



UNIVERSITY OF NAIROBI

**A STUDY OF THE ROLE OF CONTRACTING PARTIES IN PREVENTING
ESCALATION OF CONSTRUCTION CLAIMS INTO DISPUTES THROUGH THE
CLAIM MANAGEMENT PROCESSES.**

BY

MAMBOLEO HARUN GAKA

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**DEPARTMENT OF REAL ESTATE, CONSTRUCTION MANAGEMENT &
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DATE (AUGUST, 2023)

DECLARATION

I, **Mamboleo Harun Gaka** of registration number (B53/35736/2019), declare that this research project is entirely my original work that I have done with the guidance of my supervisor and that it has never been presented for award of a degree elsewhere in any other college or university.


Signature:  Date: 1ST AUGUST 2023

MAMBOLEO HARUN GAKA

Student

DECLARATION OF THE SUPERVISOR

I declare that this research project has been submitted for examination with my approval as a supervisor in the department of Real Estate, Construction Management & Quantity Surveying, University of Nairobi.

Signature:  Date: 1ST AUGUST 2023

NYAGAH B. KITHINJI

Supervisor

ACKNOWLEDGEMENT

I acknowledge the unwavering support and guidance extended to me by my supervisor Nyagah B. Kithinji in bringing me to these lengths in my academic ladder. His contribution to my academic progress through this study is appreciably beneficial. To God, I am forever indebted, Thank you.

DEDICATION

I dedicate this work to my closest family who are my closest friends, my mom, Susan, my wife, Pauline, my sons, Aaron & Moses.

ABSTRACT

Poorly managed claims result in antagonism, disputes, and disruption in construction projects. This raises the need for construction parties to manage claims well and avoid disputes. This research explored how construction claims advance into disputes as a result of poor management of the claims by the parties. The following eight aspects of claim management were examined in this study: The competence of the parties' staff in claim management; the general attitude and approach of parties during claim negotiation; the level of contractual knowledge on claims by parties' staff; the effectiveness of the claim management system adopted by parties for managing claims; party's desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims; the amount of evidence, quality of documentation and presentation of facts that parties present during claim management; party's willingness to compromise during negotiation of construction claims; the level of party and party staff involvement and participation in claim management and negotiations. The study used a quantitative research approach, which involved the use of standardized questionnaires to obtain quantitative data so as to understand experiences and opinions of people in the construction industry. The research employed deductive reasoning to reach logical conclusions. A conclusion was reached that five aspects from the eight objectives were satisfactory in terms of performance. These were, construction parties' attitude, approach, towards claim negotiations, the effectiveness of the claim management system adopted by parties for managing claims, the desire to improve cooperation amongst construction parties as an item for consideration during resolution of construction claims, the amount of evidence and quality of documentation and presentation of facts of the claim that parties give during claim negotiations, and the willingness to compromise during negotiation of claims. Three aspects from the eight objectives were however found to be unsatisfactory. These were, the competence of the parties' staff in managing claims through the whole process of claim management, the level of contractual knowledge on claims by parties' staff, and the level of party and party staff involvement and participation in claim management and negotiations.

The study concluded that for better performance in claim management, parties should put more emphasis on the technical aspects that characterize claim management. It was recommended that parties need to relook at their level of involvement and participation in claims management by increasing their input either through outsourcing experts and self-involvement a combination of both.

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LIST OF ACRONYMS AND ABBREVIATIONS

CIArb - Chartered Institute of Arbitrators

CM - Construction Management

CPM - Construction Project Manager

DAAB - Dispute Avoidance/Adjudication Board

D & B - Design and Build

DNP - Defects Notification Period

EOT - Extension of Time

FIDIC - International Federation of Consulting Engineers

ICE - Institute of Civil Engineers

ICT - Information and Communication Technology

JBC - Joint Building Council

JCT - Joint Contract Tribunal

KeNHA - Kenya National Highways Authority

KeRRA - Kenya Rural Roads Authority

KPDA - Kenya Property Developers Association

KURA - Kenya Urban Roads Authority

MC - Management Contracting

NCA - National Construction Authority

NOD - Notice of Dissatisfaction

PPP - Public Private Partnership

PPRA - Public Procurement Regulatory Authority

RFP - Request for Proposals

SPSS - Statistical Package for Social Sciences Introduction

1.1 The Background to the Study

A significant amount of time is spent preparing before beginning a construction project. And, despite thorough planning, something that could go wrong would still go wrong. This is due to the fact that issues or problems with projects are rarely completely arithmetic or readily apparent during the planning stage. Some of the problems must be resolved during the project's construction and decommissioning phases. Therefore, the level of success of a project will be greatly influenced by the structures in place as defined in the contract. The dedication of project participants to effectively implement the contract will also have an impact on the project success. Contract administrators and construction contract parties are examples of project participants and their dedication to effectively implement the contract is determined by the quality of construction contract administration.

Whereas construction refers to the process of carrying out the work described in the contract documents, construction contract administration refers to the operations required by the parties to effect and determine the completion of the contract requirements. While construction is the production of the finished product of a construction project, construction contract administration involves adherence to the requirements of a construction contract.

All effectively drafted construction contracts should have two things in common. First, the contract documents should be prepared in straightforward, uncomplicated language that is impossible to misunderstand, and second, they should be under the supervision of experienced contract administrators (Phillips, 1999). Besides contract administrators, parties must also fulfill their roles in construction contract administration by effectively honoring their obligations in the contract. If the parties fail to meet their end of obligations to the contract, it may become a trigger for things going wrong during the construction project. One of the things that can go wrong is arising of project disputes. The project disputes could be as a result of disagreements between parties in settlement of claims. When, parties fail to effectively manage the claims, the claims may escalate into disputes.

Construction projects are known to be dynamic with an unstable construction environment. When changes occur, they may contradict the party motivators for the project and parties start to realign themselves to their goals through claims.

In construction, claims have the potential to escalate into disputes if they are not properly managed or settled peacefully at the negotiation stage. Such improperly managed claims or escalating conflicts are detrimental to the project. (Jaffar et al, 2011) stated that disputes involving construction projects may lead to an increase in project costs, project delays, decreased productivity, a loss of profit, or damage to company relationships. Construction projects suffer significantly from disagreements, according to (El-Sayegh et al, 2020), which can result in cost overruns, delays, and productivity losses. Construction disputes affect the goals of the project and deteriorate relations between the parties to the contract. The successful completion of the project is seen as being hampered by a construction disagreement. Conflicts are time-consuming, inconvenient, and expensive. Workflow is hampered by conflicts, which raises expenses, causes delays, and has other negative effects. (Iyer et al, 2008) investigated the key effects of claims and disputes on projects and summarized them, which, together with other scholars agree with more or less the same effects of disputes on projects. Therefore, one can comfortably conclude that construction project disputes are antagonistic to the goals of parties of cutting on costs, saving time, maximizing profitability and improving productivity. That is why (Varghese et al, 2012) said that when construction conflicts turn into lawsuits, the limited resources of time, talent, and money are employed in an inefficient manner. Reducing or doing away with the negative effects of disputes on projects should therefore be a top priority. It is also agreeable that it should be the top priority for construction parties to put efforts to avoid disputes. There should be a very keen interest by parties to properly manage claims so that they don't escalate into disputes.

1.2 Statement of the Problem

Disputes and poorly managed claims are antagonistic to the project objectives such profit maximization, cost minimization and achieving value for money for the project. This therefore necessitates that the parties to a construction contract must do everything possible to avoid disputes caused by poorly managed claims. Proper claim management strategies by parties should be a way out for parties to avoid disputes that arise from claims. It has however been observed that despite a chance to properly manage claims by parties, claims are still escalating into disputes which end up in arbitration and even litigation. Even though it is in the interest of parties to avoid disputes, claims are still advancing into disputes. The question is, why do the claims still advance into disputes?

The answer to the above question lies in the participants that contribute to the success of proper claim management. One of the participants is, according to (Kausi, 2019), the role that contract administrators play especially during evaluation of the claims. He asserts that standard contract forms include methods for settling claims before the injured party seeks to file a case for arbitration and that it is expected that claims be resolved by contract administrators.

From the literature, there has been an in-depth study on the role of contract administrators in preventing escalation of construction claims into disputes. Various scholars have also mentioned attributes that can be found in parties that may cause disputes in a construction project or that may propel a claim to escalate into a dispute but without in-depth research. More light has been shed on the role of contract administrators in preventing claims from advancing into disputes by such scholars as (Kausi, 2019) leaving the role of parties scarcely investigated more deeply.

This gap in research may lead to a conclusion that the reason why claims escalate into disputes is majorly because contract administrators do not properly evaluate claims. This is more so because the literature analysis revealed that contract administrators' efforts to avoid the escalation of contractors' claims have not been effective (Kausi, 2019).

Given that claims are still escalating into disputes which end up in arbitration and even litigation, may not only be as a result of solely the underperformance of contract administrators. It could also be as a result of the role contracting parties play in preventing escalation of construction claims into disputes throughout the entire process of claim management. More investigation ought to be done on this aspect.

The extent to which problems that characterize the claim management processes affect parties to a construction contract has not been brought out by scholars. Furthermore, the extent to which the parties apply and pay attention to claim management strategies through the claim management processes is barely investigated. The Kenyan construction is no exception to the problems that characterize the claim management processes. This basis may be the reason why claims still escalate into disputes in the Kenyan construction industry.

The role contracting parties play in preventing escalation of construction claims into disputes will be investigated focusing on: The competence of the parties' staff in claim management; the general attitude and approach of parties during claim negotiation; the level of contractual knowledge on claims by parties' staff; the effectiveness of the claim management system adopted by parties for

managing claims; party's desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims; the amount of evidence, quality of documentation and presentation of facts that parties present during claim management; party's willingness to compromise during negotiation of construction claims; the level of party and party staff involvement and participation in claim management and negotiations.

1.3 Hypothesis

Construction parties put inadequate emphasis on proper claims management through the construction claim management processes and negotiations.

1.4 Aim, Objectives and Research Questions

1.4.1 Aim

To investigate the role contracting parties play in preventing escalation of construction claims into disputes through the claim management process.

1.4.2 Sub-Objectives

1. To establish to what extent construction parties, apply technical aspects of claims management such as competence, contractual knowledge, claim management system, evidence and quality of documentation and presentation of facts on claims through the whole process of claim management
2. To establish whether construction parties give claim negotiations a positive general attitude and approach
3. To establish to what extent construction parties, apply collaborative measures of claims management such cooperation and willingness to compromise during negotiation of claims
4. To establish the level of party and party staff involvement and participation in claim management and negotiations

1.4.3 Research Questions

1. Do construction parties, apply adequate technical aspects of claims management such as competence, contractual knowledge, claim management system, evidence and quality of documentation and presentation of facts on claims through the whole process of claim management?

2. Do construction parties give claim negotiations a positive general attitude and approach?
3. Do construction parties, apply adequate collaborative measures of claims management such cooperation and willingness to compromise during negotiation of claims?
4. Do construction contract parties and party staff commit to enough level of involvement and participation in claim management and negotiations?

1.5 The Significance of the Study

The party factors that influence claims management and negotiations for better or worse as follows. They include character traits, cultural backgrounds, beliefs, professional backgrounds, attitudes, dissatisfaction, discontent, aspiration, desire for advancement, communication, degree of authority, and contentions that arise during negotiations. Others include unsatisfactory evidence to convince other parties, poor negotiation skills, lack of supporting evidence, and wrong calculations. Also consisting the list is ambiguous causation and consequence analysis, poor presentation, willingness to keep good relationships, willingness to compromise, social perspective, claims culture, global claim, fraud, expectation of compensation from new claims or projects, willingness to pay less do more by the employer, discouragement of claims by the employer, limited information about claims, late involvement or non-involvement in claim management and the negotiations, and finally the consideration of the entire project progress as a superior priority by the employer, adversarial relationships with other parties, competitive individualism, cooperative collectivism, emphasis on avoidance, competitive spirit, and cooperative spirit. These factors are pivotal in the study's investigation. The above factors cut across human factors and technical factors. The factors have been carefully selected to form the main eight practical objects of investigation.

The research has digested, compressed and summarized those factors – instigators of claim management and negotiation breakdown and selected the following eight broad areas to be investigated in the Kenyan construction industry. The competence of the parties' staff in claim management; the general attitude and approach of parties during claim negotiation; the level of contractual knowledge on claims by parties' staff; the effectiveness of the claim management system adopted by parties for managing claims; party's desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims; the amount of

evidence, quality of documentation and presentation of facts that parties present during claim management; party's willingness to compromise during negotiation of construction claims; the level of party and party staff involvement and participation in claim management and negotiations. It is therefore the object of this research to study the role of contracting parties in preventing escalation of construction claims into disputes.

Thus, this study adds to the body of information in construction and engineering management by empirically examining the party factors influencing claim management in the Kenyan construction industry. Firstly, it will generally benefit the public at large by improving the delivery of basic public amenities and infrastructure projects in the country, as many of them are currently abandoned or have been halted due to unresolved disputes. Secondly, employers served by their staff or designated consultants will have access to a very valuable tool that will aid in the effective completion of construction projects by reducing the likelihood of claims advancing into disputes and their future effects. This is in order to get the most value for money and ensure that projects are completed to the highest possible standards. Thirdly, this study will provide contractors and subcontractors with a valuable tool for profitability while lowering costs, as well as a level playing field between employers and contractors to improve project delivery. Four, this study will act as a bridge to help industry professionals bridge the information gap. This is due to the fact that, in the past, claim management was mostly only learned by practitioners through hands-on industry training, and management practice empirically evolved over time. Moreover, in the requirement for disciplines in the built environment, claims management has not been directly studied. Lastly, the successful completion of this research will considerably add to the body of literature in construction project management, particularly in the fields of claims administration and construction project management, therefore this study will also be useful in education and scholarship.

CHAPTER 2: REVIEW OF THE LITERATURE

2.1 General

According to (Galvan, 2017), a significant source of literature reviews is the original research papers that may be found in scholarly publications. Since they are the most widely disseminated versions of the investigation, he claims they are original. As a result, they are crucial sources of information that provide information about the research technique used as well as in-depth descriptions and dialogs of the findings. He suggests a list of materials that can be used in a literature review, including reports on empirical research, theoretical papers, literature reviews, articles that contain anecdotal evidence, and reports on professional procedures and standards.

The literature was reviewed to enhance the understanding of the topic under research so as to capture the appropriateness of the understanding of other scholars vis-à-vis this research area. This chapter discusses and reviews existing works by scholars and researchers on the area of construction claims and the interaction and relation of the literature with the role of parties in preventing claims from escalating into disputes. The literature review will start by discussing construction contract administration and the role of parties in construction contract administration. Then it will follow by reviewing the typical forms of construction claims and the reasons behind them under which it discusses claims and provision for claims in standard forms of contracts i.e., FIDIC, PPRA and JBC. The process of claim management and negotiation will be reviewed with a focus on the sub-processes of claim management including claim recognition, identification, notification, response, preparation of details, evaluation, determination, negotiation, settlement, and disputing. The problems that characterize those processes will also be discussed which form the reason for this study. These problems that relate to the claim management process, are some of the reasons that may propel the claims to escalate into disputes. Following that will be a summary from the standard forms of contract on how claims escalate into disputes. Having the role of parties in construction contract administration in mind, as was discussed in the introduction, a further discussion on issues and challenges faced in the management of claims will be done which also relate to why claims may escalate into disputes. These will include, the competence of the parties' staff in claim management, party attitude towards claims, social perspective, change of attitude during the construction progress, little emphasis on avoidance, the attitude of parties during negotiation, compromises during negotiation, coordination and cooperation during

negotiation, adversarial relationships during negotiations, party's claims culture to generate revenue from claims, communication, and the claim management system. A review of how claims succeed will also be reviewed. Lastly, a summary of construction claims and disputes will also be drawn from the perspective of standard forms of contract i.e., FIDIC, PPRA and JBC synopsizing the way claims are invoked, evaluated, determined, resolved and how they may evolve into disputes.

2.2 Construction Contract Administration

Excellent relationships between all parties involved is vital to construction contract management success. The process of proper contract administration will include establishing relationships between the parties, defining roles, and selecting the optimal administrative procedures. The contracting parties must ensure that communication channels are developed and maintained during the contract's length. The most crucial thing is for the contractual parties to develop a working partnership. This includes determining on the rules and methods that will be followed in the contract's management (Uher & Davenport, 2002).

Also, in a construction contract, the parties must meet the requirements of their contractual obligations, where obligations are defined as contractual commitments made by the parties to a construction contract that are morally or legally enforceable (Phillips, 1999). The employer and the contractor are the two parties to a construction contract with specific roles to play.

2.2.1.1 The Role of Parties in Construction Contract Administration

In a construction project, on one hand, the employer is in charge of establishing the operational parameters for the finished project. He also determines his own level of involvement in the project, including the review process, mandatory reports, and approval levels (Oberlender, 1993). The employer is also in charge of figuring out the project's overall cost, cost payment schedule, major milestones, and completion date. The employer's responsibilities include giving the contractor prompt access to the site, giving the contractor reasonable assistance in obtaining licenses, permits, and other licenses, making sure that the employer's employees work cooperatively with the contractor's employees on the job site, and making timely financial arrangements that allow the contractor to receive payments on time (PPRA, 2021). Similar tasks are provided for the employer under the Agreement and Conditions of Contract for Building Works, 1999 and FIDIC conditions

of contract, 2017, with the exception that the latter calls for the employer to also submit site data and reference items.

The contractor, on the other hand, is in charge of completing all work in line with the contract documents created by the designer. This involves providing the necessary personnel, equipment, materials, and the know-how to complete the project. Thus, the contractor does what will practically produce the finished product of what constitutes a construction project. One author said that the building phase is critical because it consumes the majority of the project expenditure (Oberlender, 1993).

According to the Agreement and Conditions of Contract for Building Works, 1999, the contractor's responsibility is to oversee, finish, and correct any flaws in the works covered by the contract. Similarly, the contractor will do the work in line with the contract, according to the terms of the FIDIC Contract, 2017 and the PPRA, 2021. They stipulate that the Contractor must carry out both general and specific obligations, such as providing all equipment, materials, and services, be responsible for the sufficiency, stability, and safety of all site work and all construction methods. He should provide all facilities and documents required by the contract, and provide all of the contractor's employees, goods, consumables, and other items and services. The contractor may also design any portion of the permanent works, offer a performance guarantee, choose a contractor representative, and continue to work cooperatively with the employer's staff.

In summary, parties fulfill their roles in construction contract administration when they effectively honor their obligations in the contract. If the parties fail to meet their end of obligations to the contract, it may become a trigger for things going wrong during the construction project. What the above scholars have failed to mention is the specifics of what may and how it may go wrong if parties fail to honor their contractual obligations in the area of claims management. One of the things that can go wrong is arising of project disputes from poorly managed claims. The project disputes could be as a result of disagreements between parties in settlement of claims. When, parties fail to effectively negotiate the claims, the claims may escalate into disputes.

2.3 Typical Categories of Construction Claims and their Basis

2.3.1 General

Most scholars agree that some of the most common causes of construction claims include but not limited to delays, disruptions, variation order instructions, and defective works. This is despite the

fact that construction project types also have an impact on the types and causes of claims that occur. For instance, infrastructure projects are different from building projects in terms of nature and characteristics, and as a result, they confront various challenges in terms of implementation (Hansen, 2016). That is agreeable given that civil engineering projects may have unique challenges such as relocation of services and land acquisition issues for instance which subject the civil engineering projects to a lot of delays thereby attracting more claims on extension of time than building projects.

In (Hansen, 2016), extra costs for latent conditions, extra costs as a consequence of an extension of time, extra costs as a result of variation orders, and other recoveries due to a breach of one's party duties are all examples of construction claims, according to him. Typically, construction claims can be recovered in two ways – money from additional expenses and time from extension of time. His summary into monetary and time compensation for claims is the usual occurrence in construction both internationally and locally.

(Hansen, 2016) enumerates the following types of claims. Delay claim/extension of time claim, variation order claim, and acceleration claim. Among the reasons he gives for these claims include, event of changes or variation order, failure of parties to cooperate, slow response of employer's decision, poor contract administration, delay due to the contractor, delay in work completion, payment delay by the employer, delay due to the employer or consultant, poor and ambiguous contract, work acceleration, slow response of consultant's instruction or correction. Various scholars have also enumerated more or less similar reasons for claims in the construction industry. This study views (Hansen, 2016)'s way of viewing claims as a quantitative perspective. The dimension perceives claims in terms of their quantum of compensation in money or in time. This perspective of the types of claims and causes is not however the only way of categorizing claims and their causes. Whereas it is a primary perspective based on what happens at the construction site, claims can also be viewed from the legal stand point.

For instance, (Tochaiwat, 2005) claims that construction claims can be classified in a variety of ways. They can be categorized based on the parties involved, the rights asserted, the legal foundation, and the characteristics of the claims. By determining the legal bases that apply to them, he therefore classifies construction claims into the following three categories. Contractual claims are those that fall under specific provisions of a contract. Extra-contractual claim are claims which

can be either stated or implicit, but which do not have any specific contractual grounds, and result from a breach of a contract. Ex-gratia claims are those for which the contractor feels he is entitled despite the absence of any legal or contractual support. Other academics concur with the legal viewpoint. For instance, (Chappell, 2011) identifies four categories of construction claims based on the law. Contractual, common law, quantum meruit, and ex gratia. He defines contractual claims as those that are based on clauses in a contract that expressly permit the contractor to assert a claim in specified situations. Common law claims are claims brought to recover damages, sometimes but not usually for violation of contract. They may also offer claims for contraventions of different legal provisions, such as tort or statutory duty claims. In the majority of standard forms, the contractor's right to assert such claims is typically expressly retained. A quantum meruit claim, "as much as he has earned," provides a resolution to claims involving quantum meruit in which no price has been agreed upon. The following four possibilities pertain to quantum meruit claims: The first is when work is finished in accordance with a contract but no price has been agreed upon. The second scenario is when work is carried out under an agreement that, despite appearances, is null and void. Three is when a reasonable sum of money is decided upon. Fourth, work is performed at the request of a party without a contract. This is frequently referred to as a reimbursement claim or a quasi-contract. Work that is finished after obtaining a letter of intent is a good illustration. Ex gratia claims are unfounded since they are made "strictly as a matter of favor." As a result, an employer is not required by law to take it into account or to pay it. Sometimes a contractor will assert this when it is losing money but lacks legal support. (Achieng, 2014) also agrees with the categorization of claims into contractual, extra-contractual and Ex gratia claims.

