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# THE INDIVIDUAL EMPLOYMENT CONTRACTS IN CONFLICT OF LAWS UNDER INTERNATIONAL AND DOMESTIC LABOUR RELATION LAWS IN MAINLAND TANZANIA

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## Abstract:
*"Job mobility has become an enormous issue in the current modern world. All over the world, people sometimes move from one place to another in search of green pastures and life. Persons are sometimes forced by circumstances, as earlier stated, to move and work in countries far from places of their original nationalities. It is on such a note that, persons are compelled to abide by employment contracts that are governed by laws, not of their countries of origin. In the course of working, inevitably, employment disputes become unavoidable, and in this situation, where there is an issue to be dealt with by the courts of law in this area, a complex issue of which law should apply in determining the issue in question arises and becomes a task of the court to make a determination of the same. This article generally discusses individual employment contracts in conflict of laws perspectives under international and domestic labour relation laws, with a special focus on the Rome Conventions, its Regulations, and labour laws applicable in Mainland Tanzania. The article also addresses circumstances under which the Rome Convention, its existing Regulations as well as domestic labour relation laws pave the way in addressing the issue of individual employment contracts in the field of conflicts of laws in Mainland Tanzania. Specifically, this work addresses the concept of employee and employer view of the international and domestic labour relation laws as used also in conflict of laws. This is touched on in this research article because it is one of the complicated areas when it comes to the determination of employment contract disputes containing a foreign element, which has indeed caused a great debate in conflict of laws."*

## Keywords:
Employment, Contract, Conflict of Laws

## 1. Introduction
The issue of individual employment contracts in conflict of laws has been well covered under various international instruments governing the matter in question. This has also been covered under various specific local jurisdictions the world over. For the purpose of this research article, the main focus is on the Rome Convention and its Regulations as well as covering labour relations legislation that is operational in Mainland Tanzania. Tanzania is a party to the Rome Convention and its existing Regulations. Among the rules under discussion are the Brussels I Recast and Rome I concerning employment (Article 20(1) Brussels I Recast. Also Article 18(1) of Brussels I and the Lugano Convention, 2007; Articles.5(1) and 17(5) of the Brussels and Lugano Conventions, 1988). These rules apply in matters relating to individual contracts of employment, which are, "individual employment contracts" (Article 8(1) Rome I; Article 6 Rome Convention, 1980).

Those rules cover unfortunately neither collective labour agreements nor „contracts for the provision of services (Article 7(1)(b) Brussels I Recast; Art. 4(1)(b) Rome I). It is, however, not clear as to which contracts for the performance of work fall within the scope of those above-mentioned rules. Indeed, it is believed that most workers‟ work is under standard employment contracts. This is to say that, permanent full-time contracts with a single employer normally bear the chance of profit and risk of loss in employment contracts. These workers, on some occasions, have the right to control the workers who are integrated into the organization (Burchell, B., Deakin, S., and Honey, S., 1999; Perulli, A., 2003). In the current world, a large and increasing number of work relations lack one or more features of the typical employment contract in conflict with laws. It is contended that the vertical disintegration of production has led to the distancing of workers from the producing enterprise (Collins, H., 1990). This is indeed manifested and contributed by the rising number of fixed-term, part-time, casual, home, volunteer, and other types of „atypical‟ work

arrangements. This has also been influenced by the growth of both nominal and genuine entrepreneurships. It is believed that some countries have responded to this challenge by widening the concept of employees to encompass some categories of atypical workers. In other places, employees created intermediate legal categories of workers who are not employees. Nevertheless, this also falls to a certain extent within the scope of protective legislation in conflict of laws. Moreover, it is also argued that countries differ with regard to the way they ascribe employer responsibilities among multiple employing entities in the employment contract in conflict of laws. European private international law, for instance, is faced with essentially the same question in the employment contract sectors. This is because; the issue of the employment contract has never been uniform, particularly in the area of conflict of laws the world over.

