economic Empowerment Strategy: 2020-2025’. The Strategy recognizes the place of fair labor practices as one of the interventions needed to enhance the economic empowerment of women. Focus is given to women in the informal sector who are undervalued and face difficult working conditions. Other strategic interventions that are highlighted in the strategy that will enhance access to resources and financial inclusion include the following:

d. Access to Labor Justice

When it comes to labor justice, it is important that women have an enabling environment for them to access justice without discrimination and other socio – economic hindrances. They also need legal empowerment to access justice. There needs to be gender responsive justice institutions. This means examining parameters such as gender representation in the Employment and Labor Relations Court and whether there is an awareness of the unique needs and interests of women when making judgments in labor disputes pitting women employees against their employers and other employees. E.g. their predisposition and vulnerability to sexual and gender based violence and harassment in the workplace, maternity and occupational health, etc. It also entails examining whether there has been government investment in capacity building and sensitization activities to train employment and labor judges on the gender issues that they should be aware of when listening and making judgments on disputes.

Despite the fact that the Employment and Labor Relations Court, its processes and procedures for dispute resolution are largely gender neutral, nevertheless, the Court has made some rulings on various issues that have given the indication that some judges are sensitive to the gender nuanced issues that certain cases present.

The following are some of the cases where gender issues came up within the rulings of the Employment and Labor Court.

1. **Women and Sexual Harassment**

a. **P O v Board of Trustees, A F & 2 others [2014]eKLR**

Brief facts of the case

The claimant was an employee of the first respondent. Her duties included travelling around and talking to women farmers. The events leading to this case were that; the 2nd respondent asked the claimant to accompany him to Cape Town to see some seedlings. While in Cape Town he started making sexual approaches towards the claimant. Receiving no positive response from the claimant, the 2nd respondent was angered and made claims of spending a lot of money on the claimant only for her to rebuff his approaches. He hit the claimant. The respondent instead of booking two separate rooms booked only one room forcing the claimant to sleep on the floor while he used the bed. The next day the claimant received an air ticket from the agency and came back to Kenya. The respondent on arriving back from the conference started sending threatening messages to the claimant. The claimant's contract was later terminated through an email.

Issues for determination

- a. Whether the claimant was employed by the respondent
- b. Whether the termination was fair and lawful
- c. Whether the claimant is entitled to the prayers sought

The rule

Sexual harassment negates gender equality

Held

The termination of the claimant was unlawful, unfair and discriminative

b. NML v Peter Petraush (2015) Eklr (see paras 27 – 35)

Brief Facts of the Case

The claimant was employed by the respondent, a German national, as a domestic worker. She worked for the Respondent from 3rd September 2012 to 10th May 2013 when her employment contract was unlawfully terminated by the respondent. The claimant claimed that on several occasions the respondent sexually harassed her. She claimed that the respondent sexually harassed her by requesting sexual acts with the threat of employment termination, unwelcome physical touches such as touching her buttocks, touching her breast, forcing her to watch pornographic films and retrieving a coffee cup which was placed on the respondent's genitalia. The claimant protested the above acts and reported the respondent to the police where the respondent was charged with sexual harassment. The claimant provided the charge sheet as evidence in the civil case.

Issues for determination.

Whether the claimant was sexually harassed by the respondent

Whether claimant is entitled to the reliefs sought

Rule

An employee is deemed as sexually harassed if the employer of that employee or a representative of that employer or a co-worker:

(a) Directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express:-

- (i) Promise of preferential treatment in employment
- (ii) Threat of detrimental treatment in employment or

(iii) Threat about the present or future employment status of the employee

(b) Uses language, whether written or spoken, of sexual nature

(c) Uses visual material of a sexual nature or

(d) Shows physical behavior of a sexual nature which directly or indirectly subjects the employee to behavior that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction.