The perspective of claims from the legal stand point does not however show the primary cause of the claim but rather from which perspective of the law the claim ought to be resolved. In quantifying the claim therefore, one cannot use the legal standpoint to arrive at the answer. To quantify the claim, one has to look at it from the monetary or time cause or implication of the claim. Therefore, after identifying the source of the claim from the legal standpoint e.g., identifying that the claim is triggered by a breach of a requirement of contract thereby being a contractual claim, one can then proceed to evaluate it from the financial and time perspective. A single claim can thus be looked at, both from the legal standpoint and the quantitative perspective. In a nutshell, both perspectives work hand in hand to identify claims.

2.3.2 An Overview of Claims and their Causes in Standard Forms of Contract

Standard forms of contract provide for claims, giving directions on the entitlement of claims, stating who is, how is one and when they are entitled for compensation. The who identifies which party between the contractor or the employer is entitled to the claim. The how and when identifies the circumstances giving rise to the claim. The standard forms of contracts majorly highlight claims from the quantitative perspective in terms of monetary compensation and extension of time. The standard forms of contract do not however give details of the claim compensation processes but points out that the parties shall apply for claims when they arise or when they feel they are entitled to compensation. Afterward, the standard forms of contract direct that the contract administrators e.g., the architect, the engineer, the project manager or the quantity surveyor shall determine the claim for acceptance or rejection by the parties. The following is a summary of the clauses that provide for claims in some standard forms of contract.

Table 2. 1 An overview of claims and their causes in standard forms of contract _ Sources: FIDIC Contracts 2017 Edition (Red book, Yellow book, Silver book); Standard Tender Document for Procurement of Works (PPRA), February 2021; and Standard Tender Agreement and Conditions of Contract for Building Works (The Joint Building Council, Kenya)

Standard form of contract	Cause	Description	clauses
FIDIC Contracts 2017 Edition (Red book, Yellow book, Silver book)	Delays and Disruptions	In situations like the one described in 1.13, the contract stipulates that the contractor will be entitled to EOT and/or payment of the cost-plus profit if they experience delays or incur costs as a result of the employer's failure to secure the required permits, authorizations, licenses, or approvals. The contractor is also entitled to EOT and/or payment of such cost-plus-profit under 2.3 if the employer's failure to timely deliver the right to site or possession causes the contractor to be delayed or incur expenditures. Chapter 8 of the FIDIC suite of contracts, particularly the 2017 edition, and specifically clause 1.9, 2.1, 4.7, 4.12, 4.23, 7.4, 8.5, 8.6, 8.10, 13.6, 16.1, 16.2.2, 17.2, and 18.4 specify the precise circumstances under which the contractor is entitled to an extension of time.	1.13, 2.1

Standard form of contract	Cause	Description	clauses
	Variation order instructions	In clause 13.3, the process for variations is described. It's easy enough to comprehend. The value principles are found in clause 12.3. The engineer is in charge of quantifying and valuing deviations, while the contractor is free to request a higher amount of compensation than the engineer's estimate.	13.3,12.3
Standard Tender Document for Procurement of Works (Building and Associated Civil Engineering Works) (PPRA), February 2021	Delays	In this standard form of contract, delays could result in claims. The claim could result in the payment of delay damages or an extension of the time for completion.	8.3, 8.4
	Disruptions	A disruption is viewed and treated as a delay in accordance with clause 8.5, which calls for an extension of the completion date and/or payment of delay damages.	8.5
	Variation order instructions	The items of variations for which a variation order may be specified are outlined in clause 13.1.3. The contractor's entitlement to request an extension of time for any delays or payment of any costs incurred as a result of such modifications or adjustments for changes in legislation is mentioned in clause 13.8.	13
Standard Tender Document for Procurement of Works (Roads, Water, Bridges, etc.), (PPRA), February 2021	Delays	In this standard form of contract, delays could result in claims. The claim could result in the payment of delay damages or an extension of the time for completion.	8.4, 8.5
	Disruptions	A disruption is viewed and treated as a delay in accordance with article 8.5, which calls for an extension of the completion date and/or payment of delay damages.	8.5
	Variation order instructions	The items of variations for which a variation order may be supplied are outlined in clause 13.1.2. The contractor's entitlement to request an extension of time for any delays or payment of any costs incurred as a result of such modifications or adjustments for changes in legislation is mentioned in clause 13.7.2.	13

Standard form of contract	Cause	Description	clauses
Standard Tender Document for Procurement of small Works (PPRA), February 2021	Delays	The project manager has the power to instruct the contractor to put off starting or finishing any work-related activity.	29
	Variation order instructions	Provides for the procedure for treating variations and compensation events.	38, 42
Standard Tender Document for Procurement of Maintenance Services (PPRA), February 2021	Variation order instructions	Clause 6.1.2 gives direction for a variation	6.1.2
Standard Tender Document for Procurement of Design and Build (Turnkey) Contracts (PPRA), February 2021	Delays	In this standard form of contract, delays could result in claims. The claim could result in the payment of delay damages or an extension of the time for completion.	8.4,8.5,8.7
	Disruptions	A disruption is viewed and treated as a delay in accordance with clause 8.5, which calls for an extension of the completion date and/or payment of delay damages.	8.5
	Variation order instructions	The items of variations for which a variation order may be specified are outlined in clause 13.1.3. The contractor's entitlement to request an extension of time for any delays or payment of any costs incurred as a result of such modifications or adjustments for changes in legislation is mentioned in clause 13.7.	13
Document for Performance - Based Contracts (Road Maintenance works) (PPRA), February 2021	Delays and Disruptions	According to clause 43.2, the contractor is exempt from responsibility for any losses or damages of any kind or to anyone brought on by traffic disruption on the route covered by the contract, including any indirect or resulting loss or damage, loss of use, loss of production, loss of profits, or interest costs.	43.2
	Variation order instructions	Clause 50.5 gives direction for a variation	50.5
Standard Tender Agreement and Conditions of Contract for	Delays and Disruptions	Time is extended due to delays (clause 36). Additionally, it is covered by other terms that could result in a claim.	31.5.5,31.6.2, 31.8,34.28, 36.1,36.2, 36.3, 36.4,

Standard form of contract	Cause	Description	clauses
Building Works (The Joint Building Council, Kenya)		Disturbance is also mentioned in the contract.	37.1.3, 37.1.5, 37.1.6, 37.1.8, 37.1.10, 37.1.11
	Variation order instructions	Clause 30.0 covers the procedure for variations.	30.0

2.4 Claim Management

On one hand, (Hayati et al, 2019), said that claim management is a process that involves collaboration between parties with the goal of evaluating claims and correcting problems. Furthermore, they contend that claim management outlines the procedures to be followed in order to prevent or minimize the occurrence of construction claims and to respond quickly when one happens. And on the other hand, (Whaley, 2016), the progression of a claim from detection of a claim event to notice, assessment of its impact, and negotiation of any compensation owed is the claims process or claims management.

Form the above scholars, firstly, according to (Whaley, 2016), on one hand, negotiation comes at the end of the claim management process. What he means here by negotiation is the process of holding talks for the purposes of bargaining between parties as to the quantity or validity of the claim after all evaluations and determinations of the claim have been done by the contract administrators. Secondly, on the other hand, (Hayati et al, 2019)’s definition of claim management implies that there is negotiation throughout the claim management process. Both of them however agree that claim management involves a coordinated response to how claims are managed.

2.4.1 The Process of Claims Management

Claim management is a process involving various events. Most scholars agree on the process of claim management with slight variations from one scholar to another. (Tochaiwat, 2005) enumerates the stages of claim management process into detection and identification of change, notice of change, thorough and accurate documenting of change, assessment of how the change will affect costs and timelines, costing of change, negotiation of claim, resolution of disagreement, and settlement. (Hayati, 2016), provided a list of the processes, including claim notice, claim

detection, claim verification, claim recording, claim investigation, claim presentation, claim strategy, claim negotiation, and claim execution. Many scholars in claims management also agree to more or less the same claim management process events. Nonetheless, the events involved in claim management are not only a conventional way of managing claims enumerated by scholars. The events are also parts of a typical process of how claims are managed within the standard forms of contract discussed in this study. Eight stages of the process will be discussed with an emphasis on how the stages apply in the standard forms of contract.

2.4.1.1 Claim Recognition and Identification

The prompt and precise detection of a shift is necessary for the identification of a construction claim. In the claims process, it is the first and most crucial step. In this instance, the claimant is aware of or suspects that there are alterations to the contract that may or may not have affected the contract's time or financial changes. The complaining party invokes the contract clauses that specify the circumstances under which the party can make a claim at this point. According to the FIDIC Suites, 2017's subsection 20.1, for instance, a claim may be filed if the contract price is decreased, the DNP or time is extended for the employer's claim or any other remedy is sought against the other party. Another scenario involves disagreements between the parties regarding a different claim or remedy that is not included in the other scenarios. So, in claim recognition and identification, the demanding party asserts that the work may not be completed in full or in part within the contract's deadlines or may result in a loss of profit if the change is not compensated. As a result, the complaining party will make every effort to make the claim known to the other party and the contract administrators.

2.4.1.2 Claim Notification and Response to the Claim

Notifying the other party of a potential issue in a non-adversarial manner is part of this subprocess. The requirement of a time limit in this stage is crucial. The majority of the time, the contract specifies specific duties for each party. For example, within thirty days of the occurrence that gave rise to the claim, the contractor is required to notify the architect in writing according to (JBC, 1999). In a similar vein, according to the PPRA, 2021, the entitled party must be notified as soon as possible, but no later than thirty days after the event or circumstance occurred. However, according to FIDIC suites, 2017 (which states that claims must be communicated as soon as possible but no later than 28 days after the claimant becomes aware of them or ought to have been aware of the situation or events.), the time limit within which the claimant must send notice differs.

After the notification, the contract administrators then take action based on the notification. The engineer has 14 days to respond and explain whether the damage report was completed on time and whether it is valid, as stated in FIDIC suites, 2017. Silence is regarded as acceptable communication. According to PPRA, 2021, the architect is required to provide approval, denial, and detailed comments within 42 days of receiving a notice of claim or new details supporting a previous claim, or such other period as the architect proposes and the contractor agrees. According to JBC (1999), there is no advice on what contract administrators should do. The claims' details, including the contract administrators' decisions, are addressed in the processes that follow the claim's notice and response.

2.4.1.3 Preparation of a Detailed Claim

The preparation of a detailed claim will begin with claim data collection. The importance of records and documentation in the resolution of contract claims cannot be overstated. However, the value of record management is not fully appreciated as it should be, which is one of the reasons why a claim resolution may backfire. At this point, the claiming party gathers information that will provide evidence supporting the claim. For example, a contractor claiming an extension of time due to public demonstrations that barred him from timely access to the site for a civil engineering project might collect information on photos on the demonstrations, minutes and photos of meetings held due to the events, correspondences including notifications from the contractor and the response from the employer and the specific dates for the events of the demonstrations. With the data, a claim analysis will be done. Identifying how much of an influence the assertion has is the aim of this sub-process. The analyst will examine the schedule to ascertain the time effect and the cost breakdown into several cost components to ascertain the impact of cost. The claim analysis will be done by the claiming party subject to the scrutiny of the contract administrators who may also have done a parallel claim analysis.

After the claim analysis has been done, the next step is to do a pricing of the change. This stage is the one that is commonly referred to as the quantification of the claim in the common practice in the construction industry. The purpose of pricing the modification is to fully explain to the other contracting party the additional expenses incurred or anticipated as a result of a contract amendment. This full cost breakdown is required since additional contract expenses must be understood, discussed, and justified. The two types of claim pricing are forward pricing and post pricing. For example, a contractor claiming an extension of time and extra costs due to public

demonstrations that barred him from timely access to the site for a civil engineering project will calculate the due extension of time emanating from the delays caused by the demonstrations. He will also calculate the extra costs due to such losses in cost of standing labor during the claim period, cost of standing plant and equipment during the claim period, and head office overheads.

The processes of claim data collection, claim analysis, pricing of the change culminate in the claiming party making a detailed report on the claim for submission within the provided period. This is the detailed claim which for example, (JBC, 1999) provides for where it states that the claim must be filed within thirty days after receiving the notice.

2.4.1.4 Claim Presentation and Defense

Both the presentation and defense of the claim take place after thorough claim preparation. According to (Hewitt, 2016), his experience with claims led him to realize that many filings consisted of two- to three-page letters accompanied by a jumbled, disorganized collection of documents. He discovered that a document that is well-organized, well-presented, and easy to use demonstrates its authors' expertise in a significant way. The submission ought to be divided into two parts.

One is a narrative that describes the project, the claim's context, its impact, and serves as a foundation for supporting documentation that is prepared to demonstrate the claim's impact or scope. Second, attachments containing programs, calculations, and project records that have been prepared to support, explain, or substantiate claims.

According to (Hewitt, 2016), a convincing claim is one that is suitable regarding the writing style, where the narration ought to flow naturally, be simple to read, and most importantly, be comprehensible. Documents submitted by applicants should be easy to understand. In order to comprehend the case, many claims are crafted in such a way that numerous additional documents must be reviewed. But a well drafted claim allows that even if such documents were included in the claim submission, it is still possible to read and comprehend the claim description without any further reference to such documents. Submissions ought to be treated as distinct documents devoid of unnecessary and irrelevant content. The person who is supposed to prepare the claim often gets a lot of information, some of it important and some of it not. The ability to examine such material and determine what is relevant and should be used and what should be removed is one of the skills of an experienced claims professional. Narratives ought to be supplemented with explanations,

summaries, and conclusions on a regular basis, and narratives ought to be supported with exhibits and additional documentation. Parties should check that the supporting documents' titles, wording, and other details match the story. This makes sure that the reasoning is properly presented in the calculations, programs, and other supporting materials. The claimant is required to provide copies of these documents as evidence and ensure that any statements they make are supported by references to project records or other documents. For the story to be easy to read and comprehend, the language used should be carefully crafted in terms of prose, syntax, and punctuation. Acronyms and abbreviations should be avoided. Last but not least, you should make certain that your submission is properly indexed and organized so that reviewers can quickly locate your drafts (Hewitt, 2016).

The processes of claim data collection, claim analysis, pricing of the change together with submission of a detailed claim, claim presentation and defense build up to the determination of the claim by the contract administrators.

The claiming party must submit a completely comprehensive claim within 84 days, per (FIDIC suites, 2017), failing which the notice of claim will expire, subject to further notice by the engineer within 14 days. The engineer must proceed to evaluate or agree with the claiming party's claims after receiving the fully stated claim. When 42 days have passed without a response, the claim will be deemed to be denied (FIDIC suites, 2017).

2.4.1.5 Claim Negotiation, Resolution at Amicable Settlement and Dispute Resolution

The process of cooperatively resolving the claim is the focus of this sub-process. If the parties are unable to come to an agreement and one party feels strongly that his position is correct, he should propose an alternative method of resolving the conflict. If everything else fails, going to court is an alternative. The standard forms of contract provide that, following the determination, any party has the option to reject or accept the claim determination. They then provide for an option for the parties to try to settle the matter amicably before resorting to arbitration. The failure to reach an agreeable settlement marks the start of a dispute.

2.4.2 Negotiation

2.4.2.1 General

There are two definitions of negotiation given by (Anumba et al, 2002). One, they cite (Gulliver, 1979), who describes negotiation as one type of problem-solving procedure in which parties to a

dispute or conflict try to come to a consensus on issues of shared interest. Two, they cite (Rosenschein et al, 1994), who define negotiation as a type of decision-making process where two or more parties work together to explore various options in an effort to get to a mutually agreeable conclusion. They do, however, recognize that there is a key difference between the two definitions. The former emphasizes that negotiation is primarily used to resolve conflicts and disagreements, whilst the latter thinks that negotiation may be used to enhance collaboration. Both of the above perspectives are applicable to the construction industry particularly in respect to construction claims and disputes. One, negotiated claims in the construction industry may be as a result of disagreements or conflicts between the parties on the validity and even the quantification of the claim. Two, the negotiation of a claim in construction may as well be peaceful discussions to arrive at an agreeable resolution. The two are common occurrences in the construction industry. Despite the situation as to whether the negotiation is a peaceful discussion or brought about by a conflict, the end result of the negotiation is more important. This is because, despite negotiations sometimes coming with hinderances, negotiation in construction claims should be a strategy for reaching an agreement.

For instance, it has been asserted by (Hayati et al, 2019) that negotiation is the most typical method for coming to an agreement through discussions and compromise. Before a disagreement develops, compromises can help resolve issues. But they discovered that there are obstacles to this negotiation process, some of which include disagreements that arise during discussions, insufficient evidence to persuade other parties, weak negotiation skills, and antagonistic relationships with other parties. Their argument therefore suggests that to a certain extent, effective negotiation and positive approach to construction claims by parties through non-opportunistic behaviors play a role in managing claims. Therefore, the element of compromise among parties without a dismissive and adversarial behavior is essential in managing construction claims.

In a nutshell, there is not necessarily conflict between negotiation participants and so it is with construction claims before they evolve into disputes. But where there is conflict, the goal of negotiation is to resolve tensions between collaborative togetherness and ambitious capitalism. This is due to the fact that during negotiations, parties frequently have two competing goals – their personal usefulness and the group's aim to reach a consensus that is advantageous to all parties. (Hayati et al, 2019).

As earlier mentioned, negotiations on construction claims take place throughout the claims management processes. The negotiations can be either formal or informal. While we commonly think of negotiation in terms of infrequent, high-stakes, formal talks, (Neville et al, 2018) believe that the scope of negotiations is far larger and it involves the day to day talks on events or activities of the day. So, it is in construction claims. The contractor and the employer are ever in discussion not only on the daily or periodic activities of the project but also particularly on claims. Claims are discussed in site meetings and other meetings of the project and in one way or another there is some negotiation involved.

During these negotiations, the parties may influence the outcome of the claims resolution for better or worse. (Anumba et al, 2002), argue that negotiation flaws make claims resolution far more difficult and contentious, and can cause delays or, in the worst-case scenario, expensive litigation.

Construction claims negotiations are unique and they may call for the parties' best attitude and behavior. For instance, (Anumba et al, 2002) contend that no one may easily leave a construction claims discussion due to a number of factors. The first reason is because parties involved in a claim negotiation are constrained by the terms of a project contract, and as such, the negotiation must take place in accordance with those terms. Second, if a negotiation fails to produce a settlement, the parties may be forced to resort to costly arbitration or trial that they cannot afford. That is besides the negative effects of disputes in a project that arise out of such claims. As a result, both sides will want to prevent a dispute. However, they identify that construction project teams, on the other hand, are made up of many entities. Each participant is a member of a separate group. His ultimate goal is to gain benefits for his company. As a result, each member will endeavor to maximize his or her own advantage as long as the cooperative relationship is not jeopardized. This interplay of self-interested competitiveness is best illustrated by the administration and negotiation of construction claims, which are the main way of ensuring fair profit sharing between the employer and the contractor during the construction process (Anumba et al, 2002). Therefore, effective strategies in negotiation of claims will help to strike a balance between pursuing parties' goals and at the same time maintaining good business relationships. Various parties have thus written on negotiation and effective negotiation strategies.

2.4.2.2 Negotiation strategies

Claims negotiations require a methodical strategy. For instance, (Ren et al, 2003) made the case that negotiation preparation is essential for the success of claim negotiations. Both sides must invest time and energy into gathering data, getting accurate quotes, setting goals, deciding on the negotiation zone, assessing the proposal, predicting and analyzing the competition, and coming up with flexible solutions. Determine which goals cannot be compromised, which can be compromised up to a certain point, and which are likely to be compromised or dropped altogether.

The goal of settlement negotiations is to reach a satisfactory solution or resolution to the problem for both sides. A hostile and distrustful environment will damage a good negotiator's chances of successfully settling the disagreement, and will leave the opponent with nothing like an open mind to the possibility of an amicable settlement. There is no room for compromise if one or both sides refuse to concede anything and insist on every aspect of their positions. One must not only be willing to bargain in good faith, but must also make their commitment known to the opponent. Negotiations are worthless without such an understanding.

(Fisher et al,1981), state that there are two general strategies for negotiation i.e., hard and soft that are frequently used in negotiations. He argues, however, that these typical approaches to negotiation are problematic. They say, for instance, that standard negotiation tactics include taking positions in difficult negotiations, where positions receive more attention than meeting the parties' underlying concerns. Additionally, they contend that maintaining a relationship is threatened by disagreements over positions. However, in negotiations, many individuals are unfortunately aware of the significant costs of rigorously negotiating position, particularly for the parties and their relationship. They employ a tactic known as "soft negotiation" to try to avoid them. They argue that there lies the mistake because if you approach position negotiation in a friendly and amiable manner, you expose yourself to a person who is engaging in a hard position negotiation game.

This categorization of negotiation i.e., hard and soft, (Pinet et al, 2012) defines two types of negotiation, one being positional negotiation which occurs when neither party shifts from its original stance because both are so focused on their own wants that they cannot even begin to comprehend the other party's. And two, negotiation in which both parties' needs are addressed known as a win-win situation where as a result, mutual agreements are more easily reached.

(Fisher et al, 1981) suggest principled negotiation, in which negotiators isolate the individuals from the topic and concentrate on objectives rather than viewpoints, to avoid the issues that characterize conventional negotiation tactics. Negotiators should create possibilities for collective benefit, he continued, and stress on adopting objective standards.

Other scholars have written on ways and strategies of negotiation. For instance, (Dawson, 2012) suggests avoidance of confrontational negotiation. He observed that what you say in the first few moments of a negotiation generally sets the tone for the rest of the conversation. The other person immediately determines whether you are attempting a win-win solution or whether you are a tough negotiator looking for anything you can get. He suggests strategies such as always asking for a trade-off any time the opposing party asks for a concession in negotiations, always read the contract, and concentrate on the issues.

(Pinet et al, 2012) view negotiation as a game in which the ground must be prepared by negotiators. There are rules and ways to win, and winning is important; It is the objective and motivation with which you begin the negotiation. However, in contrast to other games (Pinet et al, 2012) state that we may want our opponent to win as well given that it is also a strategy and a goal. We can also get what we need and get through the negotiation faster by allowing the opponent to win. They assert that this is the primary distinction between win-win negotiations and positional negotiations, as well as the reason why the latter is preferred.

The literature also points to the reasoning that personal traits are a factor when negotiating that affect peoples' negotiation (Gate, 2016).

When parties understand negotiation, its strategies and the effects they have on the outcome of whether a claim will be resolved amicably, it might be a part of the solution to avoid claims developing into disputes. Parties will then know how best to manage claims especially during their negotiation both during the entire process of claim management or at the end when they have to negotiate the final decision.