**1.1. Conceptualizing Employment Contracts in Conflict of Laws**

Conceptualizing the term "employment contract" from a conflict of laws perspective has never been an easy task. An employment contract is simply conceptualized as a signed agreement between an individual employee and an employer or a labour association. It is under employment agreement where the rights and duties of contracting parties are thereby established and created. It is on this premises that, the employment rights and liabilities between the employee and the employer are created. Usually, the rights of either party to the employment agreement accrue the liabilities and benefits of each party to the employment engagements. It is indeed through employment contracts that contracting parties also understand clearly their respective contractual obligations and the terms of the employment engagements. Any employment contract includes many issues that, include but are not limited to, schedules of responsibilities, salary or wages, duration of employment, responsibilities, both general and specific ones, confidentiality, communications, future competitions as well as benefits of the contracting parties. Employment contracts are of various kinds. Normally, employment contracts include both written as well as implied employment contracts.

Generally, the term individual "employment contracts" that is used in the Brussels I Recast and Rome I should be always equated with the notion of the typical employment contract (Ibid). Considering its genealogical history, the term "individual employment contract" has different implications. The first one is, it is either an autonomous or domestic interpretation. The second one is, a policy of narrowly interpreting the scope of the special conflict of laws rules relating to employment which exclude non-standard work relations from their ambit (Ibid).

Historically, the original 1968 version of the Brussels Convention did not indicate clearly or contain any special jurisdictional rules concerning employment at all. A preliminary draft issued, however, did contain such rules at all. According to the Jenard Report, those rules were to apply in matters relating to contracts of employment in the broadest sense of this word (Jenard, P., 1968); [1979] OJ C59/ 1). The special rules were not incorporated into the final version because at that time work was in progress to harmonize choice-of-law rules within the European Economic Community (EEC) only (Ibid). It was thought however that jurisdictional rules should follow choice-of-law rules and the adoption of the special jurisdictional rules concerning employment was entirely postponed in the beginning (*Ibid*, Jenard, P., 1968), [1979] OJ C59/ 1). Two drafts of which were later published in 1972 and 1976 by the European Commission (See European Commission, "Proposal for a Regulation (EEC) of the Council on the Provisions of Conflict of Laws on Employment Relationships within the Community", [1972] OJ C49/26; European Commission, "Amended Proposal or a Regulation of the Council on the Provisions of Conflict of Laws on Employment Relationships within the Community", COM (75) 653**).** The second instrument started off as the 1972 draft of the convention on the law applicable to contractual and non-contractual obligations (Nadelmann, K. H., 1973**).** The application of the choice-of-law rules for contract or tort would have depended on the legal basis of the claim which has been raised (Ibid). The 1972 draft Convention contained special rules for contractual employment claims that were to apply to „contracts relating to labour relations" or "labour contracts" (See Article 5).

This Convention contained no special rules for tortuous employment claims. After the project of unifying choice-of-law rules for tort had been abandoned, the choice-of-law rules for the contract of the 1972 draft Convention came to life in the form of the 1980 Rome Convention (Ibid). Article 6 of this Convention contains special rules concerning employment that apply to individual employment contracts.

The parties to the employment contract entered into a particular employment contract using the terms and conditions of the employment, and the terms and conditions of the contracts largely reflect a particular of the employment contracts that are engaged. On a similar point, in any employment contract, it should be also noted that there are pros and cons. The advantages of having employment contracts include clearly defining the rights and duties of each contracting party, protecting the contracting parties, and finally, ensuring stability in the workplace. The disadvantages

of employment contracts, on the other hand, include limitation of flexibility, legally binding issues, and changes of employment contracts that can only be carried out through negotiations. It has been problematic to define the term "employment" very clearly in conflict-of-law situations. The Giuliano-Lagarde Report (Giuliano, M., and P. Lagarde, P., [1980] OJC282/1), though, tries to define the same term in de facto employment circumstances. The Report indicates that even an employer who fails to offer formal contract employment is also regarded as an employment contract in the eyes of the law. Article 6 of the Convention, however, applies to individual employment contracts and not to collective agreements.

