



# SMALL CLAIMS COURT

WHAT YOU NEED TO KNOW



YOUR ATTORNEY - YOUR TRUSTED ADVISOR

Whether you have a claim or a defence against another person, this brochure is designed to provide you with a simple guide on how to utilise the Small Claims Court effectively.

## What is a Small Claims Court?

It is a court that is established and regulated by the Small Claims Court Act 61 of 1984.

## Why the Small Claims Court?

To resolve legal disputes fast without the cost of lawyers.

## Who may claim?

Persons 18 years and older, and others assisted by their parents or guardians.

## Who may not claim?

Trusts, companies, corporations, associations, government. These may, however, institute counterclaims.

## How formal is the Small Claims Court?

Lawyers may not represent parties, but you may at your own costs, obtain advice from your attorney before appearing.

The clerk (at court) will assist you free of charge.

Any language may be used. Where interpreters are required, arrange this with the clerk beforehand.

## Against whom can you claim?

Any person, company, corporation, other entity within the court area, excluding local government and the State.

## How much can you claim?

Up to R15 000.

If your claim exceeds R15 000, you may abandon the amount that exceeds R15 000 to remain in the court. (e.g. If your claim is for R17 000, you can abandon R2 000). If you abandon part of your claim, you cannot claim that part later.

You can claim up to R15 000 for

- repayment of a loan;
- delivery of property;

- rent;
- an acknowledgement of debt, loan, promissory note, cheque debt;
- credit agreement debt in terms of the National Credit Act; and
- actions for damages not exceeding R15 000 when assessed.

## What is excluded?

Claims

- exceeding R15 000,
- against the State,
- based on cession or transfer of rights,
- for defamation, malicious prosecution, wrongful imprisonment, wrongful arrest, seduction, breach of promise to marry damages,
- for dissolution of a marriage,
- affecting status or mental capacity,
- for specific performance without an alternative damages claim (except for rendering an account, transferring property not exceeding R15 000),
- that are not civil claims (e.g. unfair dismissal, insolvency or criminal case), and
- that have prescribed (3 years from the date which it became due has passed).

## How do you claim?

### Steps before claiming:

Contact the opponent (against whom you want to claim) personally and try to resolve your claim. If you cannot –

- write a demand to the opponent (stating the amount and facts of the claim) and give at least 14 days from delivering the demand to satisfy your claim.
- Deliver the demand by hand or registered post to the opponent.
- If not paid within 14 days, go to the clerk of court with proof that the demand was delivered to the opponent.



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### What to take to the clerk:

- Demand and proof (e.g. post office slip) that it was delivered.
- Any contract, documents or other proof of claim.
- Full name, address (home/business addresses, if available), phone number of the opponent.

### What then?

- The clerk will help you (the Plaintiff) to complete a summons and allocate a hearing date and time.
- You can serve the summons on the opponent (the Defendant) personally. You should prove to the Commissioner of the Small Claims Court that you served the summons personally on the Defendant.

or

- You can pay the sheriff and hand the summons to the sheriff near where the Defendant resides. The sheriff serves it.
- Where the sheriff has served, get proof (sheriff's return of service) before the hearing date.
- Keep the contract, document and other proof of your claim.
- Inform witnesses of the hearing date and time, and arrange for them to be in court then.
- Bring a copy of the sheriff's return of service to court.

### After receiving the summons, what can the Defendant do?

- Pay the claim or arrange instalment payment with the consent of the Plaintiff.
- Deliver a written statement, stating his/her defence and the grounds on which it is based (known as 'plea'), to the clerk of the court, and send a copy to the Plaintiff.
- Institute a counterclaim (against the Plaintiff) by delivering a written statement similar to a summons to the clerk of court.
- Attend the court on the arranged date and time, and the court will consider the plea or counterclaim.

### What if the Defendant has paid before the hearing date?

Supply the Defendant with a written receipt and inform the clerk that you have been paid and will not proceed with the case. Preferably file the full settlement document.

### What can you do on the court date?

Appear at court personally on time and stay until excused by the Commissioner. Also ensure that:

- you have all documents on which your claim is based with you (the documents to prove your claim/defence);
- all witnesses attend and that you notify the clerk of their language preferences and whether you need an interpreter; and
- have written proof of service of summons on the opponent, e.g a service affidavit/sheriff's return.

### What happens at the hearing?

Court procedures are informal and simple. The Commissioner will request you to state your case and may require further details.

State the facts shortly. Answer the Commissioner's questions and submit your exhibits.

Cross-examination is not allowed. The Commissioner may permit you to put a few questions to the opponent.

Listen attentively to the opponent and once he/she finishes talking, mention facts which were not presented correctly to the Commissioner.

After the hearing you, your opponent and witnesses, the Commissioner may adjourn the proceedings to consider or may pass judgment immediately. The Commissioner may also indicate that he/she will notify you later of the judgment in writing.

### Not satisfied with the outcome?

The Small Claims Court is not a court of record and proceedings are not recorded mechanically.

If dissatisfied with the outcome of the matter, the court proceedings may be referred to the High Court for review on three grounds only:

- Lack of jurisdiction.
- Interest in the cause/bias/malice/corruption by the Commissioner.
- Gross procedural irregularity.

No appeal may be filed against the finding of the court. Consult your attorney on taking the matter on review to the High Court.

### What happens afterwards?

A Small Claims Court judgment is final. Settle any court order including costs and abide by the decision.

If in your favour: Your opponent may pay you the judgment amount. Give a receipt for the amount.

Where the debtor cannot comply, the court will investigate his/her finances and ability to pay and then make an appropriate order. During the financial investigation, other parties are asked to leave court.

### What if the judgment debtor fails to pay?

If the judgment debtor doesn't pay and you want to enforce, the Magistrate's Court procedure will apply. The clerk may issue a warrant and the sheriff of the court may execute.

Consult your attorney on enforcing the judgment in the Magistrate's Court.

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