

Recapitulating the Payment Default Effects to Contractors in the Kenyan Construction Industry

Mark Obegi Kenyatta, Ahmad Omar Alkizim, Titus Kivaa Mbiti

Abstract- Cash flow is undoubtedly the bloodline that drives enterprise in the construction industry. Any interference in its smooth flow may therefore lead to severe consequences. "Work first and get paid later", is the motto of the construction industry. This arrangement inevitably demands the input of several parties in the form of labour, materials, plant and other trade credits as the work progresses. Further, the end product becomes part and parcel of the land, whose legal possession lies squarely with the construction client. The sweat and pain of unpaid parties in the construction pyramid are therefore left at a disadvantaged position as they chase for their claims. This paper recapitulates the effects resulting from payment default to contractors from their construction clients in Kenya. Content analyses of payment dispute cases lodged in the commercial division of the Kenyan courts as well as the standard contracts were employed. The study finds that payment default in the form of late payment of one or several certificates, underpayment or paying in installments and nonpayment have led to cash flow hardships to contractors and their lower tier parties, late completion of projects, construction disputes and even insolvency. To mitigate on these impacts, this paper proposes that the industry players consider legislating on a payment specific regime just like it has happened in other countries.

Keywords: Payment default, contractors, construction industry of Kenya.

I. INTRODUCTION

It is a well acknowledged fact that the construction industry is a major economic driver in many economies, usually accounting for an average of about 10% of Gross National Product (GNP) as attested by both (Mbiti, 2008) and (Chitkara, 2011) respectively. Reports in Kenya indicate that the sector contributed a growth rate of 6% and 5% in 2009 and 2010 respectively to the Gross Domestic Product (KNBS, 2012). This implies that there is a room for growth so as to reach the global average. The importance of the construction industry is further amplified by its varied and unique end products that it supplies (Whitfield, 1994). Further, the sector offers direct employment to a significant labour force, material suppliers and plant and machinery suppliers (ibid). However, the performance of the participants involved and the product output is dependent on the promptness and regularity of payment (Ramachandra, 2013). Further the payment administration process is complicated due to the practice in the industry of "work first get paid later" (Ameer, 2006). Both Ramachandra (2013), and Mbachu (2011) suggest that payment default in the construction industry may be epitomised in three forms; delay in paying one or more certificates, downward revision of certificates or invoices, and not paying at all.

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Prism (2013) adds another aspect of payment default from head contractors to lower tier parties as a strategy of keeping their balance sheets afloat. The analysis of the payment dispute cases lodged in commercial courts in the current inquiry corroborates this trend. Anecdotal evidence in Kenya from newspaper reports and industry commentators seems to indicate that many contractors are facing insurmountable challenges as a result of late or non payment default (Africa Building, 2013). On a similar note, it was reported in one of the local dailies, that the government owed contractors 19.39 billion shillings in pending bills (Business Daily, 2013). A survey covering the year 2011, reported that 85% of the small and medium sized contractors revealed that they had suffered penalties from lending institutions as a result of late payments largely from public sector clients (NESC, 2014). This obviously points to the conclusion that poor payment practices have had adverse consequences at both the level of the contracting firm and micro levels in Kenya. The study established that the default on payment to contractors results in cash flow hardships, insolvencies, construction disputes and delay in project completion in the Kenyan construction industry.

