

Regulating Building Contractors in Kenya and Challenges of Enforcing the National Construction Authority Mandate

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Abstract- *The construction industry in Kenya has not had a regulating body since the disbandment of the National Construction Cooperation in 1988. The National Construction Authority (NCA) was then established in 2012 to regulate the construction sector and was mandated to register and regulate the undertakings of contractors. This research deals with the regulation of building contractors in Kenya and challenges of enforcing the NCA mandates. The main objective of this study is to investigate and document the challenges faced by the NCA in regulating building contractors in Kenya. Data was obtained from building contractors by means of questionnaires. The findings of the research indicated that the major challenges to the effectiveness of the NCA in registering and regulating the practices of building contractors include; corruption, poor sensitization, lack of proper organization of the NCA contractor training programs and centralization of the NCA services.*

Index terms: Contractors, Kenya, NCA, regulation, registration.

I. INTRODUCTION

The regulation of building contractors cannot be overemphasized given that they are responsible for construction of the structures occupied by millions of Kenyans. The loss of lives due to collapsed buildings in Kenya attributed to failures caused by poor workmanship and construction processes, substandard materials, poor structural designs, lack of documents confirming building approvals from the respective county governments and lack of supervision by professionals or county development enforcement officers, has prompted the government to come up with stringent measures against contractors. The NCA is one of these measures as it was established with the aim to streamline the construction industry with its key mandate being the regulation and registration of contractors in Kenya. For the NCA to effectively implement its mandate, it must identify and mitigate any challenges it may be facing from both the contractors and from within the Authority. This will ensure that the NCA is efficient and effective in its undertakings. The need to establish the NCA was due to increase of quack contractors in the construction industry and the lack of regulation of the construction sector as a whole. There was rampant collapse of buildings and consequent loss of lives of innocent Kenyans. Corruption in the construction industry was also rampant as contractors offered bribes in order to obtain compliance certificates from the respective authorities.

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The NCA is mandated to streamline the construction sector by ensuring that all construction activities are conducted according to the NCA regulations thus getting rid of the ills thereof. However, since the establishment of the NCA in June 2012, cases of collapsed buildings have been reported with the most recent cases being those of buildings in Mlolongo and Majengo areas in Nairobi which led to loss of lives and property. This is happening under the watchful eyes of the NCA. Cases of bribery during the acquisition of NCA classes and categories of registration and during NCA site inspection visits have also been noted. This means that the construction industry is still struggling with some of the challenges it faced before the establishment of the NCA. The reasons attributed to this are varied but include challenges facing the NCA from the contractors, the Authority and the government thus hindering effective implementation of their set mandate. This research, therefore, aims at identifying the challenges faced by the NCA in effectively and efficiently implementing its mandates to ensure a streamlined construction industry.

II. REGULATING CONSTRUCTION CONTRACTORS

Regulation in general is a law, rule, or other order prescribed by an authority, especially to regulate conduct (Regulation, 2014). Building regulations are statutory instruments that seek to ensure that the building policies set out in the relevant legislation are carried out (Gelder, 2004). Building regulations approval is required for most building work in any given country. In building, regulation involves registration of contractors, projects, skilled construction workers, construction site supervisors, training institutions, and provisions relating to collection and payment of the construction levy (G.O.K, 2012). Generally in every country, construction regulation authorities are established to harmonize construction laws found in statutes which may contradict each other, curb uncontrolled and unchecked physical planning of buildings and construction, control and enforce the mechanisms on the application of the Building Code in the construction industry, prevent easy entry and penetration of unqualified contractors, and improve on the bureaucratic requirements and procedures in approval of building plans. Further, construction regulation authorities eliminate corruption cases in the building industry, emphasize on both material quality and contractor performance, and revise the Building Codes to ensure relevance (Nahinja, 2014).

A. Construction Industry Development Board (CIDB), South Africa

The CIDB was been established in terms of the Construction Industry Development Board Act 38 of 2000. It has the mandate to lead the construction industry stakeholders in construction development and to facilitate regulation and development of the construction industry. The CIDB is required in terms of the Construction Industry Development Board Act to establish the Register of Contractors. The Register grades and categorizes contractors according to their capability to carry out construction projects. All contractors seeking to participate in public sector infrastructure delivery must be registered on the CIDB Register of Contractors. The objectives of the CIDB are expansive and aimed at both promoting the growth and development of the sector as well as providing a regulatory framework within which the sector should operate.

