

EXAMINING LIABILITY IN NEGLIGENCE FOR BUILDING DEFECTS: A COMPARATIVE LEGAL ANALYSIS OF NIGERIA AND SOUTH AFRICA

by

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ABSTRACT

Although structural defects are a common phenomenon across the world, the spate of building collapses and construction hazards in Nigeria is increasingly becoming alarming. At the height of building defects is the occurrence of collapsed buildings, which has become an issue of national concern, in the light of its attendant consequence of devastating loss of lives and properties. It is commonplace for the employer to require the contractor to warrant that the works upon completion are free from defects and to repair the defects in the event of such occurrence. A contractor's failure to properly perform his obligations in a construction contract or negligence in performing his obligation constitutes a breach, and as thus, he is liable to the employer who may have suffered due to the wrongful or negligent act that has caused a building defect(s). Silhouetted against this backdrop, this paper seeks to examine the liability in negligence for building defects in Nigeria. This paper employs a doctrinal methodology of legal research in which relevant primary and secondary sources of legal materials are subjected to descriptive and content analysis. Importantly, this paper draws a comparative sketch of the legal regime on building defects in Nigeria and South Africa. This paper advocates the rejigging of the legal regime on construction and building activities so that it is more pronounced to address the recurrent issues of liability in building defects. This paper concludes with some recommendations for ameliorating the incidence of building defects in Nigeria.

Keywords: Liability, Negligence, Building Defects, Nigeria, and South Africa

1.0 INTRODUCTION

The Nigerian real estate sector has witnessed a sporadic growth in recent years. Like many advance countries in the world, building construction is very much on the increase in Nigeria today as there is a widening number of people that seek luxurious shelter, housing and

infrastructural development.¹The incessancy of building defects as well as the unabated collapse of buildings continues to spell doom for the Nigerian construction industry.

When compared with other developing and developed countries around the world, the occurrence or possibility of occurrence of building collapse is relatively high in Nigeria. The incidence of building defects is owed to a cocktail of predominant reasons, amongst which are poor structural design, hasty construction, noncompliance with building codes, poor quality control, defective construction method, professional incapacity, and corruption. Common building defects such as faulty electrical wiring, architectural defects, poor ventilation, inadequate suppression systems, defective plumbing and improper insulation are, more often than not, owed to professional negligence and incompetence.²

In construction projects delivery, construction defects are inevitable and are usually contentious between the contractor or sub-contractors and employer.³ The unacceptable

¹Obi I. Nicholas, M. Nwalusi, and Francis O. Okeke, 'Building Collapse in Nigeria and its Consequences on the Architect's Role as the Leader of The Building Team' (2022); P. O.Awoyera, J. Alfa, A. Odetoyan, and I. I. Akinwumi, 'Building Collapse in Nigeria during recent years--Causes, effects and way forward' In IOP Conference Series: Materials Science and Engineering, 1036 (1), (2021): 012021, IOP Publishing; Qurix, Williams Barnabas, and RahilaGuguleDoshu. 'Mitigating building collapse in Nigeria' ARTEKS: JurnalTeknikArsitektur 5 (3,) (2020): 449-458;O.Odeyemi, Z. T.Giwa, and RasheedAbdulwahab, 'Building collapse in Nigeria (2009-2019), causes and remedies--a review,' USEP: Journal of Science and Engineering Production 1(1), (2019): 123-135;

²Rashidul, Islam, et. al, 'Impacts of design deficiencies on maintenance cost of high-rise residential buildings and mitigation measures,' Journal of Building Engineering 39 (2021): 102215; Paton-Cole, P. Vidal and Ajibade A. Aibinu, 'Construction defects and disputes in low-rise residential buildings' (2021) 13 Journal of legal affairs and dispute resolution in engineering and construction 1, 105020016; Sellathurai, Purnami, 'A Study On The Facilities-Related Issues In High-Rise Residential Building' (PhD diss., UTAR, 2021); S.G.Kennthe, 'Construction Defects: An Analysis of SB 800' 8 *Reeves Journal* 1.

³AyodeleAlejo, 'Comparative Study of Defect Liability Period Practices between Malaysia and Nigeria' (A project report submitted in partial fulfillment of the requirements for the award of the degree of Master of Science to the Faculty of Built Environment, UniversitiTeknologi Malaysia): 2.

qualities of a project which can be identified and remedied are the construction defects.⁴ It is therefore commonplace for the employer to require the contractor to warrant that the works upon completion are free from defects and to repair the defects in the event of such occurrence. A contractor's failure to properly perform his obligations in a construction contract or negligence in performing his obligation constitutes a breach, and as thus, he is liable to the employer who may have suffered due to the wrongful or negligent act that has caused a building defect(s).⁵

