

Digital Platform Work: A Transformation of Traditional Employment Relations in Nigeria

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Abstract

Digital Platform work is gradually transforming the nature of employment in Nigeria. It involves the use of applications and websites in delivering goods and services. The digital platforms are devised for on location services (transportation and delivery services, household and personal services) and digital services (cloud based work and data entries). The usual pattern is for companies to enter into contracts with persons who are readily available to deliver the goods and services upon demand. The focus of this work is on digital platforms work that render on location services; that connect demand and supply of goods and services and its effect on the existing state of labour/employment in Nigeria. With the use of doctrinal method of research, it was found that persons are engaged to supply the services and the transaction is sealed by a supply agreement. There is no regulatory framework for platform work in Nigeria. The status of platform workers is unknown and there is likelihood of the court to rely on Shena due to the peculiar nature of platform work. It was also found that platform workers face same challenges and risk with workers in traditional employment yet they have no legal protection. It was recommended that, laws should be enacted to regulate platform work and existing laws should be amended to provide legal protection to platform workers. In addition, the court should look beyond Shena to keep up with emerging forms of employment in Nigeria.

Keywords: Platform, Platform work, Employer, Employee, Independent Contractor.

1. Introduction

Work is undergoing changes through advance in technology. The advancement in technology has led to the use of digital platforms to perform work. The digital platform is a form of non- standard

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employment.¹ It has the ability of providing a source of income to all categories of persons; young, women, old, disabled, migrants and so on.² The digital platform creates an avenue for an employer to get skills needed for work, investor to get a source of income and to link consumers to suppliers³ thus creating a triangular relationship. Digital platform work involves use of online platform to perform services.⁴

The use of digital platforms to perform work has led to the emergence of the gig economy. A gig economy is stated to be among the buzzwords of the 21st century.⁵ It refers to a market system that matches providers to their prospective clients.⁶ The operation of the gig economy is through platforms wherein request for services are made.⁷ The COVID 19 pandemic resulted to remote work; thus paved way for the growth and reliance on digital platforms for delivery of services which ordinarily would have been done in a designated place of work.⁸ Apart from digital platform work, other works were done remotely. The platform work and remote work are a reflection of the changing nature of work.

The emergence of platform work is gradually revolutionizing the traditional employment setting and it is associated with concepts such as sharing economy. Digital Platform work is done in remote places and can be performed with the use of smart phones, platforms and websites. It is no longer necessary to perform work in a place designated as a workplace that is chosen by the employer. Also, the traditional view that an employee cannot work with the employer's competitors can no longer hold water as the nature of platform work

¹ A Strommen-Bakhtiar and E Vinogradov 'The Impact of the Sharing Economy on Business and Society' https://faos.ku.dk/pdf/Digital_platforms_at_work_-_Champagne_or_cocktail_of_risks.pdf Accessed 20th September, 2021.

² ILO Office, Geneva '2021 World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work' < <https://www.ilo.org/global/research/global-reports/weso/trends2021/lang--en/index.htm> > Accessed 17th August, 2021.

³ PWC 'Workforce of the Future: The Competing Forces Shaping 2030' < www.pwc.com/people > accessed 9th September, 2021.

⁴ OECD Going Digital Toolkit 'Regulating Platform work in the Digital Age' < <https://goingdigital.oecd.org/toolkitnotes/regulating-platform-work-in-the-digital-age.pdf> > Accessed 31st July, 2021.

⁵ S A Donovan, DH Bradley and JO Shimabukuro 'What Does the Gig Economy Mean for Workers' < <http://fas.org/sgp/crs/misc/R44365.pdf> > Accessed 10th September, 2021.

⁶ Ibid

⁷ Ibid

⁸ ILO Office, Geneva '2021 World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work' (n 2).

is flexible and two or more digital platform work can be done by a person within the same period of time.

The digital platform work is broadly grouped into two categories namely digital services and on-location services. In digital services otherwise known as online web-based platforms,⁹ a worker carries out work digitally (online) via the platform in remote places.¹⁰ Digital services are classified as crowd work.¹¹ Crowd work means the performance of work with the use of a computer.¹² An instance of digital service is data entry work. This is a different form of employment from the regular/ traditional contract of employment wherein there is a designated workplace existing physically where work is done in person.