2.4.3 Problems that Characterize the Claim Management Processes

Problems that characterize the claim management processes is the underlying factor for why and how claims fail. As we have seen from the earlier literature, claim management is a process. The process involves the participation of the parties. The parties are obviously vulnerable to the problems that characterize the process. This study hypothesizes that the way the parties manage

the problems will determine the outcome of the claims. Construction claims are a result of issues with conception, management, and contracting. Both project management skills and attention to the fundamental elements of the claim management process are essential. Because claims cannot be accurately foreseen, good claim management is required to avoid and detect the problems (Hayati et al, 2019). The lack or poor identification and management of these problems is one of the contributors to claims escalating into disputes. (Hayati et al, 2019) identified the following problems at different stages of the various claim management processes.

Problems in claim identification manifest in lack of awareness on the part of site staff to recognize a claim, site staff's insufficient understanding of the contract, inadequately qualified personnel to identify a claim, and poor communication between the headquarters and the site. They also manifest as documents used to identify a claim that cannot be accessed, difficulties in identifying issues while working because of the heavy workload, and a lack of time due to a heavy workload (Hayati et al, 2019).

Problems in claim notification manifest in the inaccessibility of the supporting documents required for notice, inadequate instructions for submitting the notice and poor communication, due to a heavy workload, not enough time to prepare the notice thoroughly, and ambiguous procedures for preparing notices. The problems in this stage can also be due to unclear authority over who should prepare the notice, or when there is no pre-made notice prepared using standard forms, and the contract's insufficient length of time (Hayati et al, 2019).

Problems in claim examination manifest in poor communication to gather the necessary information to analyze a claim, records that are used to analyze and estimate the possibility of recovery being unavailable, unclear procedures for examining claims, and lack of legal documents or contracts to support the claim. It can also be that there is no established formula for calculating damages and impacts, uncertain obligation as to who ought to assess how much recuperation. It could also be that the formula for calculating damages is unrealistic, lack of time to examine claim thoroughly, and not enough computers to make the calculation easier (Hayati et al, 2019).

Problems in claim documentation may be that some information and instructions may not be written down, or that the data that has been recorded is incorrect. There could be inadequate system for keeping records, and during construction, there may be no standard forms to be used to record data. Other problems in this stage are such as being unable to locate the necessary documents in

time, document inaccessibility when needed, no system of electronic documentation, and the high cost of finding the needed information (Hayati et al, 2019).

Problems in claim presentation occur when proper communication is lacking, due to a heavy workload, not enough time to prepare claims thoroughly, unclear procedures for preparing to present a claim, and inadequately qualified personnel to prepare a claim submission. The problems could also be as a result of unclear obligation to prepare a comprehensive report for the claim presentation, absence standard claim submission format, and the inaccessibility of the necessary paperwork to submit with the claim (Hayati et al, 2019).

Problems in claim resolution arise out of disagreements during negotiations, inadequate evidence to persuade the other parties, and inadequate negotiation skills relationships that are adversarial with other parties. They could also be due to lack of time due to a heavy workload, and the difficulty of settling without suing or arbitrating (Hayati et al, 2019).

Whereas it is the view that the above problems contribute to the possibility of claims escalating into disputes, not all of them come at the critical final tipping point for the claim escalating into a dispute. For example, the problems associated with the processes of claim identification, claim notification, claim examination, claim documentation, and claim presentation make a cumulating problem development that contributes to the possibility of claims escalating into disputes. They promote inconsistency and misunderstandings that may stir disagreements amongst parties during the claim management process. Besides adding to the weight that stirs the advancement of claims into disputes, they also have weight in disadvantaging the claiming party in presenting a convincing case for the claim evidence. And on the flip side, they disadvantage the responding party from adequately defending against a claim or making a counterclaim. Yet, the problems associated with the processes of claim resolution form the critical final tipping point that facilitate the claims in escalating into disputes since they come in at the critical point of the claim development in terms of the decision, rejection or acceptance of the claim.

The extent to which these problems affect parties to a construction contract has not been brought out by the scholars. Furthermore, the extent to which the parties apply and pay attention to claim management strategies through the claim management processes discussed above is barely investigated.

2.5 How Claims Develop into Disputes

2.5.1 Human Factors for How Claims Escalate into Disputes

The human factors for escalation of claims into disputes are explained in this subtopic. According to (Chaitanya et al,2013), disagreements between the parties result in conflicts because, in the end, each party must safeguard its financial advantage and interests. During claims negotiations, which take place all the way through the claims management process, from claim establishment to claim settlement, disagreements between the parties can arise (Ren et al, 2003). During claim negotiations, confrontations can quickly escalate into disputes if they are not handled appropriately. (Chaitanya et al, 2013) referred to improper mentalities as one reason for the conflict between the parties. They asserted that it is essential to keep in mind that the parties involved would have to take unilateral measures to maintain mutual trust in order to carry out the work professionally. As a result, the project must be approached professionally by both the employer and the contractor, even in areas where interpretations may differ.

Conflicts that develop during employer/contractor negotiations are one of many issues that a different researcher (Bakharya et al, 2014) highlighted as being particularly problematic for claim handling. (Bakharya et al, 2014) looked into the issues that can occur at any point during the claim management process, from the first stage of claim identification to the conclusion of negotiation. They listed a number of issues, including disagreements that arise during negotiations, ineffective negotiating techniques, and hostile relationships with other parties. However, according to (Ren et al, 2003) ineffectiveness, untimely employer intervention, and complicated human variables are the main issues with claims negotiation. These scholars thus converge at the fact that the way human factors play in parties to a construction contract in management and negotiations of claims is crucial in the claim to dispute advancement process.

2.5.2 Contractual Perspective for How Claims Escalate into Disputes

(FIDIC suites, 2017) defines a claim as a request or assertion by one party for an entitlement or relief related to, or arising out of, the contract or the execution of the works, and a dispute as an instance in which one party makes a claim and the other party rejects the claim or the first party does not consent by providing a NOD.

As will be discussed in more detail in the following sub topic under this topic, we had arrived at a view that a claim is not a dispute and that a dispute only follows a rejected claim where we agree

with (Kausi, 2019), who said that the existence of a claim does not mean the existence of a dispute until a party shows dissatisfaction of a claim and thereby rejecting the claim of the other party. The following is a discussion on how claims escalate into disputes as also is provided in the standard forms of contract.

The engineer must proceed to agree or assess the claims of the claimant using a two-step method after receiving the fully stated claim (FIDIC suites, 2017). The first step is to allow consultations, which are necessary to stimulate discussions with the aim of reaching a binding agreement within 42 days or until the parties signal that an agreement is not possible. Second, by making a decision that must be implemented within 42 days. In the absence of an answer, the claim is considered rejected. The decision will become final and binding unless notice of dissatisfaction is submitted within 28 days of receipt. In the event that one of the parties fails to comply with a decision, the situation with the claim has progressed to the point where it is being contested. The parties may refer a dispute to the DAAB even after receiving the NOD.

The contract administrator, in this case the architect, engineer, or project manager, should make its decision regarding the claim in the case of contractor claims and procurement entity claims, as stated in (PPRA, 2021). However, if the contract administrator fails to respond within the stipulated time, either party has the option of assuming that the claim has been rejected by the contract administrators and resolving the matter amicably. The potential for claims to escalate into a dispute begins at this point. After receiving a notice of claim, both parties must attempt to resolve their disagreements peacefully before initiating arbitration. Unless both parties agree otherwise, the party submitting the complaint must initiate the arbitration within the specified timeframe from the date of service of the complaint, even if no attempt has been made to reach a peaceful resolution.

In accordance with (JBC, 1999), in the event that a dispute arises out of a claim, both parties are required to notify the other in writing of the dispute and make a request for arbitration. The arbitration of such dispute or disagreement will not begin unless the parties have previously attempted to resolve the dispute or disagreement amicably, with or without the assistance of a third party, regardless of whether notification is given.

For the above standard forms of contract, the conclusion is that there is a general similar way in which claims advance into disputes. This can be summarized in four stages. The claim, the

rejection of the claim – or a notice of dissatisfaction, attempt at amicable settlement and finally the dispute. After all the due processes of the claim have taken place from the notice, to the response, to the notice of continuing effects, to the detailed claim, to the determination, the parties either reject or accept the determination. In case of a rejection, and if the parties can't resolve it at amicable settlement, the claim escalates into a dispute.

2.6 Issues and Challenges Faced in the Management of Claims

The management of construction claims presents eight challenges or issues, as identified by (et al, 2015). Some of the issues include, document keeping, pitfalls of contracts, support for ICT systems and training, employer involvement, staff turnover that is high, lack of understanding of contracts, support for the administration and contract closure. They go on to say that record keeping is linked to contractual knowledge, and that project stakeholders who are competent in contract knowledge will always produce better project output. It is evident that a lack of competency in the same must have a negative impact on the management of claims, even if there is no research on how record keeping and contractual knowledge become a challenge in the management of claims. Contractual errors will result from lower competence. Poor record keeping of information that is relevant to the management of claims is another sign of low competency. They went on to say that the person who has knowledge and experience could get accurate information and make decisions quickly to reduce the risks of unanticipated cost and time in order to avoid contract disputes for unforeseen actual site conditions. According (Lew et al, 2015), parties are responsible for comprehending the terms of warranty, guarantee, indemnity, defect liability, and performance guarantee that are expressed or implied in the written contract before signing it for contractual risks. This is done to reduce contract risks related to the performance of the contract, loss or damage, poor workmanship, poor quality, inadequacy in fit for purpose or functionality, risks in warranty period, and the peril of whether the delivered goods or work will meet project specifications. They discovered from the majority of respondents that employers intervened in decisions regarding the approval and number of claims. They discovered that the deadline for submitting large volumes of documentation and claims that require approval from the employer are not met. They suggested that might be the cause of project delays and disruptions near the end. They additionally saw that the end of the final account generally takes longer time than specified in the agreement arrangement. According to the findings of this study, (Lew et al, 2015) found that these factors have a significant potential to have a negative impact on claims management if they are not managed appropriately. For instance,

when an employer intervenes, it may elicit a negative reaction from the contractor, who may feel that the employer is bullying them. This may cause the contractor to insist on his position regarding the claim settlement.

2.6.1 The Competence of Parties' Staff in Claim Management.

(Robinson, 2013) says that the party's representative needs to know a lot about the claim's subclause. In terms of contractual difficulties, it is probably the most important clause. Inability to comprehend or follow the arrangements of this provision will just damage the party's advantages. One way (Robinson, 2013) summarized the FIDIC party's representative's claims-related activities and responsibilities is that notice of claims must be sent to the contract administrator no later than the specified period following the relevant event or circumstance, or the party will lose any entitlement. Two, provide a description of the occurrence or circumstance that led to the claim, with additional information provided separately later. Thirdly, check to see that the claim notice is sent to the right person and to the right address. Fourth, understand that the clause prohibits the contract administrator from delegating any decision-making authority. Five, include claim notifications in the monthly report. Sixth, keep in mind that specific details are not necessary in early stages. Seventh, a claim-numbering system is recommended for use. Eighth, a brief, descriptive title for each claim should be included in the heading of any subsequent correspondence or other submissions. Nine, be aware that the accurate and prompt collection of operational records and other relevant data is necessary for the proper evaluation of many claims, particularly those involving cost reimbursement. Ten, the party must submit complete details, which include any necessary paperwork, a detailed statement, and a quantum. The party needs to get started on preparations as soon as possible because this will require a lot of work. If the occurrence or circumstance persists, subsequent monthly submissions are required following this interim submission. Eleventh, understand that within the contract's timeframe, the contract administrator must respond to a claim based on its principles. Finally, understand that the following interim payment certificate ought to contain amounts that can reasonably be demonstrated.

The above process is enough evidence of the compulsory requirement of the contractor's staff handling claims to be competent enough not to miss the important details of the process.

2.6.2 Party Attitude Towards Claims

2.6.2.1 General

(YUAN et al, 2012) consider the competing attitudes of the parties in construction. They contend that contractors want to balance protecting their own legitimate interests with reducing losses through negotiation. The owners, on the other hand, desire to transfer risks and lower the project's construction costs. Therefore, the attitude with which parties perceive the managing of the construction claim has a bearing on whether the claim will advance into a dispute or not.

(Ajibade et al, 2008), explain that there are three reasons that exist, for instance in construction claims, for why parties will be cooperative or non-cooperative. One, is the perceived favorability of the decision, in this case the reward from the claim that will be made which may be material including money, benefits or profit or psychological including respect, support and acceptance. Two, the parties' attitudes and behaviors are also influenced by the perceived fairness of the procedure used to arrive at the decision. And thirdly, a combination of the both perceived favorability and procedural fairness may act together to influence the attitude and behaviors of parties and whether they will choose to be cooperative or even embrace the processes of claim resolution.

Drawing from (YUAN et al, 2012) and (Ajibade et al, 2008), besides attitude affecting the parties in embracing the processes of claim resolution, we can also draw from them the idea that either or both the contractor and the employer will reject or approve of a decision made under a claim based on whether they felt that their interests were respected and that the procedure was fair. Thus, anything less of the latter, may lead to rejection of the decision and subsequently escalate it into a dispute. In other words, the way parties perceive one another in terms of their intentions of the claim or the perception of the claim procedure will affect their acceptance or rejection of the claim decision. For instance, it may be agreeable to say that if an employer thinks that the contractor is using claims to maximize profits at the expense of the project and the claim decision supports it, the employer may tend to think that the claims are either exaggerated or made up. The employer may thus be skeptical and in opposition to the claim and the reasons for it. The contractor may also feel the same when he thinks that the employer wants to cut down on costs by avoiding or discouraging claims. That perception may lead the contractor to be insistent on his claims or skeptical and in opposition to the employer's claims.

2.6.2.2 Change of Attitude During Construction Progress

(Whaley, 2016) acknowledges that the parties, the employer or his representative and the contractor or his representative, have a direct impact on attitude. Additionally, as the project progresses, this attitude shifts. In an industry where employers view contractor claims as a source of distrust, he discovers that at the beginning of what he calls honeymoon time, both employer and contractor are under pressure to build relationships that last months or years and are reluctant to disrupt an otherwise harmonious relationship. However, the contractor's motivation to sue his employer will be influenced by a variety of positive and negative factors throughout the project. Lastly, toward the project's conclusion, the initial willingness to work with the employer representative decreases as the number of unresolved claims rises.

That process of relationship deterioration by (Whaley, 2016), is more than agreeable. At the point of broken relationships between the contractor and the employer, none of them cares about long term relationships but focuses on how they can recover losses, gain profit or minimize costs. At this point, the willingness and ability to compromise are jeopardized and thereby jeopardizing successful amicable resolutions of claims.

2.6.2.3 Social Perspective

(Whaley, 2016) acknowledges that claims management has a social component that influences how practitioners handle claims. He says that this has an impact on how parties respond to claim management. He says, for instance, that contractors may adapt the way claims are handled to the particular social setting of the project. He believes that construction management literature has portrayed "claims culture" negatively. Contractors are expected to prioritize claim planning and management as a means of generating revenue in this culture. He argues that poor claims practice may also be influenced by the social setting in which claims are made, in addition to management and project system flaws. When it comes to construction claims, he comes to the conclusion that patterns of behavior are linked to socially formed norms of acceptable and inappropriate behavior.

The view here is that (Whaley, 2016), says that the social setting may lead to a claims culture, which means that he does not mean that that is always true. It is also the view of this study that it is not always the case for all projects and all construction claims. The reason for that view is that claims, as we had seen earlier are caused by various factors including variations to the contract. These variations give rise to extra costs to the claiming party and thus become a genuine

compensation to the claiming party. Nevertheless, it is also agreeable that there is a possibility of a party to try and maximize profits or reduce costs through unwarranted claims through the claims cultural behavior where parties raise or exaggerate claims for the purpose of generating revenue. And that may be a norm or practice in sections of the construction industry. Therefore, the claiming parties adopt to the culture of a certain part of the industry where claiming parties have developed a practice of generating revenue through claims. The effect of that is, if the responding party becomes aware that the claiming party is applying the same culture, he may become skeptical and in opposition to the claiming party's claims. That includes becoming skeptical and in opposition even to claims that may be genuine.

2.6.2.4 Party's Claims Culture to Generate Revenue from Claims

Some scholars agree that people have the tendency of the desire for compensation. The other side of this is that the opposing party may have information of the other party's desire for compensation which in essence is a claims culture to generate revenue from claims.

Scholars define compensation culture as an ethos that holds that suffering should be alleviated, or at least marked, by receiving some money. This ethos holds that, with the exception of acts of God, all disasters are probably caused by someone else. Outside of construction, this definition also applies to the medical field, for instance. As a result, the compensation culture is a social phenomenon. Thus, this study has a hypothesis that construction claimants may embrace the culture of a specific industrial segment in which the construction claimants have formed a habit of obtaining revenue through claims. As a result, if the other party discovers that the claiming party is employing the same culture, he may become skeptical and antagonistic to the claiming party's assertions.

2.6.2.5 Attitudes During Negotiation

According to (Schwarz et al, 2001), attitude is a mental and neurological state of readiness that is organized by experience and affects a person's reaction to all things and circumstances that he is related with.

(Neville et al, 2018) examined how attitudes influenced negotiations of what they called psychological entitlement. They defined the psychological entitlement as a propensity to seek out excessive and unjustified rewards. They found that negotiating tactics that are confrontational and immoral, as well as individual-beneficial attitudes like ambition, first-offer intentions, and self-

efficacy, are associated with negotiators' entitlement. They proposed that bargaining power might be a social trap because the functional bargaining attitude it encourages is more likely to result in personally advantageous outcomes for the bargainer and reinforces and exacerbates these attitudes. Based on their findings, they draw the conclusion that negotiating is an essential component of eligibility since it allows qualified individuals to abuse their entitlements and profit from doing so while also damaging other people.

The most significant phrase to this study from the above literature is psychological entitlement. We may fit psychological entitlement into the definition of attitude. What we realize is that psychological entitlement then fits in the place of the mental state. What we draw from that is that if the construction parties develop psychological entitlement during claim negotiation, the most likely outcome is that it will impact on the negotiation. That is according to the second part of the definition that says that the mental state has a dynamic influence on a situation, which, in our case, is the negotiation. In other words, the attitude that construction parties develop during negotiation of claims has a direct influence on how the claim will end up. A positive attitude is likely to have better claim resolutions than a negative attitude. Furthermore, it is agreeable that ambitions, first offer intents, and self-efficacy, as well as confrontational and unethical bargaining tactics as mentioned by (Neville et al, 2018), which arise from entitlement must have negative outcomes of claim negotiations.

Attitude in the context of claims may also be linked to the claims culture that was earlier discussed in subtopic 2.6.2.4. If the parties to a construction contract believe, or it becomes their mental state that it is the norm to generate more revenue from claims, they are likely to claim more. And if the other party is aware of this norm, he is more likely to be suspicious of the claims from the claiming party. The result of that is development of untrustworthiness amongst the parties whose ultimate result is rejection of claims.

The question we thus far then ask is. What is the antithesis of when parties do not have a sense of entitlement or what is the converse of when parties don't allow the presence of a claims culture to influence them? The answer lies in the willingness to compromise.

2.6.3 Compromises During Negotiation

Speaking of compromising in negotiations, (Druckrnan, 1993), said that when parties show some flexibility from their initial attitude, when they show some readiness to compromise or surrender

in the direction of the other parties' stances, negotiations are more likely to succeed in obtaining mutually beneficial accords. He observed that negotiation failure is frequently caused by intransigence which is the height of unwillingness to compromise.

Besides compromise, the flip side of the sense of entitlement and the sense of a claims culture is coordination and cooperation during negotiation amongst construction parties.

2.6.4 Coordination and Cooperation During Negotiation

(Melissa et al, 2004) looked into how to create an environment that makes collaborative negotiation processes easier by allowing negotiators to participate, sharing relevant knowledge during the process, and managing the knowledge accumulated during each negotiation. They argued that in order to obtain competitive data that can influence the negotiation and reveal potential benefits for the other party, it is essential to have as much information as possible about the negotiation. They say there are two kinds of negotiations – collaborative and competitive. They assert that win-loss negotiations are, on the one hand, a form of competitive negotiation. The competition and the short time limit are chosen by the winner/loser negotiator. As a result, the fulfillment of one party's wishes may have a direct impact on the fulfillment of another party's wishes. However, they discovered that win-win negotiations on the other hand, are a form of cooperative negotiations. It is a process in which everyone works together to find new common sources of income that meet all of their needs. They argue that it is essential to encourage user communication and collaboration in cooperation negotiations to facilitate information sharing and process development.

Thus, little or no coordination and cooperation during negotiation will negatively affect claim negotiation.

Other researchers, like as (Xiao et al, 2005), concur that coordination is frequently characterized by various stakeholders who need to collaborate while also having competing interests. (Kausi, 2019), in his research on the contribution of contract administrators towards prevention of escalation of contractors' claims into disputes, assumed that when a consultant is evaluating a claim, employers and contractors will work with them in a cooperative manner. Making that assumption means that the parties do not necessary always cooperate during resolution of claims.

But whereas as it is true that parties may imperil the outcome of claims by unwillingness to comprise and less or no coordination and cooperation during negotiation, there is an even more

adverse possibility that plagues claim negotiations. Researchers have observed little emphasis on avoidance and that adversarial behaviour are still manifested in negotiations.

2.6.4.1 Little Emphasis on Avoidance

Even though cooperative behavior and proper negotiation may be one of the emphases that construction parties can utilize to prevent escalation of construction claims to disputes, (Lew et al, 2015), still observed that there might not be enough attention on developing a plan to avoid pointless and expensive investigations related to construction claims. It is evident that prevention is preferable to treatment in cases of construction claim disputes. This study also appeals to the same thought. If construction parties can put more stress on cooperative behavior that is deliberate on claim to dispute advancement prevention measures, there is greater possibility of avoiding disputes that emanate from claims. According to our view, these prevention measures may include compromising and positive general attitude and approach given towards claims.

2.6.4.2 Adversarial Relationships During Negotiations

Most scholars on the subject of negotiation believe that there are various styles of negotiation. They say, broadly, these styles fit into one of three categories, adversarial, collaborative, and consultative. (Goodpaster, 1996), summed the three into what he called competing, compromising, and collaborating or problem-solving styles. It is therefore possible that construction claims negotiating parties may come into the negotiation with one of the negotiations styles. Of interest at this point is the adversarial category. It is possible that the parties may employ adversarial styles during the negotiation of construction claims. This style may elicit strained relationships during claim negotiation that may cause aggravation of the parties. It is our view that such a situation is a recipe for claims escalating into disputes. The reason for such strained relationships that causes aggravation, is the desire for parties to protect their own interests which throws them into competition.

