



ARCHITECTS REGISTRATION BOARD

ARB CONTINUING PROFESSIONAL DEVELOPMENT 7th - 9th NOVEMBER, 2018

Topic: Architects in Practice: Key Contracts

Time: 9.00am - 6:30pm

Venue: Golf Course Hotel

Summary Report Notes

Introductory Remarks

Arch. Amunsiire Kenneth started with discussing the definition of 'Architect'. He highlighted that on top of the aesthetics, an Architect must apply practicality and adequate skill and knowledge reasonably.

"An Architect is one who possesses, with due regard to aesthetic as well as practical considerations, adequate skill and knowledge to enable him (i) to originate, (ii) to design and plan, (iii) to arrange for and supervise the erection of such buildings or other works calling for skill in design and planning as he might, in the course of his business, reasonably be asked to carry out or in respect of which he offers his services as a specialist."

There are 3 key contracts

1. Building Contract
2. Client Contract
3. Employee Contract

Focus was going to be on 1 type

Presentation 01: Arch. Stephen Ochola

In his introductory remarks, he stated that we are social beings and that most of our actions are linked in one way or another to other people and thus the need to define and clarify some of these actions. He then proceeded to explain the basic principles of contracting, under the following sub-topics;

Rights and obligations
Contractual environment
Contractual relationship

ii) He highlighted the need and importance of understanding our rights and obligations regarding the profession. He defined the terms as follows;

Rights - what the outside owes us and;
Obligations - what we owe the outside.

iii) He gave examples of conflicts/court cases resulting from architectural services (e.g: *the architect that was sued by her friends for offering to landscape her friend's compound for free AND Norman Foster sued for designing a hotel that was way beyond the client's budget*). This helped to highlight the professional responsibilities that we carry as professionals. This also helped emphasize his point that contracts help manage boundaries and harmonise expectations, especially regarding time and payments.

iv) He pointed out the different contractual relationships an architect is usually involved in and these include contracts with partners (fellow architects), workers/employees, other professionals, client, services providers, public entities/bodies such as NEMA or KCCA etc and the need to pay attention to the requirements of each.

v) He cited some peculiar cases.

- i. An architect was sued for landscape work that she had done for free
- ii. Foster and Partners was sued for designing overly expensive design of hotel
- iii. Architect was sued for Gym floor that didn't function as they thought it would
- iv. Architect sued church for refusing to pay, but didn't have sufficient documentation to win lawsuit

Contracts help us manage Boundaries (Quantity and Quality)

Contracts help us manage Expectations (Time and Money)

vi) As Architects, we are either

- Contracting Parties
- Contracting Administrators

Intra Contractual Relationships: Between

- Architects and Partners: Many partnerships collapse because we rely more on friendships, etc instead of partnership deeds
- Architects and Employees: Many Graduate Architects are working with no contracts with firms which is very risky
- Architects and Professionals: many Architects do not have paperwork with allied professionals

Extra Contractual Relationships: Between

- Architects and Client: Need to regulate expectations. Boxes both Architect and Client
- Architect and Service Providers: Need working agreement with printing people, landlords
- Architect and Entities: To box in expectations from KCCA, NEMA.

vii) He called upon Architects to study the Contracts Act 2010 that is available on

the ARB website. He gave as an example Act No.5 which requires that all transactions/contracts with a capitalization of 25 currency points or more should be in writing.

Contracts Act of 2010 guides all Contracts.

Whether it is a standard template or a customized contract, it must be founded on Contracts Act of 2010.

A lawyer can prepare but the responsibility of understanding the details of the contract is on you the architect.

Any Contract that exceeds 25 currency points shall be in writing (1 currency point = UGX 20,000), so 25 currency points = UGX 500,000

Standard Contracts e.g. Scale of fees, EAIA

Most contracts have:

Short form contracts: 1 to 4 pages, very basic language, easy to understand, works for smaller contracts. Avoids scaring clients with big booklets

Standard Contract: Full contact, have services of lawyer

There are also customized Contracts

viii) He concluded by advising architects to build strong relationships with fellow architects, service providers and clients since this will help in the smooth running of their project/contract.