II. THE NATURE OF PAYMENTS AND CONTRACT FORMS

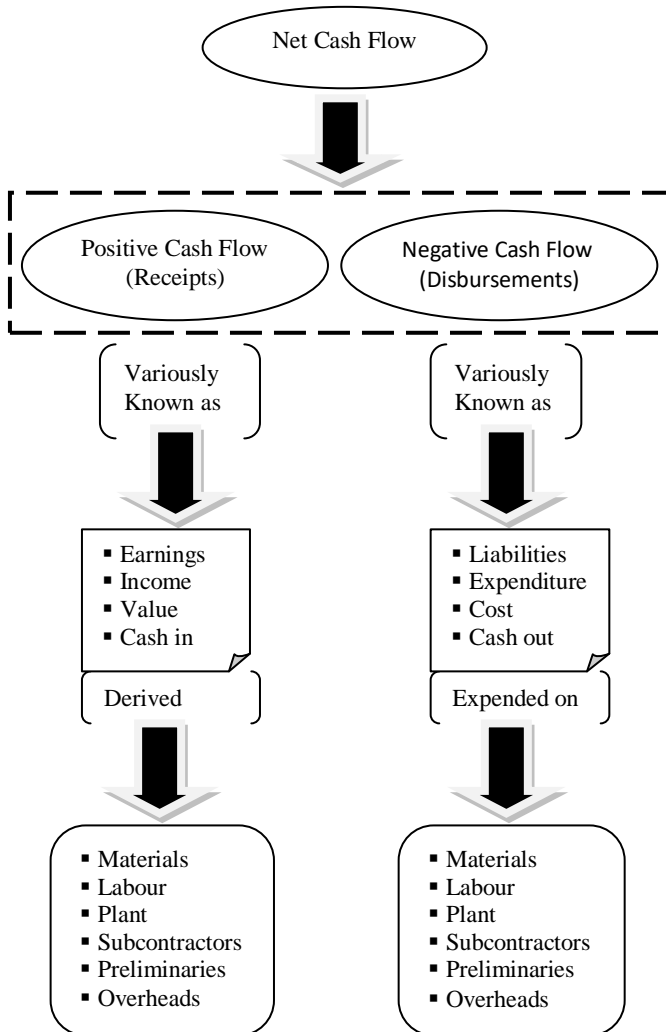
Both Siti & Rosli, (2010) and Uff (2009) describe payments in the construction industry as "a monetary consideration for the contractor's performance or work done". In the construction industry the contractor undertakes to carry out the works while the employer's part of the bargain is usually payment of the money. In Kenya, JBC form of contract goes further to classify payment types to be either interim or final. Going further, both Murdoch & Hughes, (2008) and Chitkara (2011) explain that interim payments mean temporary, provisional or short term payments made progressively to the contractor usually monthly or as may be agreed by parties in the contract.

On the other hand, the Public Procurement Oversight Authority (PPOA) contract forms for building works also goes deeper to explain that interim payments will usually constitute the value of work done and taken to comprise the value of the measured physical quantities completed during the period under consideration, materials delivered to site, approved variations and any other compensation events awarded (PPOA, 2006). Generally, construction projects will present numerous instances which bring about variations (Mururu, 2011), Standard practice requires that once a variation is admitted, the monetary value should be included in the next certificate. Sometimes this is seldom the case due to either the contractor not submitting his variation claims promptly, the variation claims is disputed or may not be approved promptly. When the later happens, then contractor's cash flow will be affected Thomas & Wright, (2011), this concept

Recapitulating The Payment Default Effects to Contractors in The Kenyan Construction Industry

of the cash flow is illustrated in figure 1.

It is depicted in figure 1 that payments made for contract work represent negative cash flow (money out) for the client and positive cash flow (money in) for the contractor Cooke & Williams,(2009). Further, Mbachu (2011), explains that the estimated net cash flow or profit form the project will ultimately be affected if payments as a known channel of income and expenditure is not paid in a timely manner .



**Figure 1 Construction cash flow concept
Reconstructed from: (Aziz, 2012)**

Similarly, Table 1, indicates that the Contractor is entitled to be paid at least once a month, save for FIDIC red book form that is used for civil and engineering works designed by the employer. It is also the time when the Architect/Project manager or Project Engineer as the case may be is obliged to issue the Contractor with the Interim Certificate. The Employer in return must honor the certificate by paying the Contractor within the time stated in the contract which is 14 days under JBC, 30 days under PPOA, and 56 days from date of application under International Federation of Consulting Engineers (FIDIC) form.

