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## Article

# EFFECTS OF DELAYS IN UGANDA'S ROAD CONSTRUCTION PROJECTS- A CASE FOR DISPUTE ADJUDICATION AND ARBITRATION BOARDS (DAABS).

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**Construction of Road interchanges at Kampala Northern bypass in Uganda**

Uganda is projected to become an upper middle-income economy by year 2040. According to the country's national planning authority, the focal point in realising this projection is entrenched in government's deliberate effort to prioritise investment in infrastructural development. To this end, the government of Uganda has devoted over \$ 11 billion in the past decade to addressing infrastructural bottlenecks particularly in the road's construction sector. While this is so, delay in road construction projects has become a major problem and is considered one of the most recurring challenges to realising the middle-income status. This inability to complete road construction projects on time has become a persistent concern, catalysed by a lack of specialized dispute resolution mechanisms for arbitration, conciliation, and mediation.

The Minister of Works and Transport, Gen. Edward Katumba Wamala stated that government is estimated to be losing ugx 120million weekly in delayed road projects. According to the 2022/2023 Parliamentary Budget committee report only 10 out of the 85 road projects are on schedule to be completed on time representing only 11.8% timely completion rate of projects. The most notable of these unfinished projects which currently hold a combined contract value of Usd 400 million include the Kampala-Jinja Expressway; Muyembe-Nakapiripirit Service Roads; Kibuye-Busega-Mpigi; Rukungiri-Kihihi-Ishasha/Kanungu; and Kampala Flyover Construction & Road Upgrading Project. The construction projects of the Kampala-Entebbe Expressway and the first phase of the Northern Bypass were planned to be completed in 2016 and 2017 respectively but were only realised in 2018 and 2021.



**Gen. Edward Katumba Wamala  
Minister Of Works And Transport**

According to a recent study, the average delay in road construction projects in Uganda is approximately 18 months. This has resulted in increased costs for contractors, with estimates suggesting that these delays have cost the country's construction industry over \$100 million in the past decade. This obstruction of road projects beyond the set completion period has been cited to have led to adverse inference on their success in terms of time, cost, and quality. In several other cases delay in road construction projects has resulted into litigation, total project abandonment and financial loss; instigated by impediments in land acquisition, obstinate contractors, errors in design and bad weather. In this regard the FIDIC (Red Book) conditions of construction contracts recognise and provide guidance on liability for delays in construction projects. The FIDIC red book is founded on the principle that, rather than wait until the works are complete, disputes should be resolved during the course of the project to prevent those contracts from being frustrated by an act(s) of prevention by the employer. The FIDIC contract rules also provide that in the circumstance that the contractor is relieved of the obligation to perform the works within the stipulated period there should be a mechanism that allows the contractor to recover the time lost for delays that are beyond their control. In Uganda the public procurement and disposal of public assets Act 1 of 2003 provides for the contracts committee to determine a contractor licensed by a competent authority to undertake a project in respect of public procurement and it is also mandated to play an oversight role to avoid project delays.

The United Kingdom Supreme Court in the case of *Triple Point Technology Inc v PTT Public Company Limited* [2021] UKSC 29, clarified the relevant principles relating to construction clauses and the payment of liquidated damages for delay. The Supreme Court confirmed that, unless clear words in the contract provide otherwise, liquidated damages for delay will be an accrued right which is recoverable where the contract is terminated either under its terms or at law for repudiation.

A critical road construction delay litigation case in Uganda is *Uganda National Roads Authority v. DOTT Services Ltd* in which the respondent was to do road construction works on Mbale- Soroti and Tororo-Mbale Roads. The contract document provided for compensation for delayed works, and in this case the respondent contended that there was delayed commencement, which led to costs arising from idle equipment, personnel, and other costs. The Commercial Court maintained that the applicant should compensate the respondents the agreed sum of UGX 29,858,532,071 arising out of prolongation costs of 509 days as provided in a contract.

The execution of road construction projects is becoming more formidable due to the bureaucratic nature in procurement of public works muddled with prolonged payment delays, unbudgeted financial



burdens, and cash flow problems. the public procurement and disposal of public assets act, 2003 spells out specific period within which a contractor should be paid after submission of monthly statement to the consultant for certification and onward payment.

However, in many cases the contractor is not paid within the contractual specified period thus impeding the completion of the project. In the case of Omega Construction Company Ltd v Kampala Capital City Authority (Civil Suit 780 of 2015) [2017] UGCommC where the defendant procured the services of the plaintiff for upgrades to some of the city's drainage sites. Following the defendant's non-payment even after the plaintiff had issued several interim payment certificates through their project manager and the plaintiff reacted by terminating the contract, upon which time a final certificate was issued by the project manager for work hitherto completed, in observance of the agreement's termination procedure.

The defendant objected to the payable figures outlined in the final certificate due to its apparent failure to factor in alleged performance anomalies on the part of the plaintiff. The court ruled in favour of the plaintiff, finding the defendant's claims to be substantially impaired since the regulations impacting the issue and review of payment certificates came into force after the conclusion of the contract, so general legal principles and the agreement's terms took precedence in the court's analysis.

Presently, the major causes of road construction project delays have been classified broadly into five categories that is, project funding, which is often as a result of delay in delivery of project loan or grant by the funding institution; slowness during the client-endorsed payment process; scarcity of professional personnel; delay in indemnifying landowners; and disputes between contractors and project stakeholders, these disputes can be related to issues such as payment and changes to the scope of work.



**Kampala Fly Over and Road upgrading Project (in progress) – Image courtesy of Uganda National Road Authority (UNRA)**

Consequently, a solution to this problem is the adoption of Dispute Adjudication and Arbitration Boards (DAABs). DAABs are independent bodies that can be used to resolve disputes between contractors and project stakeholders, as well as disputes between different contractors working on the same project. Using DAABs as a specialized dispute resolution mechanisms to resolve road construction projects disputes can help to resolve clashes more quickly, which can help to minimize delays in the project timeline and also reduce the risk of legal action being taken, which can further reduce delays and costs associated with the project. The use of DAABs to resolve disputes in construction projects is a viable alternative to court litigation and according to the Construction Industry's Guide to Dispute

Avoidance and Resolution Alternative dispute resolution methods such as mediation and arbitration can be used to resolve disputes in order to ensure that road construction projects are delivered within the specified period.

Overall, the implementation of dispute adjudication and arbitration boards could be a valuable step in addressing the issue of delays in Uganda's road construction projects. By providing a forum for the resolution of disputes and serving as a deterrent to potential clashes, these boards could help to ensure that projects are completed in a timely and efficient manner, bringing much-needed progress and development to the country.

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