

Webinar 1: Intro to the Informal Economy



This webinar was held on March 31, 2021 and introduced the informal economy and the vast array of workers that are part of the informal economy.

Pamhidzai Bamu analyzed the different employment statuses and occupational groupings that form part of the 'informal economy.'

Marlese von Broembsen discussed ILO Recommendation 204 concerning the Transition from the Informal to the Formal Economy.

Jacqueline Wamai discussed how lawyers, informal economy worker organizations, and unions have used creative legal strategies and advocacy to challenge existing legal frameworks that exclude informal workers from such rights and protections.

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ILAW

Strategic litigation in the informal economy.

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Content

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Strategic litigation and the informal economy

Why litigate – Role of strategic litigation in advancing and protecting rights

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Introduction

Over the years, lawyers, activists, workers' organizations and associations representing the informal economy workers have developed various legal strategies aimed at fulfilling workers and human rights promise in contexts marked by exclusion from these rights.

These legal strategies have led to the acquisition of rights, restoration of dignity at work and the extension of laws to the informal economy workers.

One such legal strategy used is strategic litigation

In a world of increasing informality which means more and more workers find themselves outside the coverage of formal laws, courts are among the few spaces that inclusion can be achieved, and abuse of rights protected.

Meaning of strategic litigation



“ legal action in a court that is consciously aimed at achieving rights-related changes in law, policy, practice, and/or public awareness above and beyond relief for the named plaintiff(s).”



Sometimes strategic litigation is referred to as public interest litigation, impact litigation, or public policy litigation .

Meaning of strategic litigation...



Strategic Litigation is usually a process rather than a single legal action. It involves series of phased actions, case development, hearings , ruling to post judgement implementations.



It becomes effective when it is used with other tools such as advocacy, organizing etc .



It has been used to bring social change



It can build optimism ; mobilize workers bring publicity to the issue and build self confidence to the workers .

Downside of litigation



Strategic litigation can be frustrating , time-consuming , risky, ineffective or even at times generate a backlash.



Sometimes it has been regarded as an elitists enterprises that privileges the lawyer than the worker.

Legal barriers for informal economy workers

Lack of, or inappropriate, legal frameworks;

Lack of social protection;

Lack of labour rights (that regulate minimum wages,
and rights to representation and collective bargaining);

Lack of property rights;

Lack of commercial/business rights; and

Lack of access to institutions.



Why litigate

1. Legal recognition

Recognizing Working Relationship of Domestic Workers

Decision No. 529 of 20 June 2002 , “defined the boundaries of domestic work as an employment relationship subjected to certain requirements. In that case, over the protests of the employer, the person who worked for 4 hours per day, for 6 days a week, on a regular basis, as a gardener, was not considered to be an entrepreneur or an artisan, but an employee who normally would be considered to work part time under the law. However, as the employer had failed to respect the formalities required by that decree for parttime work – namely, issuing the contract in writing– the verbal contract was deemed by the Labour Court to have turned into a contract of indefinite duration. Both the Court of Appeal and the Supreme Court confirmed the Labour Court’s decision.

Some of the decided cases suggest that the courts play an important role *in enabling parties to recognize that the domestic work relationship is indeed an employment relationship*

2

Eliminate violence and harassment

Sexual harassment

In the case of *Nml v Peter Petrausch* (2015) Eklr Cause No 441 relied on both national and International law and jurisprudence. This included ILO Convention 111 on Discrimination in respect of employment and Occupation of 1958, and UN Declaration on the Elimination of Violence against women (CEDAW). The court further relied on ILO Committee of experts (CEACR) in their 1988 General survey where they listed examples of Sexual harassment. On the same note the court relied on the case of India Supreme Court case of *Vishaka & Others v. the State of Rajasthan & Others* [JJ,1997] [7] [SC 384] which was one of the influential jurisprudence to the ILO Committee of experts on describing sexual harassment. Once again, *the court recalled that Convention 189 called states to respect the human rights of domestic workers and further held that domestic workers should not go on to be 'undervalued, devalued or remain invisible'*.

It held that the right to not be subjected to any form of violence either by public or private persons (Article 29) is an absolute right and not subject to any restrictions under the constitution of Kenya (Article 25). The court further held that the claimant status as a domestic worker made her vulnerable because of her race, social status and gender.

3.

Access to public spaces

Unlawful evictions by the Government in Zimbabwe

ZCIEA in 2010 obtained a high court ruling which allows informal workers and traders to work freely

without disturbances at Jambanja market and prohibited the municipality and their agents from

interfering in any manner with their lawful business operations.