The other service rendered in digital platform work is on-location services in which a worker is given a task to perform in person at a specified and identifiable place or location.¹³ It is classified as gigs.¹⁴ Gigs refers to tasks associated with platform work but done physically.¹⁵ An example of such service is transportation and delivery services. In this case, the digital platform serves as a link to connect demand and supply. To describe the role of platform work in on-location services and digital services, it can be stated that the digital online platform relates to the organization of work in the production stage through division of labour to a team of workers or by matching a demand with a worker who is available to perform the work.¹⁶

2. Nature of Digital Platform Work

Digital platform work is defined as a limited phenomenon that discloses the impact of technological progress on the quality of job

⁹ Ibid.

¹⁰ OECD Going Digital Toolkit 'Regulating Platform work in the Digital Age' (n 4).

¹¹ Strommen and Vinogradov 'The Impact of the Sharing Economy on Business and Society' (n 1).

¹² Strommen and Vinogradov 'The Impact of the Sharing Economy on Business and Society' (n 1).

¹³ ILO Office, Geneva '2021 World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work' (n 2).

¹⁴ Strommen and Vinogradov 'The Impact of the Sharing Economy on Business and Society' (n 1).

¹⁵ Ibid.

¹⁶ European Agency for Safety and Health at Work 'Protecting Workers in the Online Platform Economy: An Overview of Regulatory and Policy Developments in the EU' < <https://osha.europa.eu/en/publications/protecting-workers-online-platform-economy-overview-regulatory-and-policy-developments> > accessed on 4th September, 2021.

performed.¹⁷ It refers to work done through online platforms.¹⁸ The digital platform serves as an intermediary in connecting persons who are willing to work in exchange for an income with other persons or businesses or firms that want services or goods.¹⁹ A clear description of how platform work is done through platforms was explained as follows:

A request for a ride is sent by a customer using a smart-phone through an internet based digital platform. A registered driver with the platform is notified by the app on her/his smart phone of a potential customer seeking a ride. The notification to a driver is a function of algorithms that accounts for among other things, driver's availability, geographical proximity to the departure point, number of drivers in the area, and demand for rides at the time. After the completion of the ride, the driver is notified on the costs incurred on the smart phone app, and the customer makes an electronic app-based payment. The customer then receives a receipt and can also provide feedback (ratings) to the platform for the services rendered using the app.²⁰

Platform work relies on network to use the application and websites.²¹ It is gradually penetrating the Nigerian economy through transport and food delivery business. For instance, Uber (a transport technology firm) is gaining popularity lately in many states in Nigeria.²² Others include, Vconnect, Gigm, Bolt, Fiverr, Jumia,

¹⁷ SA Donovan and others 'What Does the Gig Economy Mean for Workers' (n 5).

¹⁸ European Agency for Safety and Health at Work 'Protecting Workers in the Online Platform Economy: An Overview of Regulatory and Policy Developments in the EU' (n 16).

¹⁹ P McDonald and others 'Digital Platform Work in Australia: Prevalence, Nature and Impact < https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/7315/9254/1260/Digital_Platform_Work_in_Australia_-_Prevalence_Nature_and_Impact_-_November_2019.pdf > Accessed 9th September, 2021..

²⁰ Y Samant 'the promises and perils of the platform economy: Occupational Health and Safety challenges and the opportunities for labour inspections https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/genericdocument/wcms_681846.pdf >Accessed 9th September, 2021.

²¹ H Bester, AVD Linden and S Dewan ' Policy Options for Regulating Platform Work' < https://cenfri.org/wp-content/uploads/Policy-options-for-regulating-platforms-work_Nov-2020-2.pdf > Accessed 12th September, 2021.

²² Enwukwe NE 'The Employment Status of Nigerian Workers in the Gig Economy: Using Uber as a Case Study' (2021) 107 Journal of Law, Policy and Globalization

Operapay, Upwork, Freelancer and Behance.²³ They render different services which include Household and personal services (Vconnect), Transportation and delivery services (Gigm, Bolt, Uber, Jumia and Operapay) and cloud- based work (Upwork, Freelancer, Fiverr and Behance).²⁴ It is also common in other jurisdictions. In Australia, it is prevalent and it relates to transport and food delivery, professional services, odd jobs/ maintenance work, writing or translation work, clerical and data entry, creative and multimedia work, software development and technology and care services.²⁵

