



# **BOWMANS**

THE VALUE OF KNOWING

## **CONSTRUCTION LAW SEMINAR**

**07 FEBRUARY 2017:**

**Alex Njage**

**Head – Real Estate & Construction**

**Bowmans Kenya**



“People who know what they’re talking about don’t need PowerPoint.”

— Steve Jobs  
From Walter Isaacson’s  
book *Steve Jobs*



# KPDA

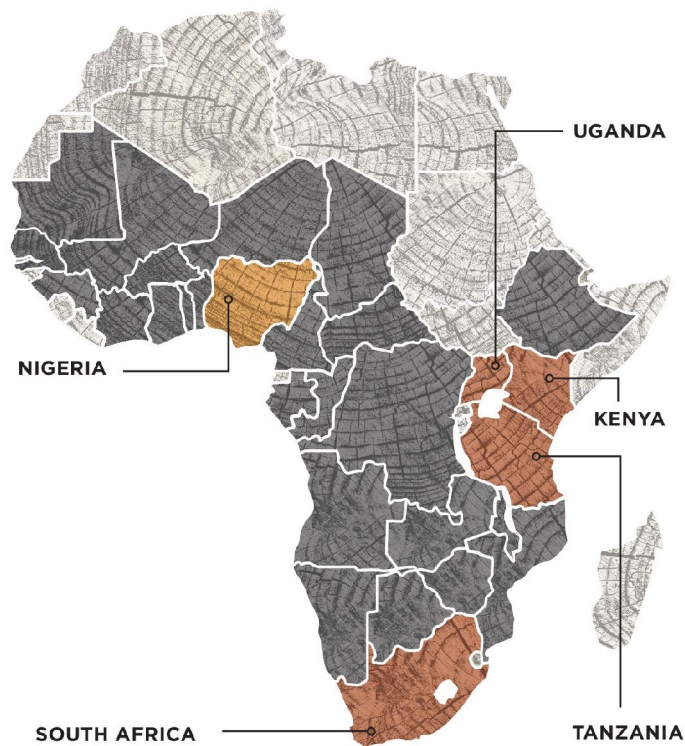





Established in Nairobi in 2006 as the representative body of the residential, commercial and industrial property development sector in Kenya

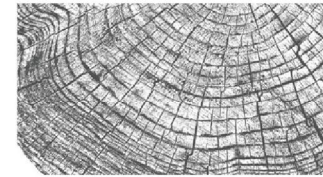
## Objectives:

- Work with the Government and other stakeholders to promote policies that stimulate the property sector
- Contribute to excellence in building through promotion of world-class ethical standards and educational programs
- Compile focused research and analysis to inform investment decisions, policy analysis and public education
- Provide a forum where property investors can share expertise and build business contacts

# OUR FOOTPRINT IN AFRICA:



-  Bowmans offices
-  Relationship firm
-  Significant transaction or advisory experience



**CHAMBERS & PARTNERS  
2016 RANKED US IN  
THE FOLLOWING AREAS**

**BAND 1**

**KENYA**  
Banking & Finance  
Corporate/ Commercial

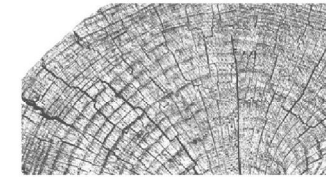
**SOUTH AFRICA**  
Capital Markets: Debt  
Capital Markets: Equity  
Competition  
Construction  
Corporate Investigations  
Corporate/ M&A  
Employment  
Environment  
IT/ Telecommunications  
Projects & Energy

**UGANDA**  
General Business Law

**BAND 2**

**SOUTH AFRICA**  
Banking & Finance  
Dispute Resolution  
Media & Broadcasting  
Tax

**58** Recognised  
Lawyers



**IFLR1000 2017 RANKED  
US IN THE FOLLOWING  
AREAS**

**TIER 1**

**KENYA**  
Corporate & Financial  
Mining

**SOUTH AFRICA**  
Capital Markets  
Competition  
Energy  
M&A

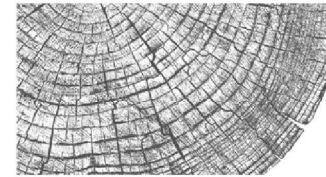
**UGANDA**  
Energy & Infrastructure  
Financial & Corporate

