



COURTS OF JUDICATURE

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THE REPUBLIC OF UGANDA

THE SMALL CLAIMS PROCEDURE

Background

The Judiciary, in its second Strategic and Development Plan has identified as a priority, reform of the institution's basic operating environment to promote access to justice. A key result area is the reform of legal procedures in order to provide easy and simple methods for adjudicating matters quickly, with a minimum of procedures and in the shortest possible time. As part of this strategy, the judiciary has now embarked on the reform of dispute settlement mechanisms involving civil/commercial disputes under the Small Claims Procedure (SCP). The SCP is aimed at developing a **fast track mechanism** where civil/commercial claims of certain amounts are resolved in a speedy manner using simple, cheaper and less adversarial means.

Following the establishment of the Commercial Court (CC) in the Judiciary, it has been found that the establishment of the **fast track mechanism** for the relatively smaller commercial disputes which affect the majority of Ugandans would give to the litigating public a faster way to resolve small claims. It has been found that such small claims form a majority of cases being handled in the Magistrate's Court.

While the Commercial Court remains a model in the Justice System, the higher jurisdiction often leaves out the relatively smaller commercial disputes which affect the majority of Ugandans who still go through the rather lengthy and slow system of justice in the Magistrate's Court.

The lengthy adversarial system has caused unnecessary backlog of cases which would otherwise be expeditiously disposed of cheaply and promptly thus the call for innovation of the small claims procedure.

The establishment of a **fast track mechanism** intends to give the litigating public a faster way of resolving small claims currently clogged in the Magistrates Courts.

The law

The Judicature (Small Claims Procedure) Rules, 2011; (Statutory Instrument No.25 of 2011) came into force on the 5th day of May, 2011. Thereafter the Rules were published in the Uganda Gazette No.36 Volume CIV of 27th May, 2011.

Following the publications of the Rules in the Official Gazette, the Chief Justice Hon. B.J Odoki accordingly designated six Chief Magistrates Courts as Small Claims Courts. The designated courts are Arua, Lira, Mbale, Mengo, Masaka and Kabale. The Chief Magistrates and Magistrates Grade One in these areas will preside over the Small Claims Courts.

The Judiciary therefore, wishes to inform the general public that the Small Claims Courts will effectively begin functioning on **1st November 2012** in the six designated pilot courts.

What is a small claim?

This is a civil claim whose subject matter value does not exceed Shs. 10,000,000. For example, the small claims procedure (SCP) can be used for matters arising out of the supply of goods, debts and rent.

What is the Jurisdiction of the SCP Court?

- The small claims procedure is applicable to claims not exceeding Shs. 10,000,000 in value.
- Every suit shall be instituted in a court in whose jurisdiction the cause of action wholly or in part arises.
- In case of a rental dispute or claim, a small claim is instituted in a court in whose jurisdiction the property is situated or where the defendant resides.

What matters are excluded from the Jurisdiction of the SCP Court?

- Claims exceeding Shs.10,000,000.
- Claims against the Government.
- Family disputes relating to the management of an estate.
- Contracts of service and contracts for service.
- Suits of defamation, wrongful arrest, wrongful imprisonment, malicious prosecution and seduction.
- Petition for divorce, nullification of marriage or separation of spouses.
- Claims concerning the validity of a will.
- A claim in which specific performance is sought without alternative claim for payment of damages, except in the case of a claim for rendering an account or transferring movable property and disputes arising out of tenancy agreements not exceeding **Shs.10,000,000 in value**.

Who may Institute a claim?

- According to the SCP Rules only a natural person may institute an action in court, but a body corporate may become a party to an action as a defendant.

Against whom may a claim be instituted?

- A suit may be instituted against a natural person or a body corporate.

What amount can be claimed?

- Any amount not exceeding Shs.10,000,000. If your claim exceeds Shs.10,000,000 in value, you can institute a claim for a lesser amount in order to pursue your case under the small claims procedure.

Is one compelled to institute a claim in the SCP court?

- No. You can have a choice to institute your claim in the SCP court or in any other competent court. However, bringing your claim to the general court will take more time since the procedures are more complicated than in the SCP court and you will probably have to hire an advocate to assist you.

Is legal representation allowed?

- No. Legal representation by an advocate is not allowed under SCP. However, at your own cost, you may obtain legal advice from an advocate before using SCP.
- Clerks for the court will assist you **free of charge**.

How do you institute a claim?

- Contact the opposing party (the person against whom you are instituting a claim) with a request to satisfy your claim.

This may be done through a face to face verbal demand or a telephone call.

