

CHAPTER 7:12

SMALL CLAIMS COURTS ACT

Acts 20/1992, 8/1996, 22/2001 (s. 4); 14/2002 (s. 10); SIs 136/1996, 158/2000, 30/2002, 159/2004, 151/2007, 126/2008, 58/2009.

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AN ACT to establish small claims courts for the adjudication of small civil claims; to make provision for the jurisdiction, powers and procedure of small claims courts and for the making of rules in connection therewith; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 19th February, 1993.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Small Claims Courts Act [*Chapter 7:12*].

2 Interpretation

In this Act—

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the

President may, from time to time, assign the administration of this Act;

“presiding officer” means a presiding officer referred to in subsection (1) of section *seven*;

“province” means a province created in terms of section 3 of the Magistrates Court Act [*Chapter 7:10*];

“rules of court” means rules of court made in terms of section *thirty-one*;

“small claims court” means a small claims court established or designated in terms of section *three*.

PART II

ESTABLISHMENT AND NATURE OF SMALL CLAIMS COURTS

3 Establishment of small claims courts

(1) The Minister may, by statutory instrument— (*a*)
establish a small claims court for any province; or

(*b*) designate a magistrates court for any province to be a small claims court for that province.

(2) Where the Minister has established or designated a small claims court in terms of subsection (1), he shall, by statutory instrument, specify places within the province concerned where the small claims court may sit.

4 Nature of small claims courts and force of process

(1) Subject to subsection (2), a small claims court shall not be a court of record.

(2) Every presiding officer shall—

(*a*) record or cause to be recorded, and shall sign, every judgment or order of court made or given by him;
and

(*b*) keep such other records relating to the proceedings of his court as may be required in rules of court.

(3) The process of every small claims court shall be of force throughout Zimbabwe.

5 Small claims courts open to public

Subject to the Courts and Adjudicating Authorities (Publicity Restriction) Act [*Chapter 7:04*], the proceedings of every small claims court shall be open to the public.

6 Parties who may appear

(1) Only a natural person may institute proceedings in a small claims court and a corporate body or association of persons may be a party to proceedings therein only as defendant or respondent:

Provided that a corporate body or association of persons that is a defendant or respondent in any proceedings in a small claims court may bring a counterclaim against the person who instituted the proceedings.

(2) A party to any proceedings in a small claims court shall appear in person and shall not be represented or assisted by any other person: Provided that—

- (i) a minor or any other person under a legal disability may be represented by his guardian or legal representative;
- (ii) a corporate body or association of persons may be represented by a director, member or employee.

PART III

OFFICERS OF SMALL CLAIMS COURTS

7 Presiding officers

- (1) A small claims court shall be presided over by a presiding officer, who shall be—
 - (a) a person appointed, subject to this section, by the Minister, in the case of a small claims court established in terms of paragraph (a) of subsection (1) of section *three*; or
 - (b) a magistrate for the province concerned or a person appointed, subject to this section, by the Minister, in the case of a magistrates court which has been designated as a small claims court in terms of paragraph (b) of subsection (1) of section *three*.
- (2) No person shall be qualified to be appointed as a presiding officer unless
 - (a) he is or has been
 - (i) a magistrate in Zimbabwe; or
 - (ii) registered as a legal practitioner in Zimbabwe; or
 - (b) possesses such other qualifications or experience as, in the Minister's opinion, renders him suitable for appointment as a presiding officer.

[Subsection as substituted by s. 10 of Act 14/2002.]

- (3) A presiding officer who is not a magistrate shall hold office for such period, not exceeding three years, and on such terms and conditions as the Minister may fix and shall be eligible for reappointment.
- (4) A presiding officer who is not a magistrate shall be entitled to such remuneration and such allowances as the Minister, after consultation with the Minister responsible for finance, may fix.
- (5) A presiding officer who is not a magistrate may, by notice in writing to the Minister, resign his office at any time.
- (6) The Minister may withdraw the appointment of a presiding officer, other than a magistrate, at any time.

8 Other officers

- (1) Subject to subsection (2), the Public Service Commission may, at the request of the Minister, appoint any member of the Public Service to be—
 - (a) a clerk of a small claims court; or (b) a legal assistant in a small claims court.
- (2) The clerk of a magistrates court that has been designated as a small claims court shall be the clerk of the small claims court.
- (3) A messenger or deputy messenger appointed in terms of the Magistrates Court Act [*Chapter 7:10*] to serve process in civil cases to which customary law applies within the province for which a small claims court has been established shall act as a messenger for that small claims court.
- (4) Officers of small claims courts referred to in this section shall perform such functions as may be assigned to them in this Act or in rules of court.

