

RUNNING HEAD: JUSTICE FOR ALL

The Small Claims Court and Accessible Quality Justice for All

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ABSTRACT

The paper acknowledges the meticulous work done by the researcher, Peter Ramphabana an LLB graduate from the University of Limpopo (Turfloop Campus)

The Small Claims Courts are simplified with no strict pleadings requirements and no formal discovery process, and in most cases, particularly in South Africa no order as to costs. These courts are meant to be easier and less expensive way to resolve disputes than higher courts. In South Africa, these courts are authorized to hear civil matter only.

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INTRODUCTION

The Small Claims Courts are based on speed, simplicity and cost-effectiveness. Initially these courts used to provide a forum for the resolution of civil disputes of up to seven thousand rand, though the jurisdiction has recently been increased to fifteen thousand rand. The establishment of Small Claims Court in South Africa is an indication that the Government remained committed to improving access to justice. Thus far, a number of steps had been taken including putting up court buildings in previous disadvantaged areas, the designation of magisterial districts as equality courts, allowing for indigenous languages to be used in courts, converting branch courts into full services courts and improving the delivery of free legal services within the community. A notable characteristic of Small Claims Courts is that no legal representatives are not needed or allowed to appear on behalf of the litigants.

1. THE INCREASE IN MONETARY JURISDICTION

It was announced that the limits for Small Claims Court will increase. According to the deputy minister, his department was engaged in consultations to increase the financial amount given jurisdiction to between R 10 000.00 and R15 000.00. After considerable consultations with various role players for inputs in respect of the increase towards monetary jurisdiction, an amicable decision to increase monetary jurisdiction from R12 00 to R15 00 was reached. The increase in the monetary jurisdiction came into effect from Tuesday, 1 April 2014, in terms of section 15 and 16 of the Small Claims Court Act¹. This increase was affected by Government Notice².

This increase in the monetary jurisdiction will lead to a marked increase in number of people that can make use of the services of Small Claims Courts, this increase will seemingly broaden access to justice for many people, especially the poor. The department wants to establish at least one active Small Claims Court in each of the country's three hundred and eighty four magisterial districts. Currently two hundred and six are already in place. It will allow individuals and businesses to resolve more claims in a simple and inexpensive way.

¹ Small Claims Court Act 61 of 1984

² Government Notice No. 185 of 18 March 2014

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It is envisaged that broadening the scope of Small Claims Court will improve access to justice for all South Africans. The business of Small Claims Courts typically encompasses small private disputes in which large amounts of money are not at stake. The routine collection of small debts form a large portion of the cases brought to Small Claims Courts. A Small Claims Court will generally have a maximum monetary limit to the amount of judgment it can award.

2. PROCEDURE IN SMALL CLAIMS COURT

By suing in a Small Claims Court, the plaintiff typically waives any right to more than the court can award. Normally the plaintiff may or may not be allowed to reduce a claim to fit the requirements in terms of the Small Claims Court Act³. The rules of civil procedure⁴, and in some cases also the rules of evidence⁵ are typically altered and/or relaxed, in other words these rules may be simplified in order to make the procedure economical. A guiding principle usually operating in these courts is that individuals ought to be able to conduct their own cases and represent themselves without recourse to a lawyer, hence relaxation of rules. It must be noted that though rules are relaxed, they still apply to some degree.

Expensive court procedures such as interrogatories and depositions as applied in other countries, like United States are not allowed in Small Claims Court. Practically all matters filed in Small Claims Court are set for trial. The procedure as applied in courts, is also applied in Small Claims Court, in that should the defendant not show up at trial, and have not requested postponement, a default judgment may be entered in favour of the plaintiff. However, should the defendant wish to rescind the judgment, he or she can do so by giving reasons of his/her failure to attend the previous trial in which judgment was granted. This is done orally without formal application for rescission of judgment. In the United States where jury system exists trial by jury is seldom or never conducted in Small Claims Court.

It is typically excluded by the statute establishing Small Claims Court. It must be noted that the State of Washington is one exception, allowing either party to demand a jury trial.

³ Small Claims Court Act 61 of 1984

⁴ Rules of Civil, Procedure RRO 1990, regulation 194

⁵ Civil Proceedings Evidence Act 25 of 1965

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It is further submitted that there are certain remedies that are not available in Small Claims Court such as injunctions, including protective orders. Winning in a Small Claims Court does not automatically ensure payment in recompense of a plaintiff's damages. The compensation may be relatively easy, in case of a dispute against insured party but it will be extremely difficult, in case of uncooperative or indigent defendant. The ordinary enforcement of judgment may be followed, that is, salary garnishment or attachment of property through sheriff and sale execution.