Poignantly, the reliance of contractors on defects liability period is tangentially worrisome in Nigeria building industry.⁶ Defects liability period has become a common component of construction contracts. It is the period of time within which the contractor is obligated under the contract to return to the construction site to repair any building defects.⁷ Usually, upon the completion of a building project, a certificate of practical completion is issued by an architect. The date of the issuance of the certificate of practical completion marks the beginning of the defects liability period. During the period, the contractor is contractually liable for the

⁴Yazeed Rabi'u Abubakar, Abdelnaser Omran, and Abdul Aziz Hussin, 'Investigating the Causes of Early Building Defects in Fatawa Housing Estate in Nigeria' (2017) 10 *Acta Technica Corviniensis-Bulletin of Engineering* 4, 35-44; Bashari, Sunusi, Ahmad Hariza Hashim, Asnarulkhadi Abu Samah, and Nobaya Ahmad, 'The Moderating Effect of Privacy in the Relationships between Residential Livability and Residents' Life Satisfaction' (2021) 26 *Journal of Construction in Developing Countries* 1, 45-62.

⁵Ramy, Khalef, Islam H. El-adaway, Rayan Assaad, and Niame Kieta, 'Contract risk management: A comparative study of risk allocation in exculpatory clauses and their legal treatment' (2021) 13 *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 1, 04520036; Nadler, Jennifer, 'Freedom from Things: A Defense of the Disjunctive Obligation in Contract Law' (2021) 27 *Legal Theory* 3, 177-206; M.S. Jacques, 'Defects Liability Period – An Introduction' *Australian Construction Law Newsletter* #92 October 2003 <http://classic.austlii.edu.au/au/journals/AUConstrLawNlr/2003/53.pdf>.

⁶A.O. Alejo, 'Defects Liability Period in Nigeria Building Industry: Practice, Problems and Prospect' (2013) 11 *British Journal of Arts and Social Sciences*, 250. <http://www.bjournal.co.uk/BJASS.aspx>

⁷Nigeria Real Estate Hub, "Defects Liability Period in Nigeria Building Industry" June 4, 2015 <https://nigeria realestatehub.com/defects-liability-period-in-nigeria-building-industry/>.

occurrence of any building defect and he has the contractual obligation to repair the defects as necessary.

The perspectives on the regulations of contractual undertakings in the construction sector are examined from the global point of view. This paper makes an extensive comparative analysis of liability for negligence for building defects in Nigeria while didactically drawing on the lessons from the South-African legal framework.

2.0 CONCEPTUAL CLARIFICATION

In the literal sense, building defects refer to the presence of imperfection or lack of essential requirements in a thing or a shortcoming which renders a thing blemish.⁸ Chan defines building defects as “deficiency in the design or defects, construction, or materials in a construction project”.⁹ Alan is of the opinion that building defects are “premature failure resulting from errors of workmanship, design, the use of faulty materials or maintenance”.¹⁰ Cama describes defects in construction of buildings as “a failure of the completed building to attain the implied or express quality or quantity obligations of the construction contract”.¹¹

From the legal perspective, scholars and jurists have ascribed far more comprehensive descriptions to building defects. Building defects are elements of a construction that are not in

⁸SyamilahYacob, *Managing Building Deterioration: Prediction Model for Public Schools in Developing Countries*, (2022), Springer Nature; Yacob, Syamilah, Azlan Shah Ali, and Cheong Peng Au-Yong, ‘Factors Contributing to Building Defects’ (2022) *Managing Building Deterioration*, 41-63; Uhoman Amos, Akims and Malgit Amos Akims, ‘Building Failures in Nigeria: Causes and Measures to Mitigate the Occurrence’ (2022) *Asian Basic and Applied Research Journal*, 16-22; Sargent, Adam, Alexandra H. Vinson, and Reed Stevens, ‘Sensing defects: Collaborative seeing in engineering work’ (2021) *51 Social Studies of Science* 4, 564-582.

⁹Ayodele, Alejo, *supra* note 3, p.21.

¹⁰Crocker, Alan, ‘Building failures – recovering the cost’ (BSP Professional Books, Oxford, 1990), 2.

¹¹J. Cama, ‘Who Pays to Fix Building Defects?’ *American Systems USA inc. Berrymans Legal Consultants*, 2004. See also Ayodele, Alejo n3, p.21.

congruity with the terms of the construction contract.¹² Building defects are also described as works that fall below the standards and reasonable specifications of a construction contract – including express descriptions, implied terms with regard to workmanship, quality and performance.¹³ The court per Bruce J. in the English case of *Tate v. Latham*¹⁴ defined building defects as the absence of essential components, or a complete lack of the requirements of standard construction in a building. Defects in construction of buildings can be balkanized into two categories. The first category is referred to as latent defects. This category of defects cannot be easily discovered in construction works. They are “concealed or hidden defects which would not be discovered by nature of a reasonable inspection” but are rather revealed through the occurrence of certain consequential effects which are result of the latent defects.¹⁵ More often than not, latent defects are not discoverable during the defects liability period.¹⁶ The second category of defects is the patent defects. Unlike latent defects, patent defects are apparent deficiency in building constructions, and which can be easily discovered through careful inspection or expert examination.¹⁷ Cohen is of the opinion that patent defects are apparent on

¹²Nigel M. Robinson, ‘Construction Law in Singapore and Malaysia’ (2nd Edition: Butterworths Asia Malaysia, 1996), 159-160

¹³D. Atkinson, ‘Measures of Damages for Defects’ <http://www.atkinsonlaw.com/cases>. See also Alejo A., n3, 22.