PART IV

JURISDICTION OF SMALL CLAIMS COURTS

9 Area of jurisdiction

The area of jurisdiction of a small claims court shall be the province for which it is established.

10 Jurisdiction in respect of persons and causes of action

- (1) Subject to this Act, a small claims court shall have jurisdiction in respect of—
 - (a) any person who resides or carries on business or is employed within its province;
 - (b) any person in respect of any cause of action that arose wholly within its province;
 - (c) any person, whether or not he resides, carries on business or is employed within the province, if he appears before the court and does not object to its jurisdiction;
 - (d) any person in respect of any proceedings incidental to any action instituted in the court by that person.
- (2) A small claims court shall not have jurisdiction in respect of any proceedings to which the State or the President or a Vice-President or any Minister, Deputy Minister, officer or employee of the State is a party in his official capacity.

11 Limits of jurisdiction in respect of causes of action

- (1) Subject to this Act, a small claims court shall have jurisdiction in respect of—

- (a) proceedings for the delivery of movable property not exceeding two hundred and fifty United States dollars in value;
- (b) proceedings for arrears of rental not exceeding two hundred and fifty United States dollars in respect of any premises within the province for which the court is established;
- (c) proceedings for ejectment against the occupier of any premises situated within the province for which the court has been established, where the right of occupation does not exceed two hundred and fifty United States dollars a month;
- (d) proceedings based on a cheque or a signed acknowledgment of debt, where the claim does not exceed two hundred and fifty United States dollars;
- (e) proceedings not mentioned in paragraph (a), (b), (c) or (d), where the claim or the value of the matter in dispute does not exceed two hundred and fifty United States dollars;
- (f) counterclaims not exceeding two hundred and fifty United States dollars in respect of any proceedings mentioned in paragraph (a), (b), (c), (d) or (e).

[Subsection amended by s.i 58 of 2009]

(2) In determining whether a claim falls within the jurisdiction of a small claims court, no claim for interest or for costs shall be taken into account.

(3) The Minister may, by statutory instrument and after consultation with the Chief Justice, amend paragraphs (a) to (f) of subsection (1) by the alteration of any amount specified therein:

Provided that no such amendment shall apply to proceedings instituted before the date of commencement of the amendment.

12 Where small claims court does not have jurisdiction

A small claims court shall not have jurisdiction in respect of—

- (a) any case where the claim is made under customary law; or
- (b) claims for divorce, custody or maintenance other than arrear maintenance; or
- (c) cases involving the validity or interpretation of a will; or (d) cases in which damages are sought for—
 - (i) defamation; or
 - (ii) malicious prosecution or wrongful imprisonment or arrest; or
 - (iii) adultery, seduction or breach of promise to marry; or
- (e) any case in which an interdict is sought.

13 Abandonment of claim

(1) In order to bring a claim or counterclaim within the jurisdiction of a small claims court a party may expressly, in his summons or counterclaim, abandon a part of the claim or counterclaim.

(2) Where a part of a claim or counterclaim is abandoned for the purposes of subsection (1), it shall be finally extinguished:

Provided that, if judgment is given for only part of the claim the abandonment shall be deemed first to take effect on that part of the claim which is not upheld.

14 Deduction of admitted debt

In order to bring a claim or counterclaim within the jurisdiction of a small claims court, a party may expressly, in his summons or counterclaim, deduct any amount, whether liquidated or unliquidated, which he admits he owes to the other party.

15 Splitting of claims disallowed

A claim exceeding the jurisdiction of a small claims court shall not be split with the object of recovering it in more than one action in a small claims court, if the parties to those actions and the point at issue in those actions would be the same.

16 No jurisdiction by consent

A small claims court shall not have jurisdiction to hear an action which is beyond its jurisdiction by virtue of the consent of the parties.

17 Small claims court may stop proceedings

(1) If a presiding officer is of the opinion that a case before him contains difficult or complex questions of law or fact that cannot fairly or properly be determined by him, he may at any stage stop the proceedings.

(2) Where proceedings have been stopped in terms of subsection (1) any party concerned may begin fresh proceedings in another competent court.

18 Agreement to exclude jurisdiction of small claims court not valid

Any provision in any agreement to the effect that a small claims court shall not have jurisdiction in the event of a dispute shall be of no effect:

Provided that a provision to the effect that any dispute shall be resolved by arbitration shall be valid.