- If the opposing party does not comply with your verbal request, address a written demand to him or her, setting out the particulars of the facts on which your claim in accordance with schedule 1 of the SCP rules.
- Deliver the demand notice by hand to the opposing party.
- If after 14 days the opposing party does not respond to the demand notice, report in person to the clerk of the SCP at your local court, with your proof that the demand notice was delivered to the opposing party.
- Take along any contract, document or other proof upon which your claim is based or that has a bearing on your claim.
- Take the full name and address (home and business address if known) and telephone contacts of the opposing party.

What are the duties of the clerk of the court?

- She/he will help you to fill the claim form under schedule 2 and will prepare the summons according to schedule.
- She/he will inform you of the hearing date.
- She/he will endorse the claim form and summons and hand them over to you for service on the opposing party.

What do you do with the claim form and summons?

- Serve a copy on the opposing party either by yourself, or by **paying a fee** to a recognized court process server who will serve the summons.
- Be sure to **obtain an acknowledgement of receipt of the claim form and summons** by the opposing party (if you serve it your self), or obtain a copy of the written proof of service by the recognized court process server and file an affidavit of service under schedule 3 within 7 days of service.

What can the opposing party do after receipt of the summons?

- She/he may satisfy the claim directly to the claimant and the claimant should report this to court.
- She/he may deliver a written statement of defence containing the nature of his/her defence and particulars of the grounds on which it is based, to the clerk of the court and send a copy to the claimant.
- She/he may institute a counter-claim by delivering a written statement of defence and counter-claim as specified in schedule 5 containing the nature of his/her defence and particulars of the counter-claim to the clerk of the court.
- She/he must prepare to attend the court hearing whether or not a counter-claim has been filed.

What do you do if the opposing party has satisfied your claim?

- Give him or her a written receipt or acknowledgement of receipt.
- Immediately inform the clerk of the court that your claim has been satisfied and that you will no longer proceed with the case.
- File a copy of the receipt with the clerk of the court.

Who is the presiding officer?

The presiding officer in a SCP may be a Judge, Chief Magistrate or Magistrate Grade 1.

Is there alternative dispute resolution in the SCP court?

- A Judicial officer shall, in any appropriate case, refer the parties to mediation, arbitration or other form of alternative dispute resolution within 14 days before the hearing of a case.
- Where the parties reach an agreement the judicial officer records a consent judgment.
- The judicial officer is the one to decide on the suitability of the case for alternative dispute resolution and will give directions.
- An agreement reached at alternative dispute resolution shall be signed by both parties and endorsed by the court as a consent judgment. It shall then be binding on both parties.
- When parties fail to settle the case through alternative dispute solution, the matter will be heard by the judicial officer.

What do you do the appointed date and time of hearing?

- You must appear in court in person.
- Bring with you all the documents and exhibit upon which your claim or written statement of defence is based.
- Ensure that any witnesses or witnesses in support of your case are present in court.
- Bring your written proof that the opposing party was served the summons, written statement of defence or counterclaim.

What are the procedural steps at the hearing?

- Procedures are informal and simple.
- No advocate or lawyers may appear on your behalf.
- State your case as clearly and consistently as possible, when the judicial officer asks you to do so.
- Submit all your exhibits when you present your case.
- Answer all the questions that the judicial officer asks.
- **Cross examination is not allowed.** It is only the judicial officer who may inquire into any aspect of the evidence that has been adduced in court.
- Listen attentively to the other party's explanations. When she/he has finished talking, bring any facts which you believe were not presented correctly to the judicial officer's attention.
- After the judicial officer has heard from you, the opposing party and any witness present, will pass judgment specified in schedule 7 of the SCP rules immediately after the hearing or within 14 days after hearing the case.

Is the Judgment final?

- The judgment of the court is final, and cannot be appealed against.
- However, an aggrieved party may apply for review on grounds of discovery of new and important matters, clerical errors, fraud or mistake.
- The application for review must be brought within one year from the date of the recovery of new and important matters.
- If the judgment is against you, abide by the decision or the court and fulfill any orders against you.
- If the judgment is in your favor, the opposing party, known as the judgment-debtor, should immediately pay you the amount of the judgment. If she/he does so, give him or her a receipt for the amount immediately.
- If the unsuccessful party cannot comply with the judgment immediately, ask the court to prepare a schedule for payment in installment.

How can the judgment be enforced?

- When the judgment-debtor fails to pay you as ordered, you may enforce the judgment against him/her.
- Ask the clerk of court or legal assistants to explain to you the procedure for execution in the general court.

For further information contact; The Chief Magistrates in the designated areas of Arua, Lira, Mbale, Mengo, Masaka and Kabale, or The Registrar, Planning and Development

P.O. Box 7085, Kampala. Telephone: 0414254856

**Araali Kagoro Muhiirwa
Assistant Public Relations Officer
The Judiciary**