The said Report notes that the „wording of Article 6 speaks of "contract of employment" instead of "employment relationship". This concludes that it covers the case of void contracts and also de facto employment relationships in particular those characterized by failure to respect the contract imposed by law for the protection of employees (*Ibid* (Giuliano, M., and P. Lagarde, P., [1980] OJC282/1). This issue was clearly illustrated in the famous case of Roger Ivenel v. Helmut Schwab ([1982] ECR 1891; [1983] 1 CMLR 538). In a subsequent case of Hassan Shenavai v. Klaus Kreischer ([1987] ECR 239; [1987] 3 CMLR 782), the court addressed the scope of the Ivenel rule. In this case, Mr.Shenavai, a German architect, was commissioned by a Dutch client to draw up plans for the building of holiday homes as per their agreement. When a dispute arose, among the issues that were to be resolved by the court was whether the contract fell within the scope of the Ivenel rule. In an attempt to make a clear clarification on this matter, the court made the following observations as thus:

contracts of employment, like other contracts for work other than on a self-employed basis, differ from other contracts – even those for the provision of services – by virtue of certain particularities: they create a lasting bond which brings the worker to some extent within the organizational framework of the business of the undertaking or employer, and they are linked to the place where the activities are pursued, which determines the application of mandatory rules and collective agreements ([1989] OJ L285/1).

Since it is difficult to get a clear definition of employment in conflict of laws perspectives, other general definitions found in various literatures, therefore, suit the purpose of this publishing article. A clear interpretation of the term "individual employment contracts" is favoured by the overwhelming majority of academics and in domestic case law (Hill, J., and A. Chong, A., 2010; Jault-Seseke, F., 2008; A. Junker, A., 2007). It is further contended that a domestic interpretation is still preferred by a very influential minority and pursued by an occasional judge (Beaumont, P. R., and McEleavy, P. E., 2011; Clarkson, C. M. V., and Hill, J., 2011; Plender, R., and Wilderspin, M., 2009). The term employment contract has been conceptualized and discussed in a number of case laws, to mention a few in this paper, Mercury Publicity Ltd. v. Wolfgang Loerke GmbH ([1993] ILPr 142), WPP Holdings Italy SRL v. Benatti ([2006] EWHC 1641 (Comm); [2007] 1 All ER (Comm) 208 and [2007] EWCA Civ 263; [2007] 1 WLR 2316), Samengo-Turner v. J&H Marsh & McLennan (Services) Ltd ([2007] EWCA Civ 723; [2007] 2 All ER (Comm) 813), and Duarte v. Black & Decker Corp ([2007] EWHC 2720 (QB); [2008] 1 All ER (Comm) 401; BAG, 20 August 2003, IPRspr.2003 no. 140; AG Münster, 26 January 1999, IPRspr.2000 No. 111). In view of academic opinions and opinions from judges as consulted in various case laws, it is obvious that it is very difficult to get a concrete definition of the term employment contract in international Conventions stated above, and much focus should be put on domestic interpretations on employment contracts in conflict of laws.

## 2. An Employee and the Employer Concepts in Conflict of Laws

There is a great debate on who is the employee and the employer in the area of conflict of laws as well. Certainly, this has never been only the issue of debate in this field alone since even in other fields of law, especially in the labour relation area, the same question has been debated over the years by academicians and other eminent scholars. For purposes of a clear understanding of this existing debate in this research paper, the discussion focuses on examining various international and jurisdictional areas as well as a domestic arena in order to have deep and detailed updates on this area.

In the European law context, for instance, the question of who is the employee faces multiple and number of methods of interpretation. Such interpretation is viable through verbal, historical, systematic, teleological, and comparative interpretations in conflict of laws area (Mankowski, P., 2017). The main purpose is to have a compact and meaningful concept of the employee in the conflict of laws. As a matter of fact, the genesis of the term "individual employment contracts" was clearly stipulated in the said European laws (Section 3(1) of the European Law).

This has also helped much in finding an autonomous definition of the term "employee", and certainly in the first place, has also assisted in having a comparative analysis of the scope of the Member States" labour laws as well as getting the concept of the employee in substantive EU law context (Ibid). In terms of the Brussels I Recast and Rome I, the term employee is conceptualized as the person working under an "individual employment contract". The discussion on the concept of the employee in conflict of laws, for purposes of this paper, is useful since it is very clear and obvious that the Member States" labour laws differ considerably with regard to their scope. This divergence is true in all countries the world over, not only in the European context alone.

