

# SMALL CLAIMS COURTS ACT, 2009

No. 7



of 2009

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**An Act to establish small claims courts and matters incidental thereto or connected therewith.**

*Date of assent:* 11.05.09

*Date of commencement:* 19.06.09

ENACTED by the Parliament of Botswana.

**PART I — Preliminary**

Short title

1. This Act may be cited as the Small Claims Courts Act, 2009.

Interpretation

2. In this Act, unless the context otherwise requires —  
“Court” means a small claims court established under section 3;  
“presiding officer” means a magistrate or other person referred to in section 8;  
“Registrar” means the Registrar of the High Court; and  
“rules of court” means rules made by the Chief Justice under section 19.

**PART II — Establishment and Nature of Court**

Establishment  
of courts  
Cap. 04:04  
Nature of  
courts

3. The Chief Justice may by Order establish a small claims court for any magisterial district established under section 9 of the Magistrates’ Courts Act.

4. (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 every decision or order of Court made by him or her and shall sign it; and

(b) keep such other records relating to the proceedings of the Court as may be required by rules of court.

(3) The process of every Court shall be of force throughout Botswana.

Courts to be  
open to public

5. (1) Subject to the provisions of subsection (2), the proceedings of every Court shall be open to the public.

(2) A presiding officer may, in the interests of justice or good order or public morals or at the request of the parties, for reasons considered sufficient by the Court, order that the proceedings shall be conducted in camera or that specified persons shall not be present.

(3) The presiding officer may, in the event of any disturbance, order the offender to be removed or that the courtroom be cleared.

Language of  
court

6. Proceedings of the Court shall be conducted in the official languages of Botswana:

Provided that where interpretation is required into any other language the presiding officer may order that the party requiring such interpretation should pay any costs incurred thereby.

Parties who  
may appear

7. (1) Only a natural person may institute proceedings in the Court.

(2) A corporate body or association may be a party only as a defendant.

(3) A corporate body or association which is sued in the Court may bring a counterclaim.

(4) A party to any proceedings in the Court shall not be represented or assisted by any other person except as to interpretation:

Provided that —

- (a) a minor or a person under legal disability may be represented by his or her guardian, curator or other representative; and
- (b) a corporate body or association may be represented by its director, member or an authorised employee.

### PART III — *Officers of the Court*

**8.** (1) The Court shall be presided over by a magistrate of not less than four years standing designated for that purpose by the Registrar or his or her deputies, the regional magistrate or the most senior magistrate for the magisterial district in which the Court is to sit.

Presiding officers

(2) The President may, on the advice of the Judicial Service Commission, appoint additional presiding officers from among fit and proper persons deemed suitable by the Commission for judicial service for such period and on such terms and conditions as may be prescribed.

**9.** There shall be appointed a clerk of the Court for each Court, and such assistant clerks of the Court and support staff as may be authorised by the Registrar.

Clerk of court

**10.** (1) There shall be a court bailiff for each Court, appointed by the Registrar.

Court bailiff

(2) Process of the Court may equally be served and executed by court bailiffs of the Magistrates' Courts or by deputy sheriffs of the High Court.

### PART IV — *Jurisdiction*

**11.** (1) The area of jurisdiction of the Court shall be the magisterial district for which it was established.

Jurisdiction of courts

(2) The Court shall have jurisdiction in respect of —

- (a) any person who resides in or carries on business or is employed within its area of jurisdiction;
- (b) any person in respect of a cause of action which arose within its area of jurisdiction; or
- (c) any other person who appears in any proceedings and does not object to its jurisdiction.

