



THREE MATTERS FROM WHICH DISPUTES COMMONLY ARISE IN CONSTRUCTION PROJECTS

By Geoffrey Odongo



Complexity of a construction project, the number of parties involved in the project together with the scale of a project will normally give rise to disputes. The following are three matters that need careful attention given that most disputes arise from them :-

Completion time

A number of disputes will revolve around a failure to complete work on time and whether a contractor is entitled to an extension of time (EOT) and/or how long an EOT should be.

Building contracts specify a date by which the works must achieve practical completion. Contracts may even specify dates by which sections of the works must be completed failing which the contractor will be liable to the employer for damages in respect of the delay.

Such default by a contractor may require payment of ascertained damages on an ongoing basis until completion is achieved. Such damages can be substantial and can turn a profitable project into an unprofitable one for the contractor.

Money

A dispute around money normally involves a claim by a contractor in relation to:-

- an overdue interim payment—ie a payment made to the contractor during the course of the project, often based on the value of the works completed at a point in time
- payment for carrying out additional works (ie an increase in the contract price), for example because the employer has increased the scope of the works by way of a 'variation'
- compensation for additional costs incurred as a result of disruption to its progress of the works—this is commonly referred to as 'loss and expense'
- The final payment/final account process, being the contractual method for determining the final price due to the contractor taking into account amounts already paid to it during the course of the works.

Defects

Many building contracts provide for a defects liability period which is a period of time following practical completion during which the contractor is required, and has the right to, rectify defects in the works. Defects in turn give rise to disputes on matters such as:-

- whether the works are in fact defective and, if so, who is responsible—for example, whether it was caused by a design issue or a workmanship issue
- the extent and nature of remediation works required
- the effect of any contractual limitations or exclusions of liability

At AIP Advocates we have lawyers who will guide you on legal matter arising from construction contracts while ensuring your interests are protected.

Do reach out to us on the contacts below for assistance

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