Indeed, for purposes of a clear understanding of this important term in labour relation laws, and in the context of conflict of laws, this part dwells into discussing briefly how the term employee is found in some jurisdictions. That, this research paper mainly focuses on England (Countouris, N., 2011), Mainland Tanzania, and Zanzibar. The focus is also put on the scope of the labour laws in these two jurisdictions with reference to who is the employee in their respective domestic laws that are also considered in conflict of laws. It is indeed a reality that in all Member States of the European Union (EU), the concept of employment contract always forms the paradigm of the kind of contract. This basically falls within the ambit of and receives protection in, labour laws of the respective jurisdictions. The concept of the contract of service, on the other hand, is regulated by their respective commercial or contract laws.

**2.1. The Employee in England Perspectives**

It is contended that the common law of employment applies to employment contracts in almost all contracts of service. In England, only employees who work under employment contracts and are found to have met the qualifying criteria are usually given all statutory employment rights under the contract of employment (See the Transfer of Undertakings (Protection of Employment) Regulations, SI 2006/246). Despite great developments that have been so far achieved, it is undeniable fact that there is no statutory definition of the concept of the employee in England's labour statutes. In that regard, the available statutes use this concept largely with reference to the common law definition (See section 230 ERA 1996). It is further stated that the basic principle of the common law is freedom of contract. In this, a person is able to employ another for an indefinite period of time only through a contractual agreement as agreed upon. It is indeed controversial when it comes to a determination on what time a particular person is regarded as an employee, or the person working under contract for service. This must be clearly understood also in the employment contracts relating to conflict of laws.

The issue of determination as to who is the employee even in an employment contract relating to conflict of laws, especially under the common law has been, therefore, for a long time, an inherently complex and uncertain process, and exacerbated the issue. To determine the same, therefore, several tests should be engaged. To determine whether a person is an employee or not, even in a conflict of laws perspective, in the first place, the „control test" is considered. Essentially, in this test, the employee is considered as the employee when the employer has the right to give orders regarding the worker's day-to-day activities (This has been evidenced in various case laws that include, but not limited to, *Lane v. Shire Roofing Company (Oxford) Ltd.* [1995] IRLR 493, 495). The control test, however, is not regarded as decisive in cases concerning skilled employees, professionals, and managers who enjoy considerable discretion in performing the work that they are also engaged with. In England, and in terms of common law employment standards, the more inclusive „integration" or „organization test" is considered. This test is applied to the extent to which the worker is integrated into the employer's organization. This is to say, the employee should always be subjected to the organization's rules and procedures for one to be regarded as an employee in a particular organization (This was observed by Lord Denning in a famous case of *Stevenson, Jordan & Harrison v. MacDonald & Evans* [1952] 1 TLR 101, 111).

Again, in a similar point, the organizational test is also taken as not decisive and absolutely perfect in some cases of flexible forms of employment contracts, even in conflict of laws. In such a scenario, the "economic reality test", in some types of cases is also taken onboard. This test essentially helps determine the status of the employee where the employee is able to take the chance of profit and risk of loss in the workplace (This test was observed by Cooke J. in a celebrated case of *Market Investigations Ltd. v. Minister of Social Security* [1969] 2 Q.B. 173, 184–5). On a similar note, the economic reality test may be again not decisive in scenarios concerning employees whose payment is tied to personal performance and business profits (This has been clearly illustrated in *O'Kelly v. Trusthouse Forte* [1984] QB 90. The same has also been indicated in a famous case of *Nethermere (St Neots) Ltd. v. Gardiner* [1984] ICR 612 and in *Carmichael v. National Power PLC* [1999] 1 WLR 2042). All in all, determination as to who is the employee, as earlier

stated, has been a complex issue in labour relation laws in many jurisdictions. This has brought difficulty when it comes to the identification of who is the employee even in employment aspects relating to conflict of laws, where it necessitated the court of law, in some occasions, to employ a particular factor in finding a better way of solving the issue of the employment status of the employee.

