

1. WHO MAY INSTITUTE A CLAIM?

- Anyone except juristic such as companies, corporations or associations.
- A person under the age of 21 must be assisted by a parent or legal guardian.

2. AGAINST WHOM MAY A CLAIM BE INSTITUTED?

- With exception of the state against anyone, including companies, corporations, municipalities or other entities within the area of jurisdiction of the court.

3. WHAT AMOUNT CAN BE CLAIMED

- An amount not exceeding R7000.
- If your claim exceeds R7000 in value, you can institute a claim for a lesser amount to pursue your case in the Small Claims Court.



4. EXAMPLE OF TYPES OF CASES THAT MAY BE REFERRED TO SMALL CLAIMS COURT

- Actions for repayment of monies lent.
- Actions for the delivery of movable or immovable property where the value of the property does not exceed R7000.
- Actions against an occupier of a property within the jurisdiction of the court provided that the value of that right to one occupant does not exceed R7000.
- Actions arising from liquid documents, i.e. an acknowledgement of debt or a mortgage bond where the amount does not exceed R7000.
- Actions arising from Credit Agreement where the amount does not exceed R7000.



5. WHAT MATTERS ARE EXCLUDED FROM THE JURISDICTION OF THE COURT

- Claims exceeding R7000 in value.
- Claims against the State.
- Claims based on the cession or the transfer of rights.
- Claims for damages in the respect of defamation, malicious prosecution, wrongful imprisonment, wrongful arrest, seduction and breach of promise to marry.
- Claims for dissolution of 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 payments of damages, except in a case of claim for rendering an account or transferring movable or immovable property not exceeding R7000 in value.

6. ARE YOU COMPELLED TO INSTITUTE YOUR CASE IN THE SMALL CLAIMS COURT

- Now, you may choose whether you want to institute it in the Small Claims Court or any other competent court.

7. LEGAL REPRESENTATION

- Representation by an attorney or advocate in court is not allowed. You may however, obtain prior advice from an attorney at your own cost.
- Legal assistance and clerks of the Small Claims Court will assist you free of charge

8. LANGUAGE

- Any of the official languages of South Africa may be used in court.
- Arrangements for an interpreter must be made with the clerk of the court beforehand if evidence is to be given in language with one of the parties is not sufficient conversant.

9. HOW TO INSTITUTE A CLAIM

9.1 Steps preceding the institution of a claim

- Contact the opposing party (the person against whom you are instituting legal proceedings) either in person, telephonically or in writing and request them to satisfy your claim.
- 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.
- After a period 14 days has elapsed, you should report in person to the clerk of the court with your proof that the written demand was delivered to the opposing party.

9.2 What to take along to the clerk of the court?

- 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 the telephone number of the opposing party.

9.3 What are the duties of the clerk of the court?

- The Clerk of the court and the legal assistance will examine your document and assist you in drawing up a summons.
- The clerk of the court will inform you about the date and time for hearing of the case.
- The clerk of the court will issue the summons and hand it to you.

9.4 What do you do with the summons?

- You can serve the summons on the opposing party in person. (Try to obtain an acknowledgement of receipt).

OR

- You can hand the summons, together with the sheriff's service fee, to the sheriff in whose district the opposing party resides for service on the opposing party

9.5 What to do then?

- Where the sheriff has undertaken the service, you must obtain prior to the date of hearing a copy of his/her written proof that his/her has done so.
- Keep the contract, document or other proof upon which your claim is based at hand.
- Inform your witnesses of the date and time the case will be heard and arrange for them to be present in court at the appointed date and time.

Small Claims COURT

10. POSSIBLE STEPS BY THE OPPOSING PARTY AFTER RECEIPT OF THE SUMMONS

- He/She may settle the Plaintiff's claim.
- He/She may deliver a written statement (plea), 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 thereof to the Plaintiff.
- He/she may file a counterclaim by delivering a written statement which contains the same particulars as those required for summons to the clerk of the court.
- Even if a plea or a counterclaim is filed, the court proceedings must still be attended.

11. WHAT DO YOU DO IF THE OPPOSING PARTY HAS SATISFIED YOUR CLAIM IN THE MEANTIME

- Supply him/her with a receipt.
- Inform the clerk of the court immediately that your claim has been settled and that you will no longer proceed with the case.

12. WHAT HAPPENS IF THE OPPOSING PARTY DOES NOT SATISFY YOUR CLAIM

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

- You must appear in court in person.
- Ensure that you have with you all the documents upon your claim is based
- Ensure that all your witnesses are present.
- Ensure that you have the written proof that the summons was served on the opposing party

12.2 The hearing

- The court procedures are informal and simple.
- Ensure that 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
- 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 (documents 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, the opposing party and witnesses that might have been called, the court can deliver judgment. The Commissioner may also indicate that judgment will be delivered in writing at a later stage.

12.3 Appeal or review

- No appeal may be filled against the judgment or order of the court
- The court proceedings may be referred to the Supreme Court for review on three grounds only;
- Absence of jurisdiction.
- Interest in the cause, bias, malice or corruption on the part of the Commissioner and
- Gross irregularity with regard to the proceedings.

12.4 Steps following judgment

12.4.1 In case judgment is given against you

- The judgment of the court is final, unless some ground for reviews 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 incurred are the fees for the sheriff.
- Abide by the decision of the court.

12.4.2 In case judgment is given in your favour

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

12.4.3 If the judgment debtor fails to comply with the judgment or order of court

If the judgment debtor fails to comply with the judgment or order of the Small Claims Court and you want to enforce the judgment debt or order given, the matter is transferred to the Magistrate's Court and the execution procedure as prescribed by the Magistrate's Court Act no 32 of 1994 is followed. It is advisable to make use of the legal representation with this procedure.



Institute your own claim!

Important

- This pamphlet 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.

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