

LEGAL COMPLIANCE OBLIGATIONS & ENFORCEMENT OF CONTRACT CLAUSES IN PANDEMIC TIMES

AN OVERVIEW

BY NELSON HAVI



LEGAL FRAMEWORK OF KEY CONTRACTUAL OBLIGATIONS

- **Law of Contract Act Cap 23**
- **Employment Act, 2007**
- **Land Act No 6 of 2012**
- **Land Registration Act No 3 of 2012**
- **Movable Property Security Rights Act No 13 of 2017**

LEGAL FRAMEWORK OF KEY CONTRACTUAL OBLIGATIONS

- **Central Bank Act Cap 491**
- **Banking Act Cap 488**
- **Bill of Exchange Act Cap 27**

LEGAL & ADMINISTRATIVE INTERVENTIONS TAKEN UPON THE OUTBREAK OF COVID-19

- **Law Society of Kenya v Cabinet Secretary for Health & others, Petition No 78 of 2020 (UR)**
- **Fourteen directives have been issued between March and November, 2020**
- **Curfew, lockdown, court closure, land registry closure, closure of public places, shutdown of air travel, closure of bars and restaurants etc.**
- **Essential Service Providers**
- **Virtual Court Proceedings, e-Filing**

LEGAL & ADMINISTRATIVE INTERVENTIONS TAKEN UPON THE OUTBREAK OF COVID-19

- **Tax Laws (Amendment) Act, 2020**
- **The Pandemic Response and Management Bill, 2020**
- **The Public Health (Covid-19 Restrictions of Movement of Persons and Related Measures) Rules, 2020**

RECOMMENDATIONS

- **Contractual Obligations**
 - **Exercise Right to Terminate Contract**
 - **Suspension, of contractual obligation**
 - **Force Majeure – definition should include pandemics, movement restrictions, lockdowns etc**
 - **Variation and waiver of obligations**
 - **Mitigation of loss**

RECOMMENDATIONS

- **Employer-Employee Relationship**
 - **Renegotiate salaries**
 - **Flexi-hours & rotational/shift duty**
 - **Encourage employees to take leave**
 - **Redundancy or frustration?**
 - **Ensure work environment has established health protocols**
 - **Ensure strict compliance by employer**

RECOMMENDATIONS

- **Company Proceedings and Meetings**
 - **Consider virtual AGMs, Meetings, Seminars**
- **Financial Obligations**
 - **Renegotiate interest rates, repayment period**
 - **Lenders may seek additional security where value of securities may be affected negatively**
 - **Insolvency**
 - **Cease doing business, if there's no way out**

RECOMMENDATIONS

- **Conveyancing & Leases & Tenancy**
 - **Vary terms especially on completion period, possession (as tenant)**
 - **Choose to terminate where allowable**
 - **Get temporary reprieve through the courts in dire cases**
 - **Slow down on large development projects**
- **Access to Justice**
 - **Enact Regulations for e-justice**

RECOMMENDATIONS

- **Access to Justice**
 - **Enact Regulations for e-justice**
 - **Financial support to the judicial & justice sector**
 - **Alternative Dispute Resolution**
- **Data Protection**
 - **Adhere to the Data Protection Act**
 - **Collect only that information that is necessary**
 - **Invest in data security**

RECOMMENDATIONS

- **Legislative & Regulatory Reform**
 - **Pandemic Response and Management Bill, 2020 with necessary amendments**
 - **Civil Procedure Act and Rules**
 - **Consumer Protection – Competition Authority aggressively protect against exorbitant pricing of essential goods**
 - **Tax Relief , Extension of compliance timelines**

CONCLUSION

- **We are on our own and will be for a while in the matter of performance of contractual obligations.**
- **We, however, hope that the governing class will wake up to the reality that Covid-19 is here and do that which is necessary on their part.**
- **On your part, remember that the keen eye of legal and other experts are required now more than ever before putting your signature on any binding contract.**

THANK YOU!

WASH YOUR HANDS

WEAR A MASK

KEEP SOCIAL DISTANCE