**2.2. The Employment Contracts Relating to Conflict of Laws in Mainland Tanzania Perspectives**

The issue of employment contracts is also found in the current labour relation law regime in Mainland Tanzania. The employment contract was guaranteed even in the old labour relation laws regime, though inevitably, its coverage may be different from one regime to another. Currently, the Employment and Labour Relations Act (Act No. 6 of 2004), and the Labour Institutions Act (Act No. 7 of 2004), whose acronyms are ELRA and ILA respectively, both form part of the labour law regime in Mainland Tanzania. There are, however, other sources of employment law, which include, but are not limited to, common law rules as well. The ELRA has incorporated requirements of the Core Conventions of the International Labour Organization (ILO) and other ratified Conventions such as the Rome Conventions and its Regulations. Tanzania's labour law regime also includes the Employment and Labour Relations (Code of Good Practice) Rules, 2007 (G.N. No. 42 of 2007), and the Labour Institutions (Regulation of Wages and Terms of Employment) Order of 2013 (G.N. No. 196 of 2013). It is an undeniable fact that these laws have been reviewed from time to time to meet the required standards and demands of the workers. The issue of the employment contract is also enshrined under the Constitution of the United Republic of Tanzania, 1977. It is though not explicitly and directly termed as the employment contract under the same Constitution. The CURT, 1977 generally recognizes employment issues in Mainland Tanzania.

Historically, the existence of these two labour relations statutes came into being as a result of repealing a number of labour law statutes that seemed to be outdated and no longer suited to modernity (Some of the repealed labour statutes include the Employment Ordinance (Cap. 366), Regulation of Wages and Terms of Employment Ordinance (Cap. 300), Wages and Salaries (General Revision) Act, No. 22 of 1974, the Trade Union Act No. 10 of 1998, the Security of Employment Act (Cap. 574), the Severance Allowance Act (Cap. 487) and Industrial Court of Tanzania Act No. 41 of 1967). After repealing a good number of existing labour statutes, labour relation issues are now put in two main labour laws that are applicable statutes in Mainland Tanzania. The current labour law regime recognizes three forms of employment contracts under the current laws. These are to mention, a contract for an unspecified period of time (termed as a permanent contract), a contract for a specified period of time (termed as a fixed-term contract, applies for managerial and professional employees, and not unskilled employees), and thirdly, a contract for a specific task or piece of work (The Labour Court in 2008 interpreted this form of the employment contract in the labour law regimes to mean a "daily contract"; V. T. Chale, V. T., 2014).

The ELRA indicates that an employment contract can either be in the form of writing or oral. The same law, however, emphasizes that in case where the employee is to work outside Tanzania, then it is mandatory under labour relation laws that it must be in written form. In a far looking, and going through the whole of labour relation laws, there is not a single provision articulating on foreign employment contract, save for that case of putting the employment contract in writing style. The issue under discussion is clearly articulated under the ELRA (Section 15(7) of the ELRA). Generally, the ELRA covers important concepts such as the employee and the employer, which have been discussed in detail, in this paper, in an extensive way.

The complicated issue of the definition of who is the employee is not covered under the ELRA. This is instead covered under the Labour Institutions Act (Section 61 of the ILA). The section interprets who is the employee in the labour relation discipline in the same manner as the concept of employee is conceptualized in another field of laws relating to employment contracts. This is to say that, in conceptualizing the concept of the employee, there is no distinction, in interpretation, under Tanzania labour relation laws and those of other jurisdictions (The section indicates the presumption as to who is an employee in the employment contract in Mainland Tanzania). In the interpretation section, the ELRA, however, does not exhaustively define who is the employee in the Tanzania context (Section 4 of the ELRA). This is the reason some scholars argue such an exhaustive definition is placed in the ELRA, but the presumption as to whom the employee is indicated in the ILA, which in fact, categorically deals with issues pertaining to disputes handling types of machinery in the labour relation system in Mainland Tanzania. Indeed, in the ILA itself, a clear interpretation of who is the employee is nowhere indicated in the interpretation section as viewed in the ELRA.

The labour relation laws must come up with and clear absurdity which also brings hardships when the courts determine the issues of employment in conflict of laws.

**2.3. The Employer in Conflict of Laws under the Rome Conventions and Other International Statutes**

The term „individual employment contract" is also used in the Brussels I Recast and Rome I. It is also important to understand to whom the employer in employment is contracting in conflict of laws perspectives. In principle, in conflict of laws, the employer is considered as a natural or legal person at the other end of the employment contract (Ibid). As a matter of fact, all factors that were discussed when examining who is the employee are closely related to this point in the discussion. Normally, the employees work for, under the control, and within the organization of a single employer, so the employer's identity can be rarely an issue. It is further noted that the employer's functions are sometimes divided among multiple legal entities. In some cases, that involve triangular relationships, they have caused difficulties in domestic labour laws. This is because they do not fit easily with the perception of the typical employment relationship as a personal and binary relationship. Domestic laws are sometimes faced with the question of how to distribute employer responsibilities among multiple entities that perform employer functions in the workplace. In eliminating this problem, especially in agency employment, there are four alternatives that are normally taken into account (Davidov, D., 2004).

