

**THE SMALL CLAIMS PROCEDURE
A PAPER PRESENTED AT COLLINE HOTEL MUKONO**

BY VINCENT EMMY MUGABO, CHIEF MAGISTRATE-MENGO

THE LEGAL FRAMEWORK

The law governing the Small Claims Procedure (SCP) flows from The Constitution of the Republic of Uganda, The Judicature Act and The Judicature (Small Claims Procedure) Rules No.25 of 2011, hereinafter referred to as **the Rules**. The Rules were made by the Rules Committee on the 5th May 2011 in exercise of the powers conferred upon it under **S. 41 of the Judicature Act**. The Rules came into force on 30th May 2011.

WHAT IS A SMALL CLAIM?

Under Rule 3 of the Rules, a small claim means, **“a matter whose subject matter does not exceed ten million shillings”**. It has to be civil or commercial in nature.

Under Rule 5, a small claim does not include:

- a) Family disputes relating to the management of an estate;
- b) A claim against the government;
- c) A suit for defamation, malicious prosecution, wrongful imprisonment, wrongful arrest or seduction;
- d) A petition for divorce, nullification of marriage or separation of spouses;
- e) A case involving the validity of a Will;
- f) A claim in which specific performance is sought without an 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 ten million shillings in value;
- g) Contracts of service and Contracts for service.

ESTABLISHMENT AND APPLICATION OF THE RULES

Rule 4 establishes a procedure known as the Small Claims Procedure. The objects of the Rules are to adjudicate over small claims and to perform any other matters that may be conferred by the Chief Justice. The Chief Justice may by notice published in the gazette designate a Court where the Rules shall apply and under Rule 7, the Chief Justice may assign a Judicial officer to preside over a case in a Small Claims Procedure and carry out any other duties incidental thereto.

As a matter of fact, the Chief Justice has already caused publication in the Uganda Gazette of 20th April, 2012 an instrument by which six (6) Courts have been designated to apply the Rules on pilot basis.

The Courts are Mengo, Masaka, Kabale, Arua, Lira and Mbale. The pilot started on 1st November, 2012. There is a gazette for the roll out of the programme at the following courts:-

1. Nabweru
2. Makindye
3. Nakawa
4. Jinja and
5. Mbarara

PARTIES TO A SMALL CLAIM

Under Rule 8, only a natural person may institute an action in a SCC. A body corporate may only become a party to an action as a defendant. It follows that when a body corporate is sued, it has a right to counterclaim under Rule 13 (b) & (c). Under Rule 5(2)(b), the Government cannot be sued in the SCC.

REPRESENTATION IN A SMALL CLAIMS COURT

Rule 8(2) & (3) provides that a person to an action in a SCC shall appear in person and shall not be represented by an advocate during the proceedings. A body corporate brought as a defendant may appear before the Court by a representative not being an advocate.

INSTITUTION OF A SMALL CLAIM

The SCP is an option and it is not mandatory for a person to institute his/her claim in the SCC. Once a claimant opts to file in the SCC, the claim has to be instituted in a Court within the local limits of whose jurisdiction the cause of action wholly or in part arose. In case of a rental dispute or claim, the claim shall be instituted in a Court within the local limits of whose jurisdiction the property is situated or where the defendant resides (Rule 9).

The SCC shall have a separate Registry at the Court and a separate case register. The Rules have also made provision for Court forms, and parties will be assisted by the Court Clerks to simply fill in the forms during the filing process.

Before instituting a small claim, the claimant has to give a notice of demand to the intended defendant requesting him/her to satisfy the claim within 14 days of receipt of the notice (Rule 10). The form of the notice is specified in Schedule 1 to the Rules. If payment is made within 14 days, that will end the matter.

If payment is not made after the 14 days, the claimant may then file his/her claim by way of a claim form specified in Schedule 2 to the Rules (Rule 11). The claimant has to attach to the claim a copy of the notice of demand, the affidavit of service of the notice, copies of documents supporting the claim, and give any other information relevant for the speedy disposal of the claim.

The Judicial Officer shall then sign the summons specified in Schedule 4 to the Rules and the documents shall be served upon the defendant either by the claimant personally or by a designated process server who shall within 7 days file an affidavit of service specified in Schedule 3 to the Rules.

Upon receipt of the summons, the defendant may satisfy the claim whereby the claimant will give him/her a receipt or written acknowledgement and also inform the Court within 7 days of the satisfaction of the claim. That will then end the matter. If the defendant disputes the claim, he/she will file a Written Statement of Defence (WSD), with a counterclaim where he/she has one. A form is provided for in Schedule 5 of the Rules.

Under Rule 17, where the defendant does not respond to the summons, upon proof of service, the Court shall enter judgment for the claimant. Where the defendant has filed a defense and pleadings are closed, the Court will fix a hearing date and have a notice served upon the parties.

ALTERNATIVE DISPUTE RESOLUTION (ADR) IN A SMALL CLAIM

The SCP has room for ADR. Under Rule 22, within 14 days before the hearing of the case, a Judicial Officer shall in any appropriate case, refer the parties to mediation, arbitration or other forms of ADR. Where the parties reach an agreement, the Judicial Officer shall register a consent judgment. Where the parties fail to settle the matter through ADR, the matter will be heard by the Judicial Officer on the date fixed for hearing.

HEARING AND JUDGMENT

On the date of hearing, the parties shall appear with all their relevant documents, exhibits, witnesses if any, and proof of service upon the opposite party. At the hearing, the Judicial Officer shall request the claimant on oath to state the facts of his/her claim and submit any document or exhibit. The Judicial Officer may then ask the claimant any questions necessary for the proper determination of the case.

