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Mercy Milgo

Call: 2019

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Areas of practice

- Construction & Engineering
- Energy & Natural Resources
- International Arbitration
- Adjudication
- Insurance

Clerks' Details

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Practice overview

Mercy Milgo has a varied practice across Chambers' core areas including construction and engineering (particularly building and fire safety matters), energy & natural resources (waste-to-energy plants), international arbitration, adjudication and insurance (relating to construction projects). Mercy is familiar with all common standard forms including the JCT, NEC, FIDIC, as well as bespoke construction contracts and PFI agreements. She has a particular interest in NEC3 and NEC4 and is a contributing author of Keating on NEC (2nd edition).

Notably, Mercy has recently been instructed:

- in a multi-million-euro international arbitration concerning the use of a pioneering anaerobic digestion technology at a waste-to-energy plant (led by Fionnuala McCredie KC);
- as sole counsel in a c.£5.5 million adjudication concerning alleged fire safety defects in a large student residential development.
- in a fire safety dispute concerning matters of principle arising from *Martlet Homes Limited v Mulalley & Co. Limited* [2022] EWHC 1813 (TCC) (the first decision from the TCC on fire safety (external wall insulation) following Grenfell), the Developer Remediation Contract and the use of PAS 9980:2022 (led by Simon Hughes KC); and
- in the UK Covid-19 Inquiry (Module 4) as part of the junior counsel team instructed by the Department of Health and Social Care.

Before coming to the Bar, Mercy read for the BCL at St Peter's College, University of Oxford, before joining Keating as the Chambers' Legal Assistant. In this role, she assisted arbitrators and assisted

with editing and updating various publications including Chitty on Contracts, Keating on Construction Contracts and Keating on JCT.

Mercy regularly represents clients in Court and in adjudications. She accepts instructions to advise, draft pleadings, and represent clients in relation to a broad range of commercial matters, with an emphasis on construction and engineering contracts and related professional negligence matters.

Having grown up in Kenya, Mercy is fluent in Swahili and is familiar with the East African region. She will be in Nairobi in June 2024 to speak at the Africa Construction Law (ACL) annual conference.

Recent work

Advocacy

- High Court (TCC London) – instructed to appear on behalf of the Claimant in c.£1.3 million adjudication enforcement proceedings.
- Application hearing (Weymouth County Court) - instructed to appear on behalf of the Defendant/Applicant in an application to stay proceedings pursuant to s.9 of the Arbitration Act 1996. The underlying dispute concerned loft conversion works at a residential property.
- Application hearing (Romford County Court) – instructed to appear on behalf of the Respondent to resist an application to set aside default judgment and to apply for a final charging order under the Land Registration Act in a dispute concerning refurbishment works.
- Application hearing (Northampton County Court) – instructed on behalf of the Defendant to make an application to set aside default judgment in a dispute concerning the design and installation of a steel frame house and garage.
- Final hearing (Southampton County Court) – instructed to appear on behalf of the Second Defendant insurance company in a commercial property damage dispute.
- Final hearing (Kingston Upon Thames County Court) – instructed to appear on behalf of the Defendant telecommunications company in a breach of contract dispute.
- Two final hearings (Central London County Court) – instructed to appear on behalf of the Defendant insurance company in a property damage claim.
- Final hearing (Oxford County Court) – instructed on behalf of the Second Defendant in a property damage dispute.
- Costs hearing (High Court) - instructed on behalf of the Claimant who sought indemnity costs for breaches of several Court orders.

Construction and Engineering

- Junior Counsel to Simon Hughes KC in a fire safety dispute involving several claimants and concerning issues arising from the Developer Remediation Contract and the use of PAS 9980:2022.
- Drafted Particulars of Claim on behalf of homeowners against a building contractor in a dispute concerning water ingress defects.
- Drafted Particulars of Claim in a dispute relating to defective design of flow rates and connection of water supplies and sprinkler systems.
- Drafted Particulars of Claim on behalf of two claimant homeowners in respect of workmanship and water ingress defects at the property.
- Drafted Particulars of Claim in a contractual debt claim concerning the hire of scaffolding equipment and a personal guarantee.
- Drafted Particulars of Claim in a dispute concerning a contractual suspension of works for non-payment.
- Drafted a Defence and Counterclaim on behalf of the defendant employer in a dispute

concerning defective decking works.

- Drafted Particulars of Claim on behalf of the claimant owner of underground ducts in a dispute relating to the New Roads and Street Works Act 1991 (previously known as the Public Utilities Street Works Act (PUSWA)).
- Drafted Particulars of Claim in a payment dispute concerning a pay-for-work retainer.
- Drafted a Letter of Claim on behalf of homeowners against a building contractor for breach of contract in relation to extension and building refurbishment works.
- Drafted a Letter of Response on behalf of a Quantity Surveyor in a fire safety dispute concerning the status and effect of an EWS1 form.
- Advised a sub-contractor on its entitlement to suspend works for non-payment under an amended JCT DB Sub-Contract and on the operation of the contractual payment mechanism.
- Advised a subcontractor on the contractual status of hand over dates in the Subcontract programme and on the contractor's entitlement to liquidated damages.
- Advised a public body on contract sum analyses in JCT contracts in a matter concerning the contractors' expenditure on research and development.
- Advised a local authority on the extent of its duties under s.91 of the Building Act 1984 in respect of a development with significant fire safety defects and incomplete works following a wrongly issued Final Certificate by a private Approved Inspector.
- Advised a subcontractor on the effect of negative payment certificates in a bespoke contract.
- Advised residential owners on potential causes of action against an architect and a developer.
- Advised a Quantity Surveyor in respect of a potential professional negligence claim regarding an EWS1 form.
- Advised a residential property developer on whether it was able to avail itself of s1(1) of the Defective Premises Act 1972 (preceded the CoA decision of URS Corporation Ltd v BDW Trading Ltd [2023] EWCA Civ 77).
- Advised a contractor on the merits of a pass down liability claim against its sub-contractors under the Civil Liability (Contribution) Act 1978.
- Assisted in LDC (Portfolio One) Ltd v (1) George Downing Construction Ltd and (2) European Sheeting Ltd [2022] EWHC 3356 (TCC), where the Court found a specialist cladding sub-contractor liable for defects in composite cladding elevations that led to water ingress and fire barrier and fire stopping defects.

