

- 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 once he has finished talking, bring to the attention of the commissioner any facts which in your opinion he has not presented correctly.
- 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 he will notify you of his judgement in writing at a later stage.)

13. 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 regard to the proceedings.

14. Steps following 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

- Your opposing party will immediately pay you the amount of the judgement, if he has the money available. Give him a receipt for the amount immediately.
- In case your opposing party cannot comply with the judgement forthwith, the court will investigate his financial position and his ability to settle his judgement debt and costs and make an order for payment thereof.

If the judgment debtor fails to comply with the judgment 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.

15. 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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 Private Bag X81, Pretoria, 0001



Small Claims COURT



Institute your own claim!

1. Who may institute a claim?

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

2. Against whom may a claim be instituted?

- With the 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 R7 000.
- If your claim exceeds R7 000 in value, you can institute a claim for a lesser amount in order to pursue your case in the small claims court.

4. What matters are excluded from the jurisdiction of the court?

- Claims exceeding R7 000 in value.
- Claims against the State.
- Claims based on the cession or the transfer of rights.
- Claims for damages in respect of defamation, malicious prosecution, wrongful imprisonment, wrongful arrest, seduction and breach of promise to marry.
- Claims for the dissolution of a marriage.
- Claims concerning the validity of a will.
- Claims concerning the status of a person in respect of his mental capacity.
- Claims 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 or immovable property not exceeding R7 000 in value.

5. Are you compelled to institute your case in the small claims court?

No, you may choose whether you want to institute it in the small claims court or any other competent court.

6. Legal representation and assistance in the preparation of your claim.

- Representation by an attorney or advocate is not allowed. You may, however, at your own cost obtain prior advice from an attorney.
- Legal assistants and clerks of the small claims courts will assist you free of charge.

7. Interpreters

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

8. How to institute a claim

Steps preceding the institution of a claim

- Contact the opposing party (the person against whom you are instituting legal proceedings) in person, by telephone or in writing, and request him so satisfy your claim.
- If the opposing party does not comply with your request, address a written demand to him (setting out the particulars of the facts on which the claim is based, and the amount of the claim) affording him a minimum of 14 days from the date of receipt of your written demand to satisfy your claim.
- Deliver the demand by hand or by registered post to the opposing party (the person against whom you are instituting a claim).
- After a lapse of a period of 14 days, report in person to the clerk of the court with your proof that the demand was delivered to the opposing party.

What to take along to the clerk of the court

- Your written demand and the proof (e.g. post office slip) that it was delivered.
- 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.

What are the duties of the clerk of the court?

- He and the legal assistant will examine your documents and assist you in drawing up a simple summons.
- He will inform you of a date and time for the hearing of the case.
- He will issue the summons and hand it to you.

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 fees, to the sheriff in whose district the opposing party resides for service on the opposing party.

What do you do then?

- Where the sheriff has undertaken the service, you must obtain prior to the date of hearing a copy of his written proof that he 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.

9. Possible steps by the opposing party after receipt of the summons.

- He may comply with the applicant's claim.
- He may deliver a written statement, containing the nature of his defence and particulars of the grounds on which it is based, to the clerk of the court and send a copy thereof to the applicant.
- He may institute a counterclaim by delivering a written statement which 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.

10. What do you do if the opposing party has satisfied your claim in the meantime?

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

11. 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 which 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. The hearing

- 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.