B. Construction Industry Development Board (CIDB), Malaysia

The Construction Industry Development Board (CIDB) is a statutory body under Minister of Works, Malaysia established in July 1994 to coordinate all activities in the construction industry and increase its competitiveness. The objective of the CIDB is to develop the capacity and capability of the Malaysian construction industry through the enhancement of quality and productivity by placing great emphasis on professionalism, innovation and knowledge in the endeavor to improve the quality of life CIDB was established under the Construction Industry Development Board Act (Act 520) to undertake functions related to construction industry which includes initiation and maintenance of the construction industry information systems, encouraging standardisation and improvement of construction techniques and materials, provision of consultancy and advisory services and accreditation and registration of contractors, site supervisors and construction workers.

C. National Construction Authority, Kenya

Building regulation in Kenya is done through a statutory authority known as the National Construction Authority (NCA), whose function is to establish and oversee the construction industry and coordinate its development. The NCA is mandated to encourage the standardization and improvement of construction techniques and materials, provide, promote, review and co-ordinate training programs for skilled construction workers and construction site supervisors, accredit and register contractors and regulate their professional undertakings, accredit and certify skilled construction workers and construction site supervisors, develop and publish a code of conduct for the construction industry (GOK, 2011).

III. IMPORTANCE OF REGULATING CONTRACTORS

The quality, cost and timely delivery of products in the construction industry very much depends on workmanship. The skill, experience and personal ability of the workmen go a long way in determining the quality of the workmen, which is a measure of their effectiveness and efficiency. Workmanship is “skill in an occupation or trade of different workmen based on their training or profession” (Adebayo, 2005). The workforce is the most important factor of production since it is the only factor that creates value and

sets the general level of productivity (Ogunsemi, 2002). Labour may be defined as comprising of the main contractor, sub-contractors and all employees under them conducting all operations on the site. The labourers include the main craftsmen, apprentices of various trades under qualified tradesman and labourers performing all kinds of labour work that does not require training. The competence and qualifications of contractors influence the construction of substandard buildings in Kenya (Nyaanga, 2014). A study carried out in Nairobi by Nyaanga (2014) indicates that many of the contractors in the country hardly hold any form of professional qualifications in engineering or building. This translates to lack of professionalism during the undertaking of various projects by the said contractors. Registration of contractors by relevant authorities ensures that only qualified contractors are licensed to practice in the construction industry. Regulation of the registered contractors ensures that professionalism is adhered to at all times as it goes beyond registration by regulating the undertaking of the contractors at each construction stage. Regulating authorities ensures that the code of conduct set out for the contractors is strictly followed by every registered contractor. This ensures that all construction processes meet the required standards of quality, competence and efficiency. The recognition of the major role played by the construction industry in socioeconomic development in Kenya led to enactment of the National Construction Authority Act 2011 and the creation of the National Construction Authority whose object is to oversee construction industry and coordinate development. Further, it will stimulate development of the industry through capacity building and training for contractors and construction workers register contractors and regulate their conduct for improved performance of the construction industry.

IV. RESEARCH METHODOLOGY

The research was quantitative and qualitative in nature since it was concerned with quantifying information on the challenges facing the construction industry in Kenya and more so the contractors with respect to the implementation of the NCA mandates. The researcher used questionnaires to collect numerical and measurable data. Data presentation was done using tables, charts, and histograms and the analysis was done using statistical software (SPSS). The target population was all building contractors in Mombasa County who were identified from the National Construction Authority Certified Contractors list. The sampling procedure to be used for this research is the disproportionate stratified random sampling. The population was divided into eight strata according to the NCA classification system NCA 1 to NCA 8. The sample sizes of each stratum were determined using different sampling fractions depending on the population size of the strata. Data from contractors was collected through in-depth questionnaires comprising of both Likert Scale (strongly agree to strongly disagree) and open ended questions. Questionnaires were administered by hand to the various contractors, filled out and collected within a period of between one to seven days. Data analysis involved preparation of the collected data, coding, editing and cleaning of data that was processed using Statistical

Package for Social Sciences (SPSS). SPSS was preferred because it is very systematic and covers a wide range of the most common statistical and graphical data analysis.

