GIG ECONOMY AND WORKER CLASSIFICATION: EMPLOYEE VS. INDEPENDENT CONTRACTOR STATUS IN NIGERIA AND KENYA APPRAISED

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Abstract

The gig economy has emerged as a transformative force in global labour markets, with Nigeria and Kenya leading Sub-Saharan Africa in platform-mediated work. This paper investigates the critical issue of worker classification, employee versus independent contractor, in the gig economies of these two nations, where approximately 17.5 million online gig workers operate, driven by high unemployment, technological advancements, and a youthful demographic. This study analyses legal frameworks, notably Nigeria's Labour Act and Kenya's Employment Act of 2007, which lack explicit provisions for gig workers, leading to judicial reliance on tests such as control, integration, and economic reality. Landmark cases, including *Oladapo Olatunji & Anor v. Uber Technologies System Nigeria Limited* in Nigeria and *Meta Platforms, Inc. v. Motaung & Others* in Kenya, illustrate the complexities of applying traditional employment tests to platform-mediated work, where algorithmic control replaces direct supervision. The socio-economic implications of classification are profound, affecting access to benefits, job security, and gender equity, with women in gig work facing lower earnings and heightened vulnerabilities. Drawing on comparative global perspectives, such as the UK's *Uber BV v. Aslam* ruling and California's Proposition 22, the paper proposes policy recommendations, including legislative amendments, hybrid classification models, and portable benefit systems, to balance worker protections with the flexibility of gig work.

Keywords: Gig economy; worker classification; independent contractor; employee; labour law.

Introduction

The gig economy is defined as a labour market characterised by short-term, flexible and often platform-mediated work arrangements, and has reshaped employment dynamics globally, offering both opportunities and challenges[1]. In Sub-Saharan Africa, Nigeria and Kenya have emerged as significant hubs for gig work, driven by high unemployment rates, a youthful population, and

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[1]*Investopedia*, 'What Is a Gig Economy?' (Investopedia, 22 July 2024) <www.investopedia.com> accessed 29 August 2026.

increasing internet penetration. According to the World Bank[2], Nigeria, Kenya, and South Africa account for 80.6% of Sub-Saharan Africa's internet traffic to gig platforms, with approximately 17.5 million online gig workers in these countries. Platforms such as Uber, Bolt, Fiverr, Glovo, and Jumia have multiplied, enabling individuals to engage in tasks ranging from ride-hailing and delivery to freelance digital services. While these platforms provide income-generating opportunities, they also raise critical questions about worker classification, specifically, whether gig workers should be classified as employees or independent contractors. This distinction has profound implications for labour rights, access to social protections, and economic stability, particularly in developing economies like Nigeria and Kenya, where informal work dominates.

Worker classification is a contentious issue globally, as traditional employment frameworks struggle to accommodate the fluid, technology-driven nature of gig work. In Nigeria, the Labour Act[3] provides a broad definition of a "worker" but lacks specificity for gig workers, leading to reliance on judicial tests such as control, integration, and economic reality[4]. In Kenya, the Employment Act of 2007 distinguishes between contracts of service (employees) and contracts for service (independent contractors), but its application to gig work remains ambiguous[5]. The courts in both countries have grappled with these issues, as seen in cases like *Oladapo Olatunji & Anor v Uber Technologies System Nigeria Limited*[6] in Nigeria and *Meta Platforms, Inc. v. Motaung &Others*[7] in Kenya, which highlight the challenges of applying traditional tests to platform-mediated work, where algorithms exert significant control.

The socio-economic context of Nigeria and Kenya amplifies the stakes of worker classification. Nigeria's labour market is characterised by high informality, with 87.3% of employed individuals self-employed in the third quarter of 2023[8]. Similarly, Kenya's informal sector employs over 80% of the workforce, with gig platforms offering a formalised yet precarious alternative[9]. Mis-classification as independent contractors deny gig workers access to benefits such as health insurance, paid leave, and pension contributions, thereby worsening financial insecurity.

Against this backdrop, this paper addresses four central questions: first, how do legal frameworks in Nigeria and Kenya define and distinguish employees from independent contractors in the gig economy; second, how have the courts in these countries interpreted worker status in key

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[2]World Bank, *Digital Opportunities in Africa: The Rise of Online Gig Work* (World Bank 2023) <www.worldbank.org> accessed 29 August 2026.

[3]Labour Act, Cap L1, Laws of the Federation of Nigeria 2004.

[4]R Nwankwo and C Muobuikwu, 'Gig Economy Workers: Employees or Independent Contractors?' Kevin Martin Ogwemoh Legal (17 March 2020) <www.kmo.legal> accessed 15 May 2026.

[5]Njaga Advocates, 'The Distinctions between Employees, Independent Contractors, and Gig Workers under the Kenyan Employment and Labour Law' (Njaga Advocates, 8 November 2024) <www.njagaadvocates.com> accessed 29 August 2026.

[6]*Oladapo Olatunji & Anor v Uber Technologies System Nigeria Ltd*, Suit No NICN/LA/546/2017 (National Industrial Court of Nigeria).

[7]*Meta Platforms Inc v Motaung & Others*, Civil Appeal Nos E232 & E445 of 2023 (Consolidated), Court of Appeal of Kenya, 20 September 2024 <www.new.kenyalaw.org/caselaw/cases/view/28371> accessed 18 June 2025.