Conclusion

The court found the Respondent liable for sexual harassment and ordered him to pay general damages of Kshs. 1,200,000. The court further explained that gender-based violence cannot be adequately addressed by the 12 months' salary ceiling given for unfair termination as provided by the 2007 Employment Act. The court was of the view that gender violence entails multiple rights violations that should not be summed up as unfair termination of employment.

See also: **GMV v Bank Of Africa (2013) eKlr** – this case also demonstrates the kind of compensation that should be given in sexual harassment cases – the court emphasized that gender-based violence in the workplace cannot adequately be redressed through the ceiling of 12 months' salary that is given for unfair termination. It includes a violation of multiple rights i.e. Articles 27, 28 and 41 of the Constitution of Kenya

c. **MWM v MFS V (2014) Eklr**

Brief Facts of the Case

The facts of the case were that the claimant was employed by the Respondent on 1/3/2011 for a five-year contract that was later changed to permanent and pensionable on 12/8/2012. She was later promoted to branch manager, and later ran into problems when a customer complained that led to disciplinary action against her. She was given an opportunity to defend herself by answering structured questions. The disciplinary panel reached a verdict and redeployed her as a recovery officer. The claimant responded to the verdict as follows, “disrespectful, contemptuous

of staff, putting staff at security risk and compromising the core value of the company”. The Claimant was later summary dismissed in a letter that asserted, "For the claimant's disrespectful conduct exhibited during and after the disciplinary action taken against her between 28/5/13 and 18/6/13, following the altercation between her and a customer". Further, the claimant claimed the MD also sexually harassed her by severally hugging her.

Issues for Determination

Whether the summary dismissal of the claimant amounted to breach of the contract of employment

Whether the claimant was sexually harassed by the respondent's MD

Whether claimant is entitled to the reliefs sought.

Conclusion

The court concluded that the summary dismissal of the claimant breached her employment contract. The court further explained that without a mechanism for reporting sexual harassment, the claimant could not be faulted for not reporting. It was held that the respondent would not benefit from the claimant not reporting the case as there was no reporting mechanism put in place

d. **SRM v GSS(K) Limited & Ano (2017) eklr**

Brief Facts of the Case

Between 1985 to 1994 and thereafter from February 1996 the plaintiff was employed by the 1st defendant in its Information Technology Department. Plaintiff claimed that on diverse dates between 2005 and 2006 the first respondent made unwanted and unwelcomed sexual advances towards her. Plaintiff reported sexual harassment by the Human Resources (HR) manager relying on the internal reporting procedure detailed in the sexual harassment policy provided by the employer. The policy required that the issues of sexual harassment be reported to the human resource manager. The human resource manager was also the perpetrator of the said acts. The

manager used his position to perpetuate retaliatory acts against the claimant such as exclusion from pieces of training as well as denial of permission to use company transportation to university for evening classes despite a prior agreement. Since the claimant failed to receive any internal remedy she sought the help of the court.

Issues for determination

- a. Whether the 1st respondent adequately and conclusively dealt with the claimant's complaint of sexual harassment.
- b. Whether there was sexual harassment of the claimant as alleged or not.
- c. Whether both respondents are jointly or separately liable to compensate the claimant if the allegation of sexual harassment is proved.
- d. What is the measure of damages if any that the claimant should be awarded?

Rule

An employee is sexually harassed if the employer or a co-worker directly or indirectly requests that employee for sexual intercourse, sexual contract or any other form of sexual activity that contains or implies promise of preferential treatment in employment or threat of detrimental treatment.

Conclusion

The court acknowledged that sexual harassment at the place of work amounts to gender-based violence. The court further recognized that only a few cases of sexual harassment are reported and litigated in courts. The court also appreciated the presence of power imbalance in the relationship between the claimant and the alleged offender. On the issue of standard of proof, the court explained that the sexual harassment cases are scaled on a balance of probabilities.