V. RESEARCH FINDINGS AND DISCUSSION

A total of 61 questionnaires were issued out to contractors around Mombasa County. 50 questionnaires were returned and analysed. The response rate was 81.9%. The response rate was deemed sufficient to be used to make conclusions about the research problem. The respondents were categorized into two groups; SME contractors comprising of NCA5-NCA8 and Large contractors comprising of NCA1-NCA4 according to the value limits on Appendix 3. The respondents were requested to give their opinions and views on the various aspects of the regulatory challenges facing the construction industry in Kenya. The response was rated

in Likert scale of 5 where 1 = strongly agree, 2=agree, 3= undecided, 4=disagree, 5=strongly disagree. The mean and standard deviations were computed and the results were as illustrated. The responses with mean of 1 and below indicated 'strongly agree', 1.1 to values less than 2.0 indicated 'agree', mean from 2.0 to values less than 3.0 indicated 'undecided', mean from 3.0 to values less than 4.0 indicated 'disagree' and means from 4.0 to 5.0 indicated 'strongly disagree'. The standard deviation indicates how divergent the responses were from the mean response. A low standard deviation indicates that the data points tend to be very close to the mean, whereas high standard deviation indicates that the data is spread out over a large range of values. A standard deviation more than 1 is significant and shows a great divergence of responses from the mean response.

Table 1: Challenges Experienced by the NCA in Registering and Regulating the Practices of Building Contractors

Descriptive Statistics				
	Large Contractors (NCA 1-4)		SME Contractors (NCA 5-8)	
	Mean	Std. Deviation	Mean	Std. Deviation
High registration and renewal fees imposed by the NCA is a hindrance to registration process	3.80	1.01	1.85	1.08
Renewal of contractor license should be extended to a period of at least two years	3.01	1.18	1.90	0.97
Contractors are using falsified documents for registration	1.60	0.50	1.91	0.98
The NCA is an income generating government project	3.00	1.46	1.88	1.07
Acquisition of NCA classes of registration has been corrupted as contractors pay their way to desired classes	1.98	1.30	1.91	1.06
Annual training offered by the NCA is necessary for the improvement of the contractor's professional undertakings	1.87	1.30	3.25	1.24
Regulation of both roads and building contractors by one Authority is necessary for the construction industry	1.79	1.06	1.88	0.79
NCA regulations will get rid of quack contractors in Kenya	4.40	1.05	4.25	1.12
NCA has provided adequate sensitization as regards to their regulations to all the stakeholders	3.13	1.18	3.00	1.13
NCA is not adequately enforcing its regulations	3.60	1.54	3.77	1.30
Registration and accreditation services should be devolved to county level	1.66	0.61	1.42	0.55

A. Challenges Experienced by the NCA Regulation Process

From the analyses of challenges experienced by the NCA in registering and regulating the practices of building contractors in Kenya, high registration and renewal fees imposed by the NCA scored a mean of 1.85 for SME contractors. This indicated that the respondents cited this as a hindrance to the registration process. The relatively high registration and renewal fees leads to cases of corruption and evasion of license renewal especially for new entrants in the construction industry leads. High registration and renewal fees imposed by the NCA scored a mean of 3.80 for large contractors indicating that it was not a hindrance to the registration process. Large contractors are well established and do not view the construction levy required by the NCA as a hindrance. The extension of the renewal period to at least two years scored a mean of 1.98 for SME contractors. According to the respondents, this period is too short since

some contractors may not have undertaken any projects during that year. New contractors may not have understood the nature of the industry and the tricks of the trade within this period. For the large contractors, extension of the renewal period scored a mean of 3.01. This indicated that the renewal period should remain annual as it was a worldwide practice. Annual renewal ensures annual vetting of contractors thus leading to improved standards in the contractor practices. The use of falsified documents for registration scored a mean of 1.91 for the SME contractors and 1.60 for the large contractors. This indicated that contractors were in agreement that the NCA registration process was flawed. This makes it difficult for the NCA to eliminate quack contractors in the construction industry. The NCA as an income generating government project scored a mean of 1.88 for the SME contractors citing that the respondents agreed. As a result of high construction levy, the respondents viewed the Authority as a government

