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SMALL CLAIMS PROCEDURE & AND AREAS FOR REFORM IN THE RULES

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Abstract

Uganda is one of the many countries where the Judiciary is alleged among other things of giving justice to the rich, allegations of delayed justice, applying complicated and lengthy trial procedures which are not friendly to the common citizens. The majority of Ugandans are in the category of poor persons, many are not sensitized on the legal regime and others are completely illiterate. With all these challenges, a study was conducted to find out how best this image can be changed in the eyes of the public. This led to the innovation of Small Claims Procedure (SCP) now commonly known as the “People’s Court” in a bid to address some of these concerns.

*Small Claims Procedure is governed the Judicature (Small Claims Procedure) Rules¹ which were made by the Rules Committee on the 5th of May 2011 in the exercise of the powers conferred upon it under **Section 41** of the Judicature Act². The Rules came into force on the 30th of May 2011. As at 02nd September, 2021, this procedure had been rolled out in 142 Courts within Uganda.*

Stages of Small Claims Procedure; SCP has two stages and these include;

1. Demand Notice

This is a formal request by a person claiming a debt (claimant) to the person against whom the debt is being claimed (defendant) to make good the debt within 14 days. If the defendant fully pays the debt, that will be the end of the matter. If the debt is either partially paid or not paid at all, the claimant is at liberty to file a small claim. A demand notice has a life span of 14 days in the system as per the law.³

2. Small Claims Hearings

A small claims hearing is a formal suit by the claimant against the defendant for recovery of either a balance of the amount on the demand notice or the entire sum if no amount was paid by the defendant at demand notice level. The particulars of a small claim are provided for under Section 11 of the Rules.⁴

* Magistrate Grade I, Mukono Chief Magistrate & Goma Grade I Courts.

¹ The Judicature (Small Claims Procedure) Rules, 2011, S.I No. 25 of 2011 (To be referred to as the SCP Rules).

² Section 41 of the Judicature Act Cap 13, Laws of Uganda 2000.

³ Section 10 of the Small Claims Procedure Rules.

⁴ Ibid.

Annual Performance Report.

According to the most recent performance report, this procedure helped the Uganda Judiciary to recover Ushs. 2,252,807,510/= (Uganda Shillings Two Billion One Hundred Fifty Two Million Eight Hundred Seven Thousand Five Hundred Ten Only) in terms of debts at only the demand notice level⁵; without progressing to the hearing stage. At the hearing level, a total of Ushs. 12,750,582,544/= (Uganda Shilling Twelve Billion Seven Hundred Fifty Million Five Hundred Eighty Two Thousand Five Hundred Forty Four Only) was recovered ⁶ This literally means that SCP has contributed a lot towards the Government's and Courts' struggle to help litigants recover their would idle money within a very short period of time.

Salient Features in the Rules

1. Jurisdiction/Cases handled under SCP.

The pecuniary jurisdiction in SCP matters is a maximum of Ushs. 10,000,000/= (Uganda shillings Ten Million Only). Only debts are recoverable under SCP and these include, friendly loans, supply of goods or sell of anything on credit, and landlord tenant disputes relating to rent arrears.

It is plausible to note that the Rules do not apply to-

- a) Family disputes relating to the management of an estate;
- b) A claim against the Government;
- c) A suit for defamation, malicious prosecution, wrongful imprisonment, wrongful arrest or seduction; (d) a petition for divorce, nullification of marriage or separation of spouses;
- d) A case involving the validity of a will;
- e) A claim 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 or transferring movable property and disputes arising out of tenancy agreements not exceeding ten million Uganda shillings in value; or
- f) Contracts of service and contracts for service.⁷

Under Rule 9 of the SCP Rules the geographical jurisdiction of SCP matters provides for geographical jurisdiction which is within the local limits of whose jurisdiction the cause of action wholly or partly arose. This means that if the cause of action arose in Mukono, you are supposed to file a claim in Mukono Court and not in Kampala.

⁵ Small Claims Procedure Annual performance report 2019 at Pg. 5.

⁶ Ibid Pg. 7.

⁷ Rule 5 of the Small Claims Procedure Rules, S.I 25 of 2011.

Representation in Court and Locus.

Rule 8 of the SCP Rules provides that only natural persons can institute an action in Court. This means that other persons in law for example companies, SACCOs, NGOs, Investment clubs, Partnerships and the Government are not allowed to file a claim under this procedure. The same Rule however provides that body corporates may be a party to a suit as a defendant. Representation in court is personal and not by advocate. This law was enacted to extend justice to native citizens who couldn't ordinarily afford the services of a lawyer in Court while claiming small sums of money.

Service of Court process.

Unlike under the Civil Procedure Rules⁸, which provides that service is to be effected by a serving officer who shall upon service file an affidavit of service, the SCP Rules give an opportunity to the claimant or defendant to personally serve Court process and file an affidavit of service as proof of service.⁹

Cross examination

Unlike the ordinary and adversarial civil and criminal procedure which give a chance to a party to cross examine the adverse party, under SCP, cross-examination is not allowed. Only the judicial officer is allowed to ask questions during the hearing. In brief, SCP isn't adversarial but it is inquisitorial.¹⁰ It's the duty of the presiding judicial officer to establish the correct facts of the dispute.

Alternative dispute resolution (ADR).

ADR is highly recommended in SCP only that unlike the period of 60 days provided for under the Mediation Rules,¹¹ the SCP Rules provides for law 14 days for parties to engage in mediation.¹²

Summary of the filing and trial procedure. Rules 11, 13, 15, 17, 20, 21, 23, 27, 28, and 29

A claim & defence form shall be filled in Court and the parties attach evidence that they intend to rely on during the trial. These may include agreements, commitments to pay, photos, vouchers, copies of ledger books, delivery notes etc. An assessment of Court fees is then made by the Court cashier and filing fees paid by the claimant or defendant in the bank. The claim is then formally registered by assigning it a small claims number. This same number is retained at filing of the defence. Summons are issued by the trial magistrate for service upon the defendant including the date when the parties shall appear for hearing. The defendant is supposed to file a defence either admitting or denying the claim. The defendant may also file a counterclaim against the claimant whereupon the claimant has a right to file a reply to the counterclaim if any. It is

⁸ Order 5 Rule 16 of the Civil Procedure Rules S.I 71-1 as amended.

⁹ Rule 12 (2) of the SCP Rules.

¹⁰ Ibid 7, Rules 23(1) and 24.

¹¹ Rule 8 of the Judicature (Mediation) Rules, 2013, Statutory Instrument No. 10 of 2013.