A lot of Nigerians earn incomes from digital platform work.²⁶ Though platform work is yet to be rampant as compared to other forms of occupation, there is a possibility of becoming a common phenomenon in Nigeria thereby establishing a new category of risk. With digital platform work, there is an increase of non-standard work employment.²⁷ Non- standard employment refers to schemes of labour market inclusion that are entirely different from traditional employment.²⁸ Platform work establishes non- traditional employment relations in an economy.²⁹ Fixed term workers are engaged instead of employees in a bid to provide financial incentives for firms, thus such firms can be stated to be high tech hire firms that are dominated by non-standard work arrangement and job insecurity.³⁰ Digital platform drivers are monitored as they subjected to digital surveillance and evaluation.³¹ Platform work can then be seen as employer-employee relationship clothed in a different regalia known as platform work with the sole aim of profit maximization and exploitation of the platform workers who are bereft of labour law

<<https://www.researchgate.net/publication/350602962>> Accessed 12th September, 2021.

²³ H Bester and Others 'Policy Options for Regulating Platform Work' (n 21).

²⁴ Ibid.

²⁵ P McDonald, P Williams, A Stewart, R. Mayes and D. Oliver 'Digital Platform Work in Australia: Prevalence, Nature and Impact (n 19).

²⁶ P McDonald, P Williams, A Stewart, R. Mayes and D. Oliver 'Digital Platform Work in Australia: Prevalence, Nature and Impact (n 19).

²⁷ Ibid.

²⁸ J Madariaga, C Buenadicha, E Molina and C Ernst 'Platform Economy and Employment' <https://publications.iadb.org/publications/english/document/Econom%25C3%25ADa_de_plataformas_y_empleo_C%25C3%25B3mo_es_trabajar_para_una_app_en_Argentina_Resumen_Ejecutivo_en.pdf> Accessed 12th September, 2021.

²⁹ Ibid.

³⁰ P McDonald, P Williams, A Stewart, R. Mayes and D. Oliver 'Digital Platform Work in Australia: Prevalence, Nature and Impact (n 19).

³¹ Y Samant 'the promises and perils of the platform economy: Occupational Health and Safety Challenges and the Opportunities for Labour Inspections (n 20).

protections. Thus, the rights that accrue to employees under the employment relationship is swept under the carpet.

Despite the risk attached to digital platform work, it has benefits. Platform work has made delivery of services easy. Gone are the days, the option of getting a taxi was strictly by having a private contact of a driver or standing by the roadside to wave at a taxi and food delivery was restricted to visit to a restaurant or an eatery or a call to the restaurant through the restaurant's employees who were usually busy with calls.³² People now sit conveniently in their comfort zones and get the services they need.

In addition, platform work has reduced the rate of unemployment in Nigeria, thus providing a source of income to sustain the worker and/or their dependents. The digital platform work could be part time to complement a traditional employment or it could be full time. In part time work, the impact of the risk of job security and unpredictable income could be handled better. However, in a situation that a worker is dependent on the platform as a sole means of livelihood, the risk could be heavy on the worker. The risks arise because the relations between the recruiting firm and the platform worker has no roots in a contract of employment.

3. Nature of a Contract of Employment

Employment relations arise from a contract of employment. A contract of employment is an agreement between an employer and an employee for the latter to offer services to the former. A contract of employment regulates the relationship between an employer and an employee. It is governed by the general principles of contract.³³ An employer under this contract with the employer, offers work and the employee accepts the work based on terms and conditions of employment. The terms are the rights and duties agreed upon by the parties to a contract of employment. The conditions of employment at the other hand are the environmental and operational features available in a workplace. The services to be rendered are done under the control of the employer in accordance with terms and conditions agreed upon by them. A contract of employment does not have a specific form. It can be in writing under seal or can be orally made or partly in writing and partly orally, or it may be by the conducts of the parties. All are valid and enforceable.³⁴

³² H Bester and Others 'Policy Options for Regulating Platform Work' (n 21).

³³ EE.Uvieghara *Labour Law in Nigeria* (Malt-house Press Ltd 2000) 12.

³⁴ Ibid 28.