Table 1 Contractual payment cycles

Description	JBC, Kenya April 1999	PPOA, Kenya 2005	FIDIC,1999
Interval of Application	As agreed between Parties in	Monthly (Cl. 23.1)	Monthly (Cl. 14.3)

	appendix page (Cl. 34.1)		
Issuance of Interim Certificate after Site Valuation	14 days (Cl. 34.3)	14 days (Cl. 23.1)	28 days (Cl. 14.6)
Period of honoring the Certificate	14 days upon presentation to the Employer (Cl. 34.5)	30 days from the date of issue (Cl. 23.1)	56 days from application date (Cl.14.7b)
Issuing Person	Architect (Cl. 34.3)	Project Manager (Cl. 23.1)	Project Engineer (Cl. 14.6)
Amount payable	Work done + Materials on Site + materials off site + Variations	Work done + Materials on Site + Variations + Compensation events	Work done + Materials on Site + Variations

Source: Author's own construction

Generally, the conditions of contract do outline the timing and manner of payments to contractors for work done. Payment application may be submitted on a regular basis, assessed by owner's consultants before being approved, and then paid in full or in part. In such cases, the contractor's cash flow and financial status largely depend on how timely the payments are. It therefore can be concluded that Late and/or incomplete and non payments can seriously affect this status Tran & Carmichael, (2013). The nature and the various types of contractual payments that could be delayed or defaulted by the employer may further be classified as interim,stage or milestone, advance payments, payment of retention monies and final payments Fleming & Koppelman, (2008), Ramachandra, (2013), Uff, (2009), Ansa, (2011) , Ashworth, (2012).and (cidb, 2013). The nature of these payments is described here under;

- Interim payment:** Refers to payments made in intervals based on interim valuations of work carried out during the month or any other agreed time frame. Interim valuation assessments will usually lead to issuance of a payment certificate which creates a debt due from the employer to the contractor.
- Stage or milestone payments:** Stage payments could be described as performance or event based payments where a contract sum is allocated on defined work stages or phases and payment is pegged upon completion of the agreed stage. Each specified milestone can be independent or cumulative and once approved as complete payment is usually made in full, less agreed retention amount. Work measurements may not be necessary in this model as the proportions of payment schedules are fixed.
- Advance payment:** This refers to instances where a sum of money is paid up front to the contractor before work is executed on site. Besides agreements as to the terms of the advanced money, the contractor may be required to furnish the employer with an advance payment bond as a surety. The rationale behind this type of payment is that the

contractor might be forced to borrow at high interest rates from which may consequently increase the contract price. It has been noted that the practice of advancing payment from public sector clients in Kenya has since been abolished as a government policy.

- d) **Retention money:** This refers to the portion of the money progressively deducted from each interim or stage payments on work that has not reached practical completion. The purpose of the retainer is to protect the employer from defective work, overpayment and contractor insolvency and at the same time act as an incentive to the contractor to complete the works. Sometimes one half of the retainer known as moiety of retention is retained for purposes of attending to defects liability period as may be agreed.
- e) **Final payment:** This refers to final payments made through issuance of a final certificate arrived at through the process of re-measurements resulting to a final account settlement after practical completion and defects liability period.

