

Dispute Resolution

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KENYA

An analysis of Kenya's Construction Payments Adjudication Bill, 2025



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**DISPUTE RESOLUTION
ALERT**

An analysis of Kenya's Construction Payments Adjudication Bill, 2025

The construction industry remains a cornerstone of Kenya's economic development, catalysing job creation and infrastructure transformation. Yet, persistent payment disputes, contractor distress and project delays plague the sector. Existing traditional methods of resolving such disputes, such as arbitration and litigation, are often expensive, slow and adversarial, and as a result, undermine the industry's efficiency and financial viability.

In response to the payment inefficiencies plaguing the construction industry in Kenya, we published this [article](#) in April 2025 explaining why Kenya should consider adopting statutory adjudication akin to the UK's approach under the Housing Grants, Construction and Regeneration Act of 1996 (UK Act) and emphasising the need for a fast, cost-effective and enforceable mechanism to resolve payment disputes and enhance cash flow in construction projects. The recent publication of the Construction Payments Adjudication Bill, 2025 (Bill) marks a major milestone towards achieving that objective.

This article analyses the Bill's framework, its strengths and gaps, and offers recommendations for its improvement, drawing from our legal experience, comparative practice and stakeholder comments.

The Bill's key features

The Bill provides a detailed structure covering adjudication agreements, the adjudication process, appointment and conduct of adjudicators, and enforcement of adjudication decisions. Notable provisions are outlined below.

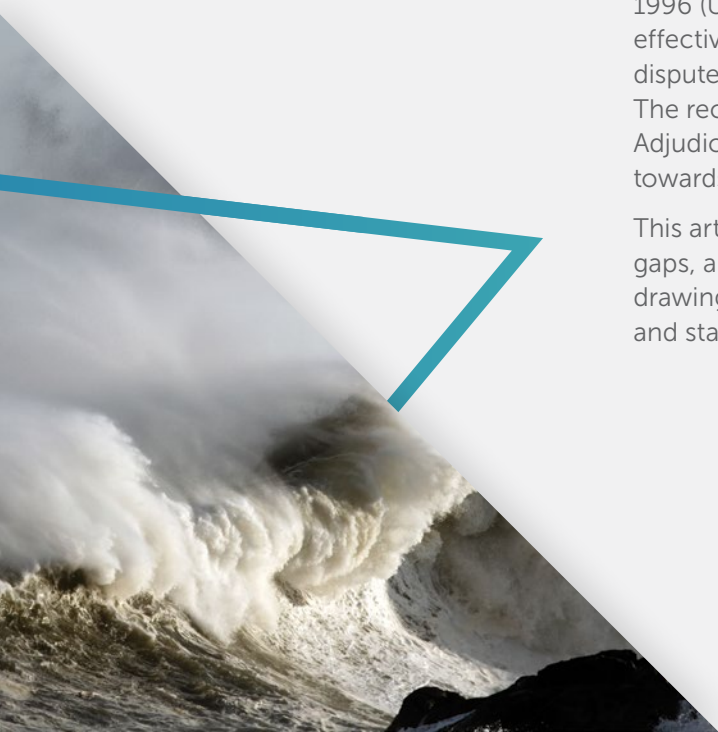
Application

If passed, the legislation will apply to a construction contract whether or not the construction works are carried out wholly or partly within Kenya. This envisions construction works such as the standard railway gauge that may extend from Kenya to Uganda or South Sudan. The parties under such a contract may elect to resolve payment disputes under the provisions of the act, notwithstanding that the works would be partly performed within Kenya.

However, the legislation will not apply to a construction contract whose terms provide for a different procedure for resolution of payment disputes or if it provides for adjudication but not under the provisions of the act.

Written agreements

For adjudication to apply as the parties' dispute resolution mechanism regarding payment, there must be an agreement in writing to adjudicate payment disputes. It shall be deemed to be in writing if the contract is signed by the parties or there is an exchange of letters, telex, telegram, facsimile, electronic mail, or other means of telecommunication between the parties in relation to the construction works being undertaken.