**TIER 2**

**KENYA**  
Energy  
Infrastructure

**SOUTH AFRICA**  
Banking  
Infrastructure  
Mining  
Oil & Gas  
Project Finance

**31** Recognised  
Lawyers



**THE LEGAL 500 EMEA  
2016 RANKED US IN  
THE FOLLOWING AREAS**

**BAND 1**

**KENYA**  
Banking & Finance  
Commercial, Corporate & M&A  
Real Estate & Construction

**SOUTH AFRICA**  
Commercial, Corporate & M&A  
Competition  
Construction  
Labour & Employment  
Projects & Infrastructure  
Shipping & Transport

**BAND 2**

**KENYA**  
Dispute Resolution  
Projects & Energy

**SOUTH AFRICA**  
Banking & Finance  
Dispute Resolution  
Investment Funds  
Real Estate  
Tax

**51** Recognised  
Lawyers

# THE KENYA WE **DON'T** WANT



# THE KENYA WE DON'T WANT

## Residents ordered to vacate sinking building in Ruaka

Nov. 24, 2016, 6:00 pm | By KIMELI KENNEDY



Residents have been asked to vacate a five-storey building in Ruaka after it started showing signs of sinking, November 24, 2016. /COURTESY



Bent metal grills on the building. PHOTO / COURTESY

# HIGHLIGHTS OF TODAY'S DISCUSSION

## 1. YOUR PROFESSIONALS IN CONSTRUCTION



# HIGHLIGHTS OF TODAY'S DISCUSSION

## 2. PROJECT COSTS



"Does 'high-rise' refer to the building or the budget?"