(3) The Court shall have jurisdiction in respect of —

- (a) claims for the payment, delivery or transfer of money owed, or other property, movable or immovable, where the claim or value of the property or money does not exceed such monetary limits as may be prescribed in the rules;
- (b) claims for eviction where the value of the right of occupation does not exceed such monetary limits as may be prescribed in the rules;

- (c) claims against sellers of defective goods for refunds or replacement or for cost of repairs, where the value of the claim does not exceed such monetary limits as may be prescribed in the rules;
- (d) counterclaims not exceeding such monetary limits as may be prescribed in the rules.
- (4) The Court shall not have jurisdiction —
  - (a) in respect of any claim brought against the State or a public officer in the public officer's official capacity;
  - (b) in respect of any claim brought in terms of customary law;
  - (c) in respect of any claim for damages, other than one brought under subsection 3 (c);
  - (d) in respect of any claim relating to status, including divorce, separation, division of matrimonial property, custody of children, or maintenance, other than recovery of arrear maintenance;
  - (e) in respect of any case in which an interdict or specific performance other than delivery is sought;
  - (f) in respect of any case where the cause of action arose more than two years before the issue of the letter of demand in terms of section 14; or
  - (g) to award interest in excess of 10 percent per annum.
- (5) A party may —
  - (a) abandon part of his or her claim or counterclaim or part of the interest sought; or
  - (b) set off an admitted debt, in order to bring his or her claim within the jurisdiction of the Court.
- (6) A part abandoned under subsection 5 (a) shall be finally extinguished.
- (7) No person shall split claims to bring an inadmissible claim within the jurisdiction of the Court.
- (8) A person may bring two or more separate claims, each within the jurisdiction of the Court, in the same proceedings, despite that their total value exceeds the Court's jurisdiction.
- (9) An agreement to exclude the jurisdiction of the Court shall be void.
- (10) There shall be no jurisdiction by consent of the parties in any cause in which the court has no jurisdiction in terms of this Act.

#### PART V — *General*

Cessation of  
action

- 12. (1) If a presiding officer is of the opinion at any stage of any proceedings, that the proceedings are —
  - (a) complex or contain issues of fact that are difficult to resolve; or
  - (b) likely to take longer than one day to conclude, the presiding officer shall stop the proceedings, in which event the parties shall be at liberty to commence fresh proceedings in a competent Court.
- (2) Except in exceptional circumstances, where an adjournment may be granted, cases before the Court shall be completed in one sitting day.

**13. (1)** Subject to the provisions of this Act, the rules of evidence shall not apply in the Court, and the presiding officer may ascertain the relevant facts in such manner as the presiding officer sees fit.

Evidence

(2) A party may submit evidence to prove or disprove any fact orally or in writing.

(3) A party shall give oral evidence on oath or affirmation.

(4) Each of the parties shall be entitled to testify in person, and the presiding officer may allow or call a further witness or witnesses where the presiding officer considers this necessary to arrive at a just decision in the case.

**14. (1)** Before commencing any action in the Court, the plaintiff shall first deliver to the defendant, personally or by registered post, a letter of demand setting out the plaintiff's claim and requiring it to be settled in 14 days, failing which action will be instituted.

Procedure

(2) If the defendant fails to satisfy the claim, the plaintiff may request the clerk of the Court to issue out a summons to the defendant.

(3) No person shall have more than three claims at any time pending before the Court.

(4) Earlier claims by a party are to be adjudicated before further summonses exceeding three in total are issued by that party.

(5) The summons shall specify the parties, the claim, the date and time of the hearing, and the place at which the defendant is required to attend the Court for determination of the claim.

(6) A claim may be served by the plaintiff on the defendant —

(a) personally; or

(b) through the court bailiff upon payment of the prescribed fees.

(7) After receiving a summons, and before the date of hearing, the defendant —

(a) may deliver to the plaintiff and to the clerk of the Court copies of a written statement setting out any defence the defendant has to the claim; or

(b) shall, if the defendant has a counterclaim, deliver copies of his or her counterclaim.

(8) The clerk of the Court shall on request assist the plaintiff and defendant in the preparation of letters of demand, summonses, statements of defence or counterclaims.

(9) The defendant may, at any time before the hearing, satisfy or offer to satisfy the claim in whole or in part.

(10) The plaintiff shall withdraw his or her action by notifying the clerk of the Court —

(a) if the defendant satisfies the claim; or

(b) if the plaintiff accepts the defendant's offer to satisfy the claim.

(11) The plaintiff has the right to withdraw his or her action at any time:

Provided that where a counterclaim has been lodged by the defendant, the action shall proceed on the hearing date notwithstanding such withdrawal.