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The provision for exchange of correspondence is meant to enable parties to agree to adjudicate after a dispute has already arisen and where their construction contract may not have provided for it.

Structured adjudication process

The Bill proposes a structured adjudication process, which includes issuance of a payment claim by the contractor, issuance of either a payment schedule by the employer or a schedule to pay less, issuance of notice of reference for adjudication where a party is aggrieved and making a reference to the construction adjudication body for the appointment of adjudicator.

Timelines

Adjudicators must determine disputes within 14 days of receiving the response, extendable with consent.

Binding decision

The Bill sets out the form of the adjudicator's decision and requires payment within seven days. The Bill also proposes to have adjudication certificates enforceable as High Court decrees.

Limited judicial intervention

The Bill proposes limiting the court's intervention except as permitted under the act, with decisions of the High Court being final.

Among the key proposals in the Bill are reforms intended to align with global best practices, streamline adjudication procedures and address gaps previously identified in Kenya's construction adjudication framework. These include:

- **Enforceability of adjudication certificates:** By proposing adoption of adjudication decisions as High Court judgments, the Bill ensures that adjudication decisions are ultimately enforceable, thereby strengthening the effectiveness of contractual adjudication.
- **Defined adjudication timelines:** The proposal to have a 14-day window for specified procedures would enhance efficiency and offer greater certainty to parties seeking interim relief.
- **Clear scope and definitions:** The Bill proposes expansive definitions for "*construction contract*" and "*construction works*", covering services from design to labour and material supply, thereby ensuring comprehensive inclusion of stakeholders.
- **Regulation of adjudicators:** Provisions relating to appointment, independence, remuneration of adjudicators and a code of conduct are intended to promote professionalism and impartiality of adjudicators.



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Potential refinements

Although progressive in several respects, the Bill presents opportunities for further improvement in certain areas such as:

A right to adjudication

The Bill, as drafted, does not confer an express right to refer a construction payment dispute to adjudication. This is in contrast to jurisdictions such as the UK and Canada whose relevant acts (the UK Act and Canada's Federal Prompt Payment for Construction Work Act of 2019) provide for a right to adjudication, meaning that a dispute may be referred to adjudication at the instance of one party without the requirement of a written agreement. It may be worthwhile considering a provision that allows reference to adjudication as a right to ensure traditionally weaker contracting parties, such as subcontractors, have access to adjudication. It would also be interesting to see how such a provision would be interpreted by the Kenyan courts in light of Article 159 (2) (c) of the Constitution of Kenya that promotes a multidoor approach to dispute resolution.

Binding effect of an adjudicator's decision

The Bill does not clearly affirm that adjudicator decisions are binding until final resolution by either arbitration, litigation or agreement. It may therefore be worthwhile to introduce a provision affirming that the adjudicator's decision is binding on the parties on an interim basis in order to resolve cash-flow issues related to delayed payments and dilatory tactics.

Reasoned decisions

The Bill does not require adjudicators to provide reasons for their decisions, which may reduce transparency. While we understand the need for timeous decisions by the adjudicators, for complex payment disputes, we propose giving parties the option of requiring a reasoned decision, where all the parties consent. This in our view will enhance transparency since reasons enhance trust in the process and assist parties to understand the basis of the decision. Further, parties retain the autonomy to waive this requirement if they prioritise speed over detail.

Timelines for challenge of the adjudication decision

Although there is often a real need for efficacy in the dispute resolution process, the seven-day period within which to set aside an adjudicator's decision is relatively short, considering that it would require an application to the High Court. The period should be extended to 14 days to allow adequate time for preparation while preserving the process' expedited nature.



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Conclusion

The Construction Payments Adjudication Bill, 2025 presents an opportunity to revolutionise dispute resolution in Kenya's construction industry. Its enactment will improve cash flow for contractors; reduce reliance on costly litigation and arbitration; and foster investor confidence through predictable legal frameworks.

However, its success hinges on strengthening certain provisions to promote fairness, access, and enforceability. By incorporating stakeholder feedback, particularly from practitioners and industry players, Kenya can create a robust adjudication regime that supports infrastructure development and economic growth.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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