The conflict of laws system is always aimed at upholding the objectives of legal certainty, predictability, and particularly the protection of employees in the workplace. This should always help accommodate the various substantive law systems by clearly indicating the employer's responsibilities in the employment contracts. There are various case laws stating who is the employer, especially in employment contracts relating to triangular relationships. The court in its decision in a famous case of Voogsgeerd (Case C-384/10), had pointed out the issue of who is the employer for the purposes of the Rome Convention, and its predecessor of Rome I Regulation. The material facts of the above-cited case are as indicated hereunder:

In this case, Mr. Voogsgeerd had entered into an employment contract with Navimer SA, a Luxembourg company. The contract was concluded at the headquarters of Naviglobe NV, a Belgian subsidiary. Mr. Voogsgeerd worked as a seaman on board ships belonging to Navimer. He received his salary from Navimer and he was obliged to report to, and received briefings and instructions from, Naviglobe in Belgium, where all of his voyages commenced and it was subsequently terminated (Ibid).

Primarily, this case is directly concerned with issues relating to the interpretation of the connecting factor with respect to the place of business for the purposes of the Rome Convention. As a matter of fact, however, both the opinion of Advocate General Trstenjak and the court judgment had helped provide guidance regarding the concept of the employer in the context of a triangular relationship in employment contracts relating to conflict of laws. From the illustration given in the above case law, and many other case laws that are available, it is possible in view of the court's decision that there a possibility to regard a particular fellow other than the nominal employer as the employer for the purposes of the special conflict of laws rules.

## 3. Employment Contracts in Conflict of Laws under the Rome Convention and its Regulations

The issue of individual employment contracts in conflict with laws has been dealt with by a number of applicable rules and emanating principles. To be specific, a discussion on employment contracts in conflict of laws, for purposes of this article, is centred on the Rome Convention, 1988, and existing Regulations applicable in all matters relating to employment contracts in conflicts of laws. The Rome Convention and Regulation provide in a broad way, the provisions that deal with and cover individual employment contracts in conflict of laws (See Article 6 of the Rome Convention and Article 8 of the Regulations).

In the conflict of laws, the rule is made that, the courts of law in determining any employment dispute relating to conflict of law, the *lex causae* most relevant to employment engagements is, therefore, the law of the country where the employee normally works. This condition, however, does not cover important areas or lacks certain reflections. It seems that the condition does not indicate that there is a possibility for the employee to work in several jurisdictions. It is also possible in employment that the employee can have several bases. There is also a possibility of the employee visiting several places for one employment undertaking one is employed for a certain period of time or longer period than expected. All these possibilities are not well covered in the above definition of employment as far as a conflict of

laws is concerned. In this area, the Regulations seem to cover the concept of employment in conflict with laws far better than the Rome Convention.

Under the Rome Convention, the rule is made that an individual employment contract is, in the absence of an appropriate choice of law as articulated in the same Rome Convention (Article 3 of the Rome Convention, 1980), governed by the law of the place (jurisdiction) in which the employee habitually carries out his day-to-day work in the performance of the contract concerned. The application and consideration of this rule are irrespective of whether the employee works temporarily or permanently in another jurisdiction or country (This is well discussed in the European Commission's Green Paper, paragraph 3.2.9.2 of the Paper). The Rome Convention also indicates circumstances under which a person is not habitually a resident of a particular place and provides further guidance on the issue of appropriate law on the determination of the issue of individual employment contracts in conflict with laws. The Convention states that in case the person is not habitually resident in any jurisdiction, then the consideration is the application of the law of the place of business which is situated. This rule, however, applies and is normally considered by the court of law unless it appears that the employment contract of the individual person is more closely connected with another jurisdiction where when such circumstances have occurred, the individual employment contract will be governed by the law of that jurisdiction as intended (Article 6(2) of the Rome Convention, 1980).

