

CHARTERED ACCOUNTANTS

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MoneyTalk

Small Claims Courts - How do they Work?

Picture the following scenarios: you sold your old motor vehicle for R7000 and have not received payment from the purchaser, or you have paid someone to do work for you, and they did not do it properly. In both these situations - you have a claim - yet it's not worth issuing a summons and incurring the costs of lawyers - but you still want to obtain what's due to you.....This article describes briefly how the Small Claims Court (SCC) works and how it is designed so as to be accessible to you, the "person in the street".

WHEN CAN YOU USE THE SMALL CLAIMS COURT?

You can only use the SCC for certain "small" civil claims - with a value up to R7000. If your claim is more than R7000 you could give up part of your claim so that it is R7000 or less. However, SCC's cannot hear certain cases, (even if they are R7000 or less), such as:

Claims concerning the status of a person in respect of his/her mental capacity

Wrongful imprisonment & wrongful arrest

Malicious prosecution

Defamation

Divorce

Matters concerning a will

Seduction

Breach of promise to marry

Claims based on the cession or transfer of rights

Note: you may choose whether you wish to use the SCC as the forum to recover your claim, and may wish to use another court to do so (even if your claim is worth less than R7000).... the choice is yours.

PARTIES WHO CAN CLAIM / BE SUED IN THE SCC:

PLAINTIFF (who can bring a claim)	OPPONENT (who you can bring a claim against)
All natural persons	All natural persons
A person under the age of 18 must be assisted by his/her parent or legal guardian	Town Councils (as long as they are within the Jurisdiction of the Court)
Not the State	Companies
Not companies	CC's
Not CC's	Associations
Not associations	Municipalities
	NOT the State

COSTS

You will just incur nominal costs of summons and the sheriff of the court. (You may even wish to deliver your letter of demand and/or summons personally - in which case the costs for the registered mail and/or Sheriff will not be applicable). Legal assistants and clerks of the SCC will assist you free of charge.

COMMISSIONER

There is no Magistrate or Judge. The Commissioner is usually a practicing attorney doing "Pro Bono" work on a volunteer basis.

You cannot use an attorney or advocate at the hearing- but you can get advice from one to assist you with preparing your case (at your additional cost). On the day of the hearing, however, you will need to appear before the Commissioner on your own and speak for yourself - without the assistance of your attorney or advocate.

HOURS

Some SCC's sit in the evenings - which is helpful as many claimants and/or opposing party(ies) will thus not lose out on working time.



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SUMMARY OF THE STEPS TO TAKE WHEN INSTITUTING A CLAIM IN THE SCC:

Step 1: Contact your opponent by telephone and letter
Contact the other person (your opponent) either by telephone or in writing BEFORE you take further steps. Try and resolve the matter this way. If your opponent does not answer your request, then take further steps, as follows:

Step 2: Send a SCC formal Letter of Demand

Send your opponent an official SCC letter of demand, stating that you intend to take the matter to the SCC. A template of this letter is available at your nearest SCC. It must be delivered personally or by registered mail to your opponent. Whichever way it is delivered - you need to obtain **proof** of its delivery and receipt by your opponent (e.g a registered mail slip). The opponent then has **14 days** in which to reply, failing which you may issue a summons.

Step 3: The summons

The letter of demand and proof that it was sent must be taken to the **Clerk of the Small Claims Court**, who will then assist you to issue a summons. You may then take the summons to your opponent and deliver it personally at his or her home or place of work OR you can give it to the Sheriff of the Court to take to your opponent. The summons gives your opponent **10 days** to pay the claim. It also mentions a date after the 10 days when she or he must appear in the SCC if the claim is not settled.

Step 4: A Statement of Defence

Your opponent may either hand in a **Statement of Defence** to the Clerk, or may decide only to mention his or her defence at the court appearance.

Step 5: The trial

At the trial, the Commissioner is the person who will make the decisions and will ask all the questions. The claimant may only ask the opponent questions when the Commissioner says that (s)he can.

Witnesses may be called to support each party's case and the Commissioner will question them as well. Bring any documents involved in the case, for example, an invoice, receipt, photographs, and statements by other people - which could be used as proof.

Step 6: What happens if your opponent does not come to court?

The court can still make its decision even if the opponent is not there. The Commissioner can give a default judgment. The same methods for enforcing a judgment can be used as in an ordinary civil case.

Step 7: The Commissioner gives judgment

After all the evidence has been heard, the Commissioner will decide on a 'balance of probabilities' who is right, and judgment will be given.

Step 8: Steps following judgment

The judgment of the court is final, unless there are grounds for review. If judgment is given against you, you must do whatever the court says you must do. You must pay any costs that the court makes against you. If you are the plaintiff/claimant, these costs can only be for fees for the messenger of the court.

If judgment is given against your opponent, he or she must immediately pay you whatever the court says.

Step 9: Enforcing a Small Claims Court judgment

The same method of enforcing a judgment can be used in a Small Claims Court case as in an ordinary civil case.

Appeals and reviews from SCC's

You cannot take the decision of the Commissioner on appeal.

You can however take the Commissioner's decision **on review**, if you think that the Commissioner was biased or did not give each side a fair hearing - e.g (s)he did not allow one of the parties to tell his/her story, or if the court did not have jurisdiction or if the proper procedure was not followed in the Court.

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