

Zodwa Malinga

Associate



Zodwa Malinga is an Associate in our Dispute Resolution practice and a member of our Construction & Engineering sector. She has experience in construction dispute resolution in and commercial litigation. Zodwa has been involved in mediations, adjudications and arbitrations under the NEC, JBCC, GCC and FIDIC standard form contracts and other bespoke agreements. She has also been involved in contract drafting and reviews along with preparing advice notes for clients.

About Zodwa

Zodwa completed her articles at a construction specialists firm of attorneys, where she also worked as an Associate prior to joining CDH in 2024.

Credentials

Education

- Bachelor of Arts, Rhodes University, 2017
- Bachelor of Laws, Rhodes University, 2019
- Year admitted as an attorney: 2023.

Experience

- Represented the Contractor in an arbitration based on the FIDIC (Red book) for the recovery of losses incurred as a result of the COVID-19 pandemic.
- Represented the Employer in an adjudication based on the JBCC Principal Building Agreement. The disputes related to various extension of time claims resulting from the obligation to supply of water and electricity for the commissioning of the works.
- Represented the Employer in a dispute regarding the interpretation of an arbitrator's decision in respect of the contract price adjustment and interest. The agreement was based on the NEC3 Terms Service Short Contract.
- Represented the Contractor in an arbitration based on the NEC3 Engineering and Construction Contract.
- Represented the Contractor in the enforcement of an adjudicator's decision issued.

Contact Zodwa

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Expertise

Dispute Resolution

Construction & Engineering

Location

Johannesburg

Language

English

isiXhosa

isiZulu

Sepedi

Setswana

- Represented the Contractor in proceedings to compel the issuing of a final account in accordance with the JBCC Principal Building Agreement
- Represented the Employer in an arbitration in which the Contractor was challenging the termination of the agreement. The agreement was based on the JBCC Principal Building Agreement.
- Represented a Contractor in mediation proceedings agreed to in accordance with the JBCC Principal Building Agreement for the payment of outstanding payments certificates and retention monies.
- Represented client in mediation proceedings against a crane hire company in terms of an agreement between the parties.

News

Types of alternative dispute resolution

Alternative dispute resolution (ADR) methods have become the preferred mechanism to resolve commercial disputes. The traditional approach to dispute resolution used to be litigation. The popularity of alternative methods of dispute resolution can in part be attributed to the backlogs experienced by courts. This has also resulted in the incorporation of one of the alternative dispute resolution methods into the Uniform Rules of Court. The introduction of the new Rule 41A in March 2020 meant that an initiator of litigation proceedings was required to file a notice asking the other party whether they were amenable to mediation and the other party was required to respond with its own notice, but mediation was by agreement. Recently, the Gauteng Division of the High Court issued a directive introducing mandatory mediation in the Gauteng division and the accompanying protocol.

Does a time-bar challenge negate an adjudicator's jurisdiction to determine a referred dispute?

Adjudication serves as a crucial dispute resolution tool in South African construction contracts, offering a rapid, interim solution to keep projects moving amid disagreements. Increasingly integrated into major construction agreements, adjudication decisions are legally binding until overturned by arbitration, litigation or mutual agreement.

Lawyers breaking barriers

Marelise van der Westhuizen, Director in the Dispute Resolution practice, and Zodwa Malinga, Associate in the Construction & Engineering sector, were recently featured in the Sunday Times Celebrating Women issue, where they discussed "Lawyers breaking barriers."

Engineering News & Mining's Women in Industry

Tessa Brewis, Director in the Energy & Power sector, Alecia Pienaar, Counsel in the Environmental Sector, and Zodwa Malinga, Associate in the Construction & Engineering sector recently appeared in "Engineering News & Mining's Women in Industry" feature.

The issue of procedural rights and settlement agreements in the adjudication of the defence of fraud against the enforcement of a performance guarantee

The parties to a construction contract often agree to the conclusion of separate financial arrangements with third parties for the purposes of ensuring financial security and project success. Where such an agreement is in place, the contractor procures an undertaking furnished by a guarantor, who is an authorised financial services provider, to pay a specified amount to the employer where the contractor (or subcontractor) fails to perform in terms of the contract. This undertaking is known as a performance guarantee.

Podcasts

Compensation events under the NEC3 Engineering and Construction Contract

Those who have worked with the NEC3 Engineering and Construction Contract know that compensation events are at the very heart of how change is managed and those who have heard of the standard form may have heard of the word "compensation event".

Retention Guarantees

Parties to a construction contract usually agree to the obligation to conclude separate financial arrangements with third parties for the purposes of ensuring financial security and project success.

Advance payment guarantees in construction contracts

Parties to a construction contract usually agree to the inclusion of separate financial arrangements with third parties for the purposes of ensuring financial security and project success.

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