2.1 THE CONSTRUCTION PYRAMID

The construction process is usually complex and fragmented (Ramachandra, 2013). Potts, (2008) also adds that the complex hierarchical structure of contracting and sub-contracting differentiates the construction industry from other industries, from which it follows that the consequences of payment default by one party are likely to be felt in the entire supply chain. This concept is illustrated in figure 2. This figure shows a hierarchical structure of a hypothetical building development, where the owner sits at the top. If the flow of payment from the owner to main contractor and down to the lower parties is defaulted, then the consequences will cascade to all the lower tiers. Secondly, the existence of imbalanced commercial bargaining power among the parties in the pyramid is yet another reason that may escalate payment default (Wu, et al., 2008). It has been argued that this aspect usually discourages lower parties from standing up for their rights against the upper tiers for fear of losing out on the opportunity to be considered for the next project. Furthermore the construction industry operates on what Sir Michael Latham described as the cascade system where the client, who sits at the top of the pyramid makes payment to the main or head contractor who will in turn pay his lower sub contractors and suppliers (Latham, 1994). Similarly, (Teresa, et al., 2008), further elaborates that the chain may begin above the client jointly with the financial institutions or any other funders who are providing project finance defaulting or main contractor collapsing, and as a result lower tier participants may consequently be treated as unsecured creditors in respect of work which they have already carried out (or goods procured).

2.2 EFFECTS OF PAYMENT DEFAULT

Various researchers are of the view that payment default may lead to cash flow hardships, insolvencies, disputes and delay in completion of projects. The foregoing effects are discussed in their appropriate sub headings here after:

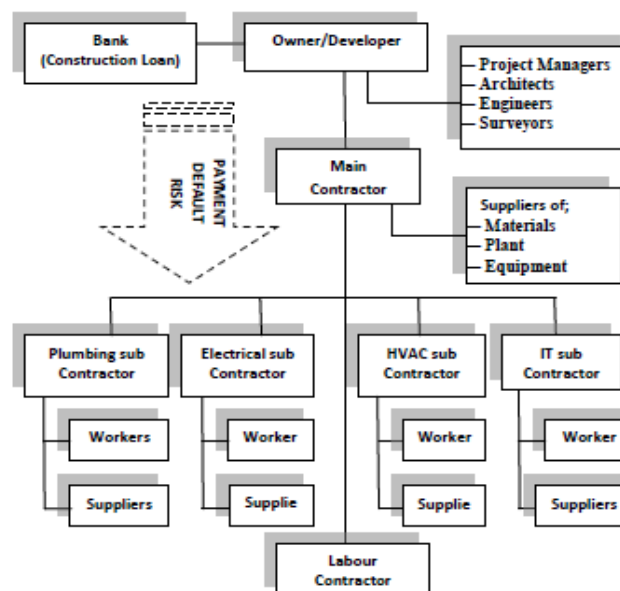


Figure 2: Construction pyramid in a large building construction project

Source: Reconstructed from (Prism, 2013)

2.2.1 Leads to Cash Flow Hardships

Longer payment periods of payment other than what was contractually agreed may mean that other participants in the downstream supply chain will and can become cash starved, forcing greater reliance on borrowing. These parties will consequently also seek to impose longer payment periods on downstream sub-contractors and suppliers (Ye & Rahman, 2010). Hence inflicting financial hardships to all parties concerned. Cunningham, (2013), argues that due to the structure of the Construction Industry which is organized in a complex network of interlinked and interdependent contractual relationships, referred to as the supply chain illustrated in figure 2. Subcontractors, particularly domestic subcontractors, are particularly vulnerable as they typically operate on pay-when-paid or any other extended credit arrangements. In these circumstances it is not difficult to envisage situations where the disruption of cash-flow at the head of the supply chain has disastrous knock-on effects for downstream subcontractors and suppliers and, which in turn, may have equally catastrophic rebound consequences for upstream larger contractors who remain ultimately responsible for delivering the works as originally agreed. In Kenya, cash flow problems have troubled the construction industry for some time now as was substantiated in the (ProInvest, 2011) report, where it was claimed that some contractors usually end up waiting for payments from government client for a period as long as 5 years consequently pushing some to the verge of bankruptcy.