# HIGHLIGHTS OF TODAY'S DISCUSSION

## 3. EXTENSION OF TIME



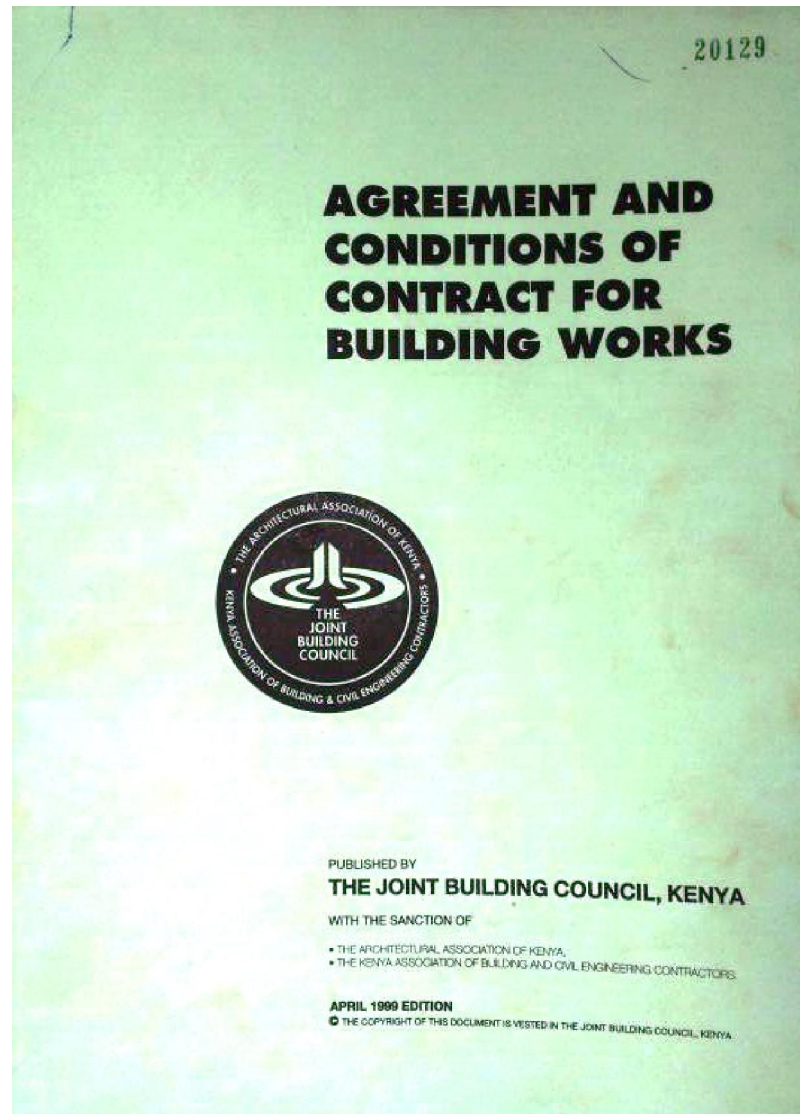
# HIGHLIGHTS OF TODAY'S DISCUSSION

## 4. PERFORMANCE BOND

### Performance Bond



# UNDERSTANDING THE JOINT BUILDING COUNCIL CONTRACT 1999 EDITION



# 1. YOUR PROFESSIONALS

## KEY CONSIDERATIONS:

- Do you have strong binding contracts with them?
- Do they have sufficient Professional Indemnity Insurance Cover?
- Do they have capacity and experience?
- Is their Scope of Work clearly defined? Proper milestones?
- What happens if work is suspended or cancelled mid-stream?
- Is their fees agreed in writing? Taxes? VAT, WHT

## WHAT COULD HAVE GONE WRONG WITH THE COLLAPSING BUILDING – PROFESSIONALS PERSPECTIVE (ignore contractor for now)?

Architect?

Structural Engineer?

Quantity Surveyor?

Mechanical & Electrical Engineer?

Project Manager?

Employer/Project Owner?

What are the available remedies/avenues for redress?

## 2. PROJECT COSTS

### WHAT CAUSES INCREASE IN PROJECT COSTS?

- Variations:

