

PRINCIPLES OF CONTRACT LAW AND IMPLICATIONS CASES AS APPLIED TO CIVIL ENGINEERING PROJECTS PRACTICE IN NIGERIA

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Abstract- Contract and properties are regulated by Law, and the Law is a set of rules that are enforceable by the courts, regulating the government of a state and the relationship between the organs of government and the subjects of the state, and also the relationship or conduct of the subjects toward each other. It is a body of obligatory rules of behavior for the members of a society whose contravention attracts sanctions. It is very vital that Engineers have a good working knowledge of the law of contract and properties. This paper examines the general principles of contract Law and also the implications cases as applied to Engineering projects Execution in Nigeria. The paper proffered recommendation and conclusion as it relates to Engineering contracts.

Keywords- Contract Law, implication cases, Engineering Projects, Nigerian Context.

I. INTRODUCTION

Contract Law the term contract is used in construction Engineering as an agreement entered into by two parties under the terms of which one party agrees to perform a specific job for which the other party agrees to pay. A contract is also an agreement which the Law will recognize. It is a promise enforceable by Law. This promise may be to do something or to refrain from doing something. A contract is a legally valid promissory agreement for a future exchange, freely and voluntarily arrived at by the parties involved.

Contract in law:- A contract in law is a binding legal agreement that is enforceable in a court of Law That is to say, a contract for the breach of which the Law will provide a remedy. Simple put, contracts an agreement creating and defining the obligations between two or more parties.

- 1. Construction Contract:** - Construction contract is a formal agreement for construction, alteration, or repair of buildings or structures (bridges, dams, facilities, roads tanks, e.t.c) Construction contracts serve as a mean of pricing construction, they also structure the allocation of risk to the various parties involved. The owner has the sole power to decide what type of contract should be used for a specific facility to be constructed and to set forth the terms in a contractual agreement.
- 2. Agreement and establishment of contract:-** Prior to the existence of a contract there is the action of the (mutual) agreement. A (mutual) agreement is the (legal) action to establish a mutual relation aiming at the creation of legal consequences. So, there is no need to put a contract in to a written form, unless the law prescribes of course, for the purpose of alleviating the burden of proof it is advisable reduce all engineering in writing.
- 3. The Principal requirement for the formation or variation of a contract are:** Authority to contract; and Consideration and Intention to create legal relations

The question of whether or not an “agreement” has been reached is one of fact. It involves and objective assessment. The test is whether or not an independent observer, appraised of the background facts known to the parties would consider there to have been agreement, and if so, what agreement. The subjective state of the negotiator’s mind is irrelevant. Where there is a mutual mistake concerning an important element of the proposed agreement this may prevent agreement. Often the existence of agreement is clear, as where there is a signed document. But where there is

series of negotiation, it is useful to use a two-stage analysis; of offer and acceptances. Once an offer has been made, it may be accepted by the party to whom it is addressed. If it is unconditionally accepted there is a agreement and contract has come in to existence an offer may only be accepted by the person to whom it is addressed (the offered). No acceptance is acceptance is possible after an offer ceases to exist. The offer may be destroyed by being withdrawn by the offeror; Lapsing at a time specified by the offeror or at a reasonable time offer being made; Being superseded by offer (by the offeror or by the offered;) Being rejected by the offeree. A request for clarification or further information may not amount to a counter-offer.

4. Essentials of contract validity

- i. **The parties to the contract:-** must be competent, and legally capable of playing their intended part. The law cannot enforce the agreement on someone who has not the legal capacity to enter into an agreement. This could be due to infancy, lunacy, drunkenness, or being restricted from entering into such agreement by a prior in data agreement or scope of authority.
- ii. **The subject matter of the contract:-** must be lawful and definite in respect of requirements and duties of each party. For example a contract violating municipal regulation is not binding and is void in counts. Also uncertainty in respect of what is wanted may result in the contract being not enforceable by law.
- iii. **Proposal and acceptance:-** there must be a proper proposal by one party and its absolute and unqualified acceptance by the other party. The proposal is not binding without a clear acceptance and is not binding beyond its date of validity.
- iv. **Free consent of parties to the contract:-** Consent is said to be free when it is not caused by force, or undue influence of fraud or misrepresentation.

5. Nature of Engineering contract

Invitation to tender:- This is generally a pre-offer invitation, in which the employer invites one or more contractors to tender quotations for a specified piece of work. There is generally no obligation for the person inviting tenders to accept the most attractive or any offer, though there may be an obligation to consider all tenders properly submitted. An invitation clearly state that a contract will be awarded to the person submitting the tender which most fully meets a stated criterion.