2.6.5 Competitiveness in Protecting Interests and in Maximizing Profit out of Negotiations

Competition in negotiations is a topic on which academics have opinions. For instance, (Goodpaster, 1996) points out that understanding negotiation is untenable without first understanding the competitive behavior of negotiation. According to him, competing is not always a successful strategy for negotiating, rather, it depends on the situation. As a result, he stresses the

importance of comprehending negotiation competition, because many parties engage in, whether consciously or unconsciously, competitive behavior when negotiating.

(Goodpaster,1996), observed that even cooperative parties compete from time to time. He says competitive bargaining is one of three techniques used by people to control negotiating relationships and dynamics while also obtaining something from others. He explains competitive negotiating, also known as hard, distributive, positional, or win-lose bargaining, as one that aims to maximize the competitive bargainer's gain over that of the other parties involved in the negotiation. He gave three reasons as to why parties bring competition in negotiation and one of the reasons is the parties see the negotiation as a competition in which they want to win or earn as much as they can. He also stated lack of trust as an incentive for competitive bargaining. Competition may act as a defense or reprisal for competitive moves directed at a party. The party may thus negotiate competitively. In other words, (Goodpaster,1996), gives three reasons for why a negotiator may want to employ competitive behavior. One, he gives the desire for gain as a reason for competition. In the context of construction, we assume that that reason is true to construction parties during negotiation of claims. This is because as we saw earlier, (YUAN et al, 2012), argued that throughout negotiations, contractors want to minimize loss and safeguard their own legitimate interests. On the other hand, the owners wish to transfer risks and cut the project's construction costs. The parties may then want to bring in competition to achieve their goals. Two, he gives lack of trust as a as a reason for competition. Lack of trust, may mean any of the following. Firstly, maybe the parties may have had occasions of dishonesty during construction or in their business relationships that make them to become suspicious of the claiming party's claims. Secondly, one party may become suspicious of the reasons for the claiming party's claims. This suspicion may arise out of such reasons as parties believing that claiming party's claims are due to a claims culture to generate revenue. Whatever the cases, the lack of trust may trigger competition amongst construction parties during claim negotiation. Three, (Goodpaster,1996), gives defense as a reason for completion. This is simply a competitive reaction of one party to competition stances from the other party.

2.6.6 Communication

Correspondence isn't just vital in construction projects in general, yet also in addition, in our everyday communication. Discord is the result of poor communication in any system. Mismanaged claims will undoubtedly result from claims management communication breakdowns. According

to (Hewitt, 2016), contract administration procedures ought to take into account the fact that early communication has a significant impact on whether or not a claim is accepted before making a claim. If the recipient is taken aback by the claim when it arrives at their desk, they may feel like they have been taken aback or think that they are professionally inept for not anticipating it and not telling their client or manager. Consequently, it is perfectly reasonable for someone in this situation to mount a strong defense. On the other hand, the recipient will not only be mentally prepared for their arrival, but he should also have made reasonable provisions for this in his reports, budgets, and the like if the party has been informed, both formally and informally, that the claimant believes they are entitled to claim and that a submission is forthcoming. Therefore, it is reasonable to assume that effective communication in claims management not only aids in streamlining the process, but also helps to reduce the number of misunderstandings that can result in strained relationships between parties.

All notices, including those regarding claims, must be in writing and delivered in person or electronically via one of the agreed-upon electronic transmission systems or as otherwise specified in the terms of contract by FIDIC. As per (Robinson, 2013), the two players ought to ensure that the main approved personnel are permitted to officially convey a hard copy regarding any impediments on designated authority. He argues that the employer must define the language of communication and the applicable law. According to the terms of the FIDIC contract, key contractors' employees must determine which forms of communication are permitted. In the event that the email contact is authorized, he must also specify how receipt evidence will be handled. He should also specify which letters should be copied and which should be addressed to the engineer, the employer, and the engineer's representative.

2.6.7 Claim Management System

As per (Hewitt, 2016), significant time can be saved while setting up the case if various records pertinent to the matter are gathered and recorded on an information base. Additionally, according to (Hewitt, 2016), the following aspects of contract administration procedures should be taken into account when managing claims. First, the procedures for handling a claim should be found in the contract's conditions and other documents. This would apply to the FIDIC contract conditions as follows. Notifying the engineer as soon as possible and no later than 28 days after the contractor became aware of, or should have been aware of, the event or circumstance that led to the claim, presenting some other notification expected by the agreement, keeping up-to-date records, within

42 days of the triggering event or condition, submitting a comprehensive claim with supporting details, sending interim claim updates if the circumstances that led to the claim persist, submitting last claim data in the span of 28 days of the finish of the circumstances leading to the claim, creating a register to keep track of events that could lead to claims, to record the deadlines for notices and submissions required by the contract, and to record such documents, examining the arriving drawings for any modifications to the work that could lead to a claim for more time or money, examining the mail for instructions that may lead to a delay or additional payments, and looking over the minutes of the meeting to find any instructions that could cause a delay or additional payment. Second, the system should initiate the procedure for filing notices and specific details of the claim if previous examinations reveal that an incident that may give rise to a claim has occurred. Last but not least, notices and claims submitted and their current status should be briefly summarized in periodic reports sent to the engineer and/or employer. The procedure is pretty much the same for other common contract forms.

If a proper claim management system is in place supporting the above procedure, the parties should be able to achieve the following in managing claims. Prompt communication procedures, maintain a clear outline of the procedure for claim management, maintain a clear hierarchical outline of the persons responsible for every aspect of the claim management process, have a stable system for management of claims, exhibit preparedness to beat the short contractual provisions for claim management timelines, have sufficient computerized machines/technology to facilitate the calculation for analysis of a claim, and be able to maintain an effective record-keeping system and database on claims.

2.7 Successful Claim Management

As has been discussed, though it is not so often, disputes arise from claims. Claims management does succeed. The point of a claim is to express the claiming party's more right than wrong to pay and to demonstrate how much that pay should be. The presentation of the damage assessment's findings is the purpose of a response document. As a result, the claim must establish and support the event that gave rise to it. Impact connects cause and effect to show how the event affected the claimant. This must be demonstrated by the claim, and it can be accomplished with time or money. The claimant's statutory or contractual right to the sought-after compensation is called a claim, and the claim must be established and supported. The claim should look at the pre-eligibility

requirements, and the applicant needs to show that they are met. It must be demonstrated that the applicant's entitlements should not be affected by the conditions if the applicant has not complied. References to the project documents, the contract, or other supporting documents must be included in any and all statements, calculations, and demonstrations. Finally, robust contract administration procedures are necessary to adequately verify cause, effect, and justification and to protect plaintiffs' contractual rights. It is critical to keep in mind the four fundamental components of any claim or determination – claim, justification, and cause and effect.

When the four aspects of cause, effect, entitlement and substantiation are clearly brought out during the whole process of claim management including negotiation, then the claims are likely to succeed.

2.8 Summary of Claims and Disputes in Standard Forms of Contract

Standard forms of contract have a striking similarity of the process of claims and disputes. Whereas the details of the processes might be different from one standard form of contract to another especially in terms of the provided time periods of notification, submissions, determinations etc., the general flow is the same. The process cutting across all the standard forms of contract can be generalized in eight stages: notice of the claim, response from the other party, notice of continuing effects of the claim, preparation of a detailed claim, determination of the claim by the contract administrators, rejection or acceptance of the claim, attempt of resolution at amicable settlement and finally the dispute. All of them provide that when a party believes that he is entitled to make any claims, they must first give a notice to the other party and the contract administrators who may be an architect, engineer, or project manager. The other party and the contract administrators then respond to the claim where the contract administrators may approve or disapprove the claim. The standard forms of contract also provide that the claiming party shall give notices of claims with continuing effects at the stated time intervals. The claiming party then submits a detailed claim whose determination is done by the contract administrators. After the determination, either party can reject or accept the claim determination. There is provision for the parties to attempt to resolve the claim at amicable settlement before proceeding to arbitration. The failure at amicable settlement is the beginning of a dispute. The implication of that is that a claim is not a dispute until a party rejects it. It is therefore agreeable to what (Kausi, 2019) said that the existence of a claim

does not mean the existence of a dispute until a party shows dissatisfaction of a claim and thereby rejecting the claim of the other party.

2.9 Conclusion of Literature Review

The review of literature has reiterated the topic of construction contract administration and the role parties play in contract administration. The aspect of parties and their role in contract administration was more so important to this study as parties and their role are the subjects of study in this research. The literature review then narrowed down to construction claims and claims management which are a part of construction contract administration. The two – parties in construction contract admirations and construction claims combined to culminate in the party related issues that affect the claims and how such has a bearing on how claims may escalate into disputes. The literature showed that various scholars have written on party factors that characterize claims. These factors were found out to broadly fall into either technical or human aspects. On one hand, the literature pointed out that there were specific technical aspects that characterize construction parties but these were broadly categorized into competence, contractual knowledge, claim management system and amount of evidence, quality of documentation and presentation of facts. On the other hand, the literature pointed out that the human party factors constituted attitude, approach, cooperation, and willingness to compromise. Finally, the literature also pointed out that level of party and party staff involvement and participation is also a party factor that affects claims. The above factors thus formed the objectives of the study for investigation on how they may contribute to claims escalating into disputes. The specific technical and human factors from the literature were carefully selected to constitute questions in the questionnaire.

2.10 Conceptual Model

Table 2. 2 Summary of Literature Review Findings and Conceptual Model 2023_Source: Literature Review Findings

Claim management issues and their manifestation during the process	
1. Competence of Parties' Staff and Contractual Knowledge in Claim Management.	
a)	<p>(Robinson, 2013) says that the party's representative needs to know a lot about the claim's subclause including and performing the following:</p> <ul style="list-style-type: none"> • That notice of claims must be sent to the contract administrator no later than the specified period following the relevant event or circumstance • Provide a description of the occurrence or circumstance that led to the claim • Check to see that the claim notice is sent to the right person and to the right address • Understand that the clause prohibits the contract administrator from delegating any decision-making authority

	<ul style="list-style-type: none"> • Include claim notifications in the monthly report • Keep in mind that specific details are not necessary in early stages • A claim-numbering system is recommended for use • A brief, descriptive title for each claim should be included in the heading of any subsequent correspondence or other submissions • Be aware that the accurate and prompt collection of operational records and other relevant data is necessary for the proper evaluation of many claims • The party must submit complete details, which include any necessary paperwork, a detailed statement, and a quantum • Understand that within the contract's timeframe, the contract administrator must respond to a claim based on its principles • Understand that the following interim payment certificate ought to contain amounts that can reasonably be demonstrated
2. Party Attitude Towards Claims	
b)	<p>(Ajibade et al, 2008), says that there are three reasons that exist, for instance in construction claims, for why parties will be cooperative or non-cooperative:</p> <ul style="list-style-type: none"> • Perceived favorability of the decision • The perceived fairness of the procedure used to arrive at the decision • A combination of the both perceived favorability and procedural fairness
c)	<ul style="list-style-type: none"> • (YUAN et al, 2012) considers the competing attitudes of the parties in construction saying that contractors want to balance protecting their own legitimate interests with reducing losses through negotiation.
d)	<ul style="list-style-type: none"> • (Schwarz et al, 2001) says that attitude is a mental and neurological state of readiness that is organized by experience and affects a person's reaction to all things and circumstances that he is related with
e)	<ul style="list-style-type: none"> • (Neville et al, 2018) showed that attitudes in terms of psychological entitlement influenced negotiations
3. Compromises During Negotiation	
f)	<ul style="list-style-type: none"> • (Druckman, 1993), said that when parties show some flexibility from their initial attitude, when they show some readiness to compromise or surrender in the direction of the other parties' stances, negotiations are more likely to succeed in obtaining mutually beneficial accords
g)	<ul style="list-style-type: none"> • (Melissa et al, 2004) talked about creating an environment that makes collaborative negotiation processes easier by allowing negotiators to participate, sharing relevant knowledge during the process, and managing the knowledge accumulated during each negotiation.
h)	<ul style="list-style-type: none"> • (Xiao et al, 2005), said that coordination is frequently characterized by various stakeholders who need to collaborate while also having competing interests.
4. Party's desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims	
i)	<ul style="list-style-type: none"> • (Goodpaster, 1996), summed the styles of negotiation of adversarial, collaborative, and consultative into what he called competing, compromising, and collaborating or problem-solving styles.
5. Claim Management System	

j)	<ul style="list-style-type: none"> • (Hewitt, 2016), said that significant time can be saved while setting up the case if various records pertinent to the matter are gathered and recorded on an information base
k)	<ul style="list-style-type: none"> • (Hewitt, 2016), said that the procedures for handling a claim should be found in the contract's conditions and other documents
l)	<ul style="list-style-type: none"> • (Hewitt, 2016), said that the system should initiate the procedure for filing notices and specific details of the claim if previous examinations reveal that an incident that may give rise to a claim has occurred

CHAPTER 3: RESEARCH METHODOLOGY

3.1 Overview

The research is focused on a preventive approach to management of construction projects. It is not enough to provide solutions to already existing problems from a management standpoint. It is more beneficial to predict the emergence of problems and create a mechanism to reduce the likelihood of their occurrence. The research studies what parties do or don't do in claim management and negotiation that may prevent construction claims from escalating into disputes.

In order to achieve its goals, the study used a quantitative research method. In eliciting knowledge from industry practitioners, the research approach used knowledge found in the construction industry practice. Standardized questionnaires were used to obtain information from industry practitioners.

3.2 Research Process and Design

Table 3. 1 Research Process and Design

Research Aim	To investigate the role contracting parties play in preventing escalation of construction claims into disputes through the claim management process.
Research Objectives	<ol style="list-style-type: none">1. To establish to what extent construction parties, apply technical aspects of claims management such as competence, contractual knowledge, claim management system, evidence and quality of documentation and presentation of facts on claims through the whole process of claim management2. To establish whether construction parties give claim negotiations a positive general attitude and approach3. To establish to what extent construction parties, apply collaborative measures of claims management such cooperation and willingness to compromise during negotiation of claims4. To establish the level of party and party staff involvement and participation in claim management and negotiations
Research Questions	<ol style="list-style-type: none">1. Do construction parties, apply adequate technical aspects of claims management such as competence, contractual knowledge, claim management system, evidence and quality of documentation and presentation of facts on claims through the whole process of claim management?2. Do construction parties give claim negotiations a positive general attitude and approach?

	<ol style="list-style-type: none"> 3. Do construction parties, apply adequate collaborative measures of claims management such cooperation and willingness to compromise during negotiation of claims? 4. Do construction contract parties and party staff commit to enough level of involvement and participation in claim management and negotiations?
Research Methodology	Quantitative Research Methodology
Research Methods	Quantitative Method
Research Strategy	Deductive
Research Tools	Structured Questionnaires

3.3 Methodology and Data Collection Methods

This study used a quantitative research approach, which involved the use of standardized questionnaires to obtain qualitative data so as to understand concepts, opinions, or experiences of people in the construction industry. The research employed deductive reasoning to reach a logical and true conclusion.

3.4 Population, Sample and Sampling Technique

3.4.1 Population

The study's population included the contractors and employers. The contractors' population will be the registered contractors from the national construction authority (NCA) list of categories NCA1, NCA2, NCA3 and NCA4. The employers will include: private developers from the list of registered developers with Kenya property developers' association (KPDA); county governments of Kenya; road agencies of Kenya government and water works development agencies of Kenya government.

3.4.2 Sample Size and Sampling Technique

The sample for the study was created using a sampling method from the: registered contractors from the national construction authority (NCA) list of categories NCA1 which has 56 registered contractors, NCA2 which has 79 registered contractors, NCA3 which has 80 registered contractors and NCA4 which has 435 registered contractors which gives a total of 650 registered contractors that will form the contractor population; 58 private developers from the list of registered developers with Kenya property developers association (KPDA); 47 county governments of Kenya; 3 road agencies of Kenya government and 8 water works development agencies of Kenya

government. The list gave us access to all of the population's members, from which we created a sample to work with.

(Kothari, 2004), a sample design is a particular method for choosing a sample from a given population. It describes the process or method the researcher used to choose items for the sample. A reliable and appropriate sample design for the researcher's research subject must be selected or prepared. The sample size should fall somewhere in the middle. It ought to be flawless. A sample that satisfies the criteria for effectiveness, representativeness, dependability, and flexibility is optimal. The amount of the sample we can draw is likewise constrained by costs. Budgetary restrictions must therefore always be taken into account when deciding on sample size. (Kothari, 2004)

The terms "random sampling" and "chance sampling" are widely used to describe probability sampling. Under this sampling methodology, there is an equal chance that every object in the universe will be in the sample. According to the law of statistical regularity, a sample that is generally picked at random will have the same characteristics and make up as the universe. For this reason, random sampling is thought to be the best technique for gathering a representative sample (Kothari, 2004)

To choose the necessary sample from the entire population, the formula below was employed.

$$n = \frac{Z^2 pqN}{e^2(N - 1) + Z^2pq}$$

Equation 3. 1

Where;

n = required sample size.

Z^2 = critical normal at a given confidence level worked out from the tables showing the area under normal curve. For 95% confidence level the normal deviate is 1.96.

N = the population size which includes NCA contractors, KPDA members, county governments, road agencies and water works development agencies that gave a total population of 766

p = confidence level of the sample population (95%)

q = 1- p (5%)

e = the degree of accuracy or desired margin of error expressed (0.05)

$$n = (1.96^2 * 0.95 * 0.05 * 766) / (0.05^2 * (766-1) + 1.96^2 * 0.95 * 0.05)$$

$$= 67 \text{ respondents.}$$

Since the entire population comprised of NCA contractors, KPDA members, county governments, road agencies and water works development agencies, our population is regarded as stratified. For a stratified population, stratified sampling was adopted. In order to get a representative sample when the population from which a sample is to be chosen is not uniform, stratified sampling is frequently used.

We can say that the similar characteristic(s) of the items situated for every stratum is used to produce the strata. NCA1, for example, constitute a homogeneous stratum, as do KPDA members, county governments, and government agencies, who each have their own homogeneous stratum. After stratification, we may say that the normal method for selecting items for the sample from each stratum is simple random sampling (Kothari, 2004)

Applying the following formula for various strata:

$$n_i = n \cdot P_i$$

Equation 3. 2

Where,

n_i = the proportion of population included in stratum i

n = the total sample size

P_i = the sample sizes as under for the different strata

Thus, n_i for:

$$\text{NCA 1} = (56 / 766) * 67 = 5$$

$$\text{NCA 2} = (79 / 766) * 67 = 7$$

$$\text{NCA 3} = (80 / 766) * 67 = 7$$

$$\text{NCA 4} = (435 / 766) * 67 = 38$$

$$\text{KPDA members} = (58 / 766) * 67 = 5$$

$$\text{County governments} = (47 / 766) * 67 = 4$$

$$\text{Road agencies} = (3 / 766) * 67 = 1$$

Water works development agencies= $(8/766) * 67 = 1$

The members of each stratum were then selected using the non-probability sampling technique known as "purposeful sampling," in which researchers use their own judgment to pick members of the population to take part in their surveys. Purposive sampling is described as a nonprobability sampling design by (Sekaran et al, 2016) as one in which the necessary data is acquired from unique or specified targets or populations of individuals based on a logical basis. Limitation of resources was also a factor considered in picking the members from the strata. For example, applying the two – purposive sampling and limitation of resources, four counties were picked out of forty-seven as follows: the counties of Nairobi, Kiambu, Kajiado and Machakos were picked since they have busy construction activities, thus, from the researcher's opinion, can provide the desired information according to purposive sampling. They were also picked because they are nearest to the work station of the research and thus minimizing the use of limited resources. Moreover, since the objective of the research centers around claims and disputes, it has been concluded that random sampling from any of the identified construction parties will be appropriate. That is because claims and disputes are common to all construction parties and do not only apply uniquely to selective construction parties.

3.5 Data Collection, Presentation and Analysis

3.5.1 Overview

Smart survey was used to conduct the survey, which was based on an online standardized questionnaire issued through the google platform of google forms. The standardized questionnaire attempted to learn about the perspectives of different practitioners in the Kenyan construction industry on claims management.

The questionnaire was divided into sections. The first segment includes questions about the participants' backgrounds, such as their occupation, training, work experience and interaction with construction claims. The remaining sections aimed at collecting the observation of participants on the parties' actions during construction claim management and negotiation.

3.5.2 Data Analysis and Presentation

The quantitative data was downloaded from the google platform of google forms in csv format in microsoft excel which formed the raw data. The raw data was then sorted within excel and the sorted data was transferred to the computer-based statistical tool known as statistical package for

social sciences (SPSS) for being statistically analyzed and interpreted. Excel and SPSS were interchangeably and complementarily used to analyze the data. Excel was also used to produce graphical presentations of the analysis. Therefore, word processing, as well as the development of graphs and charts, were done with applications such as microsoft word and excel.

CHAPTER 4: DATA ANALYSIS, PRESENTATION AND INTERPRETATION.

4.1 General

The results' analysis, presentation, and interpretation are all covered in this chapter. It will talk about the response rate and look at how respondents feel about contracting parties' role in preventing construction claims from escalating into disputes through claim management processes.

4.2 Response Rate

(Sekaran et al, 2016) suggested that when responses to numerous questions need to be obtained from a geographically dispersed sample, or when it is difficult or impossible to conduct telephone interviews without significant cost, mail questionnaires are helpful. On the other hand, surveys that are sent out usually get poor response rates, and it's impossible to know if the results are biased, since the non-respondents may not be representative of the respondents. They further argued that the mailed questionnaire survey is the best option (and possibly the only one available to the researcher) when there is a need to collect data on a substantial scale with structured questions at a fair cost from a geographically distributed sample.

The respondents were issued with online questionnaires through google forms whose issuance is similar to the one mentioned by (Sekaran et al, 2016), of mail questionnaires. The respondents were also considered to be considerably scattered over a wide area given that sample construction parties including contractors and employers – water agencies, road agencies, property developers and county governments were part of the targeted respondents. Therefore, the online questionnaire was considered appropriate to reach the respondents. To avoid a low response rate, respondents were specifically identified and targeted with phone call follow ups and online text correspondences to ensure the best and qualitative responses. Any doubts and need for clarifications the respondents had, were addressed through the online correspondences and numerous phone calls. All the 67 respondents were engaged with at least one phone call. All the 67 responds filled and submitted the questionnaires.