¹⁴*Tate v. Latham* (1897)66 LJQB 351.

¹⁵Ronald M. Sandgrund, Jennifer A. Seidman, Leslie A. Tuft, and Nelson Boyle, ‘Construction Defect Municipal Ordinances: The Balkanization of Tort and Contract Law (Part 2)’ (2017) 46 Colorado Lawyer 2, 33; Pable, Jill, and Yelena McLane, ‘Design Considerations’ (2021) In *Homelessness and the Built Environment*, 138-167. Routledge, 2021; J. Cama, supra-11. See also Alejo A., n3, p.22.

¹⁶F. James, Michael, ‘Construction Law (The Macmillan Press Ltd, London, 1994), 145. Susan Hodges held the view that latent defects would not be ordinarily discoverable through an examination by a reasonably skilled man; See Susan Hodges, *Law of marine insurance* (Cavendish Publishing Limited, London, 1996) p. 133.

¹⁷AbdulLateef, Olanrewaju, Yen Tan, Yienand See NingSoh, ‘Defect characterisations in the Malaysian affordable housing’ (2021) *International Journal of Building Pathology and Adaptation* ahead-of-print; Syamilah, Yacob, Azlan Shah Ali, and Cheong Peng Au-Yong, ‘Establishing relationship between factors affecting building defects and building condition’ (2019) 10 *Journal of Surveying, Construction and Property* 1, 31-41; Jonsson, AgnieszkaZalejska, and RosaneHungriaGunnelin, ‘Defects in newly constructed residential buildings: owners’ perspective’ (2019) *International Journal of Building Pathology and Adaptation*.

inspection, and cannot be discovered from the eye of a mere observer. The court in *Victoria University of Manchester V Hugh Wilson & Lewis Wormsley and Pochin Ltd*¹⁸ was of the position that patent defects are those which can be discovered in a construction project through the exercise of (ordinary or reasonable) care.

The extent of liability for construction defects most often varies, depending on whether the defect is patent or latent. In a construction contract for instance, where there is a patent defect, the contractors will be held liable for breach of contract. On the flip side, should the defect be latent – where it does not become obvious until many years after the construction of a building has been completed and handed over, the liability of the contractors may depend on the terms of services and of the construction contract. In such a contract, provisions are made for warranty periods as well as defects liability periods. In a situation whereby on such provision is made to cover the extent of liability of contractors for latent defects, recourse is made to the limitation law of the place where the defective building is located. In Nigeria, the statute of limitation is usually five years.¹⁹ In order to forestall the possibility of litigation and floodgate of law suits which can make them incur specific, general or aggravated liabilities, building contractors can best take measures by identifying the causes of building defects, most especially the recurrent factors.

3.0 REASON FOR BUILDING DEFECTS

¹⁹HafizahMohd, Latif, Norazida Mohamed, Morrison Handley Schachler, and AzhanJalaludin' 'Ethical Aspects and Legal Liabilities of Drainage Defects in Construction' (2022); Seealsothe provision of Section 18 of the Limitation Law (Cap L11 Laws of Delta State 2006) which states that an aggrieved party has a period of not later than 5 (five) years from when the cause of action accrued, or the date of knowledge (if later) of the person injured, to sue for redress.

Natural or manmade factors are usually the major factors attributing to defects in constructions of buildings, which may lead to collapse.²⁰ Put in another way, defects in buildings arise are occasioned from either natural or manmade phenomena. Natural factors include earthquakes, geographical extrusion and typhoons. Manmade factors, which are the most prevalent causes of defects in buildings, are caused by man's negligence or poor craftsmanship. Some of these manmade causes are laid bare for the purpose of the discussion in this paper.

One of the rampant causes of building collapse is bad design. Bad design does not necessarily equate to poor architectural input, rather it encompasses faulty/substandard input from other building professionals. In a typical construction contract, several building professionals are engaged, depending on the area of specialisation i.e., architects, builders, engineers, project managers and quantity surveyors. Inadequate utilisation of requisite skills and professional standards by any of these building professionals may result into building defects which may eventually lead to a collapse of such building.