[8]VeriAfrica, 'Nigeria's Gig-Economy: The Rise of Independent Workers' (VeriAfrica, 11 October 2024) <www.veriafrica.com> accessed 29 August 2026.

[9]Njaga Advocates (n 5).

cases; third, what are the socio-economic consequences of classification for gig workers, particularly in terms of benefits and job security; and fourth, what policy reforms can balance worker protections with the flexibility of gig work. The paper relies on legal analysis, case studies, and comparative perspectives drawn from jurisdictions such as the United Kingdom and the United States, where landmark rulings including *Uber BV v. Aslam*[10] and California's Proposition 22[11] have shaped gig economy regulation. Proposition 22, formally titled the App-Based Drivers as Contractors and Labour Policies Initiative, was passed by California voters on 3 November 2020 with approximately 58.6% approval. It permits app-based transportation and delivery companies, including Uber, Lyft, DoorDash, Instacart, and Postmates, to classify their drivers as independent contractors rather than employees, thereby exempting these companies from the full employee-benefit obligations imposed by California's Assembly Bill 5. In place of full employment status, Proposition 22 establishes a hybrid model that preserves drivers' independent contractor status while introducing specific wage and benefit protections tailored to app-based work. It remains the most expensive ballot measure in California's history, with gig companies collectively spending over $205 million to secure its passage.

The significance of this study lies in its focus on African contexts, which are often underrepresented in global gig economy discourse. By analysing Nigeria and Kenya, two of Africa's largest economies with vibrant gig sectors, the paper aims to contribute to the understanding of how developing nations can navigate the challenges of modern labour markets. It also highlights the intersection of technology, law, and socio-economic realities, offering insights for policymakers, researchers, and platform operators. The methodology combines doctrinal legal analysis, case study review, and socio-economic data, ensuring a comprehensive examination of the topic.

The Global Context of Gig Economy and Worker Classification

The gig economy is characterised by short-term, flexible, and often platform-mediated work arrangements and has transformed labour markets worldwide, challenging traditional notions of employment and worker classification[12]. Globally, gig work cuts across diverse sectors, including ride-hailing (e.g., Uber, Lyft), delivery services (e.g., DoorDash and Glovo, and, in Nigeria, Chowdeck and Jumia's e-commerce logistics network[13]), and freelance platforms (e.g., Upwork, Fiverr), with an estimated 50 million gig workers in 2023[14]. In Sub-Saharan Africa, Nigeria and Kenya have emerged as key hubs, with approximately 17.5 million online gig workers across Nigeria, Kenya, and South Africa, driven by high unemployment, technological advancements, and a youthful demographic[15].

[10]*Uber BV & Others v Aslam & Others* [2021] UKSC 5.
[11]Ballotpedia, 'California Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative (2020)' (Ballotpedia, 2020) <www.ballotpedia.org> accessed 29 August 2026.
[12]Investopedia (n 1).
[13]World Bank (n 2).
[14]ibid.
[15]Investopedia (n 1).

Defining the Gig Economy and Worker Classification

The gig economy is defined as a labour market where individuals undertake short-term, task-based work, often facilitated by digital platforms that connect workers with clients or employers[16]. Unlike traditional employment, gig work emphasises flexibility, autonomy, and task-specific engagements, blurring the lines between employees and independent contractors. An employee typically works under a contract of service, characterised by employer control, fixed hours, and access to benefits such as health insurance, paid leave, and pensions[17]. An independent contractor, conversely, operates under a contract for service, retaining autonomy over work methods, schedules, and business operations, but lacks entitlement to employment benefits[18].

Worker classification depends on several criteria, including:

- **Control:** The degree to which the employer directs the worker's tasks, hours, and methods.
- **Economic Dependency:** Whether the worker relies on the employer for their primary income or operates as an independent business entity.
- **Integration:** The extent to which the worker's tasks are integral to the employer's core operations.
- **Mutuality of Obligation:** Whether the employer is obligated to provide work and the worker is obligated to accept it.

These criteria are features of traditional employment but, in these contexts, it struggles to accommodate the unique dynamics of gig work, where digital platforms exert control through algorithms, ratings, and pricing mechanisms rather than direct supervision. This ambiguity has led to global debates over whether gig workers should be classified as employees, independent contractors, or a hybrid category, with significant implications for labour rights and social protections.

Frameworks for Worker Classification

Globally, jurisdictions have adopted diverse approaches to classifying gig workers, reflecting variations in labour law, economic priorities, and judicial philosophies. Key frameworks in the United Kingdom, the United States, and Australia offer comparative insights for Nigeria and Kenya.

United Kingdom: The "Worker" Category: In the UK, the *Uber BV v. Aslam* case marked a landmark ruling on gig worker classification. The UK Supreme Court classified Uber drivers as "workers," an intermediate category between employees and independent contractors, entitled to minimum wage, holiday pay, and other protections under the Employment Rights Act 1996. The court applied a multi-factor test and emphasised Uber's control over fares, ride assignments, and driver deactivation policies. The ruling rejected Uber's argument that drivers were independent contractors and treated the platform's algorithmic management as analogous to employer control. The UK's "worker" category offers a flexible model that balances gig workers' need for protection with the

[16]US Department of Labor, 'Fact Sheet 13: Employment Relationship under the Fair Labor Standards Act (FLSA)' (US Department of Labor, 11 March 2024) <www.dol.gov> accessed 29 August 2026.