Adjudication

- Drafted the Responding Party's Response in a fire safety adjudication.
- Drafted the Responding Party's Response and Rejoinder in a smash and grab adjudication concerning invalidly issued payment certificates.
- Drafted the Responding Party's submissions and witness statements in a c. £300k final account adjudication concerning renovation works at an upscale hotel.
- Advised the Responding Party in a c.£260k adjudication on whether various matters raised by the Referring Party had merit including on the contractual effect of a failure to achieve phased handover dates.
- Advised the Referring Party in a true value adjudication on the prospects of the Responding Party's jurisdiction and natural justice defences.
- Assisted in drafting a Reply to a Response in an adjudication concerning a residential developer's claim on certain professional indemnity insurance policies arising from fire safety issues at a large development.
- Assisted in drafting a Reply to a Response in an adjudication concerning EOTs, concurrent delay and force majeure disputes arising from the COVID-19 pandemic.

International Arbitration

- Assisted in a multi-million-euro international arbitration concerning the use of a

pioneering anaerobic digestion technology at a waste-to-energy plant (led by Fionnuala McCredie KC). Ongoing.

- Advised on the prospects of a defence and counterclaim in a c.£9 million arbitration concerning a Development Agreement.
- Assisted with closing submissions in an international arbitration (ICC rules) case concerning a defective works and invalid notices dispute in respect of a large project in Kuwait, the Middle East.

Energy and Natural Resources

- Junior Counsel to Fionnuala McCredie KC in a multi-million-euro international arbitration concerning the use of a pioneering anaerobic digestion technology at a waste-to-energy plant.
- Assisted in the Resource Recovery Solutions (Derbyshire) Ltd v Derbyshire County Council & Anor [2023] EWHC 708 (TCC) case, where the Claimant successfully resisted summary judgment and/or strike out applications by the Defendants in a termination dispute concerning the construction of an energy-from-waste plant.

Insurance

- Drafted a Letter of Response in a claim made by a developer under a Housing Warranty insurance policy. The underlying dispute concerned fire safety defects.
- Assisted in a claim concerning the NHBC policy and a risk-sharing agreement with a residential developer.
- Assisted in advising underwriters of a premier guarantee for a social housing policy in relation to whether the policy covered waking watch/fire wardens and fire alarms costs incurred in respect of remedial works undertaken to rectify cladding defects in a residential building.

Education & Professional Career

Tenant, Keating Chambers	2023
Pupil, Keating Chambers	2022 – 2023
Legal Assistant, Keating Chambers	2021 – 2022
Bachelor of Civil Law, St Peter's College, University of Oxford	2021
LLM/BPTC, City Law School	2020
Called to the Bar, Middle Temple	2019
Law LLB Honours, University of Westminster (ranked 1st in year)	2018

Awards & Scholarships

Full International Academic Merit Scholar, University of Westminster	2015
Geoffrey Reeday Tort Law Prize for Best Grade, University of Westminster	2016
Excellence Scholar, University of Westminster	2016-2018
Academic Merit Scholar, City Law School	2018
Oxford Law Faculty Scholar, University of Oxford	2020
Black Heart Foundation Merit Scholar, The Black Heart Foundation	2020
NLIU-Justice RK Tankha Memorial International Arbitration Moot – Best International Team	2021

Seminars & Publications

Keating on NEC (2nd edition): <https://www.sweetandmaxwell.co.uk/Product/Construction-Law/Keating-on-NEC/Hardback/30799799>

Legal Contributor to the Law Brief Update monthly newsletters (Construction cases): <http://www.lawbriefupdate.com/contributors/>

Milgo, M. C., (2021) "The Case for Express Compulsory Mediation in England and Wales", Journal of Law and Jurisprudence 10(1), 1-23. doi: https://www.researchgate.net/publication/357607946_The_Case_for_Express_Compulsory_Mediation_in_England_and_Wales

Memberships

Technology & Construction Bar Association (TECBAR).

Society of Construction Law (SCL).

Commercial Bar Association (COMBAR).

Member of the Attorney General's Junior Counsel Scheme (2023-2027).

Founding Member of the Oxford Law Black Alumni (OLBA) Network: <https://www.law.ox.ac.uk/oxford-law-black-alumni/former-committee-members>

Languages

Swahili (Fluent), Spanish (Conversational), Kalenjin – Kipsigis (Fluent).

Additional Information

Mercy is a keen dancer and enjoys watching Formula 1 (she is a LH fan).