Contractual terms are contained in a contract of employment. These terms are express or implied. Express terms are those terms agreed upon or presumed to be agreed upon orally or reduced in writing by the parties at the time of entering into the contract. Basically, parties formulate this terms. Implied terms are terms which have not been expressed or agreed upon; yet, they form part of their contract. The terms may be implied by statute or custom which is notorious or well known to the employee. Terms of a contract of employment can be derived from a collective agreement. This relates to matters such as wages, housing allowance, medical care, pension and a host of others. Collective agreements apply to new employees. Existing employee's employment conditions are improved upon by the collective agreement.³⁵

Contract of Employment in Nigeria is regulated mainly by the Labour Act.³⁶ There are other laws that touch on some aspects of it. An example of such is the Employee Compensation Act (ECA), 2010 which regulates the employer's duty of care and which is also the source of the right to comprehensive compensation to employees who suffer from occupational diseases,³⁷ injury,³⁸ or death³⁹ in the course of the work and at the workplace of the employer.

The Labour Act does not apply to all workers. It applies only to unskilled manual labour or semi-skilled industrial work and other types of services that attract low income.

In other words, it applies only to workers as defined by the Act. A worker is defined under the Act as any person who has entered into a contract with an employer, whether the contract is for manual labor or clerical work or is expressed or implied or oral or written or whether is a contract of service or a contract personally to execute any work or labour.⁴⁰ All other persons employed who fall outside the context of the term 'worker' as defined cannot benefit from the Act. They are prevented from seeking redress in a court of law based on the rights and duties as provided under the law.⁴¹ Notwithstanding the exclusion, the workers are protected under other laws and

³⁵ Ibid 29.

³⁶ Labour Act Cap L1 LFN, 2004 (as updated).

³⁷ Employee Compensation Act (ECA), 2010 Sections 8-10 and First schedule to the Act.

³⁸ ECA s 7,11,21,22,24,25 and second schedule to the Act.

³⁹ ECA s 17.

⁴⁰ Labour Act (n 36) s 91.

⁴¹ BC. Okoro *Law of Employment in Nigeria* (Concept Publications 2013) 31.

regulations in Nigeria (inclusive of the Nigerian Constitution and International treaty, protocol or conventions).

For a contract of employment to be enforceable, certain elements must exist. These are: offer, acceptance, consideration, capacity to contract and an intention to create a legal relation. These are referred to as the ingredients of a contract.⁴² The absence of any of these ingredients will vitiate the contract of employment. Even where an offer is made by a person not authorized to make the offer, there will be no offer.⁴³

A contract of employment results in an employer-employee relationship between the parties to it. The relationship is thus contractual in nature.⁴⁴ It is a contract of service and it is regulated and governed by the Labour Act and other labour laws. A contract of service is a contract entered into by an employer and an employee wherein the employee offers services to the employer for an agreed consideration (salary). A platform work, there is a trilateral relationship; a service provider, a consumer and an online digital platform.⁴⁵ A contract entered into by a person and an independent contractor or an agent is a contract for service and not protected under the labour laws but by the general principles of contract. The court that has jurisdiction in a contract of service is the NICN.⁴⁶

4. Legal Status of Platform Workers in Nigeria

There is no law in existence that specifically states the status of platform workers in Nigeria. The question then is whether they are employees or independent contractors under the Nigerian law. In ascertaining the status of platform workers, recourse will be had to the distinction between an employee and an independent contractor. In many jurisdictions, the distinction between an employment relations and non-standard work, lies on the extent of control the employer exercises over work done.⁴⁷ This also applies to Nigeria.

The relationship between an employee and an independent contractor bears resemblance with an employer and an employee. However, they are not the same. There is a distinction. The supreme

⁴² Uvieghara (n 33)12.

⁴³ *Nwaubani v Golden Guinea Breweries PLC* [1995] 6 NWLR 400,184 at 188.

⁴⁴ Constitution of the Federal Republic of Nigeria (CFRN), CFRN,1999 s 254(C).

⁴⁵ H Bester and Others 'Policy Options for Regulating Platform Work' (n 21).

⁴⁶ *Shena Security Co. Ltd v Afropak (Nig.) Ltd & 2 Others* [2008] 18 NWLR (Pt .1118)77.

