

# CHAPTER K13 - KWARA STATE CONTRACTS LAW

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## KWARA STATE CONTRACTS LAW

A Law regulating the proof and effect of certain contracts, frustration of contracts and

**misrepresentation in contracts.**

[KWS No. 21 of 1991.]

[Date of commencement: 15<sup>th</sup> August, 1991]

**1. Short title**

This Law may be cited as the Kwara State Contracts Law.

**2. Commencement**

This Law shall be deemed to have come into operation on the 15th day of August, 1991.

**3. Interpretation**

In this Law unless the context otherwise requires—

"**court**" means in relation to any matter, the court or arbitrator by or before whom the matter falls to be determined but not a customary court or an area court; and

"**State**" means Kwara State of Nigeria.

**PART I**

*Proof and Effect of Certain Contracts*

**4. Contracts for disposition of land**

(1) No action may be brought upon any contract for the disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note therefore, is in writing and signed by the party to be sued or by some other person lawfully authorized by him.

(2) This section applies to contracts made before or after commencement of this Law and does not affect the law relating to part performance, or disposition by the court.

**5. Promise to answer for debt, etc., of another person**

(1) No action shall be brought against a person on any promise, whether made before or after the commencement of this Law, to answer for the debt, default or miscarriage, of another person unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by that person or some other person lawfully authorized by him.

(2) No promise, in writing signed as aforesaid, shall be deemed invalid to support an action, suit, or other proceeding against the person by whom such promise has been made by reason only that there was no consideration for it or that the consideration for such promise does not appear in writing or in a written document.

**6. Representation of character**

No action shall be brought against any person upon any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money or goods, unless such representation or assurance is made in writing signed by that person.

**7. Surety who discharges liability to stand in place of creditor**

(1) Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, pays such debt or performs such duty shall be entitled to have assigned to him, or to a trustee on his behalf every judgment, specialty or other security which is held by the creditor in respect of such debt or duty, whether such judgment, specialty or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty, and such person shall be entitled to stand in the place of the creditor, and to use all the remedies and, if need be and upon a proper indemnity, to use the name of the creditor in any action or other proceeding, at law or in equity in order to obtain from the principal debtor, or any co-surety, co-contractor or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who has so paid such debt or performed such duty, and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him.

(2) No co-surety, co-contractor or co-debtor shall be entitled to recover from any other co-surety, co-contractor or co-debtor, by the means aforesaid more than the just proportion to which, as between those parties themselves, such last-mentioned person shall be justly liable.

**8. Contract by way of gaming, etc., void, saving lawful games, etc.**

(1) All contracts or agreements, whether oral or in writing by way of gaming, wagering or betting, shall be null and void and no suit shall be brought or maintained in any court for recovering any sum of money or valuable thing alleged to be won upon any wager or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made.

(2) The provisions of subsection (1) of this section shall not be deemed to apply to any subscription or contribution or agreement to subscribe or contribute for or towards any prize, or sum of money to be awarded to the winner of any lawful game, sport, past time or exercise.

(3) Any promise expressed or implied to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void under subsection (1) of this section, or to pay any sum of money by way of commission, fee, reward, or otherwise in respect of any such contract, or of any service in relation to it or in connection with it, shall be null and void and no action shall be brought or maintained to recover any such sum of money.

## PART II

### *Frustrated Contracts*

#### **9. Rights and liabilities of parties to frustrated contracts**

(1) Where a contract governed by the Law in force in the State has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, the provisions hereafter contained in this section shall, subject to the provisions of this Part, have effect in relation thereto.

(2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Part referred to as "the time of discharge") shall, in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable.

(3) If the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the court may, if it considers it just to do so having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, but not an amount in excess of the expenses so incurred.