Acquire Knowledge: On things outside drawing lines and making 3Ds

Practice Decisiveness: Avoid turning blind eyes on certain things because when it come back to bite it will not be pleasant.

He advised that for some complicated Clients you can Consult but not draw/design.

Contracting has to be progressive, not just a one off shocker to Client. Must keep growing as design/ supervision goes on.

Keep as many notes as possible.

Additional Notes

The following duties and liabilities to the **employer** were highlighted and further discussed;

1. Professional appointments; express and implied terms.

Express terms must clearly highlight what the architect is being paid for. Knowledge of the law and duty to act with reasonable skill and care are implied terms.

2. Nature of duty

Owner under a contract may have four main interests and those are:

- a) A design skill full and effective
- b) Competitive price from competitive contractor

- c) Efficient supervision of the works carried out
- d) Efficient administration of contract
- 3. Standard of care
 - Due to the inescapable possibility of error in these services, extreme skill and clear judgement must be applied at all times.
- 4. Continuing duty and limitation
 - Architect is under obligation to perform continuous check on their design to make sure that they will work effectively.
- 5. Measure of damage
 - Once an error is discovered in the design at an early stage, the employer should as part of the duty mitigate the loss and give the professional an opportunity to correct it.
- 6. Design
 - Architects are normally given a relatively free reign in design elements of their duties, but employers sometimes press their own ideas upon them such as materials to be used or plans to be followed to name a few. Architects should make an informed judgement when considering these suggestions and have them recorded.
- 7. Delegation
 - An architect can delegate work but must take responsibility it.
- 8. Examination of site
 - Whilst not necessary an Architect should be careful to check surveys or site installations.
- 9. Delivery of drawings, information and instructions on time
- 10. Instructions as to methods of working and temporary works. Unless a building contract expressly stipulates to the contrary, the contractor is entitled to choose his methods of working. An architect should also adopt a facilitative attitude as opposed to a mandatory one.
- 11. Knowledge of legislation, building regulations and rights of adjoining owners.
- 12. Excess of cost over estimates
 - In earliest of stages of employment of a professional should anticipate cost overestimates.
- 13. Recommending contractors
 - Duty of the Architect to crosscheck and make reasonable enquiries to the client.
- 14. Recommending a form of contract
 - Selecting the best form of contract that will protect the client's best interests
- 15. Supervision
 - Three principal areas of professionals' responsibility;
 - a) Prevention, protect and correction of defective work
 - b) Difficult role of intervention or non-intervention
 - c) Potential failure of permanent design, intervention to correct it.
- 16. Administration of contract
- 17. 'Quasi-judicial' duties

Presentation 02: ARB Lawyer, Ssesaazi Mark

i) He acknowledged the Contracts Act 2010 as the legal guide in the formulation of contracts in the country. He however mentioned that some proponents especially among the legal fraternity call for its amendment because it does not cover certain aspects in contracts and contracting procedures.

ii) He dwelt on the importance of paying attention to details in the contracting process. Before signing a contract the following have to be noted;

- Contracting (or entering into contracts) with the right parties. It is important to pay attention to this so as to avoid entering into a contract that is null and void.
- Paying attention to if, when and how a contract is/becomes effective to avoid getting unnecessarily involved in situations that they would have avoided in the first place.
- Paying attention to cross border transactions/contracts. In such cases, it is important to note that the laws of both countries are applicable in executing the contract. This is important to note especially in the East African Community where the laws among the member countries have not yet been well harmonized and yet there is supposed to be free movement of goods and services between the countries.
- Be clear on the parties to the contract
 - a) Description of the service should be exhausted
 - b) Consideration of payment. Include a clause of amendment of price.
 - c) Agreement /terms of contract
 - i. Conditions of contract: foundation of the contract
 - ii. Warrant: Breach of which will not terminate contract
- Breach of contract
What happens in cases of breach of contract by both parties
- Alternative Dispute Resolutions (ADR)
 - a) Negotiations
 - b) Reconciliation/mediation
 - c) Arbitration- results of an arbitration are binding
- Laws applicable
Which countries laws are governing the contract?
- Jurisdiction
Cross border contracts for example contract signed in Uganda while the task as hand takes place in Kenya. In this place laws of both these countries apply.
- Witnesses
Witness who sign this contract should be credible
- Remedies available to breached contract
 - a) Specific performance
 - b) Restitution-to be taken back to a position before the contract