- e. **JWN v Securex Agencies (K) Ltd (2018) Eklr**

Brief Facts of the Case

The facts of the case were that the claimant was employed as a guard by the respondent and assigned Nakumatt Junction Mall as the premise of work. During a routine morning parade, a respondent's supervisor confronted the claimant asserting that the previous night's CCTV indicated that she had been having sex while on duty. He publicly confronted the Claimant. The action resulted in the Claimant breaking down and sobbing. The statement was later retracted as it was based on falsehood. The claimant further explained that the respondent had no sexual harassment policy and such, she could not report the issue. Drained emotionally, the claimant left the parade and subsequently failed to show up at work.

Issues for determination

Whether the constructive termination was unfair for want of a valid or genuine reason as envisaged under section 43 of the Employment Act, 2007

Whether the claimant is entitled to the remedies as prayed for

Rule of law relied upon by the Judge

Every person has inherent dignity and the right to have that dignity respected and protected.

Conclusion

The court concluded that the respondent's conduct through the supervisor's public humiliation of the claimant seriously and adversely affected the claimant who testified that she was emotionally drained and she went into sobbing. The court further asserted that the respondent's offensive conduct is "aggravated by the respondent's failure to institute or invoke a policy statement on sexual harassment and which would have protected the claimant as envisaged in section 6 of the Act. Second, the humiliation and harassment had a serious effect leading to the unfair constructive loss of employment as well as anxiety between the claimant and her husband."

f. **Lydia Mongina Mokaya v St Leonards Maternity Nursing Home**

Brief Facts of the Case

The facts of the case were that the claimant was employed as a clinical officer by the respondent and was posted at Nyansiongo. Despite being employed, she was not offered an employment

contract. The Claimant worked from Sunday to Sunday. Further, the Claimant asserts that the respondent's manager continuously asked her for sexual favors. She was later transferred to Chepilat, 20 kilometers from Nyansiongo where she resided. The daily commuting caused her inconvenience. Through a letter dated 1st December 2014, the Respondent asked their employees to reapply for their positions. The Claimant was the only person who failed to retain her post. The Claimant further asserted that her situation was a result of her sexual harassment escapades with the respondent's manager.

Issues for determination

1. Was the termination of the employment of the claimant was wrongful, unfair and unlawful?
2. Is the claimant entitled to the relief sought?
3. Who bears the costs of this claim?

Rules

“An employee is sexually harassed if the employer of that employee or a co-worker-

- a) Directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express-
 - i) Promise of preferential treatment in employment;
 - ii) Threat of detrimental treatment in employment;
 - iii) Threat about the present or future employment status of employee;
- b) Uses language whether written or spoken of a sexual nature.

Conclusion

The court concluded as follows, "Cases and instances of sexual harassment are extremely personalized and difficult to prove. More often than not, these would not be documented but comprise of overt and covert overtures by the offending party. It is therefore expected that when this arises, action should be taken towards reporting or raising the same with the powers that be,

the employer or his agents”. The court believed that the respondent’s manager’s actions amounted to sexual harassment and that the Claimant was entitled to the relief she sought.

2. **Women and Payment Inequality**

a. **V M K v C U E A [2013] eKLR**

The facts of the case were that the Claimant was an employee of the Respondent from the year 2000 when she joined as a casual employee holding the post of a telephone operator. She was earning Kshs. 7000 as basic pay without benefits. There were two male employees in the same position employed on permanent and pensionable terms. In the year 2003, the claimant responded to an internal advert and was later told that she was successful, but was also made aware that the position depended on her medical conditions. She was tested and a few days was informed that she was HIV positive. She had not consented to the HIV test and was not counseled. The respondent failed to inform the claimant about the permanent post. The claimant continued working on a casual basis. She received no allowances or health benefits, in contrast to her male colleagues, who were earning up to 4.2 more than the applicant. At some point, the claimant asked to be employed permanently but the respondent refused. The claimant later learned that the respondent refused to offer her a permanent contract because of her HIV status. Further, when she became pregnant, she was not offered a paid leave and when she returned to work, she was given a termination letter.