project aimed at generating revenue for the government. However, this may not be true as the NCA is mandated to regulate the construction industry and not to collect revenue for the government. For the large contractors, The NCA as an income generating government project scored a mean of 3.00 indicating that the respondents disagreed. Respondents viewed the NCA as a regulator rather than a money making scheme for the government. Acquisition of desired NCA classes of registration through corruption scored a mean of 1.91 and 1.98 for the SME and large contractors respectively. This indicated that respondents agreed to the existence of corruption in the registration process. Corruption attracts quacks into the construction industry which in turn leads to compromising of standards. The necessity of the annual training offered by the NCA in the improvement of the contractor's professional undertakings scored a mean of 3.25 for SME contractors indicating that the respondents disagreed. This according to the respondents implies that the training is not necessary since the principals of the construction firms do not attend and instead send representatives. For large contractors, the necessity of the annual training offered by the NCA scored a mean of 1.87 indicating that the contractors agreed. The trainings would improve on the professionalism of the contractors if they were well structured and contractors ensured they personally attend. Contractors involved in this survey strongly disagreed with the ability of the NCA to weed out quacks in the construction company as it scored a mean of 4.25 for SME contractors and 4.40 for large contractors. Corruption in the registration process and the used of falsified

documents for registration creates a leeway for quack contractors to register and practice. Regulation of both roads and building contractors by one Authority scored a mean of 1.79 for SME contractors and 1.88 for large contractors. This indicated that respondents agreed that it is necessary to regulate both roads and building construction under one Authority for better regulation of the construction industry at large. The ability of NCA regulations getting rid of quack contractors in Kenya scored a mean of 4.25 and 4.40 for SME contractors and large contractors respectively. This indicated that contractors do not have faith in the ability of NCA regulations getting rid of quack contractors in Kenya owing to rampant corruption and inadequate infrastructure in the Authority. NCA has provided adequate sensitization as regards to their regulations to all the stakeholders scored a mean 3.60 and 3.77 for SME contractors and large contractors respectively. The respondents disagreed with the sensitization effort that the NCA has put in creating awareness to the stakeholders about the NCA mandates and regulations. This creates a challenge to the Authority in executing its mandates. The devolution of registration and accreditation services to county level scored a mean 1.42 and 1.66 for SME contractors and large contractors respectively indicating that the respondents agreed to the importance of decentralization of the NCA services. Devolution of the NCA is important to enhance accessibility and improved service delivery.

B. Effectiveness of the NCA Regulatory Structure

Table 2: Effectiveness of the NCA regulatory structure and process of regulation of contractors in Kenya

Descriptive Statistics				
	Large Contractors (NCA 1-4)		SME Contractors (NCA 5-8)	
	Mean	Std. Deviation	Mean	Std. Deviation
Evaluation and vetting of applicants carried out by the NCA is done with integrity	3.53	0.99	3.14	1.08
Registration of private and domestic projects with the NCA	1.53	0.83	1.88	0.98
Contractors must only work with NCA accredited construction workers and site supervisors	1.92	1.16	3.45	1.12
NCA must suspend, cancel or revoke the registration of a contractor due to malpractice	1.60	0.82	1.74	0.74
Owner must submit information to the NCA identifying the selected contractor	1.93	0.96	3.04	1.25
Professional training of contractors must be conducted before one is eligible for renewal or upgrading of the license	3.00	1.09	3.12	1.31

The study findings in Table 6 above on the analyses of the effectiveness of the NCA regulatory structure show that the process of evaluation and vetting of applicants carried out by the NCA scored a mean of 3.53 and 3.14 for SME contractors and large contractors respectively indicating that respondents disagreed with the integrity of the process.