(12) The plaintiff shall have the right at or before the hearing to deliver to the clerk of the Court and to the defendant a statement of his or her defence to any counterclaim raised.

Judgment

**15. (1)** The Court may, at the conclusion of a hearing —

(a) give judgment for the plaintiff for the whole or part of his or her claim;

(b) give judgment for the defendant —

(i) by upholding his or her defence, or

(ii) by allowing his or her counterclaim in whole or in part;

(c) grant absolution if the Court is unable to reach a conclusion, in which case the plaintiff shall only be permitted to issue summons at a later date for the same claim if he or she satisfies the clerk of the Court that he or she has new evidence; or

(d) make an order for costs.

(2) If a defendant upon whom a summons has been served either admits the claim or fails to appear on the hearing date, the Court may, if the Court is satisfied that the claim is established, give judgment for the plaintiff.

(3) If a plaintiff fails to appear on the hearing date the Court may —

(a) dismiss the plaintiff's claim; or,

(b) if satisfied that the defendant's defence or counterclaim has been established, give judgment for the defendant.

(4) The Court may, for good cause shown —

(a) rescind or vary any judgment granted by it in the absence of any party, or obtained by fraud or by mistake; or

(b) correct any patent errors in any judgment.

(5) Costs shall be limited to any prescribed court fees, reasonable travelling expenses and court bailiff charges.

Execution and  
enforcement of  
judgment

**16. (1)** After giving judgment, the Court may —

(a) order that the judgment be satisfied immediately or by a named date;

(b) order that the judgment be paid in specified instalments; or

(c) make such other order as to satisfaction of the judgment as the Court considers fair.

(2) If a judgment debtor fails to satisfy the judgment of the Court within the period specified in the judgment, the judgment creditor may apply to the clerk of the Court for the issue of a writ of execution.

(3) The judgment creditor may, on payment of the prescribed messenger's fees, require the messenger of the Court to serve and enforce the writ of execution issued in terms of subsection (2), and in such event the procedure for attachment and sale in execution which applies in Magistrates Courts, including provisions relating to the exemption of property from execution, shall, in so far as applicable, apply.

Finality of  
judgment

**17.** A judgment of the Court shall be final and no appeal shall lie from it, but any party may bring its proceedings on review to the High Court only on the grounds of lack of jurisdiction or gross irregularity.

**18. (1)** A person who, during any sitting, wilfully insults the presiding officer, or wilfully disrupts the proceedings —

Contempt of  
court

(a) is liable to be removed and detained in custody until the rising of the Court; or

(b) may be summarily committed to prison for any period not exceeding one month or summarily fined a sum not exceeding P1 000 by the presiding officer.

(2) If any person wilfully fails to comply with any order of the Court the presiding officer may impose upon the person a fine not exceeding P1 000, or by warrant under the presiding officer's hand commit the person to prison for a period not exceeding one month.

(3) Where the presiding officer has imposed a term of imprisonment or a fine under subsection (1) or (2), the presiding officer shall submit to the Registrar of the High Court a written statement of the presiding officer's reasons therefor, and shall give a copy of this to the person upon whom the penalty was imposed.

(4) Immediately upon receipt of such a statement the Registrar shall place it before a judge in chambers for consideration and review if the judge considers it necessary.

**19. (1)** The Chief Justice may by statutory instrument make rules for the better carrying out of the provisions of this Act and for regulating the practice and procedure of the Court.

Rules of court

(2) The rules may provide for —

(a) standard forms for the process of the Court, including letters of demand;

(b) the duties of officers of the Court;

(c) the citation of corporate bodies or unincorporated associations as defendants in proceedings;

(d) requirements to prove service, including methods of service of court process;

(e) monetary limits for the jurisdiction of the Court;

(f) fees payable for court services or forms;

(g) review procedures; and

(h) any other matter which the Chief Justice may find expedient to prescribe for the better carrying out of the provisions of this Act.

PASSED by the National Assembly this 6th day of April, 2009.

**BARBARA N. DITHAPO,**  
*Acting Clerk of the National Assembly.*