2.2.2 Leads to Business Insolvencies

Insolvency in both economic and legal terms means the inability of one party who may be an individual or company to pay debts owed to creditors (Uff, 2009). While (Cantor, 2014) adds that in some jurisdictions insolvent individuals or organizations may be made bankrupt statutorily or voluntarily through a winding up process, in practical terms, this implies being put into receivership and consequently going out of



business. (Uff, 2009), further points out that adverse cash flow conditions may drive a construction company into insolvency with the consequences of bringing the project work to an end. In South Africa, a survey covering the period 2004 to 2007 by (Marx, 2012) also quoted by (Maritz & Robertson, 2012), it was revealed that only 44% of contractors surveyed were paid on time thereby leading to cash flow hardships. This situation prompted the South African Construction Industry Development Board to hold a delayed payment conference involving industry players, where business insolvency was pointed out as one of the critical impacts associated with delayed payments (CIDB, 2010). A review of the critical challenges faced by Kenyan contractors by (ProInvest, 2011), observed that contractors were waiting for payment for more than 5 years from government clients with very high possibilities of going out of business due to late payment vice.

2.2.3 Leads to construction disputes

According to (Jaffar, et al., 2010), “a dispute may be said to exist when a claim or an assertion made by one party is rejected or not accepted” While (Muigua, 2011), is of the view that a dispute may be synonyms with a conflict which may also be described as a situation when one is pursuing objectives that are contradictory with the goals of another. This same author explains further that cost and money in construction projects are related to disputes. Similarly, (Jaffar, et al., 2010) also argues that contractual matters related to variations and payments were found to be the main sources of disputes in the Malaysian construction industry. Earlier, Abidin, (2007) also quoted in Ramachandra, (2013), had profiled construction disputes and pointed out payment certificates as the main source of disputes. Similarly, a profile of the Kenya payment dispute 33 cases in table 5 indicates that a majority of cases were related to progress payments, where variations were a bone of contention. Further afield, Ramachandra & Rotimi, (2011) also quoted in (Ramachandra, 2013), while investigating the status of payment disputes in Austrian construction industry found out that out of 40 cases reviewed, 80% were related to progress and final payments. These researchers also found out that only 40% of the cases were successful while the remaining cases were either unsuccessful or partially successful in terms of the claimant recovering money in dispute.

2.2.4 Results in late completion of projects

According to (Ali, et al., 2010), delay in construction projects refers to a situation where the project cannot be completed under the stipulated contractual time, while (Kikwasi, 2012) adds by describing this situation as the prolonged construction period. Similarly Abdul-Rahman, et al., (2011), explains that construction delay is also synonyms with time overruns either beyond the contractual date or beyond the agreed delivery dates. Hence, delay is a phenomenon where project activities are being slowed down without halting them completely. This same author further claims that a majority of projects worldwide usually suffer from late completion as a result of financial related issues. Various researchers seem to agree that extension of project time may ultimately lead to cost overruns and possibly disputes among parties besides other effects. (Aziz, 2013), suggests that the consequences of payment default will usually have an impact on profitability of construction firms.

Undoubtedly the client’s inability to promptly release the required funds will lead to late completion and therefore understanding the importance of prompt payment will most likely lead to more successful projects in terms of time, cost and quality parameters Fugar & Agyakwah-Baah, (2010).

III. RESEARCH METHODOLOGY

This study adopted content analysis of documents, where underlying themes were identified and analyzed within the context of the wider study literature. According to (Bryman, 2012), documents as a source of data collection is an approach to the analysis of documents and texts. This same author adds that the approach may be used both quantitatively and qualitatively. (Silverman, 2010), on the other hand explains that documents consist texts and images that has been recorded without the intervention of the researcher. Documents considered in the current study include payment dispute cases, the PPOA, JBC and FIDIC standard contract forms. As regards payment dispute cases, the <http://kenyalaw.org/caselaw> at the Kenya Law Report website data base portal was used to search for payment dispute related cases over a ten year period from 2005 until 2015 in Kenya. The parameters “building and construction payment disputes” were used to identify cases, and each was then examined in detail to ascertain that it was a construction payment dispute case. Only cases that related to residential, commercial, civil engineering, industrial and road construction were examined; they numbered 33 cases in total. Cases involving payment disputes over professional fees were excluded from the search. The cases examined revealed the parties involved in the payment disputes, the amount of money, and the durations cases were taking to be resolved. The possible effects emanating from payment default, expressly stated or implied were also examined.