6. Tenders or quotation:- This is generally an offer by the contractor to undertake the work for the piece or rates quoted and upon the conditions contained in his offer. Where the document is styled an “estimate” it may, nevertheless mount to an offer; it is a matter of construing the document come into existence. Otherwise it is in escrow. An offer may only be accepted by the person to whom it is addressed (the offeree). No acceptance is possible after and offer ceases to exist. The offer may be destroyed by being withdrawn by the offeror; lapsing at a time specified by the offeror or at a reasonable time after being made; being superseded by a subsequent offer (by the offeror or by the offered; being rejected by the offeree.)

7. The form of legal Contract Application in civil Engineering are:-

Deeds Simple
Bilateral contract
Unilateral Contract
Implied
Avoidable contract
Illegal
Executed-performed promise
Executor-promise to perform

8. Some Issues in principles of contract law

Principle an engineering contract is formed, interpreted and enforceable as any other contract.

- i. The Doctrine of privities
- ii. Implied Terms

iii. Contracts Reduced in to writing

9. The Nigerian position in contracts Reduced in to Writing

When any contract has been reduced to the form of a document or series of document, no evidence may be given of the terms of such contract except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained; nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence: provided that any of the following matters may be proved.

- (a) Fraud, Intimidation, illegality; want of due execution; the fact it is wrongly dated; existence, or want or failure, of consideration; mistake in fact or law; want of capacity in any contracting party, or the capacity in which a contracting party acted when it is not inconsistent with the terms of the contract; or any other document, or of any part of it, or which would entitle any person to any judgment, decree, or order relating thereto:
- (b) The existence of any separate oral agreement as to any matter on which a document is silent and which is not inconsistent with its terms, if from the circumstances of the case the court infers that the parties did not intend the document to be a complete and final statement of the whole of the transaction between them;
- (c) The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, if from the circumstances of the case the court infers that the parties did not intend the document to be a complete and final statement of the whole of the transaction between them.
- (d) The existence of any distinct subsequent oral agreement to rescind or modify any such contract grant or disposition of property. By virtue of the settled law in this country a judge in a litigation that involves a claim for damages must as much as it is possible tailor the amount of damages claimed

10. Conditions not in the contract

Terms implied by statute
Insurance and indemnities

11. Types of Contracts

Breakdown of Classification Based on Pricing
Lump sum contract
Unit price contract
Cost plus fixed percentage contract
Cost plus fixed fee contract
Cost plus variable percentage contract
Guaranteed maximum cost contract

12. Contract Duration and the Law

No right to terminate on this ground could arise until the completion date, while the obligation in most building contracts to make interim periodic payments will continue, in spite of the mounting probability of the employer incurring substantial damage. In addition, if the job owner allows the completion date to pass and acquiesces in work continuing under the contract, the employer will be held to have waived compliance with the original date for this particular purpose. However if the contractor's lackadaisical attitude to work and lack of due diligence become suffocating and unbearable and the contractor due to his incompetence sought to rely on one subterfuge or the other to suspend and abandon the work evincing the intention not to continue, the employer could forth with terminate the contract under the common law.

13. Contract Documents

The several documents forming the contracts are to be taken as mutually explanatory of one another. The priority of the documents forming the contract shall be as follows:

The contract agreement (if completed)
The letter of acceptance

The tender
Conditions contract
Any other document forming part of the contract.

14. Discharge of contracts: fulfilled or comes to an end

Performance is when the parties have fulfilled their obligation-not necessarily fully nor all at once. Part performance, if substantial, does not entitle to withdraw. Breach of a condition frees the other part of obligation; of a warranty, only entitles to sue for damages. Frustration is when it is, or becomes, due to no fault of either party, not possible to carry out the contract. Damages are the actual financial loss of the wronged party that were in the reasonable contemplation of both of the parties. Quantum Merit is piecemeal as an implied term, unless conditional to completion. Equitable remedies may be specific performance if only that would do, except for personal service; or injunction if must prevent. Liquidated damages are term in advance agreed which are fair and this should not tantamount to a penalty.

15. Essential contents of Engineering and construction contracts

Definitions, general duties of contractor. Appointment and authority of the contract administrator and his, assistants, time for completion /takeover/ performance tests, certificates, variations, payment, interest on late payment, for defect, contractor's, liabilities, insurance, limitation of contractor's liabilities, sufficiency of price and unforeseen conditions, the site and responsibilities- Health and safety, subcontracting and assignment, ownership of materials. Patents and other protected rights, contractor's default and termination of contract, bonds and guarantees, notices & their service; law and jurisdiction, payment mechanics, standard forms of contract, dispute resolution: adjudication, experts, ADR, and arbitration and arbitration and avoiding disputes.

16. Ending of contract:- A contract may be terminated or brought to an end in either of the followings ways: Full and satisfactory performance by both parties to their obligations under the contract. Breach of contract, when the default of one party releases the other party from the contractual obligations. Mutual agreement of the parties to terminate the contract. Unforeseen circumstances beyond the control of either party render it impossible to perform his duties or obligations stated in the contract. Operation of law to terminate a void contract

17. Dispute Resolution in Engineering Contracts

Adjudication in a court of law. Parties can agree on adjudication process and the court they want to be subject to. In this instance, in any case of dispute the agreed process must be follow.