[17]Internal Revenue Service, 'Worker Classification 101: Employee or Independent Contractor' (IRS, 4 April 2025) <www.irs.gov> accessed 29 August 2026.

[18]California Legislative Information, *Assembly Bill 5 (AB5)* (2019) <www.leginfo.legislature.ca.gov> accessed 29 August 2026.

autonomy valued in gig work, a potential framework for Nigeria and Kenya, where binary employee-contractor classifications dominate.

United States: Proposition 22 And The ABC Test: In the United States, worker classification varies by state, with California leading the discourse through its Assembly Bill 5 (AB5) and Proposition 22. AB5, enacted in 2019, introduced the "ABC test," which presumes workers are employees unless the employer demonstrates: (i) the worker is free from the employer's control in performing tasks; (ii) the work is outside the employer's usual business; and (iii) the worker is engaged in an independently established trade or business.[19]

The ABC test posed challenges for gig platforms such as Uber and Lyft, which struggled to meet these criteria given their reliance on drivers and delivery workers as core to their business. As discussed above, Proposition 22 responded to this by creating a hybrid model for app-based drivers, granting benefits such as a minimum earnings guarantee and healthcare subsidies while preserving independent contractor status. This compromise reflects the tension between flexibility and protection, and offers a potential model for Nigeria and Kenya, where gig platforms are integral to economic activity but resist traditional employment obligations.

At the federal level, the U.S. Department of Labor's economic reality test assesses factors such as the worker's economic dependence, the permanence of the relationship, and the degree of control[20]. Similarly, the Internal Revenue Service applies a three-factor test, behavioural control, financial control, and the type of relationship, to guide classification for tax purposes[21]. These tests illustrate the complexity of applying traditional frameworks to gig work, where control is exercised indirectly through technology.

Australia: Multi-Factor Test and Recent Reforms: Australia employs a multi-factor test to determine worker status, considering control, integration, economic dependency, and the provision of tools or equipment[22]. In *Fair Work Ombudsman v. Quest South Perth Holdings Pty Ltd*[23], the High Court emphasised the substance of the working relationship over contractual labels, a principle relevant to gig work. Recent reforms, including the Fair Work Legislation Amendment (Closing Loopholes) Act 2023, introduced provisions for gig workers, allowing the Fair Work Commission to set minimum standards for "employee-like" workers in digital platform work[24]. This approach, which avoids rigid classification, could inform Nigeria and Kenya's efforts to address gig worker protections without disrupting platform business models.

Socio-Economic Trends in the Global Gig Economy

The gig economy's growth is driven by technological advancements, changing workforce preferences, and economic pressures. Globally, gig work appeals to individuals seeking flexibility, supplemental income, or alternatives to traditional employment, particularly in economies with high

[19]US Department of Labor (n 16).

[20]Internal Revenue Service (n 17).

[21]Fair Work Ombudsman, 'Independent Contractors vs Employees' (Fair Work Ombudsman, 2024) <www.fairwork.gov.au> accessed 29 August 2026.

[22]*Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* [2015] HCA 45.

[23]Australian Government, *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*<www.legislation.gov.au> accessed 29 August 2026.

[24]International Labour Organization, *World Employment and Social Outlook: The Role of Digital Labour Platforms in Transforming the World of Work* (ILO 2021).

unemployment or underemployment[25]. However, it also raises concerns about job security, income volatility, and access to benefits. Key socio-economic trends include:

- **Precarity and Lack of Benefits:** Independent contractors typically lack access to health insurance, paid leave, or retirement benefits, increasing financial vulnerability. A 2022 OECD report found that gig workers earn 10–20% less per hour than traditional employees, with limited bargaining power[26].
- **Algorithmic Management:** Platforms use algorithms to assign tasks, set prices, and evaluate performance, creating a form of digital control that challenges traditional notions of autonomy. This dynamic complicates classification, as gig workers may appear independent but face significant platform oversight[27].
- **Global South Dynamics:** In developing economies, gig work serves as a critical income source amid limited formal employment opportunities. However, infrastructure challenges, such as unreliable electricity and internet access, increase vulnerabilities, particularly in Africa[28].

Relevance To Nigeria and Kenya

The global context provides critical insights for Nigeria and Kenya, where the gig economy is shaped by local socio-economic realities and legal frameworks. Reliable, up-to-date unemployment figures for both countries remain difficult to obtain: Nigeria's National Bureau of Statistics has not published fresh labour force data since the fourth quarter of 2024, when the unemployment rate stood at 4.90%, and Kenya's most recently reported rate, for 2025, stood at approximately 5.40%[29]. Notwithstanding the official figures, informal and gig-based work continues to expand as an alternative to scarce formal employment in both countries. The informal sector dominates, with 87.3% of Nigeria's workforce self-employed[30] and over 80% of Kenya's workforce[31] in informal roles.

The UK's "worker" category and Australia's "employee-like" framework offer potential models for Nigeria and Kenya, where binary employee-contractor classifications struggle to accommodate gig work's hybrid nature. Similarly, California's Proposition 22 highlights the feasibility of hybrid models that provide limited benefits while preserving flexibility, a balance critical for African economies reliant on gig platforms for job creation. However, global frameworks must be adapted to local contexts, considering infrastructure limitations, cultural attitudes toward work, and judicial capacity.