⁴⁷ P. MacDonald and others 'Digital Platform Work in Australia: Prevalence, Nature and Impact (n 19).

court⁴⁸ laid down factors to be considered in determining whether a person is an employee or an independent contractor. These factors are:

- a) Type and mode of payment of salary: Employees are paid wages and salaries. They are paid on a daily, weekly and monthly basis. Independent contractors are paid fees for work done or at the completion of the service.
- b) Supplier of tools and capital equipment: If the employer makes provision for tools and capital equipment, then the relationship created is an employer/ employee relationship. An independent contractor gets the work and uses his tools and equipment to do the work.
- c) Delegation of duties: Where a person who is employed has a right to delegate his duties, then he is not an employee but an independent contractor.
- d) Hours of work: An independent contractor works at his own pace and he is not controlled by the employer. No hours of work are fixed for him. However, an employee is controlled by the employer and the hours of work is fixed.
- e) Work premises: An employee works in the premises of the employer or a place chosen by the employer. An independent contractor works wherever he chooses. He is not under any duty to work in the premises of the employer.
- f. Provision of an accommodation and secretary: An independent contractor has his staff as well as his facilities. Where an employer provides any of the above, he is an employee and not an independent contractor.

Taking into consideration the factors laid down in *Shena*,⁴⁹ the status of platform workers will be better understood by the nature of the contract that exists between the parties that is, whether they are employed by the Information and Communication Technology firm or whether the firm merely contracts the platform workers as suppliers to render services to its customers for a remuneration. It would appear that where there is an exercise of control on the nature of work done as to how, where and when work is to be done, an employer employee relationship exists.

It must however be noted that in some situations, the status of a person who supplies labour could lie between an employee and an

⁴⁸ *Shena* (n 46).

⁴⁹ *Shena* (n 46).

independent contractor.⁵⁰ In such cases, the supplier of labour does not enjoy the control of services that is attributed to an employment relations.⁵¹ The work is controlled by the employer and yet, the wages/ salaries paid is below the minimum wage.⁵² It has been stated that:

Most digital platform work arrangements have certain characteristics that are similar to working on a payroll, though with greater flexibility and autonomy, which resembles self-employment work. It is precisely because of this paradox that, on a global level, we have yet to reach a consensus regarding the proper way to classify these workers.⁵³

This implies that if an item is to be delivered in the southern part of the town and the worker heads to the eastern part, the worker would be called and informed that he is on the wrong route and would be instructed to use the next turn and go to the south. The nature of the relationship that exists between the parties becomes unclear. In this light, the legal status of platform workers becomes complicated.

In other situations, persons are employed as independent contractors to supply services and this is contained in supply agreements which the terms are determined by the firm without an input from the supplier of labour. In reality, the nature of the relationship discloses an employer- employee relationship. The case of *Diego Franco v Deliveroo Australia Pty Ltd*,⁵⁴ can be illustrated to buttress this point. In the case, Diego, a Brazilian National migrated to Australia in 2016. He was employed by Deliveroo Australia Pty Ltd as a rider in April, 2017. In April, 2020, Diego's access to the Deliveroo Rider Application was disabled by Deliveroo on the ground that he breached the supply agreement as he was not delivering orders within reasonable time. This arose from customer complaints associated with rider accounts. Diego filed an unfair

⁵⁰ Directorate General For Internal Policies 'The Social Protection of Platform Workers in the Platform Economy' <https://pmb.cereq.fr/doc_num.php%3Fexplnum_id%3D4173 > Accessed on 9th September 2021.

⁵¹ Ibid

⁵² Directorate General For Internal Policies 'The Social Protection of Platform Workers in the Platform Economy' (n 50).

⁵³ J Madariaga, C Buenadicha, E Molina and C Ernst 'Platform Economy and Employment' (n 28).

⁵⁴ [2021] FWC 2818.

dismissal application against Deliveroo to the Fair Work Commission and Deliveroo raised an objection that Diego had no protection of unfair dismissal under the Fair Work Act because Diego was not an employee. The Fair Work Commission was of the opinion that deliveroo exercised control over Diego as he was required to be available regularly for delivery services, not to cancel booked services and to work at a particular time. It was held that Diego was an employee who was unfairly dismissed and an order of reinstatement was made. The case is yet to be appealed. If this position is maintained, it means platform workers will be recognized as employees and they will have the protection of the law.

Also, in the case of *Uber BV v Aslam*,⁵⁵ the United Kingdom Supreme Court held that a person who is an uber driver was an employer to enjoy the protection of the employment laws of Britain. The approach of the Fair Work Commission and the United Kingdom Supreme Court is basically keeping up with advancement to accommodate the fast changing nature of work where employers are devising means to avoid liability and to reduce cost and outbreaks of pandemics that require remote work.