Studies have shown that a considerable percentage of structural failures in cases of building collapses are caused by faulty construction.²¹ Faulty constructions by building professionals are

²⁰Qosimov, Mukhiddin Odilovich, To'lqin Ismatovich Shakarov, and Umarali Tolqinogli Toshtemirov, 'Reduction and prevention of environmental hazards in underground construction' (2021) 11 *Academicia: An International Multidisciplinary Research Journal* 1, 975-981; Thacker, Scott, Daniel Adshead, Marianne Fay, Stéphane Hallegatte, Mark Harvey, Hendrik Meller, Nicholas O'Regan, Julie Rozenberg, Graham Watkins, and Jim W. Hall, 'Infrastructure for sustainable development' (2019) 2 *Nature Sustainability* 4, 324-331; Sharma, Sparsh, Suhaib Ahmed, Mohd Naseem, Waleed S. Alnumay, Saurabh Singh, and Gi Hwan Cho, 'A survey on applications of artificial intelligence for Pre-Parametric Project Cost and Soil Shear-Strength estimation in construction and geotechnical engineering' (2021) 21 *sensors* 2, 463;

²¹Innocent Chigozie. Osuizugbo, 'Builder's view on the incessant building failures and collapse in Nigeria: A call for an effective national building code' (2018) 7 *American Journal of Engineering Research* 10, 173-180; Su-Ling, Fan, Cen-Ying Lee, Heap-Yih Chong, and Mirosław J. Skibniewski, 'A critical review of legal issues and solutions associated with building information modelling' (2018) 24 *Technological and Economic Development of Economy* 5, 2098-2130; Lawal Pedro, 'Collapse of Buildings and Infrastructure Projects – Liabilities and

occasioned by noncompliance with the building plans and specifications. Faulty constructions also include “overloading, unstable bearing support and premature removal.”²²

Another major contributory manmade factor to the occurrence of building collapse is the use of poor-quality construction materials. When most of the building materials are of inferior quality, the propensity for the building to collapse will be relatively high. For instance, where the blocks used in the construction are of low quality due to the insufficient amount of cement, sand or water, or where the steel reinforcement is substandard, the building structure or strength against ecological conditions will be staggeringly low.

4.0 GENERAL PRINCIPLES OF LIABILITY IN CONSTRUCTION PROJECTS

Liability in construction projects can be examined in different lights. Liability could arise in the construction contract. It could also arise as a result of negligence of the parties. The principle of strict liability also applies to construction projects. In the same vein, there could joint and several liabilities, as well as vicarious liability.

Contractual Liability is a legal obligation that arises from a contract between two or more parties. In the realm of construction projects, these contracts often involve parties such as the project owner, general contractor, subcontractors, suppliers, and design professionals. Each party has specific obligations outlined in the contract, and failure to fulfill these obligations

Rights of Affected Persons’ (A paper delivered at the breakout session at the 2015 Annual General Conference of the Nigerian Bar Association at the International Conference Centre, Abuja on 24th of August, 2015): 1-7.

²²ChiamakaOgochukwu, Obiora, Fidelis OkechukwuEzeokoli, ChritopherChidiBelonwu, and Francisca NkachukwuOkeke, ‘Defects in Concrete Elements: A Study of Residential Buildings of 30 Years and above in Onitsha Metropolis, Anambra State, Nigeria’ (2022) 10 Journal of Building Construction and Planning Research 3, 102-123; Thacker, Scott, Daniel Adshead, Marianne Fay, StéphaneHallegatte, Mark Harvey, HendrikMeller, Nicholas O’Regan, Julie Rozenberg, Graham Watkins, and Jim W. Hall, ‘Infrastructure for sustainable development’ (2019) 2 Nature Sustainability 4, 324-331.

can lead to a breach of contract.²³ A contract in a construction project typically includes terms regarding the scope of work, timeline for completion, payment terms, quality standards, and procedures for changes or disputes. If a party fails to meet these terms, they may be held liable for damages resulting from the breach. This could include costs for delay, rectification of defective work, or even penalties stipulated in the contract.²⁴

The case of *Balfour Beatty Regional Construction Limited v Van Elle Ltd*²⁵ provides a practical example of contractual liability in action. In this case, Balfour Beatty (BB) was engaged to design and construct a sub-sea cable manufacturing facility. The structures to be built by BB required foundational piling, and BB engaged the services of Van Elle for this task. A dispute arose when excessive settlement was discovered at the piling for the North Carousel, one of the structures in the project. Technip, the owner of the site, initiated a claim against BB for business interruption losses resulting from the settlement and remedial works. BB, in turn, issued a claim against Van Elle to recover the remedial costs and to obtain an indemnity against any liability to Technip for further losses². Van Elle argued that the works were governed by a contract formed when its earlier written quotation was accepted by BB by its conduct. However, BB denied the existence of such a contract and contended that the works were governed by a later formal sub-contract². The court found that the sub-contract, which was unsigned at the time the works were carried out, did indeed cover the works carried out by Van Elle.²⁶

²³ Masadeh, A., and Mohamed, F., 'Limitation of Liability in Construction Contracts.' (2023) 15(2) *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, 03723001.