The reliance on algorithmic management in Nigeria and Kenya mirrors global trends, with platforms like Uber and Bolt controlling fares, routes, and driver ratings. This digital control complicates classification, as courts must determine whether algorithmic oversight constitutes employer control. Cases like *Uber BV v. Aslam* provide a precedent for recognising such control, but

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[25]Organisation for Economic Co-operation and Development, *The Future of Work: Gig Economy and Platform Work* (OECD 2022).

[26]J Woodcock and M Graham, *The Gig Economy: A Critical Introduction* (Polity Press 2020).

[27]World Bank (n 2).

[28]National Bureau of Statistics (Nigeria), *Labour Force Statistics: Unemployment and Underemployment Report, Q4 2024*<www.nigerianstat.gov.ng> accessed 29 August 2026; Kenya National Bureau of Statistics, *Economic Survey 2026*<www.knbs.or.ke> accessed 29 August 2026.

[29]VeriAfrica (n 8).

[30]Njaga Advocates (n 5).

[31]Nwankwo and Muobuikwu (n 4).

Nigeria and Kenya's legal systems lack the intermediate categories or legislative clarity needed to address these nuances consistently.

Legal Frameworks for Worker Classification in Nigeria and Kenya

The rapid growth of the gig economy in Nigeria and Kenya has exposed significant gaps in legal frameworks governing worker classification, particularly the distinction between employees and independent contractors. In Nigeria, the Labour Act provides the primary statutory framework for employment relationships, but its provisions are ill-suited to the dynamic, platform-mediated nature of gig work. In Kenya, the Employment Act of 2007 offers a clearer distinction between contracts of service (employees) and contracts for service (independent contractors), but its application to gig workers remains inconsistent. Both countries rely heavily on judicial tests to determine workers' status, adapting traditional criteria such as control, integration, and economic reality to the complexities of digital platforms.

Nigeria: The Labour Act And Judicial Tests: Section 91 of the Labour Act defines a worker as "any person who has entered into or works under a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, express or implied, oral or in writing." This broad definition encompasses employees under a contract of service but does not explicitly address independent contractors or gig workers. The Act mandates protections for employees, including minimum wage, paid leave, and termination procedures, but these apply only to those classified as employees, leaving independent contractors outside its scope.[32]

The courts have developed several tests to distinguish employees from independent contractors, drawing on common law principles and adapting them to local contexts. These tests include:

- ***Control Test*:** This test assesses the degree of control the employer exercises over the worker's tasks, hours, and methods. An employee is typically subject to direct supervision, while an independent contractor retains autonomy over how work is performed[33]. In the gig economy, platforms exercise control through algorithms, complicating the application of this test. For instance, Uber's ability to deactivate drivers for low ratings or non-compliance with platform policies suggests a level of control akin to an employer[34].
- ***Integration Test*:** This test evaluates whether the worker's role is integral to the employer's business operations. Employees are typically embedded in the organisation's structure, while independent contractors provide services peripheral to core operations[35]. In gig work, drivers and delivery workers are central to platforms like Bolt and Glovo, supporting arguments for employee status.
- ***Economic Reality Test*:** This test examines whether the worker is economically dependent on the employer or operates as an independent business entity. A worker who relies on a single platform for their primary income may be deemed an employee[36]. In Nigeria, many gig workers depend on platforms like Uber for

[32]*Shonekan v Smith* [1964] 1 All NLR 168.
[33]Nwankwo and Muobuikwu (n 4).
[34]*Stevenson, Jordan & Harrison Ltd v Macdonald & Evans* [1952] 1 TLR 101.
[35]*Ready Mixed Concrete v Minister of Pensions* [1968] 2 QB 497.
[36]National Bureau of Statistics (Nigeria) (n 28).

their livelihood, a dependency reinforced by the constrained state of formal employment[37].

- ***Mutuality of Obligation Test*:** This test determines whether the employer is obligated to provide work and the worker is obligated to accept it. Employees typically have ongoing obligations, while independent contractors have no such expectation[38]. Gig platforms often claim no obligation to provide consistent work, yet drivers have reported pressure to accept rides to maintain ratings and avoid deactivation.[39]

These tests, developed in traditional employment contexts, struggle to accommodate the hybrid nature of gig work, where workers enjoy some autonomy but face significant platform control. The absence of legislative guidance in the Labour Act worsens the struggle, leaving the courts to interpret outdated statutes in novel contexts.

Challenges in Applying the Labour Act to Gig Work: The Labour Act's limitations are evident in its failure to address algorithmic management, which is a defining feature of gig work. Platforms use algorithms to set fares, assign tasks, and monitor performance, creating a form of digital control that differs from traditional supervision.[40] The National Industrial Court is yet to develop settled jurisprudence on whether algorithmic control constitutes employer control, as illustrated by the ongoing case of *Oladapo Olatunji & Anor v Uber Technologies System Nigeria Limited*. In that case, the plaintiffs, representing a group of Uber drivers in Lagos, filed suit in 2022, alleging that Uber's algorithmic management constitutes employer control. They cited features such as fixed fares set by Uber, mandatory acceptance of ride requests to maintain ratings, and the risk of deactivation for low-performance scores. The drivers sought employee status to access benefits under the Labour Act, including minimum wage, paid leave, and pension contributions. Uber countered that its drivers are independent contractors with autonomy over their schedules, vehicle ownership, and work methods, consistent with the platform's global business model.