IV. RESULTS AND DISCUSSION

4.1 Profile of construction payment cases

Table 2 reveals that majority of the cases were filed in 2014 (18%) over the 10 year period analyzed, while in the same year 24 % were determined. It is possible that the majority of payment related disputes are lodged in arbitration as opposed to the courts as provided in the standard contract forms, in such a case if the outcome is agreeable to both parties then the matters will not find their way to the courts and consequently to the public.

Table 2 Construction payment cases filed in court

Yea r	Date Filed in Court		Ruling date	
	Frequen cy	Percentage %	Frequen cy	Percentage %
2015	1	3	6	18
2014	6	18	8	24
2013	4	12	5	15
2012	6	18	6	18
2011	1	3	2	6
2010	2	6	1	3
2009	5	15	-	-
2008	1	3	-	-
2007	2	6	4	12

2006	2	6	1	3
2005	3	9	-	-
Tota	33	100		100

Source: Research data

This is because arbitration is a private dispute resolution mechanism, where the proceedings are only known to parties themselves and their counsels. As regards the duration that cases were taking in court, it is indicated from table 2 that in a majority of cases (39%) it takes an average of between three (3) to four (4) years for the court to make a determination on these payment disputes.

Table 3 Types of projects with payment disputes

No	Type of project	Frequ ency	Percent age
1	Sewerage with sanitation facilities	1	3
2	Commercial building works	7	21
3	Residential Housing development	5	15
4	Commercial cum Residential development	4	12
5	Aircraft pavement rehabilitation works	1	3
6	Civil engineering & drainage works	5	15
7	Industrial processing plants other electrochemical works	3	9
8	Oil and gas facility	1	3
9	Energy generation Projects	2	6
10	Office fit outs, partitioning and loose furniture	2	6
11	Electrical works in building projects	2	6
Total		33	100

Source: Research data

Table 3 shows that a majority of projects 21% in commercial building projects are embroiled in payment issues, followed by residential housing projects 15%, civil engineering and drainage works 15%, commercial cum residential 12%, industrial processing plants 9%, energy projects 6% ,office partitioning and loose furniture 6% and sewerage works 3% respectively. This appears to be in line with the findings of (Abidin, 2007), in Malaysia, where 71% of disputes were reported in building sub sector. The profile of the current study implies that all types of construction projects are likely to experience payment delays or even nonpayment. Perhaps the reason why majority of these projects are in building and civil engineering category may be attributable to the fact that they employ the traditional procurement approach, a view that was alluded to in (Wahome, 2014),

Table 4 Parties involved in payment disputes

Parties	Frequency	Percentage
Main contractor Vs client/Owner	26	79
Client/owner Vs main contractor	1	3

Sub contractor Vs client/owner	2	6
Sub contractor Vs main contractor	3	9
Main contractor Vs financier/bank	1	3
Total	33	100

Source: Research data

Table 4 shows how parties involved in payment disputes are distributed in the construction industry of Kenya. The majority of disputants in the area of payments are the main contractor against the client 79%. This implies that a large number of main contractors are dissatisfied when it comes to payment for work done from their clients; this is in concurrence with similar findings from South Africa (Marx, 2014) as well as Ghana (Ansaah, 2011). The second category involves sub-contractor against main contractors who filed 9% of the cases. This could be pointing to the situation where payment meant for sub contractors who rendered services under the main contractor do not receive their portion in a timely manner. Researchers Fong, (2005), Mofokeng, (2012), Prism, (2013) and Ramachandra, (2013) had reported similar findings in Malaysia, South Africa, Canada and Australia construction industries respectively.