²⁴ Onishi, M., Kobayashi, K., and Omoto, T., 'Defect liability in construction contracts.' (2003) 20 *Infrastructure Planning Review*, 139.

²⁵ [2021] EWHC 794 (TCC)

²⁶ [This ruling underscores the importance of clear contractual agreements in managing liability](#)

Negligence is another key principle in the field of construction law. It arises when a party involved in a construction project fails to exercise the level of care that a reasonable person would under the same circumstances.²⁷ This could involve a range of actions or inactions, such as failure to adhere to safety standards, poor workmanship, or reckless behavior against safety regulations.²⁸ In the context of construction projects, negligence can lead to significant harm or damage. For instance, if a contractor uses substandard materials or fails to follow the approved plans and specifications, this could result in a structurally unsound building. Similarly, if an architect or engineer provides incorrect advice or designs, this could also lead to problems with the construction project.²⁹

In *Murphy v Brentwood District Council*,³⁰ the House of Lords held that a builder was not liable to a homeowner for the cost of repairing faulty foundations, as there was no personal injury or damage to other property. The damage suffered by the claimant was neither material nor physical but purely economic, and the court ruled that the defendant was not liable in negligence. It is worth noting that the principles of negligence can vary depending on the jurisdiction and specific circumstances of each project.³¹

Strict liability is another key principle in determining liability in construction projects. Strict liability refers to a legal doctrine where a party is held responsible for damages, regardless of

²⁷ Jegede, A. O., 'Environmental laws in Nigeria: Negligence and compliance in the building of houses on erosion and flood prone areas in the south-south region of Nigeria.' (2020) 1(3) *European Journal of Environment and Earth Sciences*, 12.

²⁸ James, M. F., and James, M. F., 'Builders' Liability in Negligence'. (1994) *Construction Law*, 32-51.

²⁹ McDonald, J. E., 'Common Law Liability of Architects and Engineers for Negligence to Non-Contractual Parties.' (1989) 9 *Constr. Law.*, 5.

³⁰ [1991] 1 AC 398

³¹ See Assaad, R., and others, 'Contractual perspective for BIM utilization in US construction projects.' (2020) 146(12) *Journal of construction engineering and management*, 04020128.

negligence or intent.³² This typically applies when ultra-hazardous activities are involved or dangerous materials are used. In construction, ultra-hazardous activities could include the use of explosives or handling of hazardous materials like asbestos. If these activities cause harm, the party responsible could be held strictly liable, even if they took all reasonable precautions.³³ The use of dangerous materials in construction projects can also trigger strict liability. For instance, if a construction company improperly stores a hazardous substance and it leaks, causing harm, the company could be held strictly liable.

In *Rylands v. Fletcher*³⁴, the defendants, Rylands, employed independent contractors to construct a reservoir on their land. The contractors discovered disused mines when digging but failed to seal them properly. They filled the reservoir with water, which eventually flooded through the mineshafts into the plaintiff's mines on the adjoining property. This case established the rule that one's non-natural use of their land, which leads to another's land being damaged as a result of dangerous things emanating from the land, is strictly liable. The court held that the defendant was liable for the damage caused, even though they had not been negligent themselves.

One key aspect of strict liability is that the injured party does not need to prove negligence on the part of the construction company. They only need to prove that the company was responsible for the activity or material that caused the harm. While strict liability can apply in many contexts, it is less common in construction projects. This is because construction often involves a range of activities that, while potentially dangerous, are not typically considered "ultra-hazardous."³⁵ However, there may be specific circumstances under which strict liability

³² Shepherd, F.A. and Bourque, T.B., 'Strict Liability to the Construction Context' (1982) 3 *Construction Law* 3.

³³ See Shavell, S., 'The mistaken restriction of strict liability to uncommon activities.' (2018) 10 *Journal of Legal Analysis*, 1-45.

³⁴ (1868) LR 3 HL 330

³⁵ See Golden, B. M., 'Strict Liability Applied to the Homebuilder: A Defect in the Law of Defective Products.' (1994) 14 *Constr. Law*, 11.

could apply, such as if a construction company were to use explosives and cause damage to neighboring properties.

Another principle is joint and several liability. This is a legal principle that applies when more than one party is responsible for a loss. In such cases, each party may be held fully liable for the entire amount of the loss¹. This principle is often applied in construction projects where multiple parties, such as contractors, subcontractors, architects, etc., contribute to a single loss. The principle of joint and several liability is most relevant in tort claims, whereby a plaintiff may recover all the damages from any of the defendants regardless of their individual share of the liability.³⁶ It is often applied in negligence cases, though it is sometimes invoked in other areas of law. The principle favors the plaintiff suing for damages because it empowers them to pursue full payment, if necessary, from the party with the deepest pockets if the others named cannot pay.³⁷

Vicarious Liability is another legal principle where an employer can be held liable for the actions of its employees if those actions were performed within the scope of their employment.³⁸ This principle is often relevant in construction projects, where the actions of individual workers can have significant implications for the overall project.³⁹ In construction projects, vicarious liability can arise when an employee or a subcontractor causes damage or injury while performing their work duties. For example, if a worker negligently operates machinery and causes damage, the employer could potentially be held liable for the resulting damages.

