

What to do when business partner breaches an agreement.

It is not uncommon to hear businesspeople complain about their partners not performing what was agreed despite the fact that they have already spent substantial sum of money to perform their contractual obligations.

This is very frustrating on the part of the person who has already performed his or contractual obligations. Reasons as to why the other party was not able to discharge their contractual obligations vary from one agreement to the other.

Some people deliberately opt to either discharge fully or partial and others might be restrained by good cause. This article points out some relevant issues to do when agreement entered is breached.

It is imperative to take note that main law which regulates commercial arrangement or agreement between parties is the Law of Contract, Cap 345 R.E 2019. Section 10 of this law it provides explanation as to what amounts to agreement.

That section demonstrates that all agreements are contracts if they are made by free consent of parties competent to contract for lawful consideration and with lawful object and are not expressly declared to be void.

The above explanation carries a number of legal meanings but for the purposes of this article, it suffices to say that an agreement which needs to be protected in the eyes of the law should be entered by parties at free consent, meaning parties should not be forced to enter into agreement in either way.

Parties who enter into an agreement should have the capacity to enter into agreement or permitted by the law in the sense that minors and mentally incompetent people are not capable of entering into valid agreements.

The object of the contract should be lawful or in other words, it should not be the one prohibited by the law such as one cannot enter into agreement to sale prohibited drugs and many other items which are prohibited by law.



AUTHOR

ESTHER NJAU
PARTNER

QUALIFICATIONS

LLB

EXPERTISE

LITIGATION | CORPORATE

CONTACTS

+255 767 307 766
enjau@legisattorneys.co.tz



Golden Tulip Dar City Center,
4th Floor 11104 Jamhuri St.

Agreements can be categorized into two major parts, namely written and oral agreements. Both types of agreements are enforceable in law provided they are entered in compliance with conditions pointed out above, unless the law clearly states that such nature of agreement should be in written form such as sale of land, particularly surveyed plots.

Breach of agreement can either be total or partial. It can either be non-completion of the agreement or failure to pay the agreed sum either full or partial of it or at agreeable standards and time.

Circumstances of breach vary from one agreement to another but common ones are anticipatory breach, actual breach, material breach or minor breach.

We shall demonstrate herein how the same occurs and be categorized. Anticipatory breach is when one party notifies the other that he or she will not be able to fulfill part of his or her contractual obligation before agreed time lapses and the aggrieved party may opt to initiate legal claim before the actual breach occurs.

Actual breach is when the other party fails to discharge his or her contractual obligations within agreed time while material breach of contract is as good as nothing was discharged by the other party. In other words, substantial part of the contract is not discharged whereby remedy granted by court is also substantial upon proper proof because violation is significant fact in such circumstances.

The last one is minor breach which is the opposite of material breach or as the name depicts, it is when insignificant part of the agreement is not fulfilled. Despite the fact that it can be neglected, the other party may opt to claim for compensation because violation has occurred.

Now let us look at what can be done when your business partner or other person opts to breach the agreement entered. In the first instance, there is no hard and fast rule which defines what is required to be done when the agreement is breached unless the agreement provides what should be done in that circumstance.

Therefore, let us share our experience in handling commercial disputes upon being approached by our clients. The first thing is to examine the whole commercial transaction or agreement entered between the parties and look at the remedies available and means of resolving the dispute particularly when it comes to an issue of written agreement.

In some of the agreements, parties may propose a forum which can be used to resolve disputes when they occur. This is important and the courts are always careful to ensure what the parties agreed is enforced provided it does not violate the laws of land.

Before resorting either to court or other dispute resolutions mechanism, if circumstances permit, demand notice should be sent to the party in breach to inform him or her on what you want to pursue.

There is no format of writing demand notice. Rather, it is a simple notice notifying the other party of your intention to pursue your rights, if situation is not remedied within certain period of time.

Further, depending on the agreement or circumstances, parties may agree that in the event of a dispute, then amicable discussion should be used as means of settlement of the dispute between them or mediation means and either person or institution may be appointed to deal with the settlement.

There are many advantages of dealing with a dispute at mediation stage. Some of the persons are experts in handling mediation and can be engaged to deal with such disputes.

Currently in Tanzania, we have accredited mediators regulated by the Ministry of Justice and Constitutional Affairs dealing with mediation.

Advantages of dealing with mediation of disputes are so many. However, at this stage, it is enough to say mediation is among easy ways of resolving disputes as compared to resolving the same in courts of law.

Further, it is the government's policy to see people use mediation forums to resolve their disputes before preferring the same to the courts of law. Courts of law also encourage parties to mediate and that is why it is mandatory for every civil case filed in court to go through mediation stage before commencement of hearing. Parties may mediate even the awarded sum provided they are in agreement of the same.

The other way of dealing with dispute is through arbitration. In most cases, parties may agree that in case of a dispute, the matter shall be referred to arbitration. Courts of law on several times ensure that parties comply with what was agreed to resolve the dispute either by staying the filed case to pave way for arbitration or striking out the case so that the parties can prefer the matter for arbitration or parties may apply to the court so that their dispute can be determined through arbitration means.

An agreement can either provide a manner of appointing an arbitrator but in case the same is silent, then provision of the law can be applied, including filing of application in court if there is disagreement between the parties as to who is required to be the arbitrator. The last means is by instituting a case in the court of law for determination. In our experience, filing a case in the court of law should be last option in case

parties failed to resolve the dispute in amicable way.

Disputes in courts of law take much time because this path involves various processes or stages in which the dispute must undergo before award of verdict. Therefore, it is time consuming since it involved of legal technicalities.

At the end, winner takes all in the court of law which is different from other ways of resolving disputes. There is no room for mitigating damage. Settling commercial disputes at mediation stages is more preferable as it contains a lot of benefits as compared to courts of law.

Finally, let us point out what the aggrieved party can ask to be awarded in case an agreement is breached. There are so many remedies one can ask in case of breach, however, we shall point few of them which are very common.

Damages can be asked to be awarded mainly in two types namely specific damages which are requires to be proved specifically and general damages which are usually awarded at the discretion of the court but only upon examining the facts presented before it.

Another remedy which can be asked is cancelation of the agreement. Either party may opt to cancel the agreement in case they find the same no longer viable or impracticable to be performed by either party.

Also, an order of specific performance may be asked to be awarded in the court of law but circumstances must be analyzed to compel the other party to complete the agreement.

The last one is restitution which refers to returning the aggrieved party to the original position before the contract was entered. This always happens when the agreement is declared to be void from 'ab-nitio' (inception).

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