4.2. The effects of payment default - Case Analysis

A thematic textual analysis of the 33 cases reveals some impacts related to the payment default problems that may have led to the disputes. These effects include;

- Cash flow hardships
- Insolvencies
- Project delays
- Leads to construction disputes

4.2.1 Cash flow hardships

In 7 out the 33 cases reviewed, it was found out that failure for client to settle payment according to agreed contractual timelines resulted in some form of financial difficulties on the part of the contractor. One of the central aspects that emerged from the 7 cases above is that the operations of those contractors to diligently progress with the works on site were dependent on the regular flow of cash through progress payment certificates. And since this arrangement was disrupted, the affected contractors consequently sank into cash flow difficulties. It also does appear that contractors are highly dependent on regular progress payments to enable them meet the project expenditure that accrues during performance. A similar but separate survey in Ghana, seems to corroborate this view, where financial hardships was ranked among the top three most likely impacts of late payments to contracting firms (Ansaah, 2011). While in Malaysia it was similarly reported that financial hardships attributable to late payments was top among the three most grave effects of late and non payments (Danuri, et al., 2006)

4.2.2 Leads to Insolvencies

The majority of the cases reviewed in the current study appear to point towards payment default impacts to financial difficulties on the part of the party that has been cash starved, hence increased possibilities of slipping into liquidation. One outstanding case from the 33 examined is that of

Recapitulating The Payment Default Effects to Contractors in The Kenyan Construction Industry

Kundan Singh Construction International Limited v Bank of Africa Kenya Ltd & another, 2015. In this case the contractor borrowed project finances from commercial banks on the strength of the awarded contracts from the government, the client defaulted in making payments as scheduled and as a result the banks applied to liquidate the operations and assets of the contractor. Apart from the case above, the Central Bank of Kenya recently reported that Ten (10) out of Eleven (11) sectors surveyed revealed an increase on loan defaulters amounting 10 billion shillings in just three months. The Building and Construction as well as Real Estate sectors were singled out as the highest defaulters with 27.55% and 20.49% respectively (CBK, 2015). This default was attributed to late payment from the government, which in turn exposes the defaulting contractors to bankruptcy proceedings.

4.2.3 Delay in project completion

As regards delay in completion, the court proceedings from 8 out of 33 cases examined reveals the underlying aspects of delayed completion attributable to payment default issues. From which it follows that failure to make payments in a timely manner will slow down work progress with the inevitable consequences of not completing on the planned date.

In the case of *D. Manji Construction Limited v C & R Holdings Limited, (2014)*, it was revealed that besides the contractor claiming for among other things interest on unpaid certificates, the client on the hand was counter claiming on late completion, although it was the contractor's submission that it did not contribute to the alleged late completion. Similarly, in case of *Rich Field Engineering Limited V Syneresis Limited, (2012)*, the client terminated the contract on grounds of delayed completion, a claim that was refuted by the contractor who alleged that the delay in completion was as a result of among the factors attributable to the client's failure to make timely progress payments.

From the foregoing, it may be deduced that payment default in the form of delayed payments or even nonpayment has an effect on project completion timelines. More recently, Kimani & Kimwele, (2015), found out that financial factors in Kenya contributed the highest on project delays with an agreement of 85.5% of the respondents surveyed. Similarly the works of (Wahome, et al., 2013), appears to also corroborate these findings. Where it was pointed out that delay in making progress payments; had the second highest influence on time overruns.