5.0 LIABILITY FOR NEGLIGENCE IN BUILDING DEFECTS IN NIGERIA

³⁶ Amon, M. R., 'Liability regulations in European subcontracting: will joint liability be the 21st century European approach.' (2010) 9 *J. Int'l Bus. & L.*, 231.

³⁷ Wade, J. W., 'Should Joint and Several Liability of Multiple Tortfeasors be Abolished.' (1986) 10 *Am. J. Trial Advoc.*, 193.

³⁸ Giliker, P., *Vicarious liability in tort: A comparative perspective* (Vol. 69). (Cambridge University Press, 2010).

³⁹ *Ibid.*

In Nigeria, generally, construction contracts are expected to comply with all applicable laws.⁴⁰ However, since matters of construction are not in the exclusive legislative list under Part I of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999, as amended, state legislatures are therefore empowered to make laws on the subject. In Nigeria, there are a variety of state laws that control architectural plans and construction projects.⁴¹ With regard to building collapses in Nigeria, it is crucial to explore the liabilities and rights of individuals affected by such incidents. The recurring problem of building collapses has prompted some state governments, including Lagos State, to revise their laws and regulations, aiming to increase the accountability of building owners through measures such as forfeiture and prosecution.

Under Section 74 of the Urban and Regional Planning Law 2010 in Lagos State, if a property collapses due to negligence on the part of the owner or developer, the property shall be forfeited to the State Government after a thorough investigation and publication in the State Official Gazette. This legislative framework underscores the gravity of negligence in building maintenance and construction. As a preemptive measure, Section 71(1) of the same law grants powers to the Building Control Agency to issue a demolition notice to a developer or permit

⁴⁰ This includes those in the National Building Code 2006, Urban and Regional Planning and Development (Amendment) Laws, 2019, Lagos State Physical Permit Regulations, 2019, Lagos State Building Control Agency Regulations, 2018 (as amended), Environmental Impact Assessment Act 1992, and Public Procurement Act, in addition to the standard forms. Professionals whose services are engaged in a building project are also expected to have taken due cognizance of construction industry legislations such as the Builders Registration Act, Engineers Registration Act 2019, Quantity Surveyors Act⁴⁰ and Architects Registration Act.

⁴¹ See O. E. Chukwuemerie, C. B. N. Bert-Okonkwo, I. S. Ezennia, and C. O. Obiora, 'An Assessment of Causative Factors of Building Collapse using Physical Analysis Tests: The Case of Oko, Anambra State, Nigeria' (2022) *Journal of Engineering Research and Reports*, 1-11; Francis O. Okeke, Chinwe G. Sam-Amobi, and Francis I. Okeke, 'Role of local town planning authorities in building collapse in Nigeria: evidence from Enugu metropolis' (2020) 6 *Heliyon* 7, e04361; Atanda, Jubril Olakitan, and Obafemi AP Olukoya, 'Green building standards: Opportunities for Nigeria' (2019) 227 *Journal of Cleaner Production*, 366-377; Cap.E12 Laws of the Federation of Nigeria (LFN), 2004

holder if a structure is found to be defective and poses a danger or nuisance. The agency is authorized to demolish the defective structure and recover the demolition costs from the owner or developer.

Individuals likely to be affected by a potential building collapse have the legal right to institute an action in the High Court, seeking an order of Mandamus to compel the State government, Building Control Agency, or other relevant government agencies to demolish the risky building. If the government or its agency carries out the demolition, the owner becomes liable for the cost. Failure to pay the assessed cost may lead to an offense, with Section 75(6) specifying a fine not exceeding One Hundred Thousand Naira (#100,000.00) or one month of community service, in addition to paying the demolition cost.

Moreover, when a building collapses, causing damage to structural components and materials, investors face irrecoverable capital losses. Those affected have the right to sue the building owner and possibly the engineer for loss and damages resulting from negligence in construction. Owners and engineers of collapsed buildings can also face criminal prosecution for negligent acts causing harm under Section 250 of the Criminal Law of Lagos State, with potential sentences of two years imprisonment if found guilty. In cases involving loss of human life due to building collapse, an additional charge of involuntary manslaughter under Section 222 of the Criminal Code Law of Lagos State may lead to life imprisonment upon conviction.