The platform workers are confronted with risks that employees in a conventional or traditional setting could face. Platform drivers could face violence and threats to their lives and properties as well as effects of long working hours.⁵⁶

The classification of platform workers as independent contractors or self-employed would raise the risk of deprivation of the right to form or join a trade union to protect and promote their interest. In addition, the platform workers will not have legal protection such as non- entitlement to minimum wages and social security. The challenges that emerge from platform work is not peculiar in Nigeria. In Argentina, platform work became a challenge to the Argentina's tax, employment and social security legal/regulatory framework.⁵⁷

The approach of the NICN when the question arises as to the nature of the relationship that exists between the parties, is to ascertain whether the person who has rendered the service is an employee or an independent contractor. In this situation, the rule in *Shena* will be applied. However, in situations that a person falls

⁵⁵ [2021] UKSC 5.

⁵⁶ Y Samant 'the promises and perils of the platform economy: Occupational Health and Safety challenges and the opportunities for labour inspections' (n 20).

⁵⁷ J Madariaga and others 'Platform Economy and Employment' (n 28).

between employees and independent worker as discussed in the preceding paragraph, it will disclose a gap in the law taking into consideration the changing nature of work and its antecedents. *Shena* falls short of technological advancement in the modern world of work where online work could operate without control of the work by the employer or provision of equipments or regulation of working hours. In some applications for work, having equipments such as laptops, android phones are conditions for a possible employment. Online platform work possesses a flexible work and does not have the features of a typical employment that will require the condition as provided in *Shena*.

5. Risks and Challenges of Platform Work

The workplace of platform workers is the online platform in some cases where it involves supply of digital services such as writing or translation work, clerical and data entry, creative and multimedia work, software development and technology and in on location services, the workplace is where work is performed. A workplace is defined as any premises or place where a person carries out work or where the person is to be or required to be in the course of carrying out his duties which is related to his employment.⁵⁸ The traditional workplace is a designated place that work is performed for a consideration and as stated in *Shena*,⁵⁹ the workplace is chosen by the employer. The platform workers render the services through the platform for the benefit of the employer, the services which could be digital services (crowd work) or on location services (gigs).

Pertaining to Crowd work, there are risks associated with the use of display screen equipment (such as computers and laptops).⁶⁰ The risks result to health challenges. In clear terms, it is explained that sitting before a computer or laptop, an individual comes into contact with biological menace and the individual's body parts such as the hands, wrist, neck, shoulders, back, brain and eyes are affected by the carpal tunnel syndrome, computer related stress, computer vision syndrome and musculoskeletal disorders.⁶¹ The digital platform workers are also exposed to fatigue, eye strain, upper limb disorder

⁵⁸ ECA (n 37) s 73.

⁵⁹ *Shena* (n 46).

⁶⁰ Health and Safety 'Working with Display Screen Equipment (DSE)' <https://www.hse.gov.uk/pubns/indg36.pdf> Accessed 21st September, 2021.

⁶¹ A Ellahi, MS Khalil and F Akram 'Computer Users at Risk: Health Disorders Associated with Prolonged Computer Use' (2011) 2(4) JBME <https://www.e3journals.org/JBME> Accessed 21st September, 2021.

and backaches from prolonged use or overuse of computers and laptops.⁶² The platform workers are prone to such risks as they are paid per service rendered and to earn, the work must be continuous to achieve desired result. Every worker would work to meet the target of the company to earn and the end result is danger to the workers' health.

Platform workers that deliver on location services have identical risks with traditional employees. The traditional employees have legal protections for such challenges. The legal protections do not apply to platform workers. Where a platform worker sustains an injury or dies in the course of performing a task assigned to him, a claim of compensation cannot stand as he not regarded as an employee.