Informal traders who operate at Jambanja market were living in distress of being harassed by police

and council confiscating their goods, destroying their stalls and some being arrested. The police and

council went on to give the informal traders at Jambanja a 30 minutes ultimatum to vacate from the

market else they were going to face demolition.



4.

Enforcement of rights.

Right to Freedom of Association

A newly formed union of informal workers, the Zambia Bus and Taxis Workers Union (ZBTWU), applied for registration as a union.

Government denied this on the grounds that there was no association in the industry serving as an employer for the purpose of collective bargaining. The union asked the Zambia Congress of Trade Unions (ZCTU) to intervene.

The General Secretary appealed to the Minister of Labour and Social Security to reconsider his decision. Again this was refused.

The union now faced the danger of outright repression or a slow death because it did not have the status or protection that registration would bring.

The union, with the backing of the ZCTU, challenged the Minister in court. After several months, the union won the case and is now a registered union of informal bus and taxi drivers, and is affiliated to the ZCTU

The Right to the City: The Ajay Maken Case

In *Ajay Maken v. Union of India*¹³, the inhabitants of Shakur Basti, an informal settlement near the railway tracks in New Delhi, legally challenged the government for demolishing their homes.

It held that inhabitants of informal settlements have the right to housing and should be protected from forced and unannounced eviction.

In the *Ajay Maken* case, the Railways had failed to follow due process when it evicted the approximately 5,000 people living in 1,200 settlements in Shakur Basti. This was in clear violation of the earlier *Sudama Singh*²¹ judgment of the Delhi High Court, which requires the state to give prior notice and comply with fair procedure before undertaking any evictions.

the Court ruled that conducting a detailed survey, preparing a rehabilitation plan in consultation with informal settlement inhabitants, and starting processes for immediate rehabilitation should be ensured before any eviction by a state authority



Ajay Maken deals with housing rights in informal settlements, and these are innately linked with the right to carry out informal work. Interestingly, this connection is made in Ajay Maken, by acknowledging that the informal workers residing in such settlements “contribute to the social and economic life of a city.”

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It observed that the settlement inhabitants include “sanitation workers, garbage collectors, domestic help, rickshaw pullers, labourers and a wide range of service providers indispensable to a healthy urban life”. It further observed that many of these workers “travel long distances to reach the city to provide services, and many continue to live in deplorable conditions, suffering indignities just to make sure that the rest of the population is able to live a comfortable life”. Therefore, their housing needs should be prioritized.

Mahlangu and
Another v Minister
of Labour and Others
(CCT306/19) [2020]
ZACC 24 (19
November 2020)

This case successfully challenged the constitutionality of some section of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (“COIDA”) in south Africa , which expressly excluded domestic workers from the definition of an “employee”.

The case is a good example of how different strategies can bring about successful impact litigation. For instance, Prior research by WIEGO , Successful organizing and mobilizing by South African Domestic Service and Allied Workers Union (“SADSAWU”) etc

The case will be discussed in detail in the coming webinar series’

Justice Pius Langa, former Chief Justice of South Africa, wrote a few years ago that “widespread transformation of economic and social conditions is beyond the powers of the courts alone. Only when our judicial commitment is coupled with legislative reform and appropriate executive action can the vast disparities that continue to exist

Role of trade unions

- ❖ Trade unions working together with other Civil societies organizations – example SOCIAL ECONOMIC RIGHTS INSTITUTE worked with trade (SADSAWU) in the COIDA case
- ❖ Organizing – Trade unions are now organizing the informal economy workers this is either by affiliating them to the unions through associations or even registering trade unions for the informal economy workers.
- ❖ Advocacy – Informal Economy workers issues are now being publicized more.
- ❖ Training and awareness raising
- ❖ Solidarity actions

Conclusions

- ❖ Organizing is one of the tools to ensure effective representation of informal economy voices
- ❖ There is a need of Vast awareness raising on rights to the Informal economy workers.
- ❖ Probability of a litigation being impactful is higher when strategic litigators, potential plaintiffs and social activists act in ways that are mutually legitimizing and reinforcing
- ❖ A strength of a judgement can be measured from the declaration of rights, remedies and monitoring . Strong rights are gained by having moderate remedies and strong monitoring.
- ❖ After any litigation then the question that lingers is “was it worth the effort?”
- ❖ Identifying unjust laws that place informal economy workers in a position of disadvantage gives rise to a pressing duty to change the laws and give them the legal rights that they deserve.