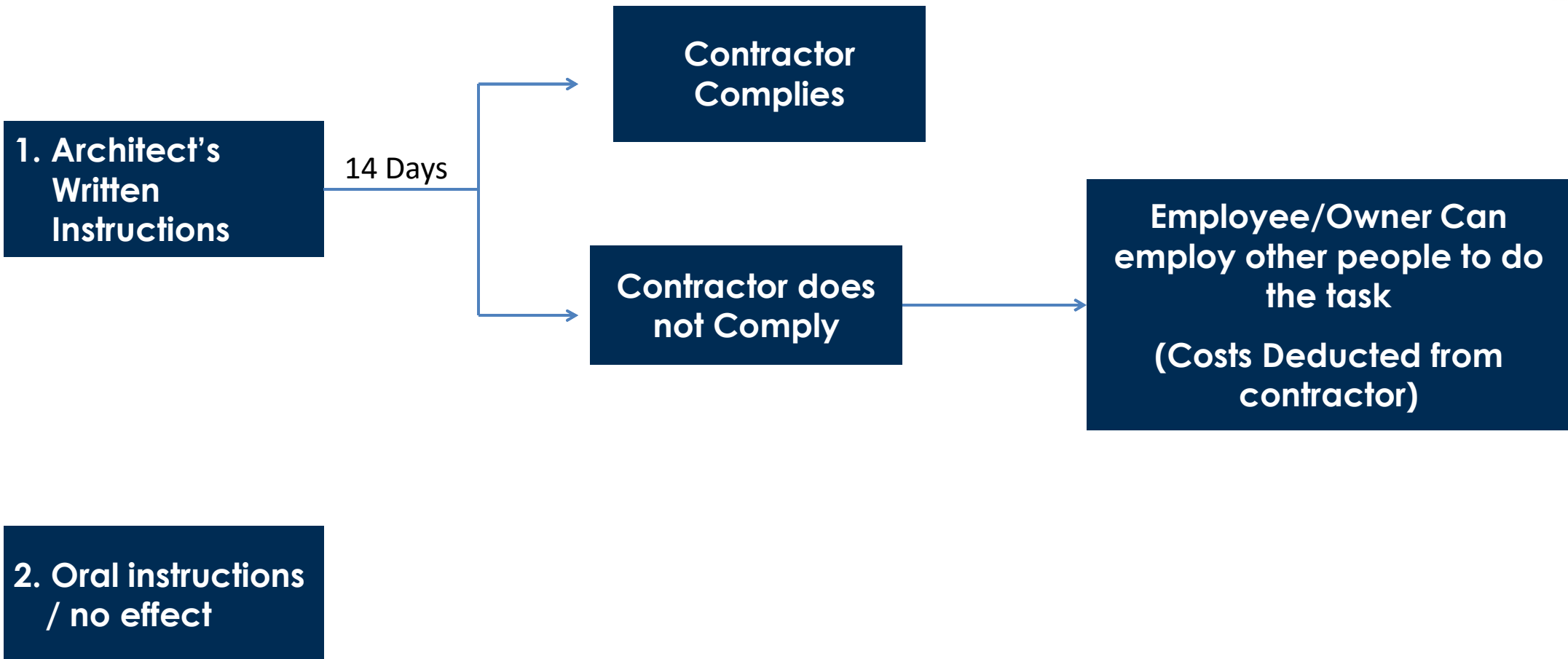


- Substandard BQ's that reveal gaps as construction progresses – *JBC deems these gaps as accepted by both parties and thus a Variation*
- Employer change in scope of works
- Forex issues – agree to local currency or currency of your funding
- Acceleration – request for construction works to move faster – say 24 hours construction

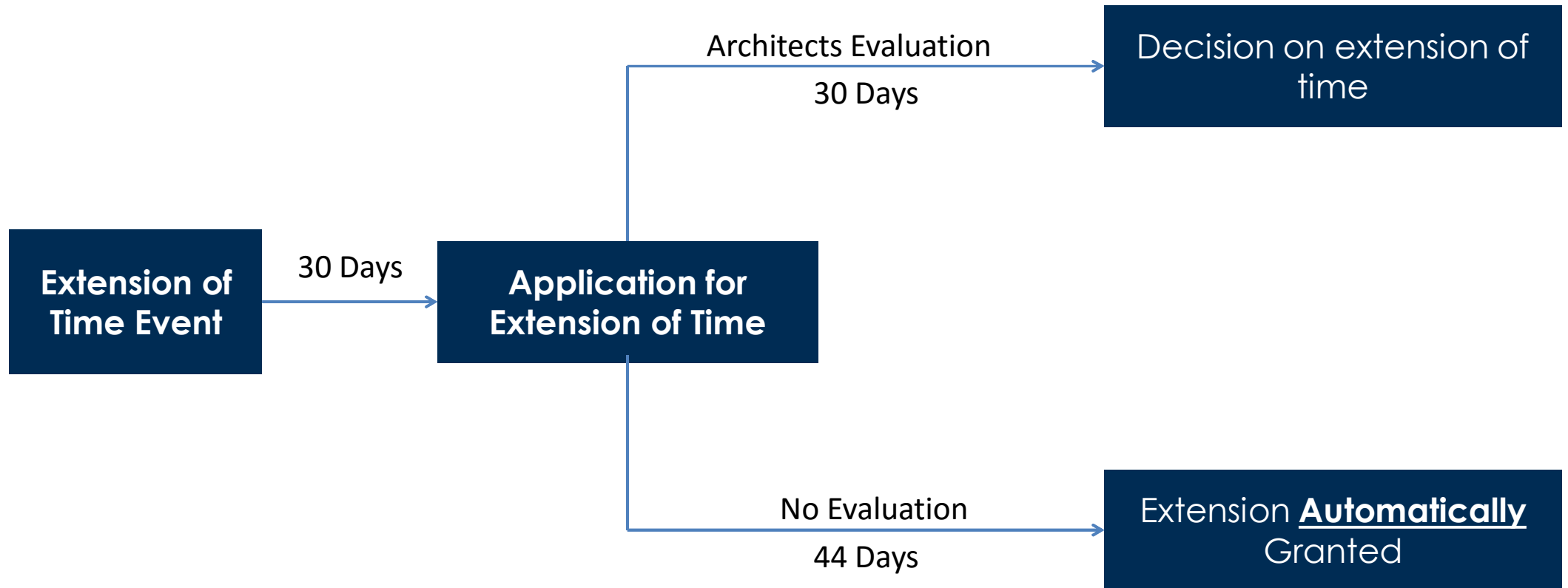
# PROJECT COSTS: VARIATIONS CLAUSE 30

- The Architect can authorise a variation.
- The architect may ratify a variation by the contractor that wasn't initially authorised by client or architect
- Architect can authorise variations up to 15% of building work without employer authority. However, not more than 0.01% of the contract price.
- Variations are measured/valued by QS
- If a variation omits any works, and such work is carried out by others the contractor shall be entitled to payment of a profit determined by the QS. Such loss or profit should be included in the **next** interim certificate.
- Variations requested by breach of contract are borne by contractor