18. Other forms of dispute Resolutions

Negotiation among the contract parties

Resort to arbitration or mediation and Private judging in which the participants hire a third party judge to make a decision, *Neutral expert fact-finding in which third party with specialized knowledge make a recommendation, and Mini-trial.

19. Bringing action in court and things that must be known

An action can be brought by either party to the contract through writ of summons filled along with the statement of claim.

II. COURTS AND OPERATIONAL SYSTEMS IN NIGERIA

The following courts are the only ones expressly prescribed in section 6(5) as superior courts of records in Nigeria. As far as Engineering contracts are concerned, these listed courts are capable of solving any Engineering disputes that may arise during the execution of Engineering contracts:-

- i. The supreme court of Nigeria:** it is the highest court in Nigeria. It has original jurisdiction in any dispute between: the Federation and a state; the National Assembly and the President; The National Assembly and any State House of Assembly; The National Assembly and the State of Federation. It has appellate jurisdiction to hear and determine appeals from the court of Appeal.

- ii. **The court of appeal:** the appeal court has original jurisdiction to hear and determine any question as to whether: any person has been validly elected to the office of president or Vice-president under the constitution; the term of the president or Vice-president has ceased; the office of president or Vice-president has become vacant. The court has appellate jurisdiction to hear and determine appeals from: The Federal High Court; The High Court of the Federal Territory, Abuja; A high Court of Appeal of a State; The sharia Court of Appeal of the FCT, Abuja; A Sharia Court of Appeal of a State; The Customary Court of Appeal of the FCT, Abuja; A Customary court of Appeal of a State; A Court Martial or other tribunal as may be prescribed by the National Assembly.
- iii. **The Federal High Court:** The Court has exclusive jurisdiction in civil cause and matters: Relating to revenue of the Government of the Federation, taxation of companies and other bodies carrying on business in Nigeria, customs and excise duties and export duties, banking , banks and other financial institutions, the operation of the CAMA, Federal enactments relating to copyright, patent, designs, trade representation, bankruptcy and insolvency, aviation and safety of aircraft, administration or the management and control of the Federal Government or any of its agencies and any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies, Treason and treasonable felony and allied offences.
- iv. **The High Court of the Federal Capital Territory Abuja:** The Court has jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claims is in issue or to hear and determine any criminal proceedings solving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person. Reference to civil or criminal proceedings includes both proceedings originating in the court and those coming before it in its appellate or supervisory jurisdiction.
- v. **A High Court of a State:-** the court has jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue. The court also has jurisdiction to hear and determine and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person. This jurisdiction includes original, appellate and supervisory function.
- vi. **The Sharia Court of Appeal of the FCT, Abuja and A Sharia Court of Appeal of a State:-** The court exercises appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law. The court is competent to decide: Any question of Islamic personal law regarding marriage concluded in accordance with that law and relating to family relationship or the guardianship of an infant; where all the parties to the proceedings are Muslims; Any question of Islamic personal law regarding wakf, will or succession where the endower, donor, testator or deceased person is a Muslim; Any question personal law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally inform; where all the parties to the proceedings, being Muslim have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, and any other question.
- vii. **The Customary Court of Appeal of the FCT, Abuja:** - In addition to such other jurisdiction as may be conferred upon it by the National Assembly, the Customary and supervisory jurisdiction in civil proceedings involving question of customary law.
- viii. **A Customary Court of Appeal of a State:** - A Customary Court of Appeal of a state exercises appellate and supervisory jurisdiction in civil proceedings involving questions of customary law. Such appellate and supervisory jurisdiction covers such questions as may be prescribed by the House of Assembly of the State for which it is established.
- ix. Other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws.

III. RECOMMENDATION

- i. It is very important that serious attention be giving to engineering programmes in Nigerian Tertiary institutions that offer related courses like Engineering economics, engineering contract law, and construction protect management. This course should be spread to all engineering faculty, and their curriculums to be the same with international standard.
- ii. Professional Bodies, e.g. COREN, NSE, NICE, etc should organize quarterly compulsory refresher courses for practicing Engineers in all field of Engineering.
- iii. Contractors handling construction Engineering project should not be left out in the working knowledge of legal issues that deals with executions of Engineering projects.

IV. CONCLUSION

Civil Engineering construction contracts serves as a means of pricing, they also structure the allocation of risk to the various parties involved, especially the practicing Engineers and the constructors. Efforts and attention should be giving to those aspects of Engineering contractors that always causing challenges in Nigerian construction Industry. It is very vital that all professional Engineers in the country posses a good working knowledge of the law of contract, property handling and legal issues that are off great importance and applications to the field of Civil and other Engineering Professions in the country.

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