As of May 2025, the case remained pending, with the court yet to deliver a final ruling. The outcome will likely set a precedent for gig worker classification in Nigeria, thereby influencing platforms like Bolt, Glovo, and Chowdeck. A ruling in favour of the plaintiffs could compel platforms to provide employee benefits, which would increase operational costs but also enhance worker protections. Conversely, a ruling upholding independent contractor status would preserve platforms' flexibility but leave workers vulnerable to instability and uncertainty.

Additionally, the Act's focus on formal employment overlooks Nigeria's large informal sector, where 87.3% of workers are self-employed.[41]

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[37] *O'Kelly v Trusthouse Forte plc* [1983] ICR 728.
[38] VeriAfrica (n 8).
[39] Woodcock and Graham (n 26).
[40] VeriAfrica (n 8).
[41] Njaga Advocates (n 5).

Kenya: The Employment Act and Emerging Jurisprudence: Kenya's Employment Act of 2007 provides a clearer framework for distinguishing employees from independent contractors. Section 2 of the Act defines an employee as a person employed for wages or a salary under a contract of service. A contract of service implies an ongoing relationship with employer control, while a contract for service, associated with independent contractors, involves delivering specific outcomes with greater autonomy. Employees are entitled to protections such as minimum wage, paid leave, maternity leave, and termination safeguards, while independent contractors are excluded from these benefits.

The Employment Act does not explicitly address gig workers, which has created ambiguity for platform-mediated work. For example, ride-hailing drivers and delivery workers are typically classified as independent contractors under platform agreements, yet their working conditions, marked by platform oversight and economic dependency, closely resemble those of employees[42]. The Act's provisions on casual workers[43] offer some flexibility by allowing casual employees to transition to permanent status after continuous service, but this provision is rarely applied to gig workers because of their fragmented work patterns.

Judicial Tests for Worker Classification: Kenyan courts, like their Nigerian counterparts, rely on common law tests to determine worker status, emphasising the substance of the working relationship over contractual labels. Key tests include:

- ***Control Test*****:** The courts assess the degree of employer control, including instructions on tasks, hours, and performance standards. In *John Muturi Wanjohi v. Equity Bank Limited*[44], the court emphasised control as a primary indicator of employment status. In gig work, platforms' use of algorithms to dictate fares, routes, and ratings complicates this test, as seen in cases involving Uber and Bolt.
- ***Integration Test*****:** Here, the courts examine whether the worker's role is integral to the business. In *Kenya Hotels and Allied Workers Union v. Fairmont Mount Kenya Safari Club*[45], the court classified workers integral to hotel operations as employees. For gig platforms, drivers and delivery workers are central to operations, supporting arguments for employee status.
- ***Economic Reality Test*****:** This test evaluates whether the worker is economically dependent on the employer. In *Samuel G. Momanyi v. Attorney General & Another*[46], the court considered economic dependency as a key factor. Many Kenyan gig workers rely on platforms for their primary income, particularly in urban centres like Nairobi, where gig work is a significant source of employment.
- ***Mutuality of Obligation Test*****:** The courts assess whether there is an ongoing obligation to provide and accept work. In gig work, platforms argue that workers can choose when to work, negating mutuality. However, deactivation policies

[42]Labour Act (n 3) s 37(1).
[43]*John Muturi Wanjohi v Equity Bank Ltd* [2016] eKLR.
[44]*Kenya Hotels and Allied Workers Union v Fairmont Mount Kenya Safari Club* [2014] eKLR.
[45]*Samuel G Momanyi v Attorney General & Another* [2012] eKLR.
[46]Njaga Advocates (n 5).

and performance incentives create implicit obligations, as seen in disputes involving Glovo.[47]

The *Meta Platforms, Inc. v Motaung & Others* case illustrates the application of these tests. The plaintiffs, content moderators based in Nairobi, were engaged by Sama to review content for Meta's platforms, including Facebook. They alleged unfair labour practices, including low pay, lack of mental health support, and unfair termination, and sought classification as Meta employees rather than independent contractors or third-party workers. The plaintiffs argued that Meta exerted significant control through algorithmic performance metrics, content moderation guidelines, and quality standards enforced by Sama. Meta and Sama countered that the moderators were independent contractors under Sama's management, with no direct employment relationship with Meta. The Employment and Labour Relations Court initially classified them as employees. However, in 2024, the Court of Appeal reversed that ruling, holding that the lower court had prematurely attributed employer status to Meta without fully examining Sama's role as an independent contractor. The case was remanded for further proceedings, leaving the final classification unresolved.

The ongoing *Meta Platforms* case underscores the challenges of determining employer status in gig work involving third-party intermediaries. A final ruling classifying moderators as employees could set a precedent for holding platform operators accountable for labour practices, even when outsourced. Conversely, upholding independent contractor status would limit workers' access to benefits but preserve platforms' operational flexibility.

Another relevant case is *Uber Kenya Ltd v. Benson Ngari & Others,*[48] where Uber drivers sought reclassification as employees. The Employment and Labour Relations Court applied the control and integration tests, taking note of Uber's algorithmic oversight and the drivers' centrality to its business. While the court leaned toward employee status, the case was settled out of court, limiting its precedential value but highlighting the judiciary's growing focus on digital control mechanisms.