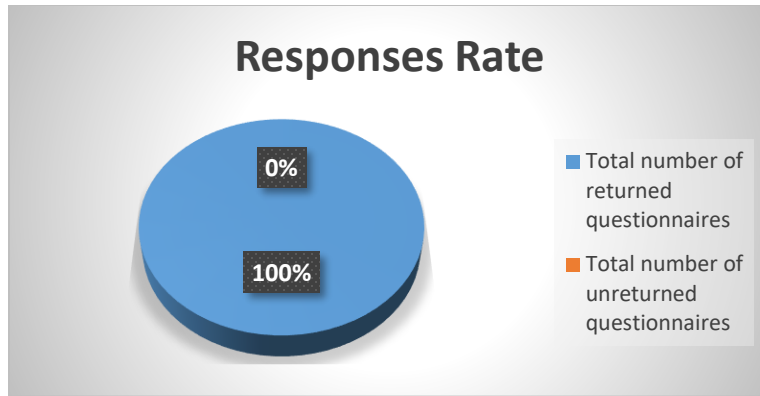


Figure 4. 1 Response rate_ Source: Author's field study, 2022.

4.3 General Information on Respondents

The first section of the questionnaire collected general information on the respondents who participated in the research.

4.3.1 Capacity of Respondents in their Project or Company

The positions held by the respondents in their various companies and projects were analyzed and the output showed the following summary.

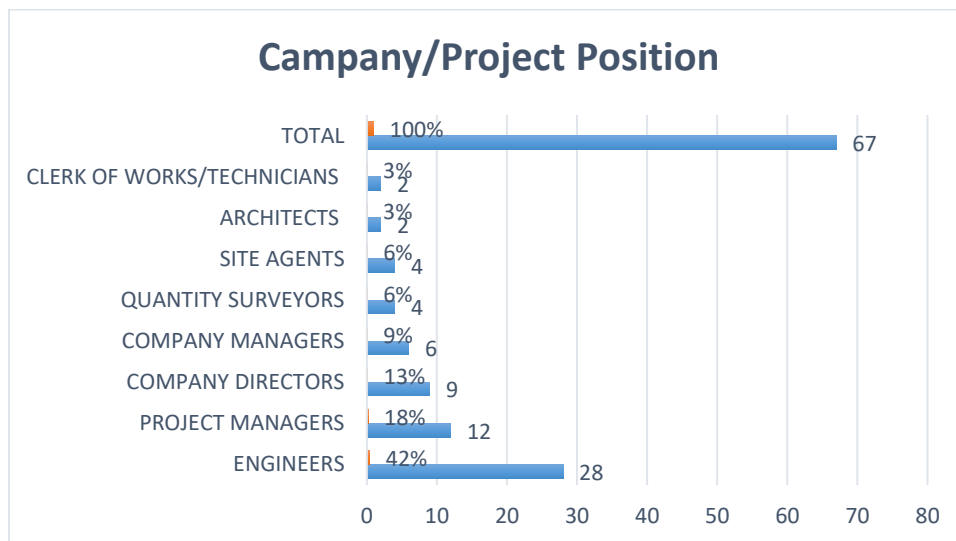


Figure 4. 2 Capacity of respondents in their project or company_ Source: Author's field study, 2022.

The above analysis indicates that the respondents were engineers (42%), project managers (18%), company directors (13%), company managers (9%), quantity surveyors (6%), site agents (6%), architects (3%), and clerk of works/technicians (3%). The above being the technical staff of

construction parties, are deemed to be at the center of the claim management processes and therefore most appropriate to give their observations and perceptions on the role parties play in claims management.

4.3.2 Career Progression

The study also sort to find out the career progression of respondents from the earliest time of employment to the current position. It was found out that most respondents started at junior positions such as clerk of works, technician, assistant project manager, assistant engineer, before moving to senior positions such as project manager, engineer, resident engineer, architect, quantity surveyor, and land surveyor. Most respondents were settled in their third position during this survey. 58% of the respondents were found to be settled in the third career position. Afterwards there was a significant reduction of respondents who had shifted to the fourth, fifth, sixth etc. positions in their career. That indicates that most respondents exhibited stability in the construction industry and thus appropriate for answering questions regarding construction. That is besides the fact that all respondents moved in their career ladder within technical positions being the technical staff of construction parties who are deemed to be at the center of the claim management processes within the construction industry.

4.3.3 Length of Experience

The length of experience accumulated by the respondents in the construction industry in general was analyzed and the output showed the following summary.

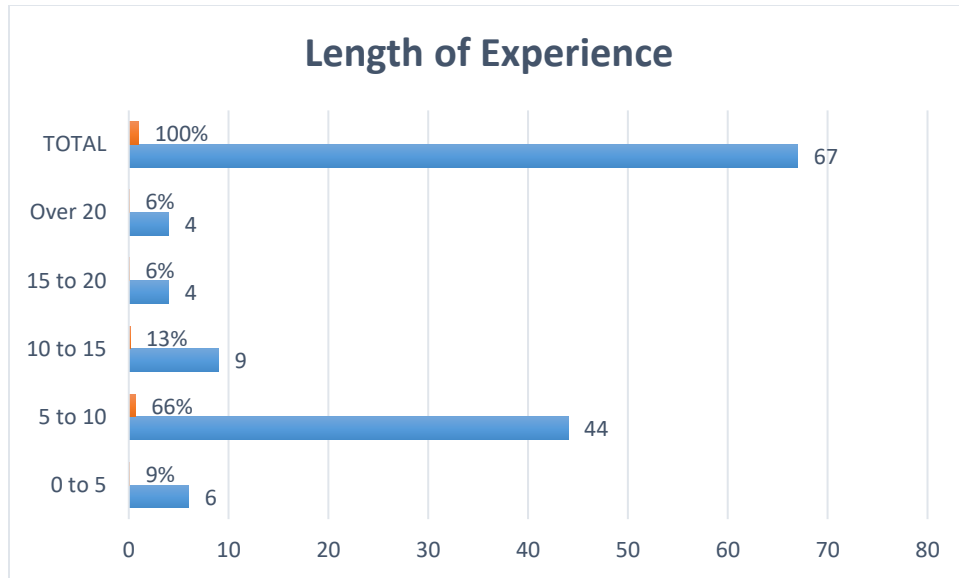


Figure 4. 3 Length of experience accumulated by the respondents in the construction industry in general _ Source: Author's field study, 2022.

The above analysis shows that the respondents have accumulated general construction field experience between 5-10 years (66%), 10-15years (13%),0-5 years (9%),15-20 years (6%), and over 20 years (6%). Therefore, majority of the respondents (91%), have accumulated over 5 years of general construction field experience. The above analysis is thus an indication that majority of the respondents had sufficient general construction field experience to be interviewed.

4.3.4 Frequency of Encountering Construction Claims

The frequency of encountering construction claims by the respondents in the construction industry in general was analyzed and the output showed the following summary.

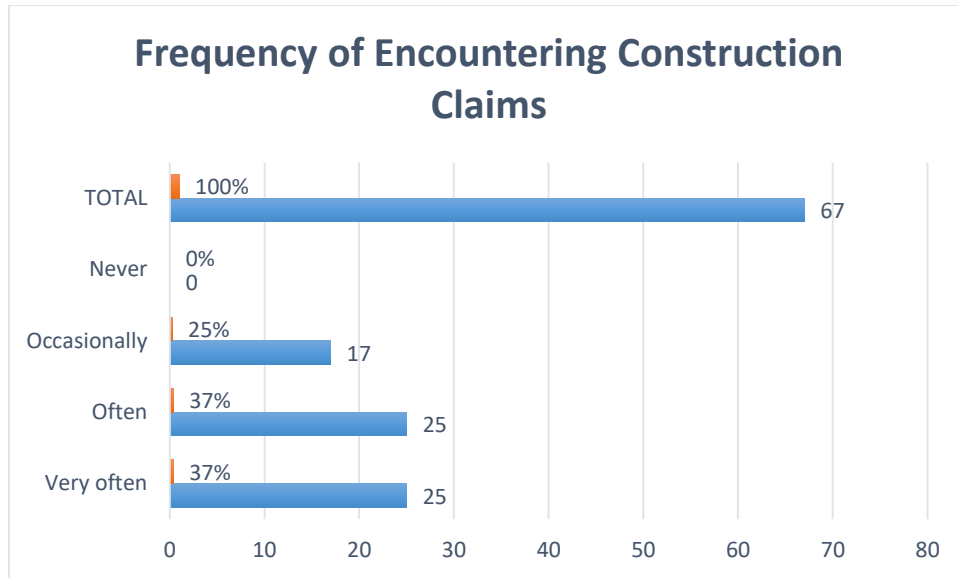


Figure 4. 4 The frequency of encountering construction claims by the respondents in the construction industry in general _
 Source: Author's field study, 2022.

The above analysis shows that the respondents have a frequency of encountering construction claims of very often (37%), often (37%), Occasionally (25%), Never (0%). The respondents therefore had sufficiency in interaction with construction claims.

4.3.5 Types of Claims Mostly Encountered

The types of claims mostly encountered by the respondents in the construction industry in general were analyzed and the output showed the following summary.

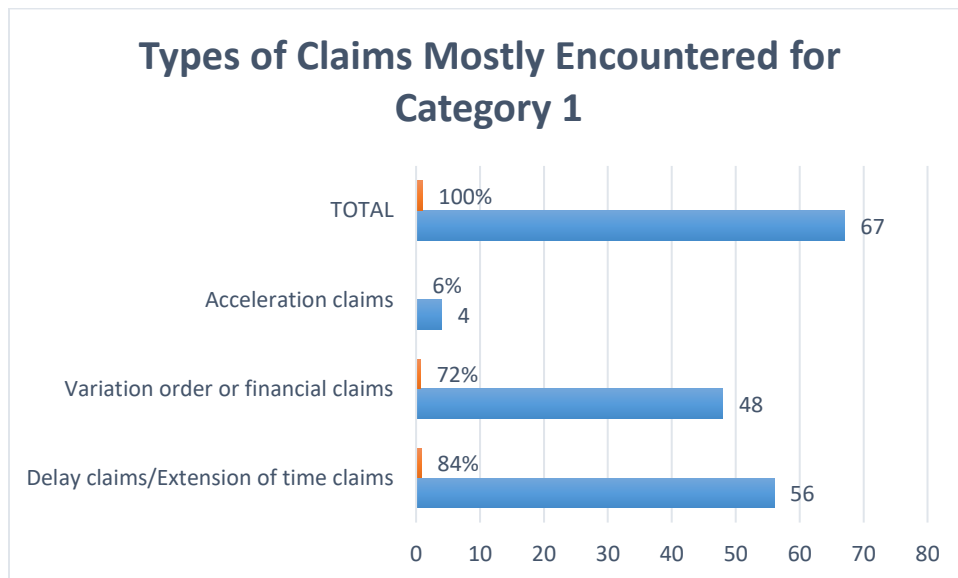


Figure 4. 5 Types of claims mostly encountered for category 1 by the respondents in the construction industry in general _
 Source: Author's field study, 2022.

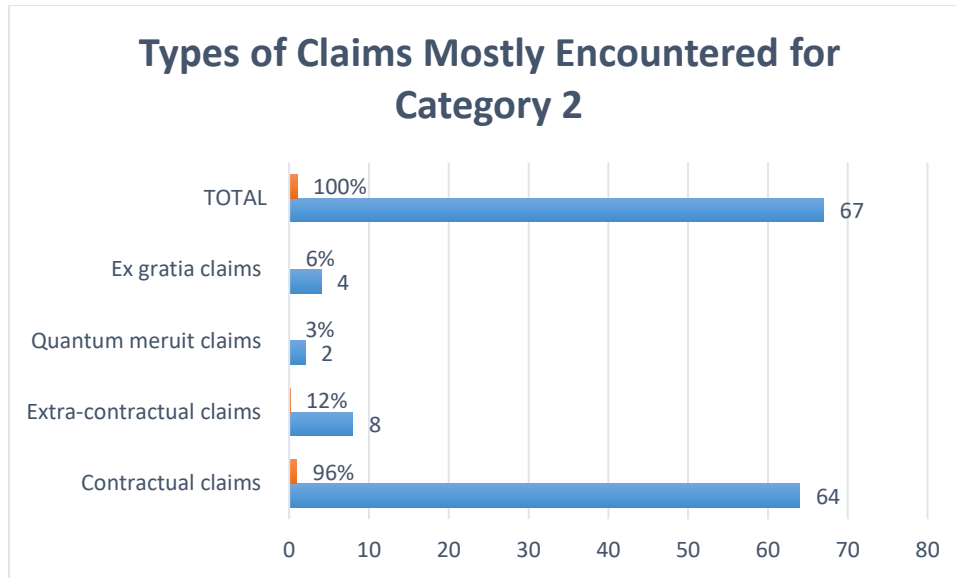


Figure 4. 6 Types of claims mostly encountered for category 2 by the respondents in the construction industry in general _
 Source: Author's field study, 2022.

The above analysis shows that the respondents encountered the types of claims of category one as delay claims/extension of time claims (84%), variation order or financial claims (72%), and acceleration claims (6%) and of category two as contractual claims (96%), extra-contractual claims (12%), ex gratia claims (6%), and quantum meruit claims (3%). That is an indication that on one hand, in category one which is the category showing claims categorization by the causing agent, delay claims/extension of time claims and variation order or financial claims were frequently encountered by the respondents, vis a vis acceleration claims which exhibited a low rate of interaction with the respondents. On the other hand, in category two which is the category showing claims categorization on the legal basis, contractual claims were frequently encountered by the respondents, vis a vis extra-contractual claims, ex gratia claims, and quantum meruit claims which exhibited a low rate of interaction with the respondents. The percentages in this category of the questionnaire add up to more than 100%. The reason for that is that the questions in this category were multiple choice questions where the respondent was allowed to select more than one option. That is because a single respondent may encounter more than one type claim in any of the categories.

4.4 The Competence of the Parties' Staff in Claim Management

The second section of the questionnaire sort to establish whether parties to a construction contract employ competent staff for claims management. The results for the competence of the parties' staff in claim management were thus analyzed and the analysis showed the following.

Table 4. 1 Summary and mean score analysis on the competence of the parties' staff in claim management _ Source: Author's field study, 2022.

Statement	Mean	Std. Deviation	Variance
Parties' staff exhibit the following during claims management.			
Have sufficient communication skills for writing and speaking in the language of communication provided for in construction contracts.	3.8955	.78111	.610
Have sufficient skills in the claims management processes	3.4179	.93985	.883
Have enough experience in claims management	3.2687	1.00878	1.018
Have sufficient skills in the processes of amicable settlement and negotiation of claims	3.2388	.95488	.912
Have a formal training in claims management	3.2090	1.05223	1.107
Average Mean Score	3.4060	.9474	.9060

Having sufficient communication skills for writing and speaking in the language of communication provided for in construction contracts scored 3.90. That score can be placed on good in the scoring scale and therefore amounts to a good performance for communication skills for writing and speaking in the language of communication provided for in construction contracts. Communication in writing and speaking is something people learn on an everyday basis and very unlikely to encounter any hinderances in its manifestation with respect to the language of communication provided for in construction contracts. Most people employed in the construction industry are more likely to quickly adapt to the language provided for in contracts. That is besides the fact that competence in communication does not necessarily require formal training. It is a basic and ubiquitous aspect for working in any industry including construction.

Having sufficient skills in the claims management processes however, scored lower but came second at 3.42. This implies that most of the respondents were midway between neutral and in

agreement. Though that indicates that parties have above average skills to manage claims, that score is still below the level of satisfactory skills required to comfortably manage claims without the risk of making mistakes that may lead to escalation. For instance, (Hewitt, 2016) emphasized the requirement for appropriate skills in claims management. He specifically addressed the process of making and defending claims, stating that the person in charge of preparing the claim frequently received or acquired a substantial amount of information, some of which is pertinent and others not. As a result, one of the skills that a seasoned claims professional possesses is the capacity to examine such material and determine what is relevant and ought to be utilized and what is irrelevant and ought to be deleted.

Having enough experience in claims management scored 3.27. Having sufficient skills in the processes of amicable settlement and negotiation of claims scored 3.24. While having a formal training in claims management scored the least in this section at 3.21. The score for those three aspects falls in the lower limits of the space between neutrality and agreement, meaning the scores tilt more toward neutrality. Additionally, those three statements have standard deviations of 1.01, 0.95 and 1.05 respectively which indicate that some respondents attested to construction parties employing staff with inadequate experience in claims management, insufficient skills in the processes of amicable settlement and negotiation of claims, and lacking formal training in claims management. The above three form the pivotal aspects of competence in claim management and their average score which indicate average performance is not satisfactory for claims management.

For competence of the parties' staff in claim management in general, the average mean was calculated from the means of the above foregoing statements. Competence of the parties' staff in claim management scored 3.41. The frequency distribution for competence of the parties' staff in claim management in general was thus drawn and showed the following:

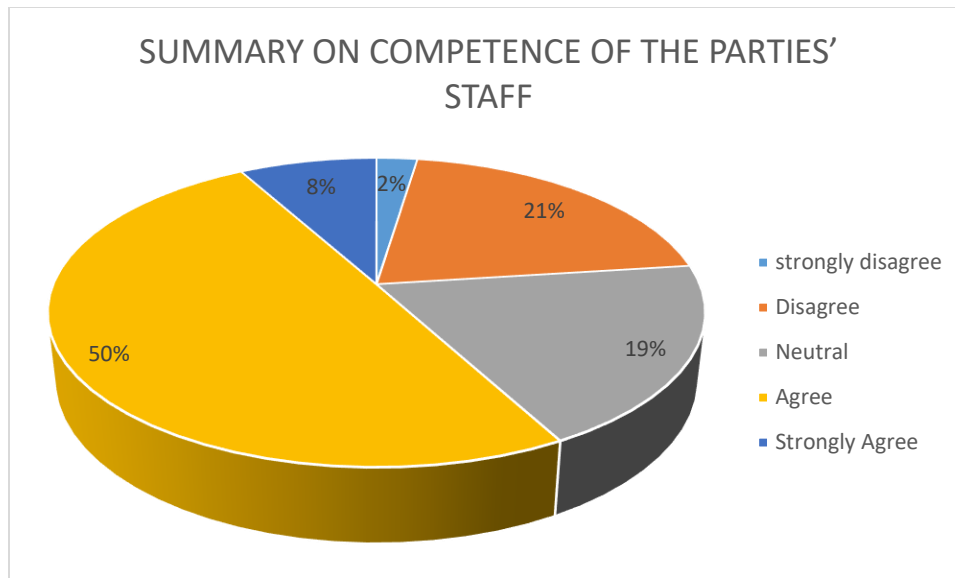


Figure 4. 7 Summary frequency distributions on the competence of the parties' staff _ Source: Author's field study, 2022.

The frequency distribution for competence showed that 50% of the respondents agreed that parties employ competent staff for claims management while 21% disagreed, 19% were neutral, 8% strongly agreed and 2% strongly disagreed. With an average mean of 3.41 and a standard deviation of 0.95, respondents were midway between neutral and in agreement. That indicates that parties employ staff with above average competence in claim management.

(Robinson, 2013) summarized the activities and responsibilities of the FIDIC parties' representative with regard to claims and stated that the contractor's personnel handling claims must be competent enough to avoid overlooking crucial claims management process details. He stated that the representative of the parties must have a firm grasp on the claims' subclause. He thinks it's probably the most important clause in terms of problems with the contract. The parties' interests will only be harmed if this clause is not understood or complied with.. Thus, in the spirit of (Robinson, 2013)'s expression of the requirement of high competence in claims management, an average mean score of 3.41, whereas it is above average, is still not enough threshold for satisfactory level of competence for claim management. Moreover, the average standard deviation of 0.95 is expressive of some respondents who believe that some parties might be employing staff that are not competent in claims management.

4.5 Party's Attitude Towards Claims Negotiations

The first third section of the questionnaire sort to establish whether parties to a construction contract exhibit a positive attitude towards claims negotiations. The results for the attitude of the parties' in claim management were thus analyzed and the analysis showed the following.

Table 4. 2 Summary and mean score analysis on Party's attitude towards claims negotiations _ Source: Author's field study, 2022.

Statement	Mean	Std. Deviation	Variance
During construction claims negotiations, parties exhibit the following:			
Express awareness of the importance of a fair resolution.	3.8657	.96759	.936
Embrace negotiation as a method of claim resolution	3.8657	.83295	.694
Show readiness to using agreement alternatives.	3.7910	.82641	.683
Express confidence in the process of negotiation	3.7612	.81816	.669
Recognize that competition may have a negative impact on their relationships	3.6866	.87402	.764
Consider the greater good regardless of the circumstances.	3.3433	1.13554	1.289
Average Mean Score	3.7189	.9091	.8392

Expressing awareness of the importance of a fair resolution and embracing negotiation as a method of claim resolution scored the highest at 3.87 followed closely by showing readiness to using agreement alternatives at 3.79 and expressing confidence in the process of negotiation at 3.76. Recognizing that competition may have a negative impact on their relationships scored 3.69. Those scores can be placed on good in the scoring scale and therefore amount to a good performance for, expressing awareness of the importance of a fair resolution, embracing negotiation as a method of claim resolution, readiness to using agreement alternatives, expressing confidence in the process of negotiation and recognizing that competition may have a negative impact on their relationships. Those scores may be attributed to the fact that construction parties are concerned with the importance of maintaining good relationships in their businesses and are therefore keen to be courteous. Parties may as well have realized that wrong attitudes are unhealthy not only for business in general but also jeopardize their chances of achieving something meaningful from claims. That is despite the assertion made by (YUAN et al. 2012) that the attitudes of the parties

involved in the construction industry are diametrically opposed, contractors seek to minimize losses through negotiation and safeguard their own legitimate interests, while owners seek to transfer risk and lower project construction costs.

The above scores also suggest that construction parties are giving up on psychological entitlement to claims that results from effects of attitudes on negotiations that was studied by (Neville et al, 2018). The parties thus prefer to maintain relationships that will last for months or years, and they are hesitant to disrupt an otherwise harmonious relationship in the industry. This disabuses the thought by (Whaley, 2016) that parties, at the outset of the project which he terms as the “honeymoon” period strive to build relationships that last which deteriorates along with the elapsing project period. The findings suggest that the relationships may as well last throughout the construction period.

Contrary to the relatively higher scores of the foregoing, considering the greater good regardless of the circumstances scored a distant low of 3.34. This indicates that most of the respondents were midway between neutral and in agreement. That shows that parties score above average in considering the greater good regardless of the circumstances during negotiation of claim.

