

QUICKLAW

ANSWERS YOUR QUESTIONS

SMALL CLAIMS COURT

Is it really better to use the Small Claims Court?

Yes. The Small Claims Court is **CHEAPER** and **FASTER** than other courts and you can go to court yourself without an attorney.

- The Small Claims Court is located in Magistrate's Courts around the country.
- It deals with claims of amounts of R7000,00 or less.
- It deals with disputes between individuals, for example claiming money from someone who owes you money
- It is convenient because the court sessions start at 4:30 pm and so it does not interfere with your working hours.

Does the Small Claims Court deal with all types of problems?

No, it does not deal with:

- Claims against the government,
- Claims based on the transfer of rights, eg. the transfer of property,
- Claims for damages concerning defamation, malicious prosecution, wrongful imprisonment or arrest, seduction and breach of promise to marry,
- Divorce,
- Interpretation and validity of wills,
- Claims concerning a person's mental capacity,
- Claims where you want another to perform,
- Claims regarding interdicts, eg. a domestic violence interdict.

What is the procedure for bringing a case before the Small Claims Court?

- You'll be given a form to complete (a letter of demand).
- Send the LETTER OF DEMAND to the person you want to sue.
- Keep a copy of the letter of demand.
- The letter must either be delivered personally (the person must sign that they have received the letter) or it must be sent by registered mail (you must keep the

registered mail slip as proof).

- The LETTER OF DEMAND must contain the following:
 1. A clear description of your claim,
 2. Other details of the claim, for example: a copy of an invoice or contract,
 3. An instruction to the other party to settle the claim within 14 days from the date of the letter or you will institute legal action against them.
- If your claim has not been settled within 14 work days after delivery of the letter of demand, you can go to the Small Claims Court to have the Summons issued.
- You must go in person to the Clerk of the Court and show them a copy of the letter of demand and proof of delivery.
- Both you and the Clerk of the Court will then sign the Summons.
- The Sheriff of the Court will serve a copy of the Summons on the other person.
- Pay for the Sheriff's services, which costs approximately R80,00. This amount can be claimed back from the other party.
- Keep the original Summons.
- If the Sheriff manages to serve the Summons on the other person, the Sheriff will issue you with a "return of service."
- Keep the "return of service" as proof of service of the summons.
- Once the Summons has been served on the other person they should appear in court on the date and at the time as set out in the Summons.

What will happen at the court case?

- Both you ("the Plaintiff") and the other person ("the Defendant") must appear in court in person on the date and at the time as set out in the Summons.
- Both of you must have all your documents regarding the claim with you.
- All witnesses who you would like to call must be present.
- You must have written proof that the Summons was served on the Defendant so remember to take the sheriff's "return of service" with you.
- Both of you should report to the Clerk of the Court at least half an hour before the appointed session of the court.
- The court procedures are informal and simple.
- The Commissioner will request that you state your case as simply as possible.
- The Commissioner will then ask questions that must be answered directly.
- At this point you may hand in documents and call in witnesses to testify to the claim.
- After the Commissioner has heard your case the Commissioner repeats the whole procedure with the Defendant.

- After the Commissioner has heard the case and has considered all the other evidence he or she will make a judgment.

What kind of judgment will the Commissioner make?

- Judgment in favour of the Plaintiff (the person that lodged the claim).
- Judgment in favour of the Defendant (the person defending the claim) or
- Any judgment that the Commissioner thinks is fair

If the judgment is made in my favour how do I make sure that I receive my money?

- The Defendant must pay the money within 10 days.
- The money must be paid directly to you and not to the court.
- If the Defendant cannot pay the amount immediately then you can agree that the Defendant pays you in instalments.
- If the Defendant fails to pay you the money within 10 days or fails to pay you the money in instalments you should go to the nearest Magistrate's Court where the Defendant lives or works.
- Go to the Clerk of the Court and ask them to assist you with a Warrant of Execution.
- A Warrant of Execution is a document telling the Sheriff of the Court to take possession of the Defendant's movable property, eg. furniture and in some instances the immovable property, eg. a house.
- Give the Clerk of the Court a certified copy of the court order.
- The court will issue a Warrant of Execution against the Defendant.
- Ask the Clerk of the Court if you should take the warrant to the Sheriff or if the court will send the warrant to the Sheriff.
- The Sheriff will attach the movables and sell them. After deductions of the legal expenses, the balance will be paid to you.
- This process can take approximately 3 weeks but it differs from court to court.

KEY:

1. COMMISSIONER - Listens to both parties and makes a decision.
2. DEFAMATION - Communication to third parties of false statements about a person that injures that person's reputation.
3. DEFENDANT - The party who is sued in a court of law
4. MALICIOUS PROSECUTION - Hamful intention to take legal action against you in a criminal case.
5. INTERDICT - To prohibit someone from committing certain acts.
6. SHERIFF - A law-enforcement officer
7. PLAINTIFF - The party that brings an action in a court of law