- c) Rescission-pulling out of a contract
- d) Reformation-looking at better terms for a contract
- e) Damages

- Definitions to consider;
 - a) Void - Cannot be performed/ unenforceable
 - b) Voidable- it is valid but can also be nullified if one of the parties repudiates the contract

iii) He stirred a discussion that helped clarify the fact that a contract can be effective even without having a written document. This is possible if the “contracting” parties act or operate in a manner that implies the existence of a contract and there is evidence for the actions.

iv) He reminded architects to pay attention to the partnerships and the type of practice they get into to avoid breaking ethical codes. He also mentioned that ARB is initiating an amendment to the law to deter non-Architects from registering companies that provide architectural services.

v) He concluded by introducing the Architects present to the **Cross Default Clause** that is in Contracts Act 2010. This clause could protect architects from fraudulent or bankrupt clients.

vi) The architects present however sought more clarity on the Cross Default Clause and the issue of copyright on architectural drawings.

A contract is entered by free will. You cannot force anyone to enter a contract. Some lawyers have argued that Contracts Act of 2010 is not comprehensive. A contract can either be written or oral. Biggest challenge is between Architect and Client. Sometimes it is Contractors who come up with the contract.

We should customize contracts for each project

Duty of Care

- One has to act on skill and knowledge.

Confidentiality Agreement

On Stamping

Stamping: the law does not stop anyone from submitting 100 plans a day.

Q&A

Arch Verna: How relevant is EAI contract because most work is small and most Clients, Contractors are not willing or even capable of taking things like Insurance, bonds, etc.

Ans:

Stephen: Most Clients want to make their own Contracts. It has been very hard to implement EAI. Have developed own contract, which is sent to Client very early, then have many meetings to discuss and agree

Flora Runumi: Genesis of contract. Was developed in 1980s because there was nothing guiding the practice. Board of Practice at ARB is now charged with understanding challenges and implementing accordingly.

Need forum to share ideas on how to make contract relevant, because Tanzania is also struggling, Kenya already discarded it.

Arch Verna: Architect - Employee contract. Most employees do not have contracts. Why?

Ans:

Arch Ashabaheebwa ARB can draft something that one has employment contracts before issuing of Practicing certificates

Arch Stephen: Industry is changing from just practices to large corporations. Have full professionals like Legal, HR, etc

Arch Verna: Job Card. It is good that now KCCA will not issue job card without copy of supervision agreement. What Contract is Architect administering in this scenario

Ans:

Stephen: Some Clients have working methods with contractors

Sometimes Contractors liaise with KCCA and work goes on without knowledge of Architect. New job card however has signing slot for Architect

Rajab: Refrigerant lines and water. Can we build these in the walls/ ducts to avoid trunking

Ans:

This is a co-ordination issue. Need to agree with Client, and other consultants

Develop design philosophies so that you can maybe create ducts that can be 'redundant' in the short run, but when one needs to run pipes, it is easy

Arch Sarah: How can ARB help KCCA to do away with stamping?

Ans:

ARB to get to know all staff because law says Architects can only stamp on work done by self or staff, but then who is staff?

Question: Why can't Clients pay professional Percentage fees?

Ans:

Arch Susan: it is usually good to have a smaller contract because clients are more willing to sign smaller documents as opposed to being hit with a massive contract. But after this, always follow up with full contract.