Contractors felt that the integrity of the Authority is compromised by corruption and other malpractices. Contractors involved in the survey agreed that it was important for all private and domestic projects to be registered with the NCA and a mean of 1.88 and 1.53 were scored for SME contractors and large contractors

respectively. The respondents concern was the issue of safety of the general public both in the urban and rural areas since the NCA was established to regulate the construction industry as a whole. The findings of the research indicate that SME contractors disagree with the fact that a contractor must work with only those site supervisors and construction workers who are accredited by the NCA. This scored a mean of 3.45 indicating that the respondents disagreed citing that it was not practical since most site supervisors and construction workers were not yet accredited. Large contractors on the other hand agreed that contractors must work with only those site supervisors and construction workers who are accredited by the NCA and a score of 1.92 was obtained. Accredited construction workers improve on the general standard of workmanship of construction works. The NCA suspending, canceling or revoking the registration of a contractor, due to malpractice, failure to renew licenses, or unpaid construction levy scored a mean of 1.74 and 1.60 for SME contractors and large contractors respectively indicating that the respondents agreed. This will improve the integrity of the Authority, the regulation process and maintain high standards in the construction sector. Submission of information by the owner to the NCA identifying the selected contractor scored a mean of 3.04 for SME contractors indicating that respondents disagreed. The feeling was that most contractors were not comfortable with

the constant vetting of their integrity, capacity and ability to accomplish the given project. Large contractors agreed that the owner should submit information to the NCA identifying the selected contractor and a mean of 1.93 was scored. The NCA ensures that only qualified registered contractors are engaged to carry out the given projects. Professional training of contractors conducted before one is eligible for renewal or upgrading of the license scored a mean of 3.12 for SME contractors and 3.00 for large contractors indicating that the respondents disagreed. The contractors feel that the trainings may not add value to the profession since they require a well-structured and relevant curriculum which should enable them to be more competitive.

C. Improvement of the NCA Regulation Process

The improvement of NCA regulation process is a continuous process. This research aimed at highlighting areas in the NCA regulations that required improvement. Respondents were asked to list down ways in which the NCA can improve on their current regulation process for effective registration and regulation of construction contractors in Kenya. From the suggestions given by the respondents, the researcher highlighted major areas as shown in Table 7. The results are given as a percentage of the total contractors involved in the survey in each research category.

Table 3: Improvement of the NCA regulation process

Improvement Areas	Percentage of Respondents	
	SME Contractors	Large Contractors
Review of registration and renewal fees	84%	48%
Ensure relevance of contractor trainings	68%	76%
Decentralization of the NCA services	87%	82%
Extension of renewal period	52%	48%
Curb corruption in the Authority	94%	91%
Unnecessary payment of construction levy	63%	78%
The NCA should be built into the Bills of Quantities	59%	73%
Accreditation of all construction workers and site supervisors is not practical	92%	89%
Role of NCA not clear cut and is overlapping and interfering with other regulating bodies like NEMA and county government	68%	76%

84% of the SME contractors taking part in this survey cited the issue of high registration and renewal fees as a hindrance to the registration process. They felt that the NCA should reduce the amount of levy charged for both registration and renewal especially when one requires registration for more than one class of works. 68% of the SME contractors and 76% of the large contractors felt that the NCA needed to improve on the quality of the annual training programs to ensure that they were relevant, current and addressed the dynamics of the construction industry. They also felt that it was not necessary for a contractor to attend a meeting as a requirement for registration but rather the NCA should stress on the importance of the trainings for continuous professional improvement of the contractors. 87% of the respondents under the SME contractor category and 82% under the large contractor category highlighted the importance of decentralization of the NCA services so as to

efficiently execute its mandates. NCA should have offices in each county to enhance access of registration, renewal and accreditation services as well as ensure compliance of contractors, owners, site supervisors and construction workers across the country. 52% of the SME contractors in the survey, most of whom had been in operation for less than five years, felt that there was a need to extend the renewal period to a period of two years citing that one year was too short as one may not have conducted any business. This was not an issue with established contractors who had mastered the construction industry and knew their way around it. 94% of the SME contractors and 91% of large contractors in this survey indicated that corruption was a major challenge to the NCA. They cited that the mandate and regulations of the NCA were well spelt out but their implementation would be hampered if the issue of corruption was not quickly dealt with. Areas highlighted as

