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Mercy Milgo

Call: 2019

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Areas of practice

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

Clerks' Details

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Practice overview

Mercy Milgo has a thriving and 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 NEC and is a contributing author of Keating on NEC (2nd edition) which provides commentary on NEC3 and NEC4. She is also a contributor to Keating on Construction Contracts.

Mercy enjoys acting as sole counsel and as a junior as part of a wider legal team. She has recently been instructed:

- As sole counsel in a c.£5.5 million adjudication concerning alleged fire safety (cladding, insulation and cavity barriers) defects in a large student residential development, successfully arguing (on behalf of the Responding Party) for the dismissal of the Referring Party's claims in full.
- 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 and William Webb KC).
- 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).

- In the UK Covid-19 Inquiry (Module 4) as part of the junior counsel team instructed by the Department of Health and Social Care (led by Sam Stein KC and Abdul Jinadu).

Before coming to the Bar, Mercy read 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 updated various publications including Chitty on Contracts, Keating on Construction Contracts and Keating on JCT.

Mercy regularly appears in Court and has spent time in the Court of Appeal marshalling Coulson LJ in *Providence Building Services Ltd v Hexagon Housing Association Ltd* [2024] EWCA Civ 962, a case concerning the proper construction of JCT DB (2016) termination (for late payment) provisions.

Mercy accepts instructions to advise, draft pleadings, and represent clients in adjudications 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 also fluent in Swahili and is familiar with the East African region. She was recently in Nairobi to speak at the Africa Construction Law (ACL) 2024 conference.

Recent work

Advocacy

- High Court (TCC London) – instructed to appear on behalf of the Claimant in c.£1.3 million adjudication enforcement proceedings.
- Costs hearing (High Court) – instructed to appear on behalf of the Claimant in a claim for indemnity costs for breaches of several Court orders.
- Two final hearings (Central London County Court) – acted for the Defendant insurance company in a property damage claim.
- Application hearing (Bromley County Court) – acted for the Respondents in opposing a pre-action application for a mandatory interim injunction in a dispute concerning ventilation systems installation and certification works.
- Application hearing (Bromley County Court) – acted for the Applicants in applying for an unless order following the Respondent's persistent breaches of Court orders.
- Application hearing (Weymouth County Court) – acted for the Defendant/Applicant in an application for a stay of proceedings pursuant to s.9 of the Arbitration Act 1996. The underlying dispute concerned loft conversion works at a residential property.
- Application hearing (Northampton County Court) – acted for the Defendant in making an application to set aside judgment entered in default of a Defence in a dispute concerning the design and installation of a steel frame house and garage.
- Final hearing (Southampton County Court) – acted for the Second Defendant insurance company in a commercial property damage dispute.
- Final hearing (Kingston Upon Thames County Court) – acted for the Defendant telecommunications company in a breach of contract dispute.
- Application Hearing (Norwich County Court) – instructed to appear on behalf of the Defendant in an application for judgment in default of a Defence to Counterclaim.
- Directions hearing (Nottingham County Court) – instructed to appear on behalf of the Defendant landlord in a dispute concerning a lease renewal (LTA 1954) application by the Claimant footwear chain.
- Final hearing (Oxford County Court) – instructed to appear on behalf of the Second Defendant in a property damage dispute.

Construction and Engineering

- Junior Counsel to Simon Hughes KC in a multiparty fire safety (cladding, insulation

and cavity barriers) dispute 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 a residential property developer in a large multi-party dispute concerning defective drainage works.
- 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, Reply and Defence to Counterclaim, in a c. £200k contractual debt claim concerning the hire of scaffolding equipment and enforcement of personal guarantees.
- 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)) and the Water Industry Act 1991.
- Drafted Particulars of Claim in a payment dispute concerning a pay-for-work retainer.
- Drafted a Disclosure Review Document (DRD) in a large multi-party fire safety dispute concerning allegedly defective cladding and insulation design and build works.
- 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).
- 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.
- Advised a contractor on the merits of a pass down liability claim against its sub-contractors under the Civil Liability (Contribution) Act 1978.

Adjudication

- Drafted the Responding Party's Response and Rejoinder in a c. 5.5 million fire safety (cladding, insulation and cavity barriers) adjudication. Successfully argued for the dismissal of the Referring Party's claims in full.
- 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

- Junior Counsel to Fionnuala McCredie KC and William Webb KC in a multi-million-euro international arbitration concerning the use of a pioneering anaerobic digestion technology at a waste-to-energy plant. 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

- Assisted in Resource Recovery Solutions (Derbyshire) Ltd v Derbyshire County Council & Anor [2023] EWHC 708 (TCC), 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

- Advised 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.
- 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.

Education & Professional Career

Tenant, Keating Chambers	2023
Pupil, Keating Chambers	2022 – 2023
Legal Researcher, 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
Academic Excellence Scholar, University of Westminster	2016-2018
Academic Merit Scholar, City Law School	2018
Oxford Law Faculty Scholar, University of Oxford	2020

Seminars & Publications

Mercy Milgo participated in a panel session on ethics and governance in Africa's construction sector at the Africa Construction Law Conference 2024: <https://www.linkedin.com/feed/update/urn:li:activity:7187113837408473088>

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).

Languages

English, Swahili.

Additional Information

Mercy enjoys dancing and watching Formula 1.