The courts in Nigeria have also blessed the principle of liability for negligence in construction cases. In *McDonald Egejuru v. Niger Construction Limited*⁴², Mr. Egejuru, employed by Niger Construction, found himself in a grave situation – a robbery on the job site left him with life-threatening injuries. While seeking extensive medical care, he endured the added burden of his employment being terminated without receiving vital terminal benefits or medical expense coverage. Taking his case to

⁴² SUIT NO: NICN/PHC/13/2019

the National Industrial Court of Nigeria, Mr. Egejuru accused Niger Construction of failing to uphold their duty of care by not providing a safe working environment. The court acknowledged this negligence, holding the company responsible for the consequences. Niger Construction was ordered to cover past and future medical costs, alongside substantial compensation for pain, trauma, and the permanent partial incapacity Mr. Egejuru now faced.

In *Strabag Construction Nig. Ltd v. Ogarekpe*⁴³, A technician named Mr. Ogarekpe faced unimaginable horror when a crane collapsed on a Strabag Construction site, inflicting severe injuries upon him. Seeking justice, he filed a negligence lawsuit against the company. The court employed the legal concept of "res ipsa loquitor," which basically means that due to the nature of the accident, it was highly likely caused by the defendant's negligence. In this case, the equipment was under Strabag Construction's control, making them responsible for the incident. As a result, the court ruled in favor of Mr. Ogarekpe, requiring the company to compensate him for his damages.

In essence, there is a firm stance on negligence in construction and building defects under Nigerian legal framework. Although the legal framework is stratified into a patchwork of state laws, the legal framework is designed to ensure accountability and protect the rights of individuals affected by building collapses. The law empowers state agencies to take preventive measures, including issuing demolition notices for defective structures, and imposes strict penalties for negligence, including forfeiture of property, fines, and even imprisonment.

⁴³ (1991) 1 NWLR (Pt.170) 733

6.0 LIABILITY FOR NEGLIGENCE IN BUILDING DEFECTS IN SOUTH AFRICA

In South Africa, legislations, case laws and common law principles govern liability in negligence for construction projects. Ordinarily, when negligence occurs in construction projects, there are legal implications. The Occupational Health and Safety Act (OHSA), Act 85 of 1993 provides a robust framework for health and safety in workplaces, including construction sites. Section 8 imposes a crucial duty on employers. The section provides that employers must “as far as is reasonably practicable”, provide and maintain a safe work environment free from health risks for employees and others affected by their activities. Failure to uphold this duty, leading to harmful consequences, can constitute negligence.⁴⁴ Importantly, section 9 extends the duty beyond direct employees. The phrase "others affected" captures subcontractors, visitors, and even passers-by potentially impacted by construction activities.⁴⁵ For instance, faulty scaffolding collapsing onto the street and injuring pedestrians could trigger liability under OHSA.

Under the National Building Regulations and Standards Act (NBRSA), Act 103 of 1977, there are certain stipulations as to the technicalities of safe construction. The Act prescribes regulations and standards covering various structural integrity, fire safety, and electricity safety. When construction deviates from these prescribed standards, negligence becomes a potential if such deviations directly cause harm. Section 24 of the NBRSA prescribes a penalty of a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months.

⁴⁴ For instance, neglecting fall protection measures on a high-rise site, resulting in worker injury, would likely be deemed a breach of the section.

⁴⁵ See generally Occupational Health and Safety Act (OHSA), Act 85 of 1993

There are also decided cases by the South African courts laying emphasis on the extent of liability in negligence in construction projects. A notable case is *Hirt & Carter (Pty) Ltd v. IT Arntsen NO and others*⁴⁶, where Big Concerts International (Pty) Ltd organized two Linkin Park concerts in Johannesburg and Cape Town. A sponsor for the concerts approached Hirt & Carter (H&C) to assist with an advertisement campaign at the two concerts. H&C proposed the erection of two towers to be used for the advertising campaign to be constructed from scaffolding. H&C had no experience in the erection of the scaffolding towers and therefore appointed a third party to do so and take responsibility for the fact that the structure would be safe. Bothma Signs (Bothma) were appointed by H&C. Bothma subsequently appointed a subcontractor to physically perform the scaffolding erection, Vertex Scaffolding CC (Vertex). On the day of the Cape Town concert, one of the scaffolding towers collapsed on concertgoers leading to multiple injuries and the death of a woman. The court found that H&C, Bothma, and Vertex were negligent. H&C's reliance on simple assurances from Bothma that the scaffolding towers were safe – without having independently verified the safety documentation itself – was misplaced. The court held that businesses involved in a construction chain cannot assume that others in that chain are responsible for site safety.

Also, in *Alfred McAlphine & Son (Pty) Ltd v Transvaal Provincial Administration*⁴⁷, the defendants entered an agreement with the Transvaal Provincial Administration (TPA) to erect six imposing hostels. However, this project took an unexpected turn when subcontractors, entrusted with specific tasks, caused damage to existing buildings on the site. Their negligence left its mark, prompting the TPA to seek reparations from the defendants, who were the

⁴⁶ [2021] ZASCA 85

⁴⁷ 1974 (3) SA 506 at 531

principal contractor. Stuttaford was held vicariously liable for the damage caused by their subcontractors.