PART V

PROCEDURE AND EVIDENCE IN SMALL CLAIMS COURTS

19 Procedure

(1) A small claims court shall not be bound by the strict rules of evidence, and the court may ascertain any relevant fact by any means which the presiding officer thinks fit and which is not unfair or unjust to either party.

(2) Evidence may be adduced orally or in writing in any proceedings in a small claims court, at the discretion of the presiding officer.

(3) The parties to any proceedings in a small claims court shall be entitled to question or cross-examine each other or any witness, but the presiding officer may terminate any such questioning or cross-examination if he considers it to be unfair, oppressive, unduly prolonged or unnecessary.

(4) It shall be the responsibility of the presiding officer to ascertain the facts in any proceedings in a small claims court, and for that purpose he may—

- (a) call any party or person to give evidence; and
- (b) question or cross-examine any party or witness; and
- (c) put any question to a party or witness which is suggested to him by any party.

20 Evidence

A party in an action before a small claims court may call one or more witnesses to prove his claim, defence or counter-claim, as the case may be, but the presiding officer shall have a discretion to order that no further evidence may be adduced on any matter which he considers has been sufficiently established.

21 Evidence on oath or affirmation

(1) Evidence before a small claims court shall be given on oath but the presiding officer may permit a witness to give a solemn affirmation to speak the truth where the witness declines, for good reason, to take the oath.

(2) Where necessary, evidence may be given through an interpreter who shall be duly sworn in accordance with rules of court.

22 Institution of actions

(1) In order to commence an action in a small claims court the plaintiff shall first deliver, personally or by registered post, a letter of demand to the defendant setting out his claim and requiring the defendant to satisfy it within fourteen days, failing which action will be commenced in the court to enforce the claim.

(2) If the defendant fails to satisfy the plaintiff's claim within fourteen days of the delivery of the letter of demand the plaintiff may request the clerk of the small claims court to issue out a summons to the defendant.

(3) If the clerk of the small claims court is satisfied that the plaintiff has duly delivered a letter of demand in terms of subsection (1) and that the plaintiff's claim has not been satisfied within fourteen days of its delivery, the clerk may issue out a summons in the prescribed form to the plaintiff.

(4) The summons shall specify the claim and the date on which, and place at which, the defendant is required to attend the small claims court for the determination of the claim.

(5) The summons may be served by the plaintiff on the defendant personally or the plaintiff may, on tendering the prescribed fee, request the messenger of the court to serve it.

(6) After receiving a summons and before the date for the determination of the claim the defendant—

- (a) may, if he wishes, lodge with the clerk of the small claims court two copies of a written statement setting out any defence he has to the claim; and
- (b) shall, if he has any counterclaim, lodge with the clerk of the court two copies of a notice setting out his counterclaim.

(7) The clerk of the court shall deliver to the plaintiff a copy of any statement of defence or notice of counterclaim as soon as possible after it has been lodged with him by the defendant.

(8) The legal assistant attached to the small claims court shall on request assist the plaintiff and the defendant in the preparation of letters of demand, summonses, statements of defence and notices of counterclaim.

23 Satisfaction of claims

(1) The defendant may, at any time before the date fixed for the hearing of an action in a small claims court, satisfy or offer to satisfy the plaintiff's claim in whole or in part.

(2) If the defendant satisfies the plaintiff's claim or if the plaintiff accepts his offer to do so, the plaintiff shall withdraw his action in the small claims court by notifying the clerk of the court.

(3) The plaintiff may, whether or not the defendant has satisfied his claim, withdraw his action at any time.

PART VI

JUDGMENT AND COSTS

24 Judgment

A small claims court may, after determining an action—

- (a) give judgment for the plaintiff for the whole or so much of his claim as has been proved;
- (b) give judgment for the defendant in respect of his defence or for the whole or so much of his counterclaim as has been proved;
- (c) dismiss the action if the presiding officer is of the opinion that the claim of neither party has been established in whole or in part;
- (d) subject to section *twenty-seven*, make an order as to costs.

25 Judgment by default or by consent

(1) If a defendant upon whom a summons has been served—

- (a) admits the claim and consents to judgment; or
- (b) fails to appear before the small claims court when required to do so; the small claims court may, if the presiding officer is satisfied after inquiry that the plaintiff's claim is established, give judgment for the plaintiff.

(2) If a plaintiff fails to appear before a small claims court when required to do so, the court may dismiss the plaintiff's claim and, if satisfied after inquiry that the defendant's defence or counterclaim, if any, has been established, give judgment for the defendant.