Challenges in Applying the Employment Act to Gig Work: The Employment Act's binary classification of employees and independent contractors struggles to accommodate gig work's hybrid nature. Algorithmic management complicates the control test, as platforms exert oversight without direct supervision. Additionally, the Act's provisions on casual workers are poorly suited to gig work, where tasks are fragmented and irregular. Kenya's judicial system, while more developed than Nigeria's in addressing gig economy disputes, faces challenges in achieving consistency, as seen in the conflicting rulings in *Meta Platforms, Inc. v Motaung & Others*.

The socio-economic context further complicates application. Kenya's informal sector employs over 80% of the workforce, and gig platforms offer a formalised alternative but replicate informal labour's precarity[49]. The lack of an intermediate "worker" category, as exists in the UK, limits Kenya's ability to provide tailored protections for gig workers without disrupting platform business models.

Comparative Analysis of Nigeria and Kenya

Nigeria and Kenya share similarities in their legal regimes, including reliance on outdated statutes and common law tests, but differ in their approaches to gig work. Nigeria's Labour Act is broader and less specific than Kenya's Employment Act, leading to greater judicial discretion in at least three respects: in determining whether algorithmic supervision satisfies the control test, since

[47] *Uber Kenya Ltd v Benson Ngari & Others* [2023] ELRC (Kenya).

[48] Njaga Advocates (n 5).

[49] National Bureau of Statistics (Nigeria) (n 28).

the Act does not contemplate automated oversight; in assessing the threshold of economic dependency at which a gig worker becomes an employee, an issue left entirely to case-by-case judicial weighing in the absence of a statutory benchmark; and in deciding whether deactivation and related platform sanctions amount to termination requiring due process, a question the Act simply does not address. Kenya's Employment Act provides clearer definitions but likewise lacks provisions for gig workers, resulting in a similar, if narrower, reliance on judicial interpretation. Both countries face challenges in addressing algorithmic control, which global precedents like *Uber BV v Aslam* have recognised as a form of employer oversight.

Nigeria's larger informal sector[50] (87.3% self-employment) compared to Kenya's (over 80%)[51] strengthens the case for classification, as gig work represents a significant formalisation opportunity. However, both countries lack the intermediate categories or hybrid models seen in jurisdictions like the UK and Australia, limiting their ability to balance flexibility and protection. Furthermore, infrastructure challenges, such as unreliable electricity and internet access, complicate the application of legal frameworks, as they affect gig workers' ability to perform tasks consistently.[52]

Influence of Global Precedents

Global precedents, particularly from the UK, US, and Australia, can influence Nigeria and Kenya's approaches to worker classification. The UK's *Uber BV v Aslam* ruling, which recognised algorithmic control as equivalent to employer control, provides a framework for addressing platform oversight in both countries. California's Proposition 22, with its hybrid model, offers a potential solution for providing benefits without re-classifying gig workers as employees. Australia's recent reforms, which allow minimum standards for "employee-like" workers, suggest a flexible approach that could be adapted to African contexts. However, these precedents must be tailored to Nigeria and Kenya's socio-economic realities, including high informality and infrastructure limitations.

Implications for Gig Workers and Platforms

The judicial approaches in Nigeria and Kenya have significant implications:

- ***For Workers*:** Rulings classifying gig workers as employees could grant access to benefits like minimum wage, paid leave, and pensions, reducing precarity. However, unresolved cases and inconsistent rulings leave workers in limbo, particularly in Nigeria, where judicial delays are common.
- ***For Platforms*:** Employee classification would increase operational costs, potentially leading to higher fares or reduced platform presence in Nigeria and Kenya. Upholding independent contractor status preserves flexibility but risks perpetuating exploitation, as workers lack bargaining power[53].
- ***For Legal Systems*:** These cases highlight the need for legislative reform to address gig work explicitly, thereby reducing reliance on judicial discretion and fostering consistency.

Socio-Economic Implications of Worker Classification in Nigeria and Kenya

[50]Kenya National Bureau of Statistics (n 28).
[51]World Bank (n 2).
[52]Woodcock and Graham (n 26).
[53]International Labour Organization, *Social Protection in Sub-Saharan Africa: Challenges and Opportunities* (ILO 2022).

The classification of gig workers as employees or independent contractors in Nigeria and Kenya has far-reaching socio-economic implications, shaping workers' access to benefits, job security, income stability, and overall well-being.

Access to benefits and social protection*: I*n Nigeria and Kenya, workers classified as employees are entitled to benefits such as minimum wage, paid leave, health insurance, and pension contributions. Independent contractors, however, are excluded from these protections, and must rely on personal resources or informal safety nets for financial security. This exclusion has significant consequences, particularly in economies with limited social safety nets.

In Nigeria, the absence of health insurance for gig workers is particularly acute, given the country's underfunded healthcare system. A 2022 study by the International Labour Organization[54] found that only 17% of Nigerian workers have access to formal health insurance, leaving gig workers vulnerable to medical expenses that can push them into poverty. Similarly, in Kenya, where the Social Health Insurance Fund provides limited coverage, gig workers classified as independent contractors often cannot afford contributions, worsening health inequities.[55]

Pension contributions are another critical gap. Nigeria's Pension Reform Act (2014) mandates employers' contributions for employees, but independent contractors must self-fund pensions, a challenge for gig workers with irregular incomes[56]. In Kenya, the National Social Security Fund (NSSF) offers voluntary contributions for self-employed workers, but low uptake among gig workers reflects financial constraints and limited awareness[57]. The exclusion from paid leave further compounds instability, as gig workers cannot afford to take time off for illness or family responsibilities without losing income.

