



Is the time ripe for enhancement of the legal rights of drivers working for ride-hailing apps?

By Geoffrey E. Odongo



On the 9th of March 2021, the Supreme Court of UK in the case of **Uber BV and Others vs Aslam and Others 2021 UKSC 5** made a precedent setting ruling by holding that:

“Uber drivers are not independent contractors but workers of Uber who are entitled to all accruing employment rights as the transportation service they perform and offer to passengers through the Uber app is very tightly defined and controlled by Uber.”

In compliance with the ruling, Uber moved to reclassify its 70,000 drivers in the United Kingdom thereby entitling them to minimum wage, vacation time, and a pension.

Whereas the legal framework regulating employment in Kenya is the Constitution of Kenya 2010, the Employment Act, No. 11 of 2007 and Labour Relations Act No. 14 of 2007, presently there still exists a gap in the law as regards the employment status of drivers using digital taxi applications. Digital taxi companies in Kenya presently treat their drivers as independent contractors. This distinction determines that which the drivers are entitled to from the Digital taxi companies. However, it is argued by some that the drivers should be regarded as employees of the various digital taxi companies.

The dispute as to whether drivers are employees or independent contractors is not one merely of law, but one of law and fact. This is because although the contract between digital taxi companies and their drivers explicitly states that the relationship between the two is not an employer-employee relationship, the reality is that the current law does not adequately deals with the challenges posed by having to classify drivers as either employees or independent contractors. The business model of digital taxi companies is beneficial to both the digital taxi companies and their drivers. For drivers, it is a major creator of job opportunities for anyone and everyone that is able to drive. For the digital taxi companies, it creates a business model that shields the companies from the economic implications of classifying taxi drivers as employees which avoids the expensive obligations afforded to employees under the law.

In Kenya, the digital taxi contracts void contracts at will and without notice. For instance at the onset, the digital taxi companies introduced various categories on the digital platforms. Subsequently, companies such as Uber and Bolt introduced *chap-chap* and *lite* versions which are meant to be cost effective. This is despite the companies having engaged most drivers on the previously existing categories and in so

doing induced them to lease or finance the vehicles for their operations only to later change vehicle categories to the drivers' detriment. Such practices are unfair to the drivers that originally registered with the app as most are pushed out of the business owing to the fact that they can no longer be able to meet their liabilities arising from their leased vehicles since the newer categories had more cost effective vehicles. Most drivers are consequently forced to work harder but their earnings do not reflect. In addition, companies also engage in unfair practices such as cutting prices without notice thereby reducing the earnings of drivers.

From the foregoing, it is apparent that there is need to afford the drivers certain protections. The business challenges arising from the Covid 19 pandemic coupled with inflation arising from constantly rising price of fuel should also be taken into consideration. The proposition is therefore that Kenya should adopt a model similar to that of the United Kingdom by creating a new category of independent workers that are granted certain basic protections, such as minimum wage and other benefits. This will go a long way in addressing the challenges faced by drivers

working using digital apps. The minimum protections would include a minimum wage to ensure that the cab fees paid to them cannot be less than a certain fixed amount.

In Kenya, the foregoing matters make it necessary for legislation to be updated in light of Article 41 of the Constitution which provides for the right to fair labour practices, fair remuneration and reasonable working conditions for every employee. The takeaway is that the law in Kenya should consider the reality on the ground regarding the nature of the relationship. The basis of this being that the drivers operating under the digital taxi companies are being denied necessary protections as dependent workers. In protecting the rights of Kenyan drivers as regards their employment status the case of ***Bernard Wanjoi Muriuki v Kirinyaga Water and Sanitation Company Ltd and another [2012] eKLR*** should guide us. In the said case, the court stated that "Labour law must always respond to the changes in the organizational relationship...."

It is therefore time for Kenya's legislation to catch up to today's labour realities and update itself to the constitutionally granted protections.

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