# ARCHITECTS INSTRUCTION CLAUSE 22

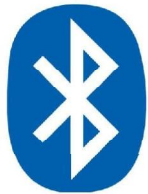


# EXTENSION OF TIME

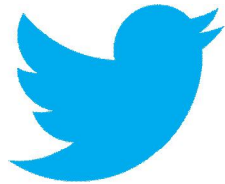




# CONCLUSION: WHEN THE JBC CONTRACT WAS LAST UPDATED (1999), THESE THINGS DID NOT EXIST



WIKIPEDIA  
The Free Encyclopedia



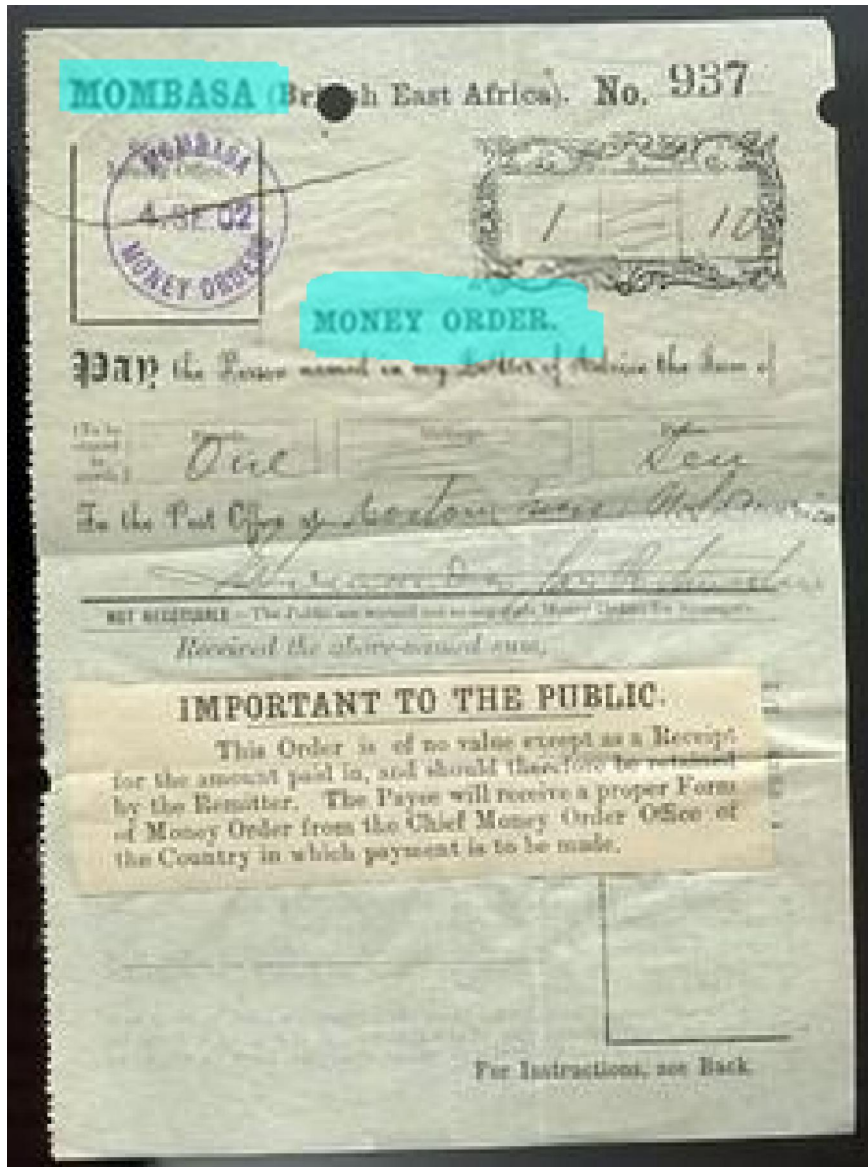
U B E R



1999

VS

2017



# THERE IS SIGNIFICANT LOBBYING FOR AN UPDATE OF THE JBC CONTRACT

## Way Forward





**BOWMANS**

THE VALUE OF KNOWING

**Q&A**

**THANK YOU**