The Judicial Officer may also allow the defendant to ask the claimant or his/her witnesses any questions. The Rules however do not permit cross examination. Any questions permitted by the Judicial Officer are for the purpose of facilitating the inquiry into the parties' claim and/or defense.

After the Judicial Officer has heard the Claimant's case on oath, he/she will then ask the defendant to respond on oath to the claim and the defendant may also be asked questions by the Judicial Officer or by the Claimant upon permission of the Judicial Officer.

A Judicial Officer may on oath allow a witness to give evidence for any of the parties as may be necessary for the determination of the case. Only one witness shall be allowed in the Court at the time of giving evidence but a witness who has already testified, may attend the proceedings.

Under Rule 26, if the Court is of the opinion that the case contains complex questions of law or fact which cannot be adjudicated upon under the SCP, the Judicial Officer shall suspend the proceedings and the claimant may file a fresh suit under other procedures provided for by the law.

The Judicial Officer is obliged to hear every case before it expeditiously and without undue regard to technical rules of evidence or procedure but shall be guided by the principles of fairness, impartiality and should adhere to the rules of natural justice.

After hearing the case, the Judicial Officer shall make judgment either immediately or within 14 days after hearing the case (Rule 27). A format of the judgment is provided for in Schedule 7 to the Rules. A very brief judgment is envisaged and the Judicial Officer will only enumerate his/her reasons for the decision but will not indulge into detailed reasoning. The Judicial Officer shall then make out an Order in the form specified in Schedule 8 to the Rules.

The most interesting and valuable feature of the SCP is that a case can normally be heard and judgment delivered within one sitting. That is actually the norm and beauty of the Procedure wherever it is practiced. In South Africa and Zambia, hearing of a case up to delivery of judgment normally takes between 30 minutes and 1 hour. However the duration taken will depend on the complexity of the case but most importantly on the experience and skill or tact of the presiding Judicial Officer.

It is desirable that specific days or time are set aside by the Court to conduct the SCC. This is because the SCP requires a different environment from that of ordinary Civil Procedure and practice.

EXECUTION OF JUDGMENT & ORDERS

Where the Court has granted judgment for payment of money, it has to inquire into the financial position of the judgment debtor and his/her capacity to pay without delay. The Court may then allow the judgment debtor to pay the debt wholly or in such installments as the court may determine.

Where the Judgment Debtor pays the debt, the Judgment Creditor shall issue a receipt acknowledging payment and shall notify the Court in writing within 7 days of receipt of such payment. Where the Judgment Debtor fails to pay, under Rule 31(3), the Judgment Creditor may with the guidance of the Court apply for execution under S. 38 of the CPA and O.22 r.7 of the CPR.

CORRECTION AND REVIEW OF JUDGMENTS

Under the SCP, judgment of the Court is final and cannot be appealed against. However an aggrieved party may apply for review of the judgment by the same Court on grounds of the judgment being passed in his/her absence, for being void, for having been obtained by fraud or as a result of a mistake common to the parties, or on discovery of new and important matters or for latent errors in the judgment.

EXPECTED BENEFITS OF THE SMALL CLAIMS PROCEDURE

- a) The procedure is less formal and user-friendly. It requires no legal representation as technical rules of evidence and procedure are discouraged. A party is expected to walk in with his claim and walk away with his/her judgment within a very short time.
- b) The SCP is cheap. This is because it takes a short time, involves no lengthy pleadings and only Court costs are reimbursed i.e. Court fees and cost of service of process.
- c) The SCP is inquisitorial rather than adversarial. It therefore facilitates quick and more meaningful settlement of claims.
- d) It is a strong tool for case backlog reduction.
- e) It is intended to demystify our complex Court system and legal procedures and to foster better access to justice.
- f) It is expected to boost public confidence in the Courts.

POSSIBLE CHALLENGES

- a) **Service of process:** There is an apparent problem with service of process by a party in person. Yet it is also clear that the facilitation of the Court process servers by the parties will make the Procedure expensive and unaffordable to some of the parties. Service to parties who cannot easily be traced is also a likely problem.
- b) **Court fees:** The Rules are silent about Court fees which means the usual Court fees structure shall apply. This however is likely to make the procedure expensive to the indigent.
- c) **Manipulation of the Rules:** There is a possibility of the parties or their advisors to manipulate the process so that their cases can fit into the SCP when actually they are not meant to go there. That is likely to cause backlog.
- d) **Re- opening of cases by way of review:** The Rules, in Rule 30, give a party up to a maximum period of one year within which he/she is at liberty to seek review of the Court Judgment in instances set out therein. This is likely to be used by parties to derail the SCC process.
- e) **Execution process:** No doubt, this is a likely minefield of problems to the SCC. Our people do not have a Culture of willingly paying their debts even when ordered. Yet it is clear that the application of the CPR in this regard is also likely to bring a sour test to the SCP.

CONCLUSION AND WAY FORWARD

The SCP is a unique intervention in the effort to improve judicial effectiveness and efficiency. The Procedure presents one of the most fundamental contributions towards Judicial Productivity and will also go a long way in bolstering the Judiciary’s Case Backlog Reduction Strategies. My view is that if we embraced the Procedure with the commitment and pro-activity it deserves, its contribution towards access to justice will be unprecedented and the Uganda Judiciary stands to reap enormous benefits. I call upon all Stakeholders to afford the SCP a supportive environment to its unique qualities of informality, user friendliness, cost-effectiveness, timeliness and simplicity.

I thank you so much for listening to me.

God bless you,

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VINCENT EMMY MUGABO
CHIEF MAGISTRATE