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A brief overview of Small Claims Court procedures

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The Small Claims Court ("SCC")

The Small Claims Court ("SCC") was established by the Small Claims Court Act 61 of 1984 ("Act") as a means of improving access to justice by providing informal court processes through which members of the public could settle small civil claims. The SCC aims to resolve civil claims speedily, inexpensively and informally. For this reason, no legal representation is allowed, and claimants (called "plaintiffs") are required to institute their own claims. However, claimants may seek guidance regarding any procedures of the SCC from the clerk of the court, an attorney or a legal advice office.

In terms of the Act only a natural person may institute action as a plaintiff in the SCC. A plaintiff may institute action against both natural and/or juristic persons; meaning that a juristic person can only participate in SCC claims as a defendant. Notably, the Act specifically states that no action may be instituted against the State in the SCC.

A plaintiff is required to institute a claim against a defendant in the SCC that is either in the area: where the defendant resides, carries on business or is employed; where the defendant's business premises are situated; where the whole cause of action (or dispute) arose; or where an immovable property is situated (if the dispute relates to that property).

SCC jurisdiction

The SCC has jurisdiction to deal with claims of up to R20 000.00 (as at August 2021). The nature of claims that may be dealt with by the SCC are the following –

- actions for the delivery or transfer of any movable or immovable property not exceeding R20 000.00 in value;
- actions for ejectment against the occupier of any premises or land within the court's area of jurisdiction, provided that where the right of occupation of the premises or land is in dispute between the parties, that right does not exceed R20 000.00 in value;
- actions based on or arising out of a liquid document or a mortgage bond, where the claim does not exceed R20 000.00;
- actions based on or arising out of a credit agreement, as defined in the National Credit Act 34 of 2005, where the claim or value of the property in dispute does not exceed R20 000.00;
- actions other than those already mentioned above where the value of the claim does not exceed R20 000.00; and
- actions for counterclaims not exceeding R20 000.00.

Excluded from the jurisdiction of the SCC

The following types of matters are specifically excluded from the jurisdiction of the SCC:

- matters in which the dissolution of a marriage or customary union are sought;
- matters concerning the validity or interpretation of a will;
- matters concerning the status of a person's mental capacity;

- claims for specific performance without an alternative claim for payment of damages, except in the case of –
- the rendering of an account for a claim not exceeding R20 000.00;
- the delivery or transfer of any movable or immovable property not exceeding R20 000.00 in value;
- matters in which a decree of perpetual silence is sought;
- claims for damages relating to: defamation, malicious prosecution, wrongful arrest, seduction, and/or breach of promise to marry; and
- matters in which an interdict is sought.

Before instituting a claim, a plaintiff is required to address a letter of demand to the defendant, which shall contain particulars of the facts upon which the claim is based and the amount sought, and must give the defendant at least 14 days to satisfy the plaintiff's claim. The letter of demand must be delivered to the defendant by hand or registered mail. There must be proof of delivery either in the form of an affidavit, if delivered by hand; or registered post receipt, if delivered by registered mail.

If 14 days have passed and the claim is not satisfied, the plaintiff may institute a claim against the defendant by preparing a summons – a legal document outlining the nature of, and basis for the claim – and delivering it to the defendant. Importantly, a plaintiff must institute their monetary claim within 3 years from the date on which the debt arose, failing which their claim may be deemed to have lapsed in terms of the Prescription Act 68 of 1969.

There is no requirement for the defendant to deliver a written response to the summons, but if they choose to do so, they may deliver a written statement (before the hearing) in which they set out the nature of their defence and the particulars of the grounds on which it is based.

Once the letter of demand and summons have been delivered to the defendant and the clerk is satisfied that there is adequate proof of delivery, the clerk will allocate a date and time for the hearing of the matter, which will be communicated to the parties.

The parties are then required to attend the hearing on the allocated date to appear before a commissioner (the presiding officer in the SCC) who will hear the versions of the parties and their witnesses, if any, and consider their evidence before granting judgment. The SCC differs from other courts in that the commissioner actively plays an inquisitorial role to ascertain the relevant facts from the parties.

A judgment granted by a commissioner is final and cannot be appealed. It may, however, be reviewed in the High Court in limited circumstances.

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Read more about the claims for non-payment in terms of Section 73A of The Basic Conditions of Employment Act.



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