

STEP BY STEP GUIDE on how to institute a claim

Small Claims COURT



Cautionary principle for persons using the Small Claim Courts.
If you intend instituting a claim in the Small Claims Court, ensure that the opposing party is able to compensate you should the judgement be in your favour. It is futile to institute a claim against another person who is unemployed and who possesses no property.

STEP 1

Contacting the opposing party

Contact the opposing party (the person against whom you are instituting legal proceedings) either in person, in writing or telephonically and request them to satisfy your claim.



STEP 8

Appeal and review

- No appeal may be filed against the judgement or order of the court.
- The court proceedings may be referred to the Supreme Court for review on three grounds only:
 - Absence of jurisdiction by the court;
 - Interest in the cause, bias, malice or corruption on the part of the commissioner;
 - gross irregularity with regards to the proceedings.

STEP 7

After judgement

In case judgement is given against you

- The judgement of the court is final, unless some ground for review exists.
- Settle any order for costs that the court may make against you. The only possible costs can be those that the opposing party may have had in respect of fees for the sheriff.
- Abide by the decision of court.

In case judgement is given in your favour

- The opposing party must immediately pay any or all the money owed to you according to the judgement if they have the money available. Immediately issue a receipt for any money paid.
- In case the opposing party is unable to comply with the judgement immediately, the court will investigate the respondent's financial position and determine their ability to settle the judgement debt and any costs incurred and make an order for repayment.

If the judgement debtor fails to comply with the judgement or order of the court.

- If the judgement debtor fails to comply with the judgement or order of the Small Claims Court and you want to enforce the judgement or order concerned, the matter is transferred to the Magistrate's Court and the execution procedure, as prescribed by the Magistrate's Courts Act, 1944 (Act 32 of 1944), is followed. It is advisable to make use of legal representation with this procedure.

STEP 2

Letter of demand

If the opposing party does not satisfy your claim, send them a written demand setting out the facts on which the claim is based and the amount you are seeking. Afford the opposing party 14 days from receipt of your letter to settle your claim.

Deliver the written demand by hand or registered post to the opposing party.



What might happen between STEP 5 and STEP 6

- ### POSSIBLE STEPS BY THE OPPOSING PARTY AFTER RECEIPT OF THE SUMMONS
- The respondent may comply with the applicant's claim
 - The respondent may deliver a written statement to the clerk of the court and send a copy to the applicant.
 - The respondent may issue a counterclaim by delivering a written statement that contains the same particulars as those required for a summons to the clerk of the court.
 - If a plea or a counterclaim is instituted, the court proceedings must still be attended.

- ### WHAT DO YOU DO IF THE OPPOSING PARTY HAS SATISFIED YOUR CLAIM?
- Issue a written receipt immediately
 - Inform the clerk of the court that your claim has been settled and that you are no longer proceeding with the case.

STEP 6

Hearing



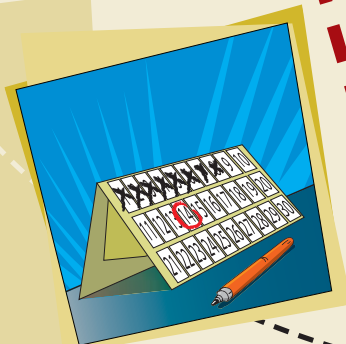
- You must appear in court in person.
- Ensure you have all the relevant documents on which your claim is based with you.
- Ensure that all your witnesses are present.
- Ensure that you have the written proof that the summons was served on the opposing party.
- The court procedures are informal and simple.
- No advocate or attorney may appear on your behalf.
- The commissioner of the court will request you to state your case. State the facts as concisely as possible.
- Answer the questions of the commissioner and submit your exhibits. (document upon which your claim is based)
- No cross-examination between the parties is allowed. With the commissioner's permission you may, however, put a few questions to the opposing party.
- Listen attentively to the opposing party's explanations and inform the commissioner of any facts you believe have not been presented accurately.
- After the commissioner has heard you, your opposing party and any witnesses that may be present, the court can pass judgement. The commissioner may also indicate that judgement will be passed in writing at a later stage.

STEP 3

Going to the clerk of the court

After 14 days report to the clerk of the court with the following documents:

- Proof that the written demand was delivered, such as a post office slip.
- Any contract, document or other proof upon which your claim is based or that has regard thereto.
- The full name and address (home and business addresses, if available) and telephone number of the opposing party.



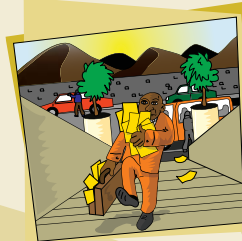
STEP 4

Summons to the opposing party

The clerk of the court will examine your documents and assist you in drawing up the summons.

The clerk of the court will issue the summons and hand it to you to hand to the opposing party.

The clerk of the court will also inform you of the date and time of the hearing of the case.



STEP 5

Delivery of the summons

Serve the summons on the opposing party in person and have them sign for the document.

The plaintiff is required to make copies of the summons, letter of demand and return of service. The copies must be served on the opposing party (otherwise known as the respondent). The plaintiff must deliver the original summons and return of service to the clerk of the court as soon as possible before the hearing to ensure the information is kept in the court file.

IMPORTANT

- This poster merely informs you of the most important steps to be taken with regard to the institution of a case in the small claims court.
- Should you require assistance with any matter at all, the address and telephone number of the clerk of the small claims court can be obtained from your local magistrate's office.

Institute your own claim!