

**TUMISANG MONGAE**

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**Overview**

Tumisang Mongae is a partner in our Johannesburg office Dispute Resolution Department.

He specialises in construction and engineering law, administrative law, corporate litigation as well as contractual and general disputes. Tumisang acts for private companies and state-owned entities in disputes involving the execution of construction contracts and provides ongoing legal advice, contract implementation assistance and dispute avoidance processes as well as advice on various aspects of procurements processes. His experience extends to advising clients in enforcing or defending demands for payments under performance bonds.

Tumisang has LLB and LLM degrees from the University of Pretoria.

**Experience****Construction sector experience**

- Tumisang specialises in dispute resolution arising out of or in connection with the execution of construction contracts. He has acted primarily for Employers, both private companies and state-owned entities, on disputes based on a variety of standard form of construction contracts, including the FIDIC Red Book (For Building and Engineering Works Designed by the Employer), FIDIC Yellow Book (For Electrical and Mechanical Plant, and for Building and Engineering Works, Designed by the Contractor), the JBCC Principal Building Agreement, the New Engineering Contract 3 as well as various bespoke contracts.
- Has acted in various construction disputes relating to earthworks, the construction of buildings (High Courts, a Church, a factory), road infrastructure (national highways), coal-fired power stations, a hydro pumped storage scheme and a sub-station. He is currently advising on maintenance works to be carried out at a nuclear power station and on disputes relating to maintenance works on rail infrastructure.
- He has also advised a client in relation to an indemnity proposal relating to a design by client and a subsequent installation by another, and on taking over of certain areas of the Works.
- In addition to specific disputes, Tumisang is involved in ongoing legal advice, contract implementation assistance and dispute avoidance processes on behalf of clients.

**Insurance sector experience**

- Related to the construction sector experience, Tumisang has advised clients in enforcing or defending demands for payments under performance bonds.
- On the enforcement of performance bonds, Tumisang has advised a roads agency in enforcing a performance guarantee due to a Contractor having been placed under business rescue, alternatively due to its failure to complete the works timeously or at all. Tumisang has also engaged with a Guarantor, after making a demand for payment under a performance bond, for the appointment of a replacement contractor, which entailed allocating risks and ensuring timeous completion of the works.
- On defending demands against performance bonds, Tumisang has provided strategic advice to a Contractor regarding the prospects of interdicting an Employer prior to the latter making a demand to a Guarantor under a performance bond.

## Procurement sector experience

- Tumisang has advised state-owned entities on various aspects of their procurements processes.
- He has also advised on appropriate responses to requests for access to information and has opposed a Court application for such access.
- Tumisang has advised state-owned entities in opposing review applications launched by unsuccessful tenderers to set aside the award of tenders. Two noteworthy review applications which he was involved in were in respect of the award of a tender for on-road services currently being provided in Gauteng Province as part of the Gauteng Freeway Improvement Programme, and the declaration of national roads in the Western Cape as toll roads in accordance with applicable legislation as well as the appointment of a concessionaire as a toll operator.

## Contractual and General Litigation

Tumisang has advised various clients on the following:

- Defending a claim on behalf of a roads agency for damages to telecommunication services installed illegally.
- Defending a concessionaire (a toll operator) in a claim for damages arising from injuries sustained by a driver at a toll gate.
- Opposing numerous applications for interdicts against a newspaper publication.
- Defending numerous defamation claims against a newspaper publication.
- Assisting client in making representations against its exclusion from a tender process.
- Defending a claim for additional payment for services rendered in the preparation of stadia for the 2010 FIFA World Cup.
- Opposing numerous applications for summary judgment.
- Preparing representations on behalf of a professional registered with the Engineering Council of South Africa in response to a complaint lodged against him.

## Lecturing on Construction Law

- Tumisang is a guest lecturer at the University of the Witwatersrand's School of Construction Management and Economics on aspects of Construction Law, including basic contractual principles, remedies for breach of contract and risk allocation, to students as part of the Masters Curriculum.
- During May 2016 Tumisang delivered paper on Recent Developments in South African and International Construction Law at the Masterclass hosted by Hill International.
- Tumisang offers workshops to personnel of existing and potential clients on aspects of construction law from time to time.

## Latest Matters

- Advising an Employer on various claims by a contractor before a Tribunal based on the NEC3 (GCC) relating to the construction of a hydro pumped storage scheme.
- Advising an Employer on various claims by a contractor before an Adjudicator based on the NEC 3 (TSC) relating to the maintenance of rail infrastructure.
- Advising an Employer on various claims before an Arbitrator based on a bespoke contract relating to the construction of a sub-station.
- Advising an Employer in a review application before a High Court based on its decision to cancel a tender process.
- Advising an Employer in a review application before a High Court based on a deviation from its tender process.
- Advising an Employer on various claims amounting to R6 Billion relating to the construction of coal-fired power stations.
- *Chambers and Partners*, 2018 recognised Tumisang as an Up and Coming practitioner in the Construction sector.

## Publications & Insights

- Application of the “root cause” principle in construction claims
- New claims regime may delay uptake of 2017 FIDIC contracts
- SA perspectives on risk allocation under the new FIDIC