The above situation is different under the existing Regulations applicable in matters relating to individual employment contracts. The Regulations indicate that to the extent that the law is applicable to the employment contract concerned and where there is no appropriate choice of the law by contracting parties, the employment contract is regulated by the law of the place where the employee habitually carries out his job in the performance of the contract concluded (Ibid). Indeed, the Regulations further point out clearly that, the place where the work is habitually carried out does not change anything regardless of whether the employee is temporarily employed in another jurisdiction or otherwise (Article 8(2) of the Regulation).

The Regulations further indicate that in case of contracting parties to the employment contract have not specifically indicated the choice of proper to govern the employment contract engaged, then the consideration will be consideration of the law of the place of business where the employment is situated (Article 8(3) of the Regulation). It is further indicated under the same Regulation that, the determination of the court with regard to a proper choice of the law to apply in an individual employment contract should also regard how much the employment has the closest relation to the place where the employment contract is located (Article 8(4) of the Regulation).

### 3.1. The Rationale of the Employees' Protection under the Rome Convention and its Regulations

There is a great rationale for the existence of the Rome Conventions and its Regulations with regard to individual employment contracts. No doubt, and in a far looking, the rationale behind of having these provisions contained under the Rome Convention and the Regulation are purposely intended to offer protection of the employees in the employment contracts in conflict of laws. It has been observed from various scholarly works that, neither the Rome Convention nor the Regulation has closely dealt with the issue of the employees" protections in the employment contracts relating to conflict of laws. In general terms, the protection of the employees in the contract of employment in conflict of laws has never been to the satisfactory levels the employees would expect. The protection of the employees in the employment contracts in conflict of laws, in many jurisdictions, seems to be far better and perfect under local legislation than under the Rome Convention and its Regulation in place (Phillip, P. M., 1982; P. Kaye, P., 1993). Morse, for instance, is of the view that it is sometimes difficult to accord with common sense that the consumers are deprived of their statutory protection of the mandatory rules provided under the laws of their habitual residence when a person is better off than such the person would have been had those rules and had been well considered when the matter is determined ((1992) 41 I.L.Q. 1).

## 4. Conclusion

From multiple observations that have been made in the course of writing this research article, it is obvious that many domestic labour laws have extended their scope beyond the standard. It has also been observed that many employment contracts cover certain categories of employees traditionally classified as self-employed as well as other employers who are responsible for multiple employing entities. It is also concluded that many domestic labour laws seem to have remained under-inclusive. This means that labour relations laws of various jurisdictions, which are essentially

dependent on the courts of law when determining the rights of the employees in the employment contracts, especially in conflict of laws have not covered certain categories of employees in genuine need of offering them absolute protection in their respective workplace. This raises eyebrows and the call is made to find a means of redefining labour relation laws in the respective jurisdictions. A wider interpretation of the terms employed in employment contracts with respect to conflict of laws must be widely given by various stakeholders in the field of conflict of laws, either from Tanzania or elsewhere. It is also concluded that the autonomous definition of the term „individual employment contracts" that is used in the Brussels I Recast and Rome I as indicated in these international statutes seems to converge towards those wide and inclusive concepts in the employment contract, particularly in the field of conflict of laws. Despite the fact that there are loopholes, from the point of view of their scope, these rules, however, concerning the employment of the two regulations largely seem to have met the intended objectives provided under these international rules relating to conflict of laws as well. It is obvious, though, that much is still to be done.

It is further concluded in this research article that, despite Tanzania being a party to the Rome Convention and its Regulation, more efforts should be put into ensuring that employees in employment contracts in conflict of laws are well protected. In no way, their employment contractual rights should also be safeguarded. The employees should be well protected and safeguarded not only through these international law rules but also by local legislation in place in various jurisdictions. From observations made, it is obvious that the employees in the employment contracts can be strongly protected by local laws than international law rule as above evidenced. In the broad sense of the goals, the objective of the protection of employees is also met given the breadth and inclusivity of employee terms in the employment contract in the existing regime of the conflict of laws. Finally, is concluded that the issue of conceptualization of the term employee in the employment contract in the domestic statutes seems to be the same as that under common law employment contracts, though with minimum distinctions from one domestic law and the other.

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