



5 tips for successfully preparing for construction disputes

By Geoffrey E. Odongo



Besides involving complex technical and factual issues, construction disputes have a propensity to require the expenditure of substantial sums to resolve. As such, it is imperative when accosted with the likelihood of a dispute to evaluate the prospects of success of the claim and to determine appropriate strategies to adopt.

For typical construction or engineering disputes the following are essential tips for consideration prior to commencing a claim or engaging in the defence of a claim in order to maximise prospects of success.

a. Initial information to be gathered

At the onset, identify the basis for the contemplated claim. For instance, if the claim arises from a contract and is attributable to a breach of the contract precisely identify the allegations.

In addition, identify and preserve critical documents, obtain testimonies/statements from key individuals, take photographs (in appropriate cases) and perform checks on the creditworthiness of the prospective defendant to ascertain their ability to settle the suit amount or costs of the claim.



b. Seek Preliminary advice

Obtain legal advice in evaluating legal and evidentiary aspects and also obtain the advice of an independent expert with technical knowledge or experience on the pertinent areas covered by the claim which helps provide an objective assessment of the claim.

c. Make strategic considerations

These may include the following;

- I. Whether you can afford to bring the action. For instance as a sub-contractor contemplating a claim against a main contractor if you are engaged in other projects with the contractor in question one must consider the likely loss if bringing the claim will jeopardise the relationship or adversely affect other lucrative projects.
- II. Where a claim is made against you, consider the cost benefit of resisting the claim by evaluating whether the potential recovery justifies the time and resources, which you will need to invest.
- III. Consider whether the entity has resources to defend the claim through to judgment including the resources for dealing with the consequences in terms of costs (including the costs of the successful party which you may be ordered to settle).

- IV. Exploring the possibility of a compromise while noting that this is normally easier to reach at the preliminary stages but diminishes as parties incur more costs.

d. Witnesses and experts

Analyse the issues and identify witnesses who will address each disputed issue. Collect statements from each witness and have them substantiated by documents to which reference is made in the statements.

e. Consider seeking interim relief

Interim reliefs take the form of stay orders which are meant to maintain the status quo and preserve the subject matter of the suit from dissipating thereby rendering the eventual judgment nugatory. These may include orders that a party whose creditworthiness is uncertain deposits security for costs, among other orders.

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

Do reach out to us on the contacts below for assistance:

Nairobi Office: +254 722 367 647

Mombasa Office: +254 708 158 832

Kisumu Office: +254 776 401 133