The platform workers generally have poor working conditions. They are vulnerable. The change in the structure of labour relations with the absence of trade unions and exclusion from collective agreement and social security coverage that are applicable in an employment relationship contributes to the state of an individual platform worker bearing risks associated with the work.⁶³ The burden of the costs of employees' protection which includes compensation for injuries or death that occur in the course of employment has been lifted off from the traditional employer as a result of the digital platform.⁶⁴ Though the online platform does not conform with the traditional workplace, it is regarded as a workplace capable of compensation for injury sustained by an employee. This is by virtue of ECA wherein, it is provided that an employee will be entitled to compensation where the nature of the business of the employer extends beyond the usual workplace known⁶⁵ and by extension, the usual workplace known is the traditional workplace that is identifiable physically and beyond the workplace known could be any other place work is performed. An online firm may exist that has workers who work on the online platform. Thus, the performance of the platform work extends beyond the registered office which is expected to be the workplace. The work is done beyond the office space. It is done precisely on the online platform. In other cases, it involves the delivery of manual services to a destination. The

⁶² Ibid.

⁶³ Strommen and Vinogradov 'The Impact of the Sharing Economy on Business and Society' (n 1).

⁶⁴ Ibid.

⁶⁵ ECA (n 37) s 11(a).

destination is the workplace. Example of such is transport and food delivery services.

In all cases that involve performance of platform work, the workers will be faced with risks and occupational diseases that an employee in a traditional employment could face. It is unfortunate that workers bear the responsibility for any risk occasioned in the course of performing the task because, on the face of the agreement that exists between the company and the platform worker, it is merely a supply agreement and not a contract of employment. There could be a way out through ECA.

The provision of ECA extends the concept of workplace. The provision of ECA envelopes places other than a designated place of work where work is performed by a worker. This implies that where a person fits into the description of an employee as provided in ECA, the ECA will apply to grant compensation to the worker for injuries he suffers in the course of employment. A platform worker can seek compensation for occupational diseases or injuries that arose in the course of employment where the person is captured in the definition of employee as provided therein. The voyage to rely on ECA in a platform work relation is yet to be embarked upon though it appears likely that the words employee and workplace as defined will apply where the employee-employer relationship is disguised.

6. Regulatory Framework of Platform Work in Nigeria

The Nigerian labour law applies where there is a typical employer employee relationship. There is no provision in the laws on non-standard work such platform work. The laws regulates the employment relations. The companies do not regard the platform workers as their employees. The companies maintain that they are intermediaries for matching demand and supply and with regard to transport technology firms, they argue that the drivers are not employed and that they do not own the vehicles used for the business.⁶⁶ Also, with the decision of the Supreme Court in *Shena*, platform workers could be broadly classified as independent contractors which its legal implication is that the parties would lack the protection of the Nigerian laws on contract of employment and the employer's obligation that flows from a contract of employment cannot be enforced.

⁶⁶ NE Enwukwe 'The Employment Status of Nigerian Workers in the Gig Economy: Using Uber as a Case Study' (n 22).

The classification of platform workers as independent contractors would lead to injustice to platform workers who are dependent on the platform work and who do not have control on services they render. Those who cannot do any other work other than deliver services to the technology company yet have no fixed payment and they earn as they work. In this case, the option could be to rely on the law of contract and not the laws regulating a contract of employment.

At most, where a platform worker falls within the definition of employee as contained in ECA, the protection under the Act will be enjoyed by the platform workers. Where the platform workers do not fall within the definition of employee as provided, the Act will not apply to them. They cannot claim the compensation.

The transformation of the traditional concept of employment by platform work has brought about the pressing need to address the issue of legislative and regulatory concerns as the extant Nigerian laws do not have provisions for platform work in Nigeria. As rightly captured, *as the nature of work changes and more individuals derive an income from platform work, existing labour and social protection regulations are no longer fit for the purpose*.⁶⁷ The statement clearly portrays the effect of platform work on existing laws on employment/ labour.

The only area where there is a legislative response to issues relating to platform work is in the area of tax. The Income Tax Act was amended by the Finance Act, 2019 to have the legal backup to tax non- resident individuals and unincorporated entities that have significant economic presence in Nigeria.⁶⁸ Section 13 of the Companies Income Tax Act, 2004 was amended to capture platform work where the company has a Significant Economic Presence (SEP). The minister is empowered by the section to determine what constitutes SEP. The minister made the SEP order and it was contained therein that a digital transactions will be deemed to have economic presence and liable to pay tax where it derives an income of twenty-five million or equivalent in other currencies in a year from streaming or downloading of digital contents, transmission of data collected about users in Nigeria, use of platform work in supply of goods or services and intermediary services that link suppliers and

⁶⁷ H Bester and Others ' Policy Options for Regulating Platform Work' (n 21).