3. MATTERS THAT ARE EXCLUDED FROM THE JURISDICTION OF THE COURT

- Claims exceeding R1500 in value
- Claims against the State (including the Municipality/Local Government).
- Claims based on the cession or the transfer of rights.
- Claims for damages in respect of defamation, malicious prosecution, wrongful imprisonment, wrongful arrest, seduction and breach of promise to marry.
- Claims for the dissolution of a marriage
- Claims concerning the validity of a will
- Claims concerning the status of a person in respect of their mental capacity.
- Claims in which specific performance is sought without an alternative claim for payment of damages, except in the cases of a claim for rendering an account or transferring movable or immovable property not exceeding R15 000 in value.

4. LIST OF CAUSES OF ACTION AND EXAMPLES

4.1 Action for repayment of monies lent

This is where the plaintiff has borrowed money to the defendant and the defendant has failed to pay over the money either during the stipulated time as per their agreement or upon demand by the plaintiff. The money owed should not exceed R12 000.

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4.2 Action for the delivery of movable or immovable property

Where defendant's indebtedness to the plaintiff arises from property that the defendant had bought from the plaintiff and fails to pay for it, the plaintiff can sue the defendant in the Small Claims Court. Examples of the property sold and delivered would include furniture or a piece of land not exceeding R 15 000 in value.

4.3 Action against an occupier of a property

These are usually actions where the defendant's rental of the plaintiff's property is in arrears and the rental arrear amount does not exceed R15 000

4.4 Actions arising from liquid documents

These are actions wherein the plaintiff's claim is based on a document like acknowledgement of debt, a mortgage bond, a promissory note or a cheque as the case may be, where the amount does not exceed R15 000.

4.5 Actions arising from Credit Agreements as prescribed in terms of section 1 of the Credit Agreement Act,⁶

These are actions wherein the plaintiff is a sole proprietor who sometimes provides credits facilities to his/her customers. Where the defendant has failed to pay his/her installments in terms of the credit agreement and the arrear payment does not exceed R15 000 the sole proprietor may approach the Small Claims Court for relief.

4.6 Actions for damages

The plaintiff may also sue the defendant for damages arising, for example from a motor vehicle accident wherein the damage to the plaintiff's motor vehicle does not exceed R15 000 when assessed.

⁶ Credit Agreement Act 75 of 1980

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5. ROLE OF SHERIFF VERSUS ACCESS TO JUSTICE

While it is true that Small Claims Courts are meant to be easier and less expensive way to resolve disputes, it should also be born in mind that most enforcement of judgments are done through office of the sheriff. According to the Sheriff Act⁷, the sheriff is appointed under section 2(1) of the Act for the purpose of Chapter ii, iii, iv, or v. Chapter 1 section 3 provides that subject to the provisions of this section,

a sheriff shall perform within the area of jurisdiction of the lower or superior court for which he/she has been appointed the functions assigned by or under any law to a sheriff of that court. Section 3(2) (a)⁸ provides that the Minister may describe one or more areas within the area of jurisdiction of a lower or superior court and allocate any such area to a sheriff of that court. It is common cause that the Small Claims Court processes should be served by a sheriff, in particular within the area of jurisdiction of the Small Claims Court. Section 30 of the Act provides that “a sheriff or his/her deputy shall not perform any functions assigned to a sheriff by or under any law unless:

- The sheriff is the holder of a fidelity fund certificate, and
- The sheriff obtains professional indemnity insurance to the satisfaction of the Board to cover any liability which he/she may incur in the course of the performance of his/her functions in terms of this Act, or
- in case of an acting sheriff:

↔ the acting sheriff is the holder of fidelity fund certificate

↔ the acting sheriff has paid the prescribed contribution to the Board.

⁷ Sheriff Act of 1887

⁸Sheriff Act of 1887

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A sheriff may serve or execute process only within the area of jurisdiction or the portion of an area of jurisdiction for which he/she has been appointed. A sheriff is entrusted with the service or execution of a process shall act without avoidable delay in accordance with the provisions rule 8(4) of the Magistrate Court Rules⁹ or Rule 4 (6) of the Supreme Court Rules¹⁰. It is common knowledge that sheriffing profession is a private business, it simply means, the sheriff by virtue of his profession and business interest, the sheriff is bound to charge fee for professional service rendered.

It is true that the tariffs are regulated; however, it is a fact that litigants ought to pay certain amount to have the process served or execution carried out. One may postulate that the intervention of sheriffs in the Small Claims Court turns to be an impediment to access to justice. It appears from the Act¹¹ that sheriffs are entrusted to perform this duty simply because;

- The sheriffs are the holders of the fidelity fund certificates, and
- That the sheriff obtains professional indemnity insurance.

