CIVIL AND DELICTUAL CLAIMS

Small Claims Court

Read this QuickLaw guide to find information about the Small Claims Court (SCC) in South Africa, and learn about the procedure for instituting and defending a claim in the SCC.

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For all your Small Claims Court answers, simply follow our guide below:

1. What is the Small Claims Court (“SCC”)?
2. Does the SCC deal with all types of claims?
3. What is the procedure for instituting and defending a claim in the SCC?
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1. What is the Small Claims Court (“SCC”)?

- It is a court that allows a person (“plaintiff”) to institute a claim of R30 000 or less. No legal representation by an attorney or advocate is allowed in the SCC.
- If a plaintiff’s claim exceeds R30 000, part of the claim may be abandoned. This means that a plaintiff may institute a claim for a lesser amount in order to continue with his/her claim in the SCC, but will not be able to institute a claim at a later stage for the amount s/he abandoned.
- The SCC is usually located in the local Magistrate’s Court.

2. Does the SCC deal with all types of claims?

- No, the SCC does NOT deal with claims:
    - exceeding R30 000 in value;
    - against the State (including municipalities);
    - of a criminal nature;

- for damages in respect of defamation, wrongful imprisonment, wrongful arrest, and seduction;
- for dissolution of a marriage, customary marriage or civil union (divorce);
- concerning the validity and interpretation of a Will;
- concerning the status of a person in respect of their mental capacity;
- regarding interdicts, for example, a domestic violence interdict; or
- 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, delivering or transferring of property.

3. What is the procedure for instituting and defending a claim in the SCC?

- The clerk of the SCC ("clerk") will assist a person with the procedure to institute and defend a claim, free of charge.
- Before instituting a claim:
    - The clerk will provide the plaintiff with a letter of demand to complete. The letter of demand must contain a clear description of the plaintiff's claim against another person ("defendant").
    - The plaintiff must address the letter of demand to the defendant requesting him/her to settle his/her claim within 14 days and that legal action will be instituted if s/he fails to settle the claim.
    - The letter of demand must be delivered by hand or registered post, proof of delivery must be kept by the plaintiff (registered post receipt, delivery receipt, or delivery affidavit) together with a copy of the letter of demand.
- Instituting a claim:
    - If the defendant has failed to settle the plaintiff's claim within 14 days, the plaintiff must report to the clerk who will assist him/her to complete and issue a summons. The letter of demand, proof of its delivery, copies of any relevant document/s (contract or invoice) in support of the plaintiff's claim, and the full details of the defendant (full name, address and contact details) must be shown to the clerk.
    - The clerk will inform the plaintiff of the date and time of the hearing.

    - A copy of the issued summons must be served (delivered) on the defendant in person or by a sheriff (service fee payable). Written proof of its service must be filed with the clerk, together with the issued summons before the hearing date.

- Defending a claim:
    - The defendant may settle the plaintiff's claim. If the defendant settles the claim, the plaintiff must provide him/her with a receipt and inform the clerk that the claim has been settled.
    - If the defendant does not settle the plaintiff's claim, s/he may deliver a written statement and/or counterclaim to the plaintiff and the clerk before the hearing date. The statement and/or counterclaim must contain the nature of his/her defence and/or particulars of his/her counterclaim.

- Hearing of the claim:
    - Both the plaintiff and the defendant ("parties") together with their witnesses, if any, must be present in the SCC on the date and time of the hearing. Failure to appear in the SCC on the date and time indicated on the summons or by the commissioner may result in the claim being dismissed or a judgment being granted.
    - Both parties must have their original documentation regarding the claim or defence with them at the SCC.
    - Both parties will be given the opportunity to hand in their documents, call their witnesses, and state their cases and the commissioner will then ask the parties questions.
    - After the commissioner has heard both sides of the case and considered all the evidence, s/he will make judgment in favour of the plaintiff or the defendant.

- After judgment:
    - After judgment has been given, it must be complied with within 10 days or alternative arrangements must be made to settle the claim or counterclaim (for example, payment in instalments).
    - Failure to settle the judgment will result in a warrant of execution being issued in the Magistrate's Court. The warrant of execution will be sent to the sheriff, who will attach the property of the person owing, in order to sell the property at an execution auction.

4. How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest LegalWise Branch , call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or visit our join now page.

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