⁶⁸ PWC 'Nigeria's Finance Act, 2020: Insights Series and Sector Analysis <https://www.pwc.com/ng/en/assets/pdf/nigeria-finance-act-2020-insights-series-and-sector-analysis.pdf> Accessed 12th September, 2021.

clients in Nigeria.⁶⁹ Apart from getting revenue, it is necessary that the Nigeria Government should consider the vulnerable nature of the platform workers and take appropriate steps to protect the workers as done in other jurisdictions.

In some jurisdictions like the Republic of Czech and Croatia, there are efforts put in place by the government to respond to the challenges of platform work. In Czech, the government approved the development of a National Action Plan to revise the Labour Code chapter that relate to occupational safety and health (OSH) and working conditions that deal with remote work and the development of a mode of evaluating the characteristics and impact of digital work on the mental and physical health of workers.⁷⁰ In Croatia, the government worked on regulations on new forms of employment which includes digital platform work to provide a regulatory framework for platform work.⁷¹

7. Conclusion

Platform work is an emerging form of employment in Nigeria which is addressing unemployment by providing work opportunities. It is gradually changing the employment structure in Nigeria as in place of employees with legal protection, platform workers are employed on fixed terms and the platform workers work remotely. Though promising with regards to source of income, the workers do not enjoy same rights with workers in a traditional employment. The workers with legal protections are vulnerable, the platform workers who have assumed a position in the Nigerian economy without any labour protection are most vulnerable. They do not have access to social security schemes as such schemes are linked to employment relationship. They are subjected to surveillance and they work for long hours in order to maintain the job with the company as the ratings on work done is material. Where the platform workers fail to render the services as required, they are denied access to the platform.

⁶⁹ PWC 'Nigeria Issues Order on Significant Economic Presence' < <https://pwc-nigeria.typepad.com>> Accessed 12th September, 2021.

⁷⁰ S Garben 'Protecting Workers in the Online Platform Economy: An Overview of Regulatory and Policy Developments in the EU' < <https://osha.europa.eu/en/publications/protecting-workers-online-platform-economy-overview-regulatory-and-policy-developments> > Accessed 4th September, 2021.

⁷¹ Ibid.

The platform workers suffer same occupational challenges with other employees in a contract of employment. If a platform worker who is delivery person has an accident in the course of delivering pizza, the injury sustained or death will be same with an employee who has a contract of employment yet the platform worker may not get a compensation because he is an independent contractor who merely has a supply agreement existing between him and the company.

The agreement that exists between a company and a platform worker is a supply agreement and it is expected to govern the relationship that exists. In reality, the work done by the platform worker is beyond supply but an employment as the platform worker is subjected to control by the company through persistent digital surveillance and reliance on ratings of the platform worker.

There are legislative and regulatory efforts made by countries around the world to address platform work.⁷² Platform work became a part of their economies and this prompted the need for a legislative and regulatory intervention to govern the new form of employment. There is a need for such intervention in Nigeria as platform work is gradually gaining popularity in Nigeria in recent times. This will protect platform workers from exploitation.

8. Recommendations

The following recommendations are hereby made:

1. Laws should be enacted to govern or regulate platform work in Nigeria. This will provide protection to platform workers and include them among beneficiaries of social security schemes in Nigeria.
2. The Employee Compensation Act, 2010 should be amended to cover non-standard employments such as platform work to provide compensation for injuries and death.
3. The courts should decide cases beyond *Shena*. The changing nature of work which involves technology in employment and remote work should be considered in determining the nature of a relationship that exists
4. The Employee Compensation Act should be amended to expressly provide for compensation of platform workers for injuries, occupational diseases that the platform worker may

⁷² V Jain, S Bansal and R Rangwala 'Unlocking the potential of the GIG Economy in India' <<https://media-publications,bcg.com/India-Gig-Economy-Report.pdf> > Accessed on 10th Septembwe, 2021.

suffer in the course of performing task assigned to him and compensation of their families for the deaths of the platform workers or in the alternative, a Safe Work Act should be enacted to ensure and guarantee safe working environment in Nigeria that covers all types of contractual work arrangement. This Act will apply irrespective of the nature of contractual relationship that exists.

Platform work should be regarded as a type of employment which could fall within the category of statutory employment where the gig firms are owned by the government or a master servant employment where it is private venture.