Economic Instability and Income Volatility*:* Gig work is characterised by income volatility because earnings depend on task availability, platform algorithms, and market demand. A 2023 study by the World Bank found that gig workers in Sub-Saharan Africa, including Nigeria and Kenya, experience income fluctuations of up to 30% month-to-month, compared to 10–15% for traditional employees[58]. The current classification of gig workers as independent contractors worsens this volatility, since workers lack guaranteed minimum wages or income stability. In 2024, for example, Uber drivers in Lagos reported earnings below Nigeria's then-minimum wage of ₦30,000 per month during low-demand periods, despite working long hours.[59]

The present-day picture is only marginally better. Nigeria's national minimum wage rose to ₦70,000 per month in 2024 following industrial action, but gig income has not kept pace with the cost of maintaining a vehicle. Reporting from 2026 indicates that ride-hailing platforms in Lagos retain a commission of between 25% and 30% of each fare, and that a driver grossing ₦60,000 in a day is typically left with about ₦42,000 to ₦45,000 after the platform's cut, before fuel, which itself can run to ₦20,000 to ₦25,000 a day amid the sharp fuel price increases recorded in early 2026[60].

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[54]Njaga Advocates (n 5).

[55]VeriAfrica (n 8).

[56]International Labour Organization (n 53).

[57]World Bank (n 2).

[58]National Bureau of Statistics (Nigeria) (n 28); see also 'How Much Do Uber Drivers Make in Lagos 2026: Daily Earnings' *WithinNigeria* (3 July 2026) <www.withinnigeria.com> accessed 29 August 2026.

[59]'How to Make Money with Glovo in Kenya: 2026 Complete Guide' *Wealthy Kenyans* (2026) <www.wealthykenyans.co.ke> accessed 29 August 2026.

[60]Trade Unions Act 2004, s 3.

Net earnings, once fuel, maintenance, and platform commissions are deducted, therefore continue to hover close to, and at times below, the statutory minimum wage, and Lagos drivers staged a strike in March 2026 over the combined effect of rising commissions and fuel costs.

In Kenya, delivery workers for platforms like Glovo face comparable challenges, as their earnings are tied to the number of deliveries completed and are subject to platform fees and fuel costs.[61] As of 2026, the typical Glovo rider earns in the region of KSh 25,000 to KSh 40,000 per month, a figure that sits well below the earnings reported by a small cohort of top-performing ride-hailing drivers on platforms like Bolt, some of whom earn upward of KSh 213,000 to KSh 400,000 per month. This disparity illustrates that, notwithstanding the gig economy's growth into an industry valued at over KSh 129 billion and employing more than 1.5 million Kenyans, the median gig worker's present income remains modest, volatile, and heavily dependent on platform algorithms, hours worked, and vehicle type, rather than on any guaranteed wage floor. The lack of employee status means workers bear the full cost of expenses like vehicle maintenance, fuel, and internet data, which reduces net income. This economic instability contributes to financial stress, limiting workers' ability to save, invest, or plan for the future.

Lack of collective bargaining*:* ndependent contractors typically lack the right to collective bargaining, which limits their ability to negotiate better pay or conditions. In Nigeria, trade unions are restricted to employees under the Trade Unions Act 2004, effectively excluding gig workers[62]. In Kenya, the Employment Act allows collective bargaining for employees, but gig workers' independent contractor status prevents unionization.[63] This lack of bargaining power perpetuates low earnings and poor working conditions, as platforms unilaterally set terms. A 2023 survey by the ILO found that 70% of gig workers in Kenya were unable to negotiate platform fees or policies.[64] Employee classification could enable unionisation, as seen in the UK, where the GMB union represents Uber drivers following *Aslam*.

Vulnerability to Deactivation

As independent contractors, gig workers suffer significant job insecurity, particularly through platform deactivation policies. Platforms like Uber and Bolt can deactivate workers for low ratings, non-compliance with policies, or algorithmically detected issues, often without notice or appeal[65]. In Nigeria, drivers in *Oladapo Olatunji & Anor v Uber Technologies System Nigeria Limited* cited deactivation as a key grievance, arguing that it reflects employer-like control rather than contractor autonomy.[66] In Kenya, content moderators in *Meta Platforms, Inc. v. Motaung & Others* reported terminations without clear justification, highlighting the volatility of gig work.[67]

Attaining employee status would provide protection against unfair dismissal by requiring platforms to follow due process under Nigeria's Labour Act[68] or Kenya's Employment Act.[69] However, platforms have argued that deactivation is a contractual prerogative essential for

[61]Employment Act 2007 (Kenya), s 24.
[62]International Labour Organization (n 53).
[63]Woodcock and Graham (n 26).
[64]Oladapo Olatunji & Anor v Uber Technologies System Nigeria Ltd (n 6).
[65]Meta Platforms Inc v Motaung & Others (n 7).
[66]Labour Act (n 3) s 11.
[67]Employment Act 2007 (Kenya), s 45.
[68]World Bank (n 2).
[69]International Labour Organization (n 53).

maintaining service quality. This tension underscores the need for balanced policies that protect workers without stifling platform operations.