prone to corruption include the use of falsified documents for registration, acquisition of desired categories of registration through corruption, obtaining of certificates of compliance through bribes, and during the upgrading process where contractors give kick-backs. Construction levy paid to the NCA at the rate of 0.05% of the total construction cost for any construction project of more than five million was viewed as a challenge since 63% of the respondents under the SME contractor category and 78% under the large contractor category cited it as an area that required improvement. Respondents viewed this levy as unnecessary and uncalled for since its purpose was not clearly given. In view of the various levies charged by the NCA, respondents viewed that it was necessary for the NCA to have a separate bill in the Bills of Quantity in order for the overall contract sum to cover for these levies. 59% of the SME contractors in the survey and 73% of the large contractors highlighted the necessity of this inclusion. 92% of the respondents under the SME contractor category and 89% under the large contractor category agreed that the requirement by the NCA to have all site supervisors and construction workers working under the contractors to be accredited was both unrealistic and unnecessary. This was due to the numerous numbers of construction workers available most of whom lack any form of technical training although they possess technical skills learnt on the job. Role of NCA is not clear cut and is overlapping and interfering with other regulating bodies like National Environmental Management Authority (NEMA) and county government. 68% of the SME contractors in the survey and 76% of the large contractors reiterated that NCA issues instructions to contractors that other bodies are mandated to provide. Contractors therefore find themselves in a dilemma as to which instructions to follow.

VI. CONCLUSIONS

The conclusion of the study provides answers to the research questions which involved the challenges faced by the NCA in the implementation of its mandate and the effectiveness of the NCA regulatory framework. The research found out that the main challenges include; corruption, poor sensitization, lack of proper organization of the NCA contractor training programs, centralization of the NCA services, unnecessary payment of construction levy, and lack of clear cut roles of the NCA leading to overlapping responsibilities. The major areas of corruption in the Authority are use of falsified document in the registration and upgrading of contractors, acquisition of desired classes and categories of registration, and contractors bribing NCA officers for compliance certificates. The Authority has done little in creating awareness to the general public and other sectors of economy about its role, mandate and regulation of the construction industry. The NCA contractor training programs lack proper curriculum, training structures and motivating strategies to enhance attendance. Contractors lack motivation and reasons to attend the training programs and hence send representatives to attend on their behalf. Centralization of the NCA services is a key factor which affects the effectiveness of the Authority in fully implementing its mandate. The contractors and all construction stakeholders as a whole should be sensitized of

the importance of the NCA. Construction levies paid out by both contractors and the project owners should have justification in order to ensure transparency of the registration and regulation process. The burden of payment of construction levies should be passed down to the project owner by including a separate bill in the bills of quantities. This will ensure maximum profits for the contractors and better compliance and cooperation of the NCA regulations and procedures.

VII. RECOMMENDATION

The findings of this study show that the major challenges to the effectiveness of the NCA in registering and regulating the practices of construction contractors include; corruption, poor sensitization, lack of proper organization of the NCA contractor training programs and centralization of the NCA services. The study therefore recommends that in order to curb corruption, the NCA should conduct thorough due diligence on each applicant and develop a comprehensive data bank to improve information management systems. The Authority should enforce integrity, ethics and ways to punish corrupt NCA officers. The NCA needs to increase awareness through print and electronic media, presentations in institutions, public forums and lectures, and frequent roadshows. The study further recommends that the Authority should develop a relevant curriculum that is more dynamic to changing trends in the construction industry and come up with a training structure that creates motivation to the contractors. The NCA should make it mandatory that all principal directors of construction companies attend the annual trainings. This study recommends that the NCA clearly states the purpose of the construction levy charged at the rate of 0.05% for any construction project whose contract sum exceeds five million shillings. Once this sum is justified, a separate bill in the Bills of Quantities should be included to cushion the contractor of these and other extra charges charged by the Authority. Finally, the research recommends that the Authority should devolve its services to the counties by creating offices in each county and deploy enough personnel to enhance compliance and better regulation for the good of the public since the NCA was created to safeguard the interests of Kenyans in the building and construction industry.

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