4.2.4 Leads to construction disputes

Construction disputes' emanating from payment related issues is a common feature of the construction industry in many countries as indicated in the literature section. Although only 33 payment dispute cases were examined, the proceedings thereof nevertheless suggest that Kenyan construction industry is not an exception. It also does appear that a majority of such payment disputes are resolved through alternative dispute resolution forums, hence only a few of them proceed on the litigation path. A deeper textual analysis of the cases further reveals that the following maybe the underlying reasons for payment disputes;

- Disagreements of the value of work done in interim certificates
- Value of variations in interim certificates
- Disagreements on the final account quantum

- Refusal to pay interest arising from late settlement of certificates
- Price escalations resulting from late completion
- Counterclaims arising from defective work
- Special damages due to contract breach
- Underpayment of certified amounts

Table5. indicates that in a majority of cases 14 (42%) out of 33 were related to interim progress payments on certificates or invoices, while in 8 (24%) cases out of 33 the disputes emanated from a combination of both interim progress payments and the final account certificate. Further, in 9 out 33(27%) were disputes as a result of the default on the final account certificate or interests claims accruing from late settlement of the final certificate while there was one case (3%) attributed to disagreements on final account re-measurements. One case (3%) was also revealed to have been filed in court due to failure to prepare payment certificates.

Table 5 Nature of payments in disputes

Ref. No	Nature of payments in dispute
355 of 2014	Interim certificate
882 of 2011	Interim and penultimate certificates
482 of 2014	Interim and penultimate certificates
39 of 2014	Nonpayment of final certificate
445 of 2013	Interim and final certificates
464 of 2012	Final account quantum upon termination by client
219 of 2012	Outstanding interim certificates and final account
166 of 2012	Final certificate including interest on late settlement of interim certificates
164 of 2013	Disagreements on certified amount
85 of 2009	Delay in honoring interim certificate
31 of 2010	Interest accruing from late payments of 10 certificates ranging from 209 to 458 days
24/29 of 2014	Unpaid final account certificate
765 of 2008	Outstanding final amount including variations
547 of 2007	Nonpayment of final certificate
546 of 2007	Variations and interest on late payments final account
536 of 2005	Variations & default on interim & final certificates & accrued interests
506 of 2012	Unpaid certificates accrued interests
487 of 2013	Unpaid interim certificate
464 of 2012	Unpaid interim and final certificates
445 of 2010	Unpaid certificates
367 of 2009	Underpaid certificate and accrued interest
362 of 2012	Disputed final account
194 of 2009	Final account
151 of 2009	Variations executed & Final account disputed
148 of 2014	Unpaid certificates
106 of 2013	Payment default
71 of 2015	Unpaid certificates
44 of 2006	Failure to prepare payment certificates and non payment
18 of 2005	Late settlement of certificate, accrued interest & losses
13 of 2014	Unpaid certificates
157 of 2006	Delayed payments & final account
52 of 2005	Final certificate and accrued interest
13 of 2009	Final account re-measurements

Source: Research data

The finding in table 5 above, seem to be supported by the earlier works of (Abidin, 2007), in Malaysia, where it was found out that variations accounted for the

majority of payment disputes in the construction industry. Elsewhere in Western Australia, (Love, et al., 2010), similarly observed that several parties were proceeding to adjudication due to rejected claims by clients, partial payments and failure to release retention monies. While payment conflicts were also reported to be associated with variations, unclear specifications, inappropriate contract terms and late issuance of instruction in the Turkish construction industry. On a similar note, (Mahamid, 2014), from Saudi Arabian construction industry adds that delay in settling progress payments by the employers is sometimes motivated by the interest earned in preserving the unpaid sums.

V. CONCLUSION

This paper sought to recapitulate the underlying effects of payment default from clients to contractors in Kenyan construction industry. The study finds out that payment default in the form of late payment of one or several certificates, paying in installments and nonpayment leads to cash flow hardships, business insolvencies, late completion of projects, and construction disputes. Based on these findings, firstly it's recommended that contractors should consider factoring in their bid prices a margin for late payment. It may also be advisable for industry players to review the current payment regime with a view of enacting a payment specific statutory framework just like it has happened in other progressive countries. Future research should also be undertaken on subcontractors and consultants so as to take their views into consideration in respect to payment default.

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