



A Sigh of Relief for Contractors

Introduction

The High Court on April 28, 2022, quashed The National Construction Authority (Defects Liability) Regulations 2022 (the “revoked Regulations”). The revoked Regulations proposed to regulate defects liability periods applicable to commercial buildings by setting out statutorily mandatory minimum patent and latent defects liability period. The Regulations among other things sought to define minimum Defect Liability Periods (DLPs) prescribing a patent DLP of at least twelve (12) months from the Practical Completion Date and a latent DLP of a minimum of six (6) years from completion of the patent defects liability period. They also sought to impose liability on professionals involved in the construction of buildings such as Quantity Surveyors and Architects in the event of these defects. See our detailed insights on the revoked Regulations [here](#).

Contractors and lobby groups in the construction industry opposed the revoked Regulations as they disregarded global principles that govern construction contracts and custom and trade usage in the construction industry. This culminated in the filing of Republic V National Construction Authority & 3 others ex parte Joint Building and Construction Council by the Joint Building and Construction Council (JBCC). The court on hearing the matter quashed the Regulations.

The Court's Decision

In arriving at its decision, the court carefully examined the process leading to the gazettelement and concluded that:

- There was neither consultation with the National Construction Authority Board as required by section 42 of the National Construction Authority Act, nor
- Were the revoked Regulations tabled in Parliament, as required by law.

Following this decision, any actions or inactions premised on the Regulations are invalid. Contractors engaged in building commercial buildings remain purely bound by contractual arrangements between them and their Clients, as it should be, and national and county guidelines on construction standards. Focus for the national government should remain on finalising the update of the Building Code and our construction standards not only to reflect technological advancements but also to incorporate lessons learnt with contractual arrangements residing with the client or industry bodies like JBCC that generate Standard Form Contracts.

Coming on the back of the invalidation of the Value Added Tax Regulations, 2017 on the basis of non-compliance with the Statutory Instruments Act, 2013 the decision serves as a timely reminder to bodies with the power to make delegated legislation of the importance of compliance with the Statutory Instruments Act and any relevant Acts.

DISCLAIMER:

This alert is for informational purposes and is intended to be of general use only. It is not intended to create an advocate-client relationship between the sender and the receiver. It does not constitute legal advice or a legal opinion. You should not act or rely on any information contained in this legal update without first seeking the advice of an advocate.

CONCLUSION