Issues

1. Whether the Claimant was discriminated against and denied fair and equal employment terms and conditions on the basis of gender by denying her permanent and pensionable employment terms as enjoyed by her two male counterparts in the same position.
2. Whether the Claimant was discriminated against, denied fair and equal employment terms and conditions and terminated from her employment due to her HIV status.
3. Whether the Claimant was discriminated against on the basis of pregnancy by denying her paid maternity leave contrary to express provision of Section 29 (1) of Employment Act.

Rule Relied Upon by the Judge

“No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee

a) On grounds ofsex...pregnancy...or HIV status”

Conclusion.

The Court found that the claimant had initially been discriminated against on the basis of her sex, in that she did not receive equal remuneration for work of equal value. She had also been subjected to pregnancy discrimination. The Court also found that the claimant had been discriminated against on the basis of her HIV status.

3. **Women and Social Protection**

a. **G M V v Bank of Africa Kenya Limited [2013] eKLR**

The facts of the case were that the claimant was an employee of the respondent for five years. In the last two years of her employment, she was blessed with two issues. While the first pregnancy had few difficulties, the second pregnancy was not smooth, forcing the claimant to take sick leave. The respondent later terminated the contract of the claimant, an action that the claimant asserted was a result of her pregnancy and not her performance. The claimant, aggrieved, instituted the suit claiming unfair discrimination under section 5 of the Employment Act of 2007.

Issues

Whether the dismissal of the claimant amounts to discrimination under Section 5 of the Employment Act

Rule Relied Upon by the Judge

In any proceedings where a contravention of Section 5 (3) is alleged, the employer shall bear the burden of proving that the discrimination did not take place as alleged, and the discriminatory act or omission is not based on any grounds specified in this Section. The court further explained that gender violence cannot be adequately redressed through the ceiling of 12 months’ salary

given for unfair termination under the Employment Act. The court must therefore be careful not to see sexual harassment as just another unfair termination.

Conclusion

The court declared that the respondent's actions discriminated against and violated the claimant's constitutional rights.

b. Mercy Gakii Nabea v Malindi Management Strategy Ltd (2019) Eklr

On 1st December 2007, the Claimant was employed by the Respondent as a security guard. On 12th December 2017, she applied for maternity leave which was granted. While still on maternity she received a letter terminating her employment contract on account of redundancy and a sum of Kshs. 65,159, which she declined, was offered to her, leading to the institution of this case.

Issues

- a) Whether the termination of the Claimant's employment was lawful and fair;
- b) Whether the Claimant is entitled to the remedies sought.

Rule

(1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions –

- (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labor officer in charge of the area where the employee is employed of reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
- (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labor officer;

(c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;

(d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;

(e) the employer has where leave is due to an employee who is declared redundant, paid off the leave-in cash;

(f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and

(g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pays for each completed year of service.

Conclusion

The court concluded that the Respondent's actions amounted to unlawful and unfair termination of employment. Further, the court explained that the actions of the respondent amounted to discrimination on the basis of pregnancy.

c. Tracy Wangechi Mugambi v Windsor Golf Hotel and Country Club [2019] eKLR

Brief Facts of the Case

The facts of the case were that the Petitioner was employed by the respondent as a hostess on 4th September 2009, and was later promoted to the position of supervisor in 2011. She held the supervisor position until 18th January 2016 when the Respondent terminated her services from employment. In October 2014, the petitioner became pregnant, a situation that she informed the Respondent about, but continued to perform her duties diligently. On 4th February 2015, the Petitioner received a phone call from the Banqueting Manager, enquiring when she was due and that the director had requested that she proceeds on leave as she seems to be tired and that she should return to work upon delivering. The Petitioner proceeded on leave as directed despite not being issued with leave forms from the Respondent's human resource department, though the

leave was paid. She delivered in July 2015 and thereafter, proceeded on leave, until December 2015. The petitioner received her termination letter on 18th January 2016. The Petitioner contends that the termination of her employment services was unlawful, wrongful, unfair, arbitrary, in bad faith, discriminatory, unconstitutional and occasioned by factors other than those within the terms and conditions of her contract of employment.