26 Rescission, variation and correction of judgments

The court may, for good cause shown—

- (a) rescind or vary any judgment granted by it in the absence of any party;
- (b) rescind or vary any judgment obtained by fraud or due to a mistake; (c) correct any patent errors in any judgment.

27 Costs

(1) A small claims court may, where it considers it just and fair to do so, award costs to either party.

(2) Costs may include only—

- (a) the prescribed fee for the issue of the summons; and (b) the fees and expenses of the messenger.

PART VII

EXECUTION OF JUDGMENT

28 Orders of small claims courts

(1) After a small claims court has given judgment against a party it may inquire into the ability of that party to satisfy the judgment and may—

- (a) order that the judgment be satisfied forthwith or by such future date as the court may specify;
- (b) order that the judgment be paid in such instalments as the court may specify;
- (c) make such other order as the court considers just and fair in the circumstances to the parties.

(2) The party in whose favour judgment has been given may attend any inquiry in terms of subsection (1), and section *nineteen* shall apply, *mutatis mutandis*, in relation to the inquiry.

29 Enforcement of judgment

(1) If a judgment debtor fails to satisfy the judgment of a small claims court within the period specified by the court, the judgment creditor may apply□

- (a) to the clerk of the small claims court for the issue of a writ of execution; or (b) to the small claims court for a garnishee order.

(2) The judgment creditor may, on payment of the prescribed messenger's fees, require the messenger of a small claims court to serve and enforce a writ of execution issued in terms of paragraph (a) of subsection (1), and in such event the procedure for attachment and sale in execution which applies in magistrates courts, including the provisions relating to the exemption of property from execution, shall apply, *mutatis mutandis*, in relation to the attachment and sale of property in execution of the writ of execution.

(3) A small claims court to which an application for a garnishee order has been made in terms of paragraph (b) of subsection (1) shall have the same powers as a magistrates court in regard to the making of such an order, and section 33 of the Magistrates Court Act [*Chapter 7:10*] and any rules made thereunder shall apply, *mutatis mutandis*, in regard thereto.

PART VIII

GENERAL

29A Stay of execution

Subject to rules of court, a small claims court may, for good cause shown, suspend the execution of any judgment of the court on such terms and conditions as the court thinks just.

[Section inserted by s. 10 of Act 14/2002.]

30 Finality of judgment

A judgment of a small claims court shall be final and no appeal shall lie from it, but any party may bring the proceedings on review before the High Court on any grounds on which the High Court may review proceedings of judicial tribunals.

31 Rules of small claims courts

(1) The Minister may, by statutory instrument, make rules of court regulating the practice and procedure of small claims courts.

(2) Rules made in terms of subsection (1) may provide for—

- (a) the form of the process of small claims courts, including letters of demand;
- (b) the duties of officers of small claims courts;
- (c) the methods by which corporate and unincorporated bodies may be cited and represented in proceedings before small claims courts;
- (d) the power of small claims court to condone non-compliance with the rules;
- (e) the method of service of process of small claims courts and the proof required of such service; (f) the fees payable in respect of the issue of process of small claims courts.

32 Contempt of small claims courts

(1) If any person wilfully insults a small claims court or any member thereof during any sitting of the small claims court or wilfully interrupts the proceedings of the small claims court or otherwise wilfully disturbs the peace or order of such proceedings the presiding officer may order that person to be removed and detained in custody as if he were a prisoner awaiting trial until the rising of the small claims court, and the presiding officer may, by warrant under his hand, impose on the offender a fine not exceeding level three or commit him to prison for a period not exceeding one month, or both impose such a fine on him and commit him to prison for such a period.

[Subsection amended by s. 4 of Act 22/2001.]

(2) If any person wilfully disobeys or neglects to comply with any order of a presiding officer issued under the powers conferred upon him by this Act such presiding officer may by warrant under his hand impose on the offender a fine not exceeding level five or commit him to prison for a period not exceeding six months, or both impose such a fine on him and commit him to prison for such a period.

[Subsection amended by s. 4 of Act 22/2001.]

(3) Where a presiding officer has imposed any penalty in terms of subsection (1), he shall forthwith submit to a judge of the High Court a written statement setting out the reasons for his action, and shall cause the person upon whom he imposed the penalty to be given a copy of the statement.

(4) A judge of the High Court to whom a statement is submitted in terms of subsection (3) shall review the matter and may take such measures as he thinks necessary to rectify any defect in the proceedings concerned.

33 Other courts to have parallel jurisdiction

Nothing in this Act shall be construed as depriving any other court of its jurisdiction to hear and determine any matter which, by this Act, is declared to be within the jurisdiction of a small claims court.