(4) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which subsections (2) and (3) of this section apply) before the time of discharge, there shall be recoverable from him by the said other party such sum (if any) not exceeding the value of the said benefit to the party obtaining it, as the court considers just, having regard to all the circumstances of the case and, in

particular—

(a) the amount of any expenses incurred before the time of discharge by the benefited party in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under subsections (2) and (3) of this section; and

(b) the effect, in relation to the said benefit, or the circumstances giving rise to the frustration of the contract.

(5) In estimating, for the purposes of the foregoing provisions of this section, the amount of expenses incurred by any party to the contract, the court may, without prejudice to the generality of the said provisions, include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed by the said party.

(6) In considering whether any sum ought to be retained or recovered under the foregoing provisions of this section by any party to the contract, the court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to the party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any written law.

(7) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the court may, if in all the circumstances of the case it considers it just to do so, treat for the purposes of subsection (5) of this section any benefit so conferred as a benefit obtained by the person who has assumed the obligation as aforesaid.

#### **10. Contract to which Part II applies**

This Part shall apply to contracts, whether made before or after the commencement of this Law, as respects which the time of discharge is on or after the date of commencement of this Law, but not to contracts as respects which the time of discharge is before the said date.

#### **11. Contracts to which the State is a party**

This Part shall apply to contracts to which the State is a party.

#### **12. Contracts containing provision as to frustration**

Where any contract to which this Part applies contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising

which operate, or would but for the provision operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the court shall give effect to the said provision and shall only give effect to the provisions of this Part to such extent (if any) as appears to the court to be consistent with the said provision.

**13. Severance of part of contract**

Where it appears to the court that a part of any contract to which this Part applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat the provisions of this Part as only applicable to the remainder of that contract.

**14. Part II not to apply to contracts to which certain provisions of the Sale of Goods Law apply**

This Part shall not apply to any contract to which the provisions of the Sale of Goods Law relating to the avoidance of contracts for the sale of specific goods which perish before the risk has passed to the buyer applies, or to any other contract for the sale, or for the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished.

**PART III**

*Misrepresentation*

**15. Removal of certain bars to rescission for innocent misrepresentation**

Where a person has entered into a contract after a misrepresentation has been made to him, and—

(a) the misrepresentation has become a term of the contract; and

(b) the contract has been performed,

or both, then, if otherwise he would be allowed to rescind the contract without alleging fraud, he shall be entitled to do so subject to the provisions of this Part, notwithstanding the matters mentioned in paragraphs (a) and (b) of this section.

**16. Damages for misrepresentation**

(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the

misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.

(2) Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled, by reason of the misrepresentation, to rescind the contract, then if it is claimed, in any proceedings arising out of the contract, that the contract ought to be or has been rescinded, the court or arbitrator may declare the contract subsisting and award damages in lieu of rescission, if of the opinion that it would be equitable to do so, having regard to the nature of the misrepresentation and the loss that would be caused by it if the contract were upheld, as well as the loss that rescission would cause to the other party.

(3) Damages may be awarded against a person under subsection (2) of this section whether or not he is liable to damages under subsection (1) thereof but where he is so liable any award under the said subsection (2) shall be taken into account in assessing his liability under the said subsection (1).

#### **17. Avoidance of provision excluding liability for misrepresentation**

If a contract contains a term which would exclude or restrict—

(a) any liability to which a party to a contract may be subject by reason of any misrepresentation made by him before the contract was made; and

(b) any remedy available to another party to the contract by reason of such a misrepresentation,

that term shall be of no effect except in so far as it is reasonable in all the circumstances of the case; and it is for those claiming that the term is reasonable to show that it is.

#### **18. Saving for past transaction**

Nothing in this Part shall apply in relation to any misrepresentation or contract of sale which is made before the commencement of this Law.

### **PART IV**

#### *Application*

#### **19. Application**

This Law shall not apply to any transaction under Customary law or Islamic law.

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CHAPTER K13  
KWARA STATE CONTRACTS LAW

SUBSIDIARY LEGISLATION

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*No Subsidiary Legislation*

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