



THE JUDICIARY



Frequently asked **QUESTIONS**

ON THE OPERATIONS AND PROCEDURE

Q. What is a Small Claims Court?

A Small Claims Court is a subordinate court established under section 4 of the Small Claims Court Act No. 2 of 2016 and has jurisdiction over civil claims whose subject matter does not exceed Kenya Shillings one million (Ksh 1,000,000).

Q. What is the jurisdiction of the Small Claims Court?

As per the provisions of Section 12(1) of the Small Claims Act, 2016, the court has jurisdiction over civil claims relating to;

- a) contract for sale and supply of goods and services,*
- b) contract relating to money held and received,*
- c) liability in tort in respect to loss and damage caused to any property or for movable property,*
- d) compensation for personal injuries and set off and counter claim under any contract; whose subject matter does not exceed Ksh 1 million.*

Q. What matters are excluded from the jurisdiction of the Small Claims Court?

All other civil claims not enumerated under Section 12(1) of the Small Claims Act are excluded. Some of these may include; claims whose cause of action is founded upon defamation, libel, slander, malicious prosecution, divorce or dispute over a title to or possession of land or a matter concerning employment and labour relations etc.

Q. Who may institute a claim?

A natural person or persons as well as body corporates may institute an action in court. A person lodging a claim at the Small Claims Court is referred to as a claimant whilst a person being sued is referred to as the respondent.

Q. How do I institute a claim at the Small Claims Court?

As per the provision of section 23 of the Small Claims Court Act, all claims filed in court should be by way of statement of claim in the prescribed form SCC 1. The claim form is available on the Judiciary website www.judiciary.go.ke. The claimant may at the time of filing attach any supporting documents and statements.

Q. Do you pay any fees for commercial cases filed at the Small Claims Court?

No. As per the Legal Notice No. 59 issued under the Public Finance Management Act, the Cabinet Secretary for National Treasury and Planning waived court fees for commercial cases whose monetary value does not exceed Ksh 1 million for a period of 2 years from 1st April 2020. Other civil cases filed in the court may attract a nominal filing fee charged at not more than Ksh 1,000.

Q. Do I need legal representation to prosecute my claim at the Small Claims Court?

A claimant may choose to prosecute his/ her claim in person or through a representative who may be an advocate.

Q. Do I need to serve the respondent with a copy of the filed statement of claim?

Yes. To enable the respondent respond to the claim, a claimant is required to serve the respondent with a copy of the statement of claim as well as any supporting documents in support of the claim and file a certificate of service to that effect.

Q. What does the respondent do after receipt of the statement of claim?

Within 15 days of service of the claim by the claimant, the respondent may;

- Satisfy the claim directly to the claimant and the claimant should report this to court,*
- Admit whole or any part of the claim and the Court shall record the admission as an order of the Court in favour of the claimant. Where there is part admission, the court may proceed to determine any part of the claim that is denied.*

- Deny, claim a set off or a counter-claim, apply to join a 3rd party or request the court to transfer the proceedings to another court as per the provisions of rule 7 of the SCC rules. The response to the claim is filed in Form SCC 2 which is available on the Judiciary website www.judiciary.go.ke

Q. What happens where the respondent upon being served fails to respond to the statement of claim?

Where the respondent fails to respond to the claim within the prescribed period, the court being satisfied that the respondent has been duly served, may, on its own motion or on the claimant's application enter judgement for the claimant and order the relief sought in the statement of claim.

Q. How long does my matter take to be heard at the Small Claims Court?

As per the provisions of section 34 of the Small Claims Court Act, all matters should be heard and determined within 60 days of filing the claim. To this end, adjournments are highly discouraged and limited to a maximum of 3 given only under exceptional and unforeseen circumstances.

Q. Can I file a claim a matter at the Small Claims Court if I reside outside the set local limits of the court?

A claimant may file a matter at the Small Claims Court if; he/ she ordinarily resides or carries on business within the local limits of the jurisdiction of the court, the cause of action arose or was intended to be performed within the local limits of the court's jurisdiction, the subject matter is situated within the local limits of the court's jurisdiction or if the respondent(s) resides within the local limits of the jurisdiction of the court.

Q. Can I file a matter at the Small Claims Court if similar proceedings are pending before another Court?

No. However, a party may apply to withdraw a matter before another court and have it filed at the Small Claims Court or the matter may be transferred by a higher court to the Small Claims Court.

Q. How soon after hearing can I get Judgement on my matter?

In line with Section 34 (2) of the Small Claims Court Act, all judgements shall be delivered on the same day and in any event, not later than 3 days from the date of hearing.

Q. Are costs and interest excluded from the limited award of Kshs. 1,000,000/=?

Yes, the Court may award costs and interest to the successful party which is excluded from the limited award of 1million.

Q. Is there provision for Alternative Dispute Resolution (ADR) mechanisms in the Small Claims Court?

Yes, under section 18 of the Small Claims Court Act, the Court may with the consent of the parties adopt ADR mechanisms and the agreement reached by the parties shall be recorded as a binding order of the Court.

Q. What redress does a party aggrieved by the decision of the Court have?

A person aggrieved by the decision or an order of the Court may appeal that decision or order to the High Court on matters of law and such appeal shall be final.

Q. What is the official language of the court?

The official language of the court is English, Kiswahili or any other appropriate language. With a view of achieving enhanced access to justice, the court will facilitate the use by parties of indigenous languages, braille and other forms of communication accessible to persons with disability.

Q. Where is the Small Claims Court located?

The Small Claims Court is currently located at Milimani Commercial Court Building. There are plans to roll out the court to other parts of the country in the near future.

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FOR FURTHER ENQUIRIES, PLEASE CONTACT:

SMALL CLAIMS COURT

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