It is further argued that these processes can also be served by the state officials or state sheriffs or messengers of court to improve access to justice by rendering the process less cost effective. The question to be answered is whether or not the mentioned state employees are in possession of the fidelity fund certificates, to include the professional indemnity insurance. It must also be taken into consideration that if the process involves attachment and removal, the state does not have facilities, to include, the storage and where to store the property removed. This process will still involve the participation of a sheriff.

The sheriff's fee in the area in which I preside as a Commissioner¹² is around R 300.00 to serve the summons. One would venture to say that R 300.00 is reasonable and perhaps affordable, however, one must not lose sight of the fact that in a Small Claims Court, and plaintiff may sue for, say R 400.00.

⁹ Magistrate Court Rules promulgated in terms of the Magistrate Court Act 32 of 1944

¹⁰ Supreme Court Rules promulgated in terms of the Supreme Court Act 59 of 1959

¹¹ Sheriff Act of 1887

¹² LLM, Howard University, LLM, Georgetown University Washington DC respectively. Senior lecturer and head of department, Public law, University of Venda School of Law. Commissioner for Small Claims Court, Thohoyandou and Hlanganani Districts.

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In the event where plaintiff has to pay service fee of, say R 300.00, it would appear worthless to pursue such a claim, taking further into consideration the fact that the plaintiff travels for quite a long distance to access the court. For writ of execution some Small Claims Courts, sheriffs charge a fee of about R 1000.00 and assume that plaintiff is suing for R 700.00, surely plaintiff will be discouraged to pursue the claim.

6. COMMISSIONERS

The deputy minister called on all legal practitioners with more than five years experience to make themselves available to preside in Small Claims Courts, including experienced academics from different academic institutions of higher learning, in particular law schools. The department provides education and training to both commissioners and Small Claims Courts clerks. Clerks were being trained on a continuous basis by the justice college.

Basically, there is no compensation or prescribed fee paid to the commissioners, speaking from the university point of view since I am currently attached to a university, universities allow experienced staff members to participate as commissioners for small claims courts and view it as a community out-reach programme. The commissioners could only claim from department travelling expenses incurred while attending courts, which amounts to kilometers, travelled to court and return.

The commissioner has to fill in claim a form which is paid after some months. This made it difficult for commissioners to volunteer to carry out the task. The deputy minister indicated that South Africa needs more men and women who had a burning passion for justice and who are willing to become commissioners. While it is encouraged that practitioners and academics should respond to the noble call from the deputy minister and volunteer their services as commissioners, their travelling allowance should be paid timeously as a motivation to proceed and assume the task. It is common cause that one cannot use his limited resource to execute a voluntary community service. It is my submission that the Government should in future consider a kind of limited compensation to commissioners admittedly within its limited resources.

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CONCLUSION

It is evident that Small Claims Court matters are dispensed within a month or two, providing people with a simple, speedy and accessible forum that makes a huge difference in people's lives. It is further submitted that sheriffs should be canvassed to offer free services in desperate cases, particularly in Small Claims Court matters. The sheriffs should consider, perhaps amount involved in litigation, taking into consideration the example referred to above. The Government should pay commissioners expenses incurred in execution of Small Claims Court matters.

RECOMMENDATIONS

The establishment of Small Claims Court is one of the measures which the Department of Justice and Constitutional Development implements its vision of "Access to Justice for all". Small Claims Court provide a prompt and inexpensive way to resolve minor disputes. These courts are therefore meant for the ordinary man and woman in the streets who cannot afford civil litigation in the normal courts and can benefit especially the destitute and indigent of user-friendly manner.

LIMITATIONS

It is common cause that if your claim is above the Small Claim's track limit, or a judge decides that you cannot use the services of the Small Claims Court, then you will have to resort to the full country court which is more complicated. The full country court is more costly and can take a lot longer to dispense with matter.

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REFERENCES

Commissioner

LLM, Howard University, LLM, Georgetown University Washington DC respectively.
Senior lecturer and head of department, Public law, University of Venda School of Law.
Commissioner for Small Claims Court, Thohoyandou and Hlanganani Districts.

Statutes

Civil Proceedings Evidence Act 25 of 1965

Credit Agreement Act 75 of 1980

Government Notice No. 185 of 18 March 2014

Magistrate Court Rules promulgated in terms of the Magistrate Court Act 32 of 1944

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Sheriff Act of 1887

Small Claims Court Act 61 of 1984

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