Issues

Whether the dismissal of the claimant amounts to discrimination under Section 5 of the Employment Act

Rule

A person shall not discriminate directly or indirectly against another person based on pregnancy

Conclusion

Employment and Labor Court directed the Windsor Hotel and Country Club to pay a former employee Kshs. 2.5 million (approx. USD 25000) for sacking her over a pregnancy. The Court held that Ms. Tracy Wangechi Mugambi was discriminated against when she was sacked just after resuming duty from maternity leave. The Judge relied on Article 27(4) of the Constitution, which is explicit that no one should be discriminated against on account of pregnancy. A person shall not discriminate directly or indirectly against another person based on pregnancy.

On disability

a. Juliet Mwongela Muema v Smollan Kenya Ltd (Cause No 104 of 2017)

“the claimant suffered low vision and requested for screen reader software. The employer rejected the request and transferred her to another division. The court found that failure to provide the claimant with a screen-reader and subsequent transfer which amounted to demotion was discrimination. That it was a contravention of Articles 10, 27, 28, 41 and 54 of the Constitution.”

UNPAID WORK/CARE ECONOMY

Care Economy

Domestic Workers

a. Robai Musinzi v Sadfar Mohamed Khan (2012) Eklr

The Plaintiff sued for wrongful dismissal and refusal by the employer to pay terminal dues. She claimed that she was employed as a domestic worker in August 2007 on a monthly salary of Kshs. 11,000. She worked from 8.30am to 7pm without break or overtime for seven days a week. Her duties were cleaning, babysitting, taking care of 5 children and other duties as assigned to her. There was no written contract of employment issued to her and there were no statutory contributions deducted from her salary e.g. NHIF, NSSF. She was not given accommodation and had to commute everyday without being given any transport allowance. She was summarily dismissed on 11th October 2011.

The Court held:

That the lack of a written contract of service did not disprove the fact that she was not an employee. Oral contracts sufficed. It was found that she was unfairly dismissed and compensated accordingly.

b. National Union of Domestic Workers v Registrar of Trade Unions (2019) Eklr

Brief Facts of the Case

on 26th March 2016, the Appellants made an application vide Section 12(1) of the Labor Relations Act to have the Kenya National Union of Domestic Workers registered. The appellants made the application arguing that the general union did not capture the unique services rendered by domestic workers. The respondent denied the application. The appellants believed that the denial was discriminatory against domestic workers.

Issues

a. Whether the registrar of trade unions, the respondent was justified to refuse the Appellant union registration.

b. Whether the Appellant is entitled to the reliefs sought.

Rule

Any treaty or convention ratified by Kenya shall form part of the law of Kenya under the constitution”

Conclusion

The court asserted that through Article 2(6) of the 2010 constitution, international laws apply to Kenya. The court went further to state that the denial of registration does not have any reasonable justification.

c. Mebo Ambogo Lundu v Moses Nderitu (2014) eklr

Brief Facts of the Case

The claimant was employed as a loader and domestic servant by the Respondent around August 2002. She served in the same position up to April 2012 when the Respondent terminated her contract without notice or reason. Aggrieved, she approached the court. The Respondent failed to enter an appearance in the suit and neither did they file a response or attend court.