Arch Flora: We are not bound to give full services to everyone. We can agree and give time rates as per different projects.

Duties and liabilities of Construction Professionals.

Qn: How do you resolve a situation where client and architect have opposing views?

Ans: Architects still carry professional liability so it is important to apply effective skill and judgement to these situations. In cases where this cannot be necessarily done always protect your back with documentation and record. Having to write minutes is actually an advantage because one can detail exactly decisions that are theirs or the Clients.

Qn: In cases where there are many parties in play making decisions how does one keep up and avoid cost overruns?

Ans: In multidisciplinary situations one must utilize subcontracts for sub consulting assigning duty and liability

Other Challenges

Some Clients want to shortchange and use juniors but get frustrated.

From our Partners

1. HISENSE (Presented by Mr. Sebuggwawo Rajab)

Started in 1969 , Headquarters are in china and are the leading air conditioning supplier in the country. Hisense came to Uganda in 2009.

- Outlets in Uganda are located at plot 806, Channel Lane, Bugoloobi, forest mall and others suppliers but factory will be built at Kapeeka Industrial Park in two years.
- When purchasing a Hisense product request for warranty for legitimacy.
- Air conditioners have dust and bacteria filter which are easy to clean and durable.
- Can design any system because they are the manufacturers themselves
- AC units have flexible body so it cannot break
- Filters are fabric so they also cannot break, and are easy to clean
- Body is made of non-rust material
- Capacities 9,000 BTU to 48,000 BTU
- Have black Friday every year with very good discounts. This year's **Black Friday** will take place on 23rd November where items will be 50% off.

Q&A for Hisense

Qn: Are the filters good enough for operating theatres?

Ans: Yes, Hisense can provide a customized system as long as details of the area is

provided

Qn; Does Hisense do centralized systems?

Ans: Yes, a system can be customized and installed. A recent project done was national water and environment offices.

Qn: How much do the items cost

Ans: this depends on the design and specification of the product

2. DURACOAT / BASCO PAINTS by Michael Charles Kyeyune.

Office is at 6th Street Ind. Area. Head Office is in Nairobi. Basco specify Companies in their BOQ. The presenter also mentioned that there is an issue of specific brands of paint being specified in BOQ's as opposed to quality type and quality of paint. Put product grade so that it can be competed for favorably.

- They deal in decorative, industrial, special effects and auto-guard (car) paints.
- It was noted Duracoat/ Basco paint thinners are safe to use and that the paint thinners currently on market are dangerous because they contain ethanol.
- Duracoat/ Basco Paints are watery in nature because they are sold premixed and ready for application. The presenter also warned that some paints are made to look thick by manufacturers by compromising the product.
- To check on site if the contractor has done a good job one must use masking tape by placing it on painted wall and removing it to see if it comes off.
- Their Sampling, supervision and consultation are all free.
- Most contractors are using white cement to fill.
- Duracoat has skimcoat. Water based product. Better than white cement. Goes direct to plastered wall, covers all irregularities on wall.
- Skimcoat saves almost 25% on painting cost
- Cause of paint peeling off is caused by two things:
 1. Surface preparation.
 2. Cheap filler mixed with white cement to make undercoat. You shouldn't use cheap undercoat with good top coat

Q&A for Basco Paints

Qn: How much do the items cost

Ans: This depends on the paint specified and the application process and whether they are exterior or interior paints.

Qn: What is Basco/ Durocoat doing to challenge low quality paints on the market?

Ans: Basco/ Durocoat has made a conscious effort to get the ministry involved when assessing the nature of paint thinners.

CPD Conclusion and Looking Ahead

The architects in attendance appreciated this initiative by ARB and were happy with the choice of topic because of its relevance to the practice.

There were pertinent issues that arose during the meeting and some members requested to have these discussed and clarified. For instance, the proposed amendment of having architects registering and practicing solely as a firm of architects versus architects registering limited liability companies raised quite a bit of discussion and will need thorough discussion to amicably address the matter.

Compiled by:
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