Unreliable Electricity and Internet Access: Infrastructure limitations in Nigeria and Kenya significantly impact gig workers' productivity and earnings. In Nigeria, frequent power outages and unreliable internet access disrupt online work, particularly for freelancers on platforms like Fiverr.[70] A 2022 study estimated that Nigerian gig workers lose 10–15 hours per week due to infrastructure issues, reducing income by up to 20%[71]. In Kenya, while internet penetration is higher (42% in 2023), rural gig workers face connectivity challenges that limit access to platform opportunities[72]. Independent contractor status places the burden of infrastructure costs, such as purchasing generators or mobile data, on workers, further depleting their earnings. Employee classification could shift some of these costs to platforms, such as through data stipends, as seen in California's Proposition 22 model.[73]

Economic Context and Informal Labour*:* The gig economy operates within Nigeria and Kenya's large informal economies, where self-employment dominates the economic landscape. Gig work offers a formalised alternative but replicates informal labour's instability owing to independent contractor status. Workers face irregular payments, platform fees, and high operational costs, with no safety net to cushion economic shocks. For example, fuel price hikes in Nigeria reduced drivers' net earnings by an estimated 15–20% in 2023,[74] a pattern that recurred, and intensified, during the fuel price surges of early 2026. Employee status could provide stability through minimum wage guarantees and expense reimbursements.

Platform Accountability: The socio-economic implications of classification extend to platform accountability. Judicial decisions in *Oladapo Olatunji* and *Meta Platforms* highlight the resistance by platforms to embrace employee classification, prioritising cost savings over worker welfare. Judicial rulings in favour of workers could compel platforms to adopt fairer practices, thereby enhancing corporate social responsibility in African markets.

Policy Recommendations

The gig economy in Nigeria and Kenya has transformed their respective labour markets by offering opportunities for economic inclusion while exposing significant gaps in worker protections due to the predominant classification of gig workers as independent contractors. Drawing on the analyses in preceding sections and global precedents like the UK's *Uber BV v. Aslam* and California's Proposition 22, the following recommendations are proposed to address these challenges.

Amend Current Regulatory Frameworks:

- **Definition of Gig Workers:** Introduce a statutory definition of gig workers as individuals engaged in platform-mediated, task-based work, distinguishing them from traditional employees and independent contractors.
- **Minimum Standards:** Mandate minimum standards for gig workers, including a base pay rate, maximum working hours, and protections against arbitrary

[70]Njaga Advocates (n 5).
[71]Ballotpedia (n 11).
[72]VeriAfrica (n 8).
[73]International Labour Organization (n 53).
[74]T Scholz, *Uber-Worked and Underpaid: How Workers Are Disrupting the Digital Economy* (Polity 2017).

deactivation, drawing on Australia's Fair Work Legislation Amendment (Closing Loopholes) Act 2023.

- **Algorithmic Transparency:** Require platforms to disclose algorithmic processes for task allocation, pricing, and performance evaluation, ensuring fairness and accountability.

Portable Benefit Systems

Portable benefit systems allow gig workers to accrue benefits across multiple platforms, effectively addressing the fragmented nature of gig work. Such systems are particularly relevant in Nigeria and Kenya, where workers often engage with multiple platforms (e.g., Uber and Bolt) to maximise earnings. Portable benefits ensure continuity of protections like health insurance, pensions, and paid leave, regardless of platform affiliation. The proposed system includes:

- **Centralised Benefit Fund:** Establish a government-administered fund, financed by platform contributions proportional to worker earnings (e.g., 5% of gross revenue per worker). Workers could access benefits like health insurance and pensions through this fund, similar to models proposed in the US.
- **Digital Platform Integration:** Use digital platforms to track worker contributions across platforms, leveraging existing mobile payment systems like M-Pesa in Kenya or OPay in Nigeria for seamless administration.
- **Voluntary Contributions:** Allow workers to make voluntary contributions to enhance benefits, encouraging long-term financial planning.

Judicial Guidance

Guidelines proposed include:

- **Algorithmic Control:** Recognise algorithmic management (e.g., fare-setting, task allocation, deactivation policies) as equivalent to employer control, drawing on the judicial decision in *Uber BV v. Aslam*.
- **Economic Dependency Threshold:** Establish a threshold for economic dependency (e.g., 70% of income from a single platform) to classify workers as employees or employee-like, but not as independent contractors.
- **Judicial Training:** Provide training for judges on gig economy dynamics, including algorithmic management and platform business models, to ensure informed rulings.

Conclusion

The gig economy is undoubtedly a transformative financial medium in Nigeria and Kenya, offering millions of workers opportunities for income generation in labour markets marked by high unemployment and informality. However, the classification of gig workers as employees or independent contractors remains a central challenge, with profound implications for labour rights, social protections, and economic equity. Judicial approaches in Nigeria and Kenya, exemplified by the *Oladapo Olatunji* and *Meta Platforms* cases, highlight the challenges of applying traditional tests to gig work.

The socio-economic implications of worker classification are profound. The gig economy in Nigeria and Kenya holds immense potential for economic inclusion, particularly for youth, women, and rural workers, but its benefits are undermined by the current classification of workers as independent contractors. By implementing the proposed policies, Nigeria and Kenya can foster equitable gig economies that balance worker protections with the flexibility that attracts both workers and platforms.