Issues for Determination

- a. Whether the termination was unlawful
- b. Whether the Claimant is entitled to the prayers sought

Rule

Every person has the right to fair labor practices

Conclusion

The Respondent has not entered appearance and having not defended the suit, the court found in favor of the claimant.

d. Khobesh Agencies Ltd & 32 others v Minister of Foreign Affairs & International Relations & 4others (2013) eklr –

Brief facts of the Case

On the 22nd day of July 2012, the government issued a press release to media houses through its Political and Diplomatic Secretary suspending recruitment and export of domestic workers to the Middle East. The government asserted that the conditions of work to which the Kenyans in the country worked were deplorable and inhuman. The applicant's business of taking Kenyan workers to the Middle East was greatly affected forcing it to apply to the court to quash the government directive.

Issues

Whether the applicant is entitled to the prayers sought.

Rule of law

"Judicial review is about fair treatment and for it to remain relevant now and in the future, it must reach out to enhance democracy and public morality – it has a glorious role and future and in this role, it has a partner in the Constitution and as partners, the two must keep almost the same pace."

Conclusion

The court sided with the government on a directive on suspension of recruitment and export of domestic workers to the middle east until protective regulations had been put in place by those countries to protect the wellbeing and human rights of Kenyan domestic workers.

Unpaid Work

MW v AN (2021) ECLR

Brief Facts of the Case

The two parties to the suit were married on 1st September 1990 and their marriage was later dissolved in 2011. Plaintiff prayed that the matrimonial property be sold and the proceeds be shared equally. Defendant disagreed with the wife, asserting that he built the matrimonial home himself without the wife's contribution.

Issue

- i. Whether the property LR NAKURU MUNICIPALITY BLOCK xxx (KITI ESTATE) is matrimonial property.
- ii. Whether the parties herein contributed to the purchase of the plot and the construction of the house.
- iii. Whether the two properties in Kiamunyi and Piave were matrimonial.
- iv. Whether the parties contributed to the purchase of the said properties.
- v. Whether the defendant made any deposits into the plaintiff account in refund of the loans the plaintiff took with a view to clearing the outstanding loan balances.
- vi. What orders should issue.
- vii. Who should bear costs

Rule

"... where the disputed property is not registered in the names of the spouses but is registered in the name of one of the spouses, the beneficial share of each spouse would ultimately depend on the proven respective proportions of financial contribution either indirect or direct towards the acquisition of the property. However in cases where each spouse has made substantial but unascertainable contribution it may be equitable to apply the maxim equality is equity"

Conclusion

The court eventually held that the property, even though it was registered in the name of the husband, did not belong to the husband alone but was co-owned by the Plaintiff and the Defendant. The court further asserted that "raising of children is a full-time job that families pay a person to do. Cooking and cleaning as well"

Response Strategies

.Policy Actions:

- a) Strengthen and review the legal and administrative framework for labor administration to integrate women in hitherto non-traditional trades i.e., construction, mining, infrastructure development, among others;
- b) Enhance compliance to the ‘not more than two thirds’ gender principle in recruitment, appointment and promotion of women and men in all spheres for greater inclusion and visibility;
- c) Implement labor policies that support minimum wage guidelines, regulations on work hours, and protection for trade union and collective bargaining rights, particularly for women to close the differences in access to economic opportunities, earnings and productivity gaps;
- d) Recognize unpaid care (for children, older persons, the sick, and persons with disabilities) and domestic work to ensure shared responsibility within the house and invest in social services and infrastructure provision and social protection policies to reduce the burden on women;
- e) Establish a database on employment records of women and men in formal and informal sectors to track, evaluate and improve employment conditions for all particularly women;
- f) Review skills development programmes and projects and target them at increasing decent employment for all particularly women;
- g) Build capacities of women’s entrepreneurial skills linked with start-up capital; and,
- h) Regulate job security for women and men on maternity/paternity leave and ensure safety and protection of women in informal sector including women with disabilities.

Conclusion

The Employment Act of 2007 and its amended version have huge gaps that lead to payment inequalities, women’s contribution is not recognized. The women who are employed under precarious work are not fully recognized or protected by the act. There is need to amend the act to make it cover informal employment and increase social protection coverage as well as increase financial inclusion in order to facilitate women’s economic empowerment.