7.0 COMPARATIVE ANALYSIS OF THE TWO JURISDICTIONS

The liability for negligence in building defects in Nigeria and South Africa exhibits distinct features within their respective legal frameworks. In Nigeria, the absence of exclusive legislative jurisdiction on construction matters in the federal constitution allows state legislatures to enact laws governing construction projects. The Urban and Regional Planning Law in Lagos State specifically addresses building collapses, empowering the state to forfeit properties of negligent owners and developers. This legislative intervention emphasizes accountability, coupled with the Building Control Agency's authority to issue demolition notices for defective structures, reinforcing the commitment to preventive measures. Individuals affected by potential collapses can seek legal recourse, and the legal system imposes fines, community service, and potential imprisonment for non-compliance.

The legal framework for negligence in construction is shaped by common law principles, case laws, and legislation in South Africa. Employers are required by the OHSA to ensure a safe workplace, and this obligation extends to subcontractors, guests, and bystanders in addition to direct employees. Technical guidelines for safe construction are also provided by the NBRSA, with consequences for any violations that endanger people. Court decisions in South Africa in cases such as *Hirt & Carter* have reinforced a shared responsibility for site safety by emphasising the necessity for companies in the construction chain to independently check safety measures. One example that emphasises vicarious liability for losses caused by subcontractors is *Alfred McAlphine's* case.

While both jurisdictions emphasize accountability and impose penalties for negligence, Nigeria's approach involves a patchwork of state laws addressing building collapses, with a

focus on forfeiture and prosecution. In contrast, South Africa integrates comprehensive national legislations like OHSA and NBRSA, supported by decisive case laws, to establish a holistic framework for construction negligence. South Africa has a more centralized legal framework, contributing to a unified approach to construction regulations. Additionally, South Africa has made significant strides in infrastructure development and has a more developed industrial base.⁴⁸

8.0 RECOMMENDATIONS AND LESSONS FOR NIGERIA

Nigeria can draw valuable lessons from South Africa's approach to addressing negligence in construction, even as the two countries have different legal structures and challenges. Firstly, there is merit in exploring the possibility of creating a more unified national framework for construction regulations in Nigeria. While decentralization allows for localized solutions, a cohesive and standardized approach could enhance consistency in safety standards and legal procedures across the country.

Additionally, Nigeria could benefit from emphasizing preventive measures similar to those seen in South Africa. Implementing measures like demolition notices for defective structures, as seen in Lagos State's Urban and Regional Planning Law, could serve as a proactive step to mitigate potential risks before building collapses occur. Strengthening the capacity of relevant government agencies to enforce these measures and fostering a culture of compliance with safety standards are essential aspects that Nigeria can prioritize.

Moreover, Nigeria can consider enhancing collaboration between stakeholders in the construction industry to share responsibility for safety. The South African legal framework emphasizes that businesses in the construction chain cannot assume that others are solely

⁴⁸ See Etim, E., and Daramola, O., 'The informal sector and economic growth of South Africa and Nigeria:' (2020) A comparative systematic review. *Journal of Open Innovation: Technology, Market, and Complexity*, 6(4), 134.

responsible for site safety. Encouraging clear communication, collaboration, and shared accountability among developers, contractors, subcontractors, and regulators could contribute to a more robust safety culture in Nigeria's construction sector.

Furthermore, Nigeria can consider investing in comprehensive training and certification programs for professionals in the construction industry. South Africa's emphasis on safety in workplaces, as outlined in the Occupational Health and Safety Act (OHSA), can inspire Nigeria to develop and enforce rigorous training standards for architects, engineers, and construction workers. A well-trained workforce is better equipped to adhere to safety protocols, recognize potential hazards, and contribute to the overall reduction of negligence-related incidents.

While acknowledging the existence of the Council of Registered Builders of Nigeria (CORBON), which is mandated to encourage standardization, improve construction techniques, and oversee training programs, there may be room to further strengthen and empower this regulatory body. Nigeria could consider providing CORBON with additional resources, legislative support, and enforcement authority to enhance its effectiveness. This could include granting CORBON more autonomy in conducting regular and rigorous inspections, taking swift actions against non-compliance, and collaborating closely with other relevant agencies. By fortifying CORBON's capacity and mandate, Nigeria can ensure that the regulatory body plays a central role in upholding and enforcing construction safety standards, contributing to a safer and more accountable construction industry.

9.0 CONCLUSION

This paper has examined the position of the law on liability in negligence for building defects, while drawing a comparative sketch of South African laws and regulations on building defects. In the global pursuit of safer and more accountable construction practices, there is an opportunity for Nigeria to glean valuable insights from the South Africa's approach. Nigeria,

facing issues like poor structural design and professional negligence, may find inspiration in South Africa's centralized approach and strict adherence to health and safety regulations, as well as incorporating community-driven measures and individual rights protection.