For party’s attitude towards claims negotiations in general, the average mean was calculated from the means of the above foregoing statements. Party’s attitude towards claims negotiations scored 3.72. The frequency distribution for the party’s attitude towards claims negotiations in general was thus drawn and showed the following:

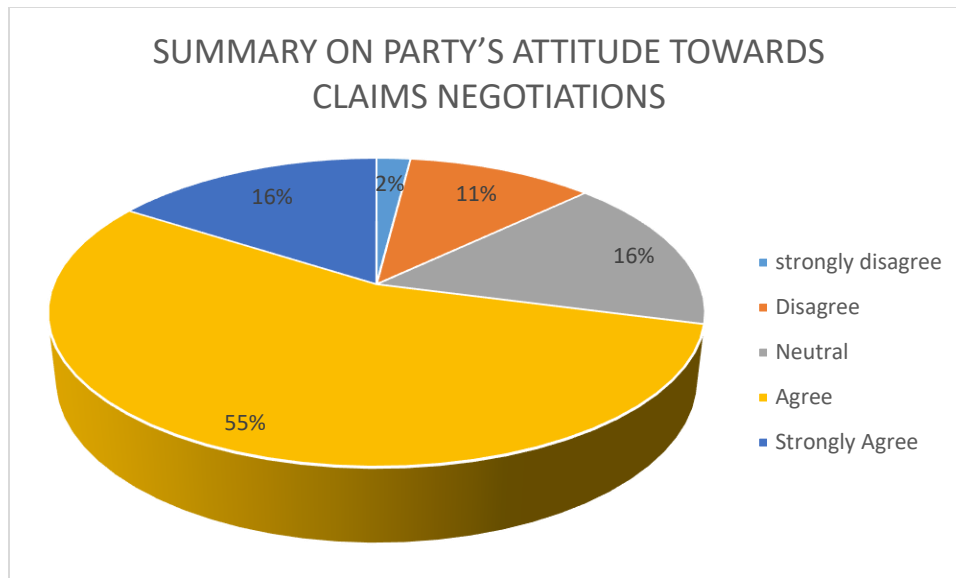


Figure 4. 8 Summary frequency distributions on party's attitude towards claims negotiations _ Source: Author's field study, 2022.

The frequency distribution for party's attitude towards claims negotiations showed that 55% of the respondents agreed that parties exhibit a positive attitude towards claim negotiations while 16% strongly agreed, 16% were neutral, 11% disagreed, and 2% strongly disagreed. With an average mean of 3.72 and a standard deviation of 0.91, respondents were in agreement. That indicates that parties exhibit a positive attitude towards claim negotiations. The relatively lower standard deviation shows that more respondents are clustered around the average mean of 3.72 suggesting that most respondents are within the range of agreement. Thus, in general, party's attitude towards claims negotiations performed relatively well.

4.6 Party's Approach Towards Claims Negotiations

The second third section of the questionnaire sort to establish whether parties to a construction contract give a positive approach towards claims negotiations. The results for the party's approach towards claims negotiations were thus analyzed and the analysis showed the following.

Table 4. 3 Summary and mean score analysis on Party's approach towards claims negotiations _ Source: Author's field study, 2022.

Statement	Mean	Std. Deviation	Variance
Parties approach negotiation of construction claims as follows:			
Avoid terminating the negotiation prematurely	3.9851	.82559	.682

Statement	Mean	Std. Deviation	Variance
Accept a fair resolution	3.7313	.78975	.624
Show a determination to overcome obstacles that may cause the claim to result in bad outcomes.	3.6418	.86518	.749
The parties avoid aggravation and aggression	3.5522	1.06292	1.130
They acknowledge the instances where the other party is right.	3.3881	.88686	.787
Average Mean Score	3.6597	.8861	.7944

Avoiding terminating the negotiation prematurely scored the highest at 3.99 and accepting a fair resolution scored second at 3.73 followed by showing a determination to overcome obstacles that may cause the claim to result in bad outcomes at 3.64 and the parties avoiding aggravation and aggression at 3.55. Those scores can be placed on good in the scoring scale and therefore amount to a good performance for, avoiding terminating the negotiation prematurely, accepting a fair resolution, showing a determination to overcome obstacles that may cause the claim to result in bad outcomes, and the parties avoiding aggravation and aggression. These scores are attributable to the possibility that parties have embraced the importance of non-confrontational behaviour during negotiations of claims being similar to what (Hayati et al, 2019) suggested that to a certain extent, effective negotiation and positive approach to construction claims by parties through non-opportunistic behaviors play a role in managing claims.

However, parties acknowledging the instances where the other party is right scored a distant low of 3.39. This indicates that most of the respondents were midway between neutral and in agreement. That shows that parties score above average in acknowledging the instances where the other party is right during negotiation of claims.

For party's approach towards claims negotiations in general, the average mean was calculated from the means of the above foregoing statements. Party's approach towards claims negotiations scored 3.66. The frequency distribution for the party's approach towards claims negotiations in general was thus drawn and showed the following:

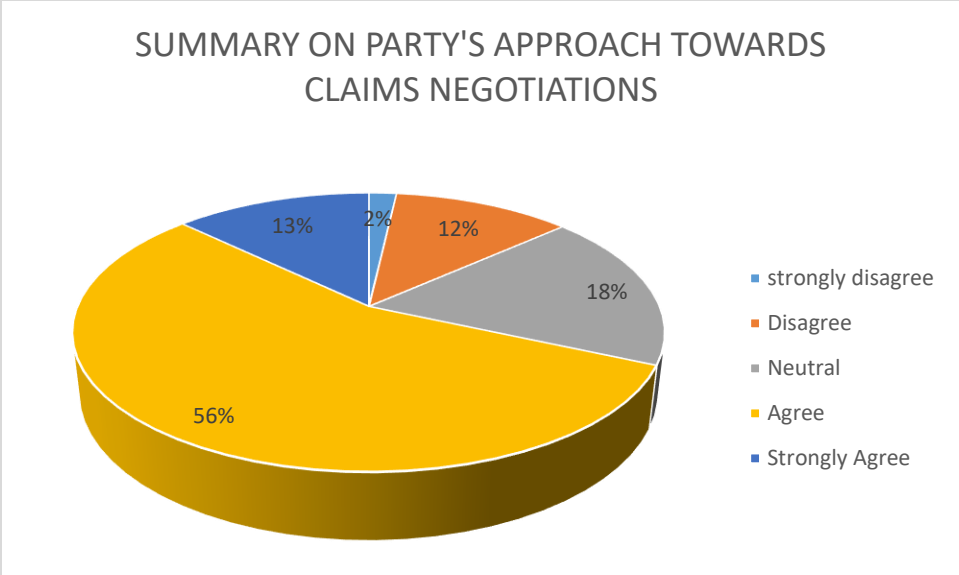


Figure 4. 9 Summary frequency distributions on party’s approach towards claims negotiations _ Source: Author’s field study, 2022.

The frequency distribution for party’s approach towards claims negotiations showed that 56% of the respondents agreed that parties approach claim negotiations positively while 18% were neutral, 13% strongly agreed, 12% disagreed, and 2% strongly disagreed. With an average mean of 3.66 and a standard deviation of 0.89, respondents were in agreement. That indicates that parties approach claims negotiations positively. The relatively lower standard deviation shows that more respondents are clustered around the average mean of 3.66 suggesting that most respondents are within the range of agreement. Thus, in general, party’s approach towards claims negotiations performed relatively well.

There is a striking resemblance of the respondents’ views between party’s attitude towards claims negotiations and party’s approach towards claims negotiations. The scores for the two are almost similar and the same. This similarity underscores the assumption that, of late, construction parties, for the sake of keeping good business relations in general have started to embrace other strategies other than confrontational behaviors during, not only in their businesses in general but more so when negotiating claims. Parties are seen to score relatively higher in ‘soft issues’ of human aspects in their dealings with other parties in construction in general and in claim negotiations in particular. The evidence therefore seems to suggest that parties have embraced the fact that the attitude and approach which they exhibit during negotiation of claims have a direct influence on how the claim will end up. They seem to conform to the fact that positive attitude and approach are likely to have better claim resolutions than negative attitudes and approaches. That is as

expressed by (Neville et al, 2018), who argued that first offer intents, and self-efficacy, as well as confrontational and unethical bargaining tactics have negative outcomes of claim negotiations.

4.7 The Level of Contractual Knowledge on Claims by Parties' Staff

The fourth section of the questionnaire sort to establish the level of contractual knowledge on claims by parties' staff. The results for the level of contractual knowledge on claims by parties' staff were thus analyzed and the analysis showed the following.

Table 4. 4 Summary and mean score analysis on the level of contractual knowledge on claims by parties' staff _ Source: Author's field study, 2022

Statement	Mean	Std. Deviation	Variance
Parties' staff exhibit the following level of contractual knowledge for claims management.			
Have the ability to present claims according to contractual requirements	3.5522	1.00429	1.009
Have sufficient contractual knowledge on claims	3.4627	.97434	.949
Have a contractual understanding on who is responsible for every process of claim management.	3.4478	.95796	.918
Have a contractual understanding on the submissions of a claim with continuing effects	3.4478	1.00429	1.009
Have sufficient contractual knowledge on the timeline provisions for claim management processes.	3.3582	.89952	.809
Have enough experience in contractual provision for claims.	3.3433	1.02325	1.047
Average Mean Score	3.4353	.9773	.9568

Having the ability to present claims according to contractual requirements scored 3.55. That score can be placed on fairly good in the scoring scale and therefore amount to a fairly good performance for having the ability to present claims according to contractual requirements. According to (Hewitt 2016), an expert in the field of presenting claims, he realized that several filings contained a two- to three-page letter attached to a disorganized, disjointed collection of papers. He made the observation that a document that is well organized, well presented and easy to use is a great sign that the person responsible knows what they are doing. The 3.55 score thus shows that construction

parties are doing fairly well in this area and therefore know what they are doing according to (Hewitt, 2016).

The foregoing was closely followed by having sufficient contractual knowledge on claims at 3.46, having a contractual understanding on who is responsible for every process of claim management at 3.45, and having a contractual understanding on the submissions of a claim with continuing effects at 3.45. These scores fall on the upper lower limit of between neutral and agreement. That indicates that parties have above average contractual knowledge on claims, understanding on who is responsible for every process of claim management, and contractual understanding on the submissions of a claim with continuing effects. This may explain why respondents believe that parties have the ability to present claims according to contractual requirements which scored highest. That is because the former cumulatively contribute to the ability to be good in the latter.

However, having sufficient contractual knowledge on the timeline provisions for claim management processes scored 3.36 and having enough experience in contractual provision for claims scored 3.34. This implies that most of the respondents were midway between neutral and in agreement. Speaking of contractual timelines, (Hewitt, 2016) argued that, for proper claim management, parties must exhibit preparedness to beat the short contractual provisions for claim management timelines. Thus, the 3.36 score for having sufficient contractual knowledge on the timeline provisions for claim management processes is not, but only approaching sufficient for this aspect. The 3.34 score for having enough experience in contractual provision for claims means that whereas people may have knowledge, they may not necessarily have attained enough experience in the particular field because experience depends on the number of years and frequency of interaction with that particular field. Thus, the respondents must have observed that, whereas parties have employed staff with a fair understanding of contractual provisions on claims management, they have not however attained higher levels of experience.

Overall, though, the average mean score for the level of contractual knowledge on claims by parties' staff indicates that parties employ staff with above average contractual knowledge on claims. For the level of contractual knowledge on claims by parties' staff in general, the average mean was calculated from the means of the above foregoing statements. The level of contractual knowledge on claims by parties' staff scored 3.44. The frequency distribution for the level of

contractual knowledge on claims by parties' staff in general was thus drawn and showed the following:

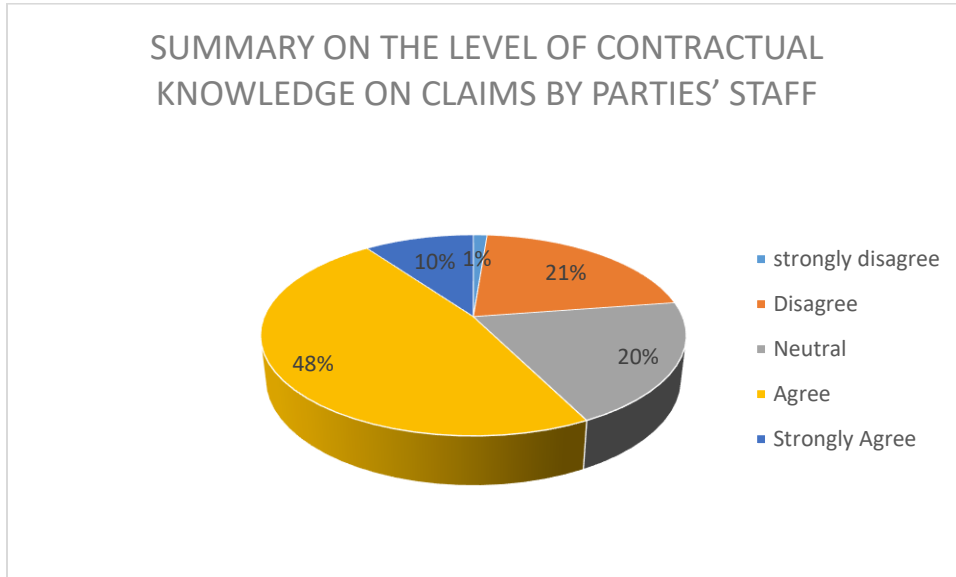


Figure 4. 10 Summary frequency distributions on the level of contractual knowledge _ Source: Author's field study, 2022.

The frequency distribution for the level of contractual knowledge on claims by parties' staff showed that 48% of the respondents agreed that parties the employ staff with enough level of contractual knowledge on claims while 21% disagreed, 20% were neutral, 10% strongly agreed, and 1% strongly disagreed. With an average mean of 3.44 and a standard deviation of 0.98, respondents were midway between neutral and in agreement. That indicates that parties employ staff with above average level of contractual knowledge on claims.

4.8 The Effectiveness of the Claim Management System Adopted by Parties for Managing Claims

The fifth section of the questionnaire sort to establish the effectiveness of the claim management system adopted by parties for managing claims. The results for the effectiveness of the claim management system adopted by parties for managing claims were thus analyzed and the analysis showed the following.

Table 4. 5 Summary and mean score analysis on the effectiveness of the claim management system adopted by parties for managing claims_ Source: Author's field study, 2022

Statement	Mean	Std. Deviation	Variance
Parties adopt the following for the purpose of claim management			
Maintain an effective record-keeping system on claims	3.6716	1.03555	1.072
Maintain a clear outline of the procedure for claim management	3.6567	.94632	.896
Maintain an effective communication system for claim management	3.6418	.98013	.961
Maintain a clear hierarchical outline of the persons responsible for every aspect of the claim management process	3.6119	.99932	.999
Maintain a stable system that enables accurate execution of every stage of the claim management processes	3.4328	1.00339	1.007
Have the preparedness to beat the short contractual timelines for executing the various stages of claims management processes	3.1791	1.04338	1.089
Average Mean Score	3.5323	1.0013	1.0040

Maintaining an effective record-keeping system on claims scored 3.67, maintaining a clear outline of the procedure for claim management scored 3.66, maintaining an effective communication system for claim management scored 3.64, and maintaining a clear hierarchical outline of the persons responsible for every aspect of the claim management process scored 3.61. Those scores can be placed on fairly good in the scoring scale and therefore amount to a fairly good performance for maintaining an effective record-keeping system on claims, maintaining a clear outline of the procedure for claim management, maintaining an effective communication system for claim management, and maintaining a clear hierarchical outline of the persons responsible for every aspect of the claim management process. Some of the problems that (Hayati et al, 2019) outlined which characterize claim management include, effective record-keeping, clear procedures, and effective communication. (Hewitt, 2016) mentioned clear hierarchical outline of the persons responsible for every aspect of the claim management process as characteristic that may affect

claim management. So, with the scores for the above four aspects, it can be drawn that respondents agree that parties are doing fairly well in these aspects in terms of claims management.

Maintaining a stable system that enables accurate execution of every stage of the claim management processes scored 3.43. That score falls on the upper lower limit of between neutral and agreement. That indicates that parties have above average stable system that enables accurate execution of every stage of the claim management processes.

Having the preparedness to beat the short contractual timelines for executing the various stages of claims management processes scored a distant low of 3.18 with a standard deviation of 1.04. That score falls in the lower limits of the space between neutrality and agreement, meaning the score tilts more toward neutrality. Additionally, that statement has a standard deviation of 1.04 which indicates that some respondents believe that construction parties do not have the preparedness to beat the short contractual timelines for executing the various stages of claims management processes. Having the preparedness to beat the short contractual timelines forms a pivotal aspect of claim management and a 3.18 score which indicates average performance is not satisfactory for claims management. This finding at this stage is consistent with the finding of having sufficient contractual knowledge on the timeline provisions for claim management processes which scored 3.36, also relatively low, under section four of the level of contractual knowledge on claims by parties' staff.

For the effectiveness of the claim management system adopted by parties for managing claims in general, the average mean was calculated from the means of the above foregoing statements. The effectiveness of the claim management system adopted by parties for managing claims scored 3.53. The frequency distribution for the effectiveness of the claim management system adopted by parties for managing claims in general was thus drawn and showed the following:

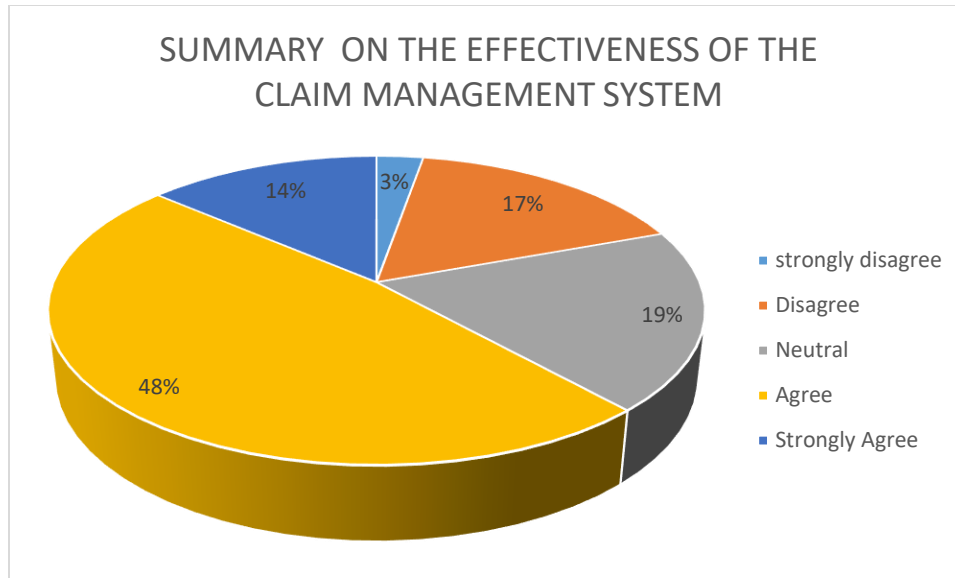


Figure 4. 11 Summary frequency distributions on the effectiveness of the claim management system _ Source: Author's field study, 2022.

The frequency distribution for the effectiveness of the claim management system adopted by parties for managing claims showed that 48% of the respondents agreed that parties adopt an effective claim management system while 19% were neutral, 17% disagreed, 14% strongly agreed, and 3% strongly disagreed. With an average mean of 3.53, there is an indication that parties generally adopt a fairly effective claim management system.

If a proper claim management system is in place, the parties should be able to achieve prompt communication procedures, maintain a clear outline of the procedure for claim management, maintain a clear hierarchical outline of the persons responsible for every aspect of the claim management process, have a stable system for management of claims, exhibit preparedness to beat the short contractual provisions for claim management timelines, and be able to maintain an effective record-keeping system and database on claims – which are some of the aspects that characterize good claim management as enumerated by (Hayati et al, 2019) and (Hewitt, 2016).

4.9 Party’s Desire to Improve Cooperation Amongst Themselves as an Item for Consideration During Resolution of Construction Claims

The sixth section of the questionnaire sort to establish the party’s desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims. The results for the party’s desire to improve cooperation amongst themselves as an item for

consideration during resolution of construction claims were thus analyzed and the analysis showed the following.

Table 4. 6 Summary and mean score analysis on party's desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims_ Source: Author's field study, 2022

Statement	Mean	Std. Deviation	Variance
During negotiation of construction claims, parties do the following:			
The parties define conflicting interests as a mutual problem that will be solved with the collaborative effort	3.6716	.99068	.981
The parties pay attention to one another's' views	3.6716	.99068	.981
Parties show politeness and helpfulness	3.4328	.97272	.946
The parties foster transparency	3.4179	1.01726	1.035
The parties show a willingness to share information	3.4179	1.01726	1.035
Average Mean Score	3.5224	.9977	.9956

The parties defining conflicting interests as a mutual problem that will be solved with the collaborative effort scored 3.67, and the parties paying attention to one another's' views scored 3.67 also. Those scores can be placed on fairly good in the scoring scale and therefore amount to a fairly good performance for the parties defining conflicting interests as a mutual problem that will be solved with the collaborative effort, and the parties paying attention to one another's' views. That can be attributed to the fact that in the beginning of a negotiation, that is when those factors manifest the most, the parties tend to promote goodwill expecting the best out of the negotiation. Into the negotiation, the situation starts to heat up. That is probably why the parties showing politeness and helpfulness scored lower at 3.4. Deep into negotiation, the negotiation might manifest more of positional hard negotiation that (Fisher et al, 1981) talked about. That hard negotiation may be the reason why parties start to show less politeness and helpfulness.

The parties fostering transparency and the parties showing a willingness to share information both scored lower at 3.42. (Goodpaster, 1996), summed the three various styles of negotiation as adversarial, collaborative, and consultative into what he called competing, compromising, and collaborating or problem-solving styles. It is possible that construction claims negotiating parties

may come into the negotiation with one of the negotiations styles. And if they choose competition, there is a high likelihood that they will be unwilling to foster transparency and show an unwillingness to share information. Although the score is lower relative to the first statements, it however, still falls on the upper lower limit of between neutral and agreement. That indicates that parties have above average willingness of fostering transparency and showing a willingness to share information.

For the party’s desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims in general, the average mean was calculated from the means of the above foregoing statements. The party’s desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims scored 3.52. The frequency distribution for the party’s desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims in general was thus drawn and showed the following:

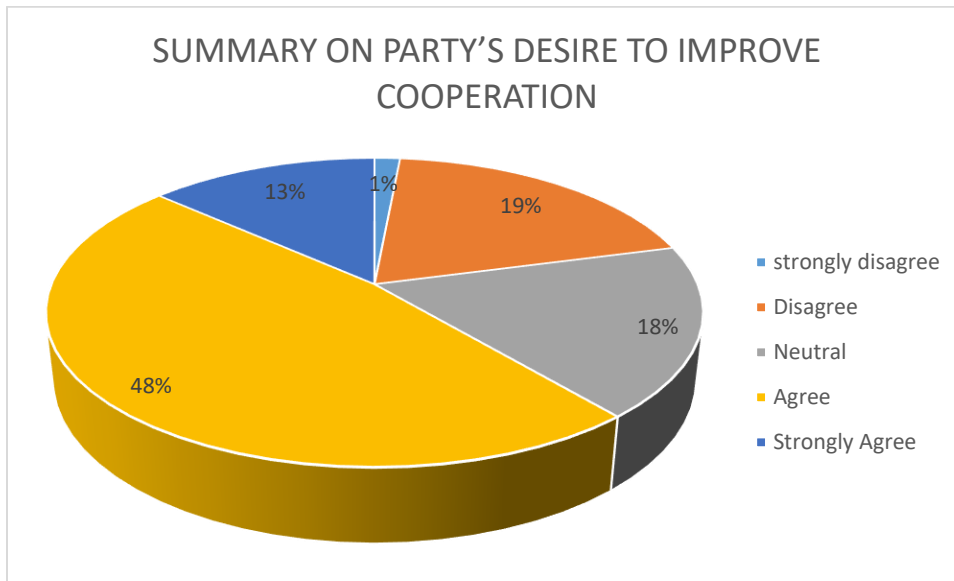


Figure 4. 12 Summary frequency distributions on party’s desire to improve cooperation _ Source: Author’s field study, 2022.

The frequency distribution for the party’s desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims showed that 48% of the respondents agreed that parties are willing improve cooperation while 19% disagreed, 18% were neutral, 13% strongly agreed, and 1% strongly disagreed. With an average mean score of 3.52, there is an

indication that parties generally fairly desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims. The reason for that fair performance can be explained by what (Xiao et al, 2005) said that coordination is frequently characterized by various stakeholders who need to collaborate while also having competing interests.

4.10 The Amount of Evidence, Quality of Documentation and Presentation of Facts that Parties Present During Claim Management

The seventh section of the questionnaire sort to establish the amount of evidence, quality of documentation and presentation of facts that parties present during claim management. The results for the amount of evidence, quality of documentation and presentation of facts that parties present during claim management were thus analyzed and the analysis showed the following.

Table 4. 7 Summary and mean score analysis on the amount of evidence, quality of documentation and presentation of facts that parties present during claim management_ Source: Author's field study, 2022

Statement	Mean	Std. Deviation	Variance
Parties exhibit the following for claims management.			
Communicate properly during claims presentations	3.7761	.91818	.843
Present evidence proving compliance with contractual timelines for claim notices and submissions	3.6866	1.03293	1.067
Have the preparedness to counter a claim presentation	3.6866	1.00316	1.006
Follow a clear procedure and standard format during presentation of claims.	3.6269	.98220	.965
Come with satisfactory evidence to convince the other party of the merits of the claim	3.5224	1.09210	1.193
Have a proper accessibility of documents used for accurate execution of every stage of the claim management processes	3.4925	1.00564	1.011
Present a properly drafted claim	3.4925	1.07834	1.163
Have standard formulae and procedures used to evaluate impacts and calculate damages from a claim	3.2985	1.16794	1.364
Average Mean Score	3.5728	1.0351	1.0765

Communicating properly during claims presentations scored 3.78, presenting evidence proving compliance with contractual timelines for claim notices and submissions scored 3.69, having the preparedness to counter a claim presentation scored 3.69, following a clear procedure and standard format during presentation of claims scored 3.63, and coming with satisfactory evidence to convince the other party of the merits of the claim scored 3.52. Those scores can be placed on fairly good in the scoring scale and therefore amount to a fairly good performance for communicating properly during claims presentations, presenting evidence proving compliance with contractual timelines for claim notices and submissions, having the preparedness to counter a claim presentation, following a clear procedure and standard format during presentation of claims, and coming with satisfactory evidence to convince the other party of the merits of the claim.

Having a proper accessibility of documents used for accurate execution of every stage of the claim management processes and presenting a properly drafted claim both scored 3.49. These scores fall on the uppermost lower limit of between neutral and agreement. That indicates that parties have above good accessibility of documents and ability to present a properly drafted claim.

Having standard formulae and procedures used to evaluate impacts and calculate damages from a claim scored lowest at 3.30. But the score still fell on the upper lower limit of between neutral and agreement. That indicates that parties have above average standard formulae and procedures used to evaluate impacts and calculate damages from a claim.

For the amount of evidence, quality of documentation and presentation of facts that parties present during claim management in general, the average mean was calculated from the means of the above foregoing statements. The amount of evidence, quality of documentation and presentation of facts that parties present during claim management scored 3.57. The frequency distribution for the amount of evidence, quality of documentation and presentation of facts that parties present during claim management in general was thus drawn and showed the following:

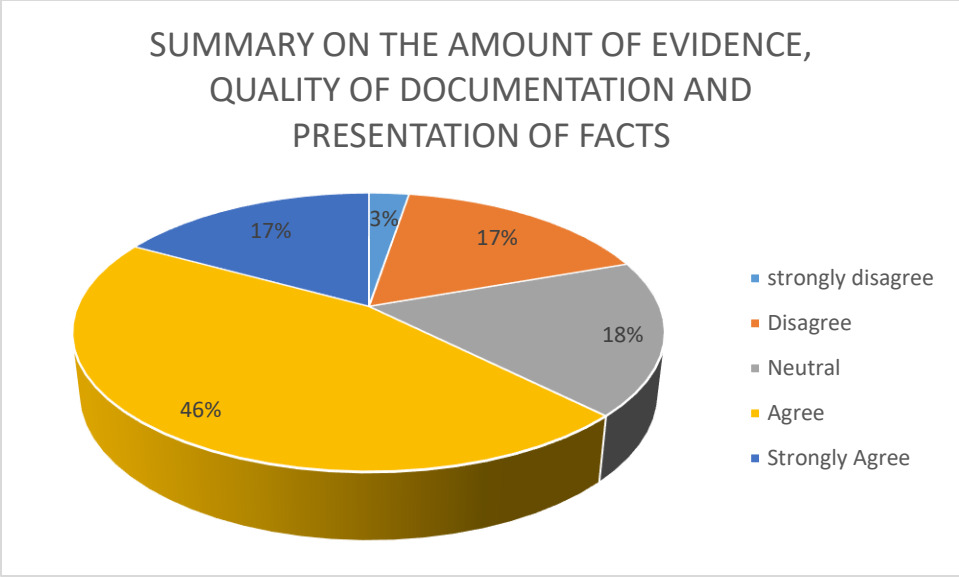


Figure 4. 13 Summary frequency distributions on the amount of evidence, quality of documentation and presentation of facts – Source: Author's field study, 2022.

The frequency distribution for the amount of evidence, quality of documentation and presentation of facts that parties present during claim management showed that 46% of the respondents agreed that parties come with enough amount of evidence, quality of documentation and presentation of facts while 18% were neutral, 17% disagreed, 17% strongly agreed, and 3% strongly disagreed. With an average mean score of 3.57, there is an indication that parties generally come with fairly enough amount of evidence, quality of documentation and presentation of facts during claim management. However, the average standard deviation of 1.04 is expressive of some respondents who believe that there is a number of parties who might be coming with little amount of evidence, poorer quality of documentation and inadequate presentation of facts during claim management.

4.11 Party’s Willingness to Compromise During Negotiation of Construction Claims

The eighth section of the questionnaire sort to establish the party’s willingness to compromise during negotiation of construction claims. The results for the party’s willingness to compromise during negotiation of construction claims were thus analyzed and the analysis showed the following.

Table 4. 8 Summary and mean score analysis on the party's willingness to compromise during negotiation of construction claims_
Source: Author's field study, 2022

Statement	Mean	Std. Deviation	Variance
During negotiation of construction claims, parties show the following:			
The parties are consciously aware that the outcome might be less than they had originally hoped for.	3.7910	.78889	.622
The parties are willing to make proposals and concessions back and forth until they reach a compromise.	3.7164	.90128	.812
The parties are cognizant that the general welfare of the organization will benefit from giving in on some of their demands.	3.5224	.80450	.647
The parties focus on what is achieved rather than on what will be given up.	3.4925	.97504	.951
They maintain flexibility in their negotiation strategy	3.4478	.87531	.766
Parties are ready to agree to disagree and live with the outcome of the negotiation.	3.4478	1.00429	1.009
Average Mean Score	3.5697	.8916	.8012

The parties being consciously aware that the outcome might be less than they had originally hoped for scored the highest at 3.79. That score can be placed on good in the scoring scale and therefore amounts to a good performance for parties being consciously aware that the outcome might be less than they had originally hoped. That is a good indication that parties are mentally prepared and therefore likely to agree with the determination or resolution of a claim without disputing.

The parties willing to make proposals and concessions back and forth until they reach a compromise scored second at 3.71. That score can also be placed on good in the scoring scale and therefore amounts to a good performance for the parties willing to make proposals and concessions back and forth until they reach a compromise. (Pinet et al, 2012) suggested that making any necessary concessions is a good method and strategy in any negotiations. Making such concessions or tradeoffs is a precursor to successful negotiation that leads parties in a construction contract to be contented with the outcome of the negotiation of claims.

The parties being cognizant that the general welfare of the organization will benefit from giving in on some of their demands scored 3.52 and the parties focusing on what is achieved rather than on what will be given up scored 3.49. Those scores can be placed on fairly good in the scoring scale and therefore amount to a fairly good performance for parties being cognizant that the general welfare of the organization will benefit from giving in on some of their demands and the parties focusing on what is achieved rather than on what will be given up.

Parties maintaining flexibility in their negotiation strategy and parties being ready to agree to disagree and live with the outcome of the negotiation both scored 3.48. These scores fall on the upper lower limit of between neutral and agreement. That indicates that parties have above average willingness of maintaining flexibility in their negotiation strategy and being ready to agree to disagree and live with the outcome of the negotiation. Those two factors contribute to the overall flexibility in negotiation which is a good thing for avoiding disagreements that may lead to escalations. That is in agreement with what (Druckrnan, 1993) said, that when parties show some flexibility from their initial attitude, when they show some readiness to compromise or surrender in the direction of the other parties' stances, negotiations are more likely to succeed in obtaining mutually beneficial accords.

For the party's willingness to compromise during negotiation of construction claims in general, the average mean was calculated from the means of the above foregoing statements. The party's willingness to compromise during negotiation of construction claims scored 3.57. The frequency distribution for the party's willingness to compromise during negotiation of construction claims in general was thus drawn and showed the following:

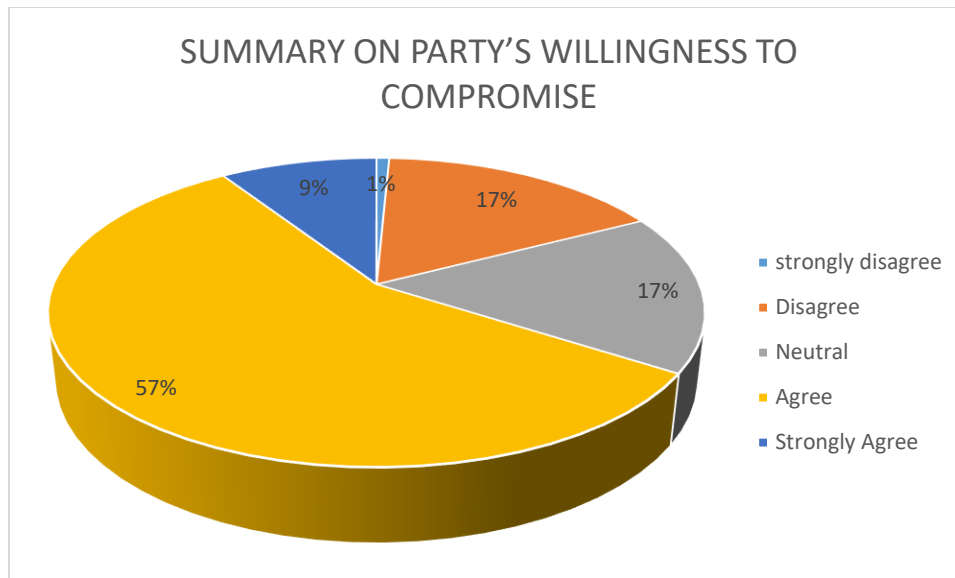


Figure 4. 14 Summary frequency distributions on the party's willingness to compromise _ Source: Author's field study, 2022.

The frequency distribution for the party's willingness to compromise during negotiation of construction claims showed that 57% of the respondents agreed that parties are willing to compromise while 17% were neutral, 17% disagreed, 9% strongly agreed, and 1% strongly disagreed. With an average mean score of 3.57, there is an indication that parties are generally willing to compromise during claim management. Furthermore, the average standard deviation of 0.89 is expressive of respondents clustering around the average mean of 3.57 suggesting that most respondents are within the range of agreement.

Overall, for the parties' to compromise during construction claims according to (Pinet et al.,2012), it was discovered that we also want to see our opponent win because this is more of a goal than a method. Also, a strategy that will help us get what we want and get through the negotiation faster.

4.12 The Level of Party and Party Staff Involvement and Participation in Claim Management and Negotiations

The ninth section of the questionnaire sort to establish the level of party and party staff involvement and participation in claim management and negotiations. The results for the level of party and party staff involvement and participation in claim management and negotiations were thus analyzed and the analysis showed the following.

Table 4. 9 Summary and mean score analysis on the level of party and party staff involvement and participation in claim management and negotiations_ Source: Author's field study, 2022

Statement	Mean	Std. Deviation	Variance
During claim management and negotiations, the parties and party staff do the following			
Maintain a close tie with the contract administrators specifically reconciling claim issues	3.5672	.90828	.825
Give management of claims enough attention	3.3134	1.15744	1.340
Maintain a close tie with the other party specifically reconciling claim issues	3.3134	.97248	.946
Allocate adequate resources for claim management	3.1642	1.05309	1.109
Commit to overtime expenses when claim management demands more time	3.0896	1.13793	1.295
Employ enough and appropriate staff for the management of claims	2.8507	1.17104	1.371
Average Mean Score	3.2164	1.0667	1.1477

Maintaining a close tie with the contract administrators specifically reconciling claim issues scored 3.57. That score can be placed on fairly good in the scoring scale and therefore amount to a fairly good performance for maintaining a close tie with the contract administrators specifically reconciling claim issues. This may be attributed to the desire by parties to tighten relations with contract administrators i.e., the architect, the engineer or the project managers (JBC 1999, FIDIC 2017 and PPRA 2021, standard forms of contracts). These are the ones who do the determinations for claims. The parties hope to earn favorability in decision making which affects their willingness to cooperate as was observed by (Ajibade et al, 2008). People always compete for favorability.

Giving management of claims enough attention and maintaining a close tie with the other party specifically reconciling claim issues both scored 3.31. This indicates that most of the respondents were midway between neutral and in agreement. That shows that parties score above average in giving management of claims enough attention and maintaining a close tie with the other party specifically reconciling claim issues. The reason for the relatively lower score especially in maintaining a close tie with the other party is that parties to a construction contract view each other

as competitors and most likely not open to one another. Moreover, the existence of the claims culture expressed by (Whaley, 2016), which is something in which contractors are supposed to place a premium on claim planning and management as a means of generating revenue may contribute to the increase in that rift.

Allocating adequate resources for claim management scored 3.16 and committing to overtime expenses when claim management demands more time scored 3.09. These are neutral scores and it means that there is a balance between those who agree and those who disagree that parties allocate adequate resources for claim management and commit to overtime expenses when claim management demands more time. Moreover, standard deviations of 1.05 and 1.14 respectively indicate that there is a number of respondents who are in disagreement. That is not a satisfactory score for claim management.

Employing enough and appropriate staff for the management of claims scored low at 2.58. This is the lowest score of all statements from all the sections of the questionnaire. The score is below neutrality meaning most respondents disagree that parties employ enough and appropriate staff for the management of claims. Moreover, a standard deviation of 1.17 means that more respondents disagree even more. Therefore, there is a low commitment by parties to employ enough staff for management of claims. That could be the greatest undoing in managing claims since human resource is very important in all aspects of construction including claims management. But that score could be attributed to the low availability of scarce resources.

For the level of party and party staff involvement and participation in claim management and negotiations, the average mean was calculated from the means of the above foregoing statements. The level of party and party staff involvement and participation in claim management and negotiations scored 3.22. The frequency distribution for the level of party and party staff involvement and participation in claim management and negotiations in general was thus drawn and showed the following:

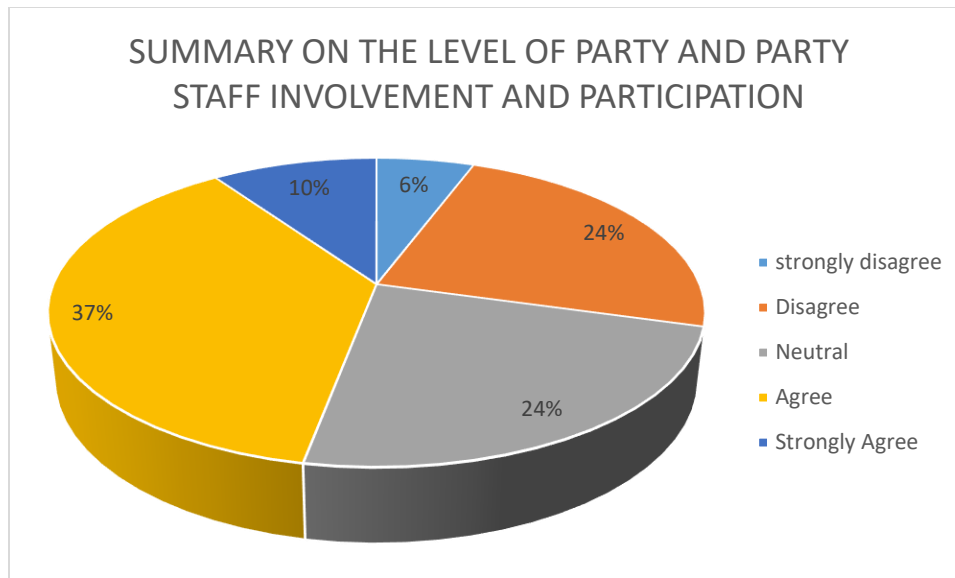


Figure 4. 15 Summary frequency distributions on the level of party and party staff involvement and participation _ source: author's field study, 2022

The frequency distribution for the level of party and party staff involvement and participation in claim management and negotiations showed that 37% of the respondents agreed that parties and party staff get involved and participate adequately in claim management and negotiations while 24% were neutral, 24% disagreed, 10% strongly agreed, and 6% strongly disagreed. With an average mean score of 3.22, there is an indication that parties and party staff are generally doing only averagely in getting involved and participating in claim management and negotiations. Furthermore, the average standard deviation of 1.07 is expressive of a number of respondents scattered away from the average mean of 3.22 suggesting that a number of respondents disagree that that parties and party staff get involved and participate adequately in claim management and negotiations.

4.13 Conclusion on Data Analysis, Presentation and Interpretation

The last section of the questionnaire concluded by enquiring from the respondents on their opinions on the areas they felt are important to focus on for improvement of claim management. It also sort to find out from the respondents, the ways they thought construction parties should adopt to achieve the best results in claims management.

4.13.1 Areas Felt to be Important to Focus on for Improvement of Claim Management

The areas respondents felt to be important to focus on for improvement of claim management were analyzed and the output showed the following summary.

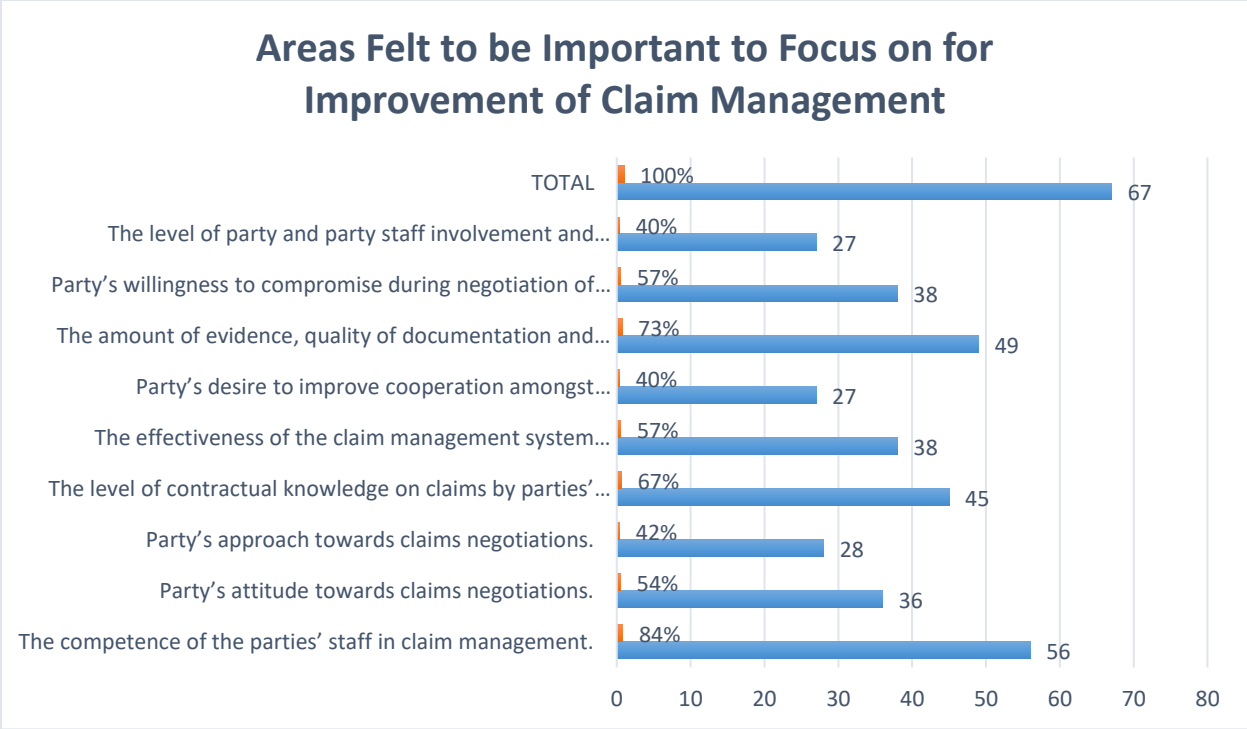


Figure 4. 16 Areas respondents felt to be important to focus on for improvement of claim management _ Source: Author's field study, 2022.

The competence of the parties' staff in claim management scored the highest at 84%, followed by the amount of evidence, quality of documentation and presentation of facts that parties present during claim management at 73%, the level of contractual knowledge on claims by parties' staff at 67%, the effectiveness of the claim management system adopted by parties for managing claims at 57%, party's willingness to compromise during negotiation of construction claims at 57%, party's attitude towards claims negotiations at 54%, party's approach towards claims negotiations at 42%, party's desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims at 40%, and the level of party and party staff involvement and participation in claim management and negotiations at 40%. The observation here is that the parties' technical aspects that characterize claim management scored the highest. Their scores were all above human factors. That is an indication that the respondents believe that technical aspects of claim management are more important in claim management. The percentages in this category of the questionnaire add up to more than 100%. The reason for that is that the questions in this category were multiple choice questions where the respondent was allowed to select more than one option. That is because a single respondent may believe that more than one aspect is crucial for the management of claims.

4.13.2 The Ways Construction Parties Should Adopt to Achieve the Best Results in Claims Management.

The ways respondents thought construction parties should adopt to achieve the best results in claims management were analyzed and the output showed the following summary.

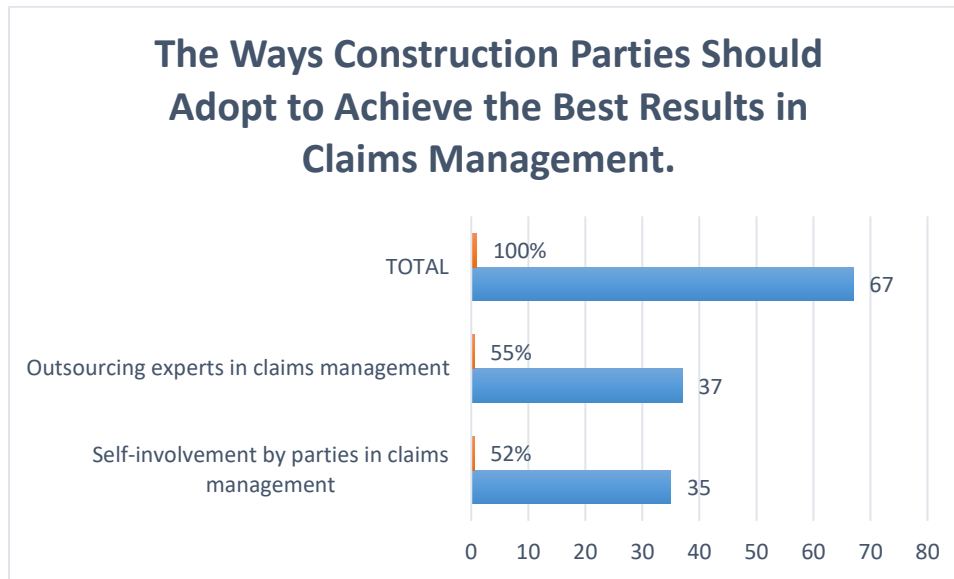


Figure 4. 17 The ways respondents thought construction parties should adopt to achieve the best results in claims management _ Source: Author's field study, 2022.

Outsourcing experts in claims management scored higher at 55% while self-involvement by parties in claims management scored 52%. More respondents believe that outsourcing experts in claims management is better than parties involving themselves. But the difference between the two is small at 3% which means that there is almost half to half belief by respondents that both outsourcing experts and self-involvement is appropriate for claim management. The percentages in this category of the questionnaire add up to more than 100%. The reason for that is that the questions in this category were multiple choice questions where the respondent was allowed to select more than one option. That is because a single respondent may believe that more than one aspect is crucial for the management of claims. It means some respondents believe both outsourcing experts and self-involvement can be combined for claim management.

CHAPTER 5: SUMMARY OF RESULTS, CONCLUSION AND RECOMMENDATIONS

5.1 General

The purpose of this research was to study the role of contracting parties in preventing escalation of construction claims into disputes through the claim management processes. The main objective was to investigate the role contracting parties play in preventing escalation of construction claims into disputes through the claim management process. With the findings of the literature in perspective, subobjectives were formulated which were then used to generate research questions which the study sort to answer. A questionnaire was created with respect to the research questions which formed the data collection tool. The questionnaires were issued to 67 respondents. The results were collected and analyzed, presented and interpreted. Now, for this topic, the results will be summarized, conclusions drawn and recommendations given.

5.2 Summary of Results and Discussion of Study Findings

The first objective was to establish the competence of the parties' staff in managing claims through the whole process of claim management. Someone who is competent in claim management should first of all have a training in claims management and therefore be able to develop skills for the whole process of claims management. They should also understand construction contracts in general and be able to read, understand and interpret construction contracts efficiently. Overall, they should gain industry experience on how to manage claims. Such were the aspects that the research investigated under competence and the finding was that all the aspects scored above 3. The average mean score was found to be 3.41 which is above average but not satisfactory for competence in claims management.

The second objective was to establish whether construction parties give claim negotiations a positive general attitude and approach. The attitude and approach were investigated. A positive attitude will embrace and express confidence in negotiation. Parties with a positive attitude will also look forward to a fair resolution with a regard to goodwill despite the circumstances. They will compete fairly and be agreeable and open to alternative claim resolutions. A good approach will be to accept a fair resolution, commend the other party, and strive to overcome obstacles. Parties will also avoid violent behaviour which may lead to terminating negotiations prematurely. The above aspects were investigated. The findings showed scores of above 3.6 for the attitude with

one outlier of 3.34 and, 3.5 for approach with one outlier of 3.39. The average mean score was found to be 3.72 for attitude and 3.66 for approach. Party attitude and approach are human attributes that characterize claims and they were found to score well showing how respondents believe that parties are doing well in these aspects. That is satisfactory.

The third objective was to establish the level of contractual knowledge on claims by parties' staff. This aspect that characterizes claims management relates to competence or it is the precursor that builds to competence in claim management. According to (Robinson, 2013), the party's representative must have a firm grasp on the claims sub clause in standard forms of contract. That person must therefore have sufficient contractual knowledge on claims in terms of timelines, responsibilities, submissions, claims with continuing effects, and claim presentations. These should also amount to good understanding and experience. Investigation on the above aspects found out that all scores were above 3.3 with an average mean score of 3.44 which is above average but not satisfactory for contractual knowledge on claims.

The fourth objective was to establish the effectiveness of the claim management system adopted by parties for managing claims. According to the literature, an effective claims management system is characterized by effective communication, clear procedures, hierarchy of responsibility, stability, preparedness, and effective record-keeping. The study's objective under this aspect was to find out if parties exhibit the above characteristics in terms of the effectiveness of the claim management system they adopt. The findings showed scores of above 3.4 with one outlier of 3.18. The average mean score was found to be 3.53 showing that respondents believe that parties are doing well in maintaining a claim management system. That is satisfactory.

The fifth objective was to establish whether there is a desire to improve cooperation amongst construction parties as an item for consideration during resolution of construction claims. When parties are cooperative, they pay attention to one another's' views and show politeness and helpfulness. They also define conflicting interests as a mutual problem that will be solved with the collaborative effort. Moreover, in cooperation the parties show a willingness to share information and foster transparency. The respondents believed that most parties are cooperative especially on the first three aspects and to a lesser extent but averagely well for the last two. This is because the findings showed that all the aspects scored above 3.4 with an average mean score of 3.52 which showed that parties do well in cooperation and is satisfactory.

The sixth objective was to establish the amount of evidence and quality of documentation and presentation of facts of the claim that parties give during claim negotiations. To be able to support a claim, one needs to have a proper accessibility of documents. They also need to have clear outline of formulae and procedures. Their presentations must conform to the contract. They should be able to communicate properly and follow due procedure during claims presentations. The claimant must come with satisfactory evidence while the responding party must prepare a thorough defense or counterclaim. Overall, the party must draft the claim properly. That is why, for a properly presented claim, (Hewitt, 2016) proposed that for the writing style, the narrative should flow, be easily readable, and, most importantly, be correctly understood. The above formed the major items of investigate for the amount of evidence and quality of documentation and presentation of facts of the claim that parties give during claim negotiations. What was observed was that the scores for the above aspects ranged between 3.3 to 3.8 with an average mean score of 3.57. For the amount of evidence and quality of documentation and presentation of facts of the claim that parties give during claim negotiations, that is satisfactory.

The seventh objective was to establish whether parties to a construction contract commit to the willingness to compromise during negotiation of claims. For construction parties to be able to compromise during claim negotiations, they should be able to manage expectations and focus on what is achieved rather than on what will be given up. They should be able to trade demands with the general welfare of the organization. And if they can't make proposals and concessions back and forth until they reach a compromise, then they should agree to disagree and live with the outcome of the negotiation. Lastly, they should maintain flexibility in their negotiation strategy. The research investigated to what extent parties do the above. The finding was that the scores for the above aspects ranged between 3.4 to 3.8 with an average mean score of 3.57. For the willingness to compromise during negotiation of claims, that is satisfactory.

The eighth and last objective was to establish the level of party and party staff involvement and participation in claim management and negotiations. The purpose of this objective was to find out whether parties actively engage in claims or they just passively engage in claims management. From the summary of literature in this area, it was found out that a party that is actively engaged in claims should employ enough and appropriate staff who will give management of claims enough attention. They should also allocate adequate resources for claim management. They should also maintain close ties with other participants to the claim including the other party and contract

administrators. And when there is pressure for work, parties should commit to overtime expenses to do a proper work in preparing for/and presenting claims. What was found out from the investigation of those factors was that their scores range from 2.9 to 3.6 with an average mean of 3.21. Since commitment and human resource form the backbone of any work including management of claims, that average score, is deemed not satisfactory.

5.3 Conclusions

Five aspects from the eight objectives were found to be satisfactory in terms of performance according to the respondents. These were, construction parties' attitude and approach towards claim negotiations, the effectiveness of the claim management system adopted by parties for managing claims, the desire to improve cooperation amongst construction parties as an item for consideration during resolution of construction claims, the amount of evidence and quality of documentation and presentation of facts of the claim that parties give during claim negotiations, and the willingness to compromise during negotiation of claims. Three aspects from the eight objectives were however found to be unsatisfactory. These were, the competence of the parties' staff in managing claims through the whole process of claim management, the level of contractual knowledge on claims by parties' staff, and the level of party and party staff involvement and participation in claim management and negotiations.

It was also observed that respondents believed that for better performance in claim management, parties should put more emphasis on the technical aspects that characterize claim management including, the claim management system, the amount of evidence and quality of documentation and presentation of facts, competence, and contractual knowledge on claims. However, the respondents regarded the human factors not to be as much paramount. These include, attitude and approach to negotiations, cooperation, and willingness to compromise. The hybrid factor, level of involvement and participation, was regarded by respondents as of average importance.

It was also observed that there is almost half to half belief by respondents that both outsourcing experts and self-involvement is appropriate for claim management. Some respondents also believe both outsourcing experts and self-involvement can be combined for claim management.

5.4 Recommendations

The observation from the conclusions is that respondents believed that for better performance in claim management, parties should put more emphasis on the technical aspects that characterize

claim management. Yet the performance of two major technical factors including competence and the level of contractual knowledge was found to be unsatisfactory. Therefore, since technical aspects need emphasis, parties need to put more into improving competence and the level of contractual knowledge for management of claims. Competence scored 84% for approval rating as a crucial aspect in claims management yet it scored an average performance of 3.41 for people that parties employ for claims management. The level of contractual knowledge scored 67% for approval rating as a crucial aspect in claims management yet it scored 3.44 as the level to which parties attain it for claims management.

Another recommendation is that parties need to relook at their level of involvement and participation in claims management. Lastly, since it was also observed that there is almost half to half belief by respondents that both outsourcing experts and self-involvement is appropriate for claim management, and that other respondents also believe both outsourcing experts and self-involvement can be combined for claim management, parties should find ways of how best they can combine the two to achieve the best claim management outcomes.

5.5 Areas of Further Study

When investigating the areas that construction parties need to focus to improve claims management, the competence of the parties' staff in claim management scored the highest at 84%, followed by the amount of evidence, quality of documentation and presentation of facts that parties present during claim management at 73%, the level of contractual knowledge on claims by parties' staff at 67%, the effectiveness of the claim management system adopted by parties for managing claims at 57%, party's willingness to compromise during negotiation of construction claims at 57%, party's attitude towards claims negotiations at 54%, party's approach towards claims negotiations at 42%, party's desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims at 40%, and the level of party and party staff involvement and participation in claim management and negotiations at 40%. A study on the favors that contribute to such differences in scores could give more understanding.

The findings of this study as far as the role of contracting parties in preventing escalation of construction claims into disputes through the claim management processes is concerned was an average between the employer and the contractor as construction parties. A study can be done to see how the two compare.

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APPENDICES

Appendix A: Letter of Introduction to Respondents



UNIVERSITY OF NAIROBI
DEPARTMENT OF REAL ESTATE, CONSTRUCTION MANAGEMENT &
QUANTITY SURVEYING
P.O. Box 30197, 00100 Nairobi, KENYA,
Tel: No. +254-020-491 3531/2
Mobile: +254-782383848/759535572/713120505
E-mail: recmqs@uonbi.ac.ke

Ref: B53/35736/2019

Date: 7th October, 2022

To Whom It May Concern

Dear Sir/Madam,

RE: RESEARCH LETTER – HARUN GAKA MAMBOLEO

This is to confirm that the above named is a student in the Department of Real Estate, Construction Management & Quantity Surveying pursuing a course leading to the degree of M.A. in Construction Management.

He is carrying out a research entitled "*A Study of The Role of Contracting Parties in Preventing Escalation of Construction Claims into Disputes Through The Claim Management Processes*" in partial fulfillment of the requirements for the degree programme.

The purpose of this letter is to request you to allow him access to any kind of material he may require to complete his research. The information will be used for research purposes only.

Thank you.




Isabella N. Wachira-Towey, (PhD)
Chairman & Senior Lecturer,
Department of Real Estate, Construction Management
& Quantity Surveying

Appendix B: Questionnaire

SECTION I: General Information

State your response as it best describes your background information.

1: In what capacity are you working in the project or company?

2: How long have you worked in the construction industry?
 0-5 Years, 5-10 Years, 10-15 Years, 15-20 Years, Over 20 Years

3: Using the options below, please provide a list of the positions you have held while working in the construction sector, starting with the earliest.

Clerk of Works, Technician, Assistant Project Manager, Project Manager, Assistant Engineer, Engineer, Resident Engineer, Architect, Quantity Surveyor, Land Surveyor, Interior Designer, Environmental Specialist, Social Specialist, Other (Specify).

4: Have you encountered construction claims in the period that you have been in the construction industry?

Very often (...) Often (...) Occasionally (...) Never (...)

5: Which claims did you encounter the most? Select at least one from the two categories.

- a) Delay claims/Extension of time claims (...) Variation order or financial claims (...) Acceleration claims (...)
- b) Contractual claims (...) Extra-contractual claims (...) Quantum meruit claims (...) Ex gratia claims (...)

SECTION II: The competence of the parties' staff in claim management.

Please indicate the extent to which you agree with the following statements by using a scale of 1 to 5 where **1= strongly disagree, 2= Disagree, 3=Neutral, 4=Agree and 5 = strongly agree.**

Please tick (√) or (X) which best describes your opinion of the statement.

1: Parties' staff exhibit the following during claims management.	1	2	3	4	5
a) Have a formal training in claims management					

b) Have sufficient skills in the claims management processes					
c) Have sufficient skills in the processes of amicable settlement and negotiation of claims					
d) Have sufficient communication skills for writing and speaking in the language of communication provided for in construction contracts.					
e) Have enough experience in claims management					

SECTION III A: Party’s attitude towards claims negotiations.

Please indicate the extent to which you agree with the following statements by using a scale of 1 to 5 where **1= strongly disagree, 2= Disagree, 3=Neutral, 4=Agree and 5 = strongly agree.**

Please tick (√) or (X) which best describes your opinion of the statement.

2: During construction claims negotiations, parties exhibit the following:	1	2	3	4	5
a) Embrace negotiation as a method of claim resolution					
b) Express confidence in the process of negotiation					
c) Express awareness of the importance of a fair resolution.					
d) Consider the greater good regardless of the circumstances.					
e) Recognize that competition may have a negative impact on their relationships					
f) Show readiness to using agreement alternatives.					

SECTION III B: Party’s approach towards claims negotiations.

Please indicate the extent to which you agree with the following statements by using a scale of 1 to 5 where **1= strongly disagree, 2= Disagree, 3=Neutral, 4=Agree and 5 = strongly agree.**

Please tick (√) or (X) which best describes your opinion of the statement.

3: Parties approach negotiation of construction claims as follows:	1	2	3	4	5
a) Accept a fair resolution					
b) They acknowledge the instances where the other party is right.					
c) Show a determination to overcome obstacles that may cause the claim to result in bad outcomes.					
d) The parties avoid aggravation and aggression					
e) Avoid terminating the negotiation prematurely					

SECTION IV: The level of contractual knowledge on claims by parties’ staff

Please indicate the extent to which you agree with the following statements by using a scale of 1 to 5 where **1= strongly disagree, 2= Disagree, 3=Neutral, 4=Agree and 5 = strongly agree.**

Please tick (√) or (X) which best describes your opinion of the statement.

4: Parties’ staff exhibit the following level of contractual knowledge for claims management.	1	2	3	4	5
a) Have sufficient contractual knowledge on claims					
b) Have sufficient contractual knowledge on the timeline provisions for claim management processes.					
c) Have a contractual understanding on who is responsible for every process of claim management.					
d) Have a contractual understanding on the submissions of a claim with continuing effects					
e) Have the ability to present claims according to contractual requirements					
f) Have enough experience in contractual provision for claims.					

SECTION V: The effectiveness of the claim management system adopted by parties for managing claims

Please indicate the extent to which you agree with the following statements by using a scale of 1 to 5 where **1= strongly disagree, 2= Disagree, 3=Neutral, 4=Agree and 5 = strongly agree.**

Please tick (√) or (X) which best describes your opinion of the statement.

5: Parties adopt the following for the purpose of claim management	1	2	3	4	5
a) Maintain an effective communication system for claim management					
b) Maintain a clear outline of the procedure for claim management					
c) Maintain a clear hierarchical outline of the persons responsible for every aspect of the claim management process					
d) Maintain a stable system that enables accurate execution of every stage of the claim management processes					
e) Have the preparedness to beat the short contractual timelines for executing the various stages of claims management processes					
f) Maintain an effective record-keeping system on claims					

SECTION VI: Party’s desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims

Please indicate the extent to which you agree with the following statements by using a scale of 1 to 5 where **1= strongly disagree, 2= Disagree, 3=Neutral, 4=Agree and 5 = strongly agree.**

Please tick (√) or (X) which best describes your opinion of the statement.

6: During negotiation of construction claims, parties do the following:	1	2	3	4	5
a) The parties pay attention to one another’s’ views.					
b) Parties show politeness and helpfulness					
c) The parties define conflicting interests as a mutual problem that will be solved with the collaborative effort					
d) The parties show a willingness to share information					
e) The parties foster transparency					

SECTION VII: The amount of evidence, quality of documentation and presentation of facts that parties present during claim management

Please indicate the extent to which you agree with the following statements by using a scale of 1 to 5 where **1= strongly disagree, 2= Disagree, 3=Neutral, 4=Agree and 5 = strongly agree.**

Please tick (√) or (X) which best describes your opinion of the statement.

7: Parties exhibit the following for claims management.	1	2	3	4	5
a) Have a proper accessibility of documents used for accurate execution of every stage of the claim management processes					
b) Have standard formulae and procedures used to evaluate impacts and calculate damages from a claim					
c) Present evidence proving compliance with contractual timelines for claim notices and submissions					
d) Communicate properly during claims presentations					
e) Follow a clear procedure and standard format during presentation of claims.					
f) Come with satisfactory evidence to convince the other party of the merits of the claim					
g) Have the preparedness to counter a claim presentation					
h) Present a properly drafted claim					

SECTION VIII: Party’s willingness to compromise during negotiation of construction claims

Please indicate the extent to which you agree with the following statements by using a scale of 1 to 5 where **1= strongly disagree, 2= Disagree, 3=Neutral, 4=Agree and 5 = strongly agree.**

Please tick (√) or (X) which best describes your opinion of the statement.

8: During negotiation of construction claims, parties show the following:	1	2	3	4	5
a) The parties are consciously aware that the outcome might be less than they had originally hoped for.					
b) The parties focus on what is achieved rather than on what will be given up.					
c) The parties are cognizant that the general welfare of the organization will benefit from giving in on some of their demands.					
d) Parties are ready to agree to disagree and live with the outcome of the negotiation.					
e) The parties are willing to make proposals and concessions back and forth until they reach a compromise.					
f) They maintain flexibility in their negotiation strategy					

SECTION IX: The level of party and party staff involvement and participation in claim management and negotiations

Please indicate the extent to which you agree with the following statements by using a scale of 1 to 5 where **1= strongly disagree, 2= Disagree, 3=Neutral, 4=Agree and 5 = strongly agree.**

Please tick (√) or (X) which best describes your opinion of the statement.

9: During claim management and negotiations, the parties and party staff do the following	1	2	3	4	5
a) Employ enough and appropriate staff for the management of claims					
b) Give management of claims enough attention					
c) Allocate adequate resources for claim management					
d) Maintain a close tie with the other party specifically reconciling claim issues					
e) Maintain a close tie with the contract administrators specifically reconciling claim issues					
f) Commit to overtime expenses when claim management demands more time					

SECTION X: Conclusion

Select the areas you feel are important to focus on for improvement of claim management.

- 1: The competence of the parties' staff in claim management.
- 2: Party's attitude towards claims negotiations.
- 3: Party's approach towards claims negotiations.
- 4: The level of contractual knowledge on claims by parties' staff
- 5: The effectiveness of the claim management system adopted by parties for managing claims
- 6: Party's desire to improve cooperation amongst themselves as an item for consideration during resolution of construction claims
- 7: The amount of evidence, quality of documentation and presentation of facts of the claim that parties present during claim management
- 8: Party's willingness to compromise during negotiation of construction claims
- 9: The level of party and party staff involvement and participation in claims management and negotiations

Which of the following do you think construction parties should adopt to achieve the best results in claims management?

- 1: Self-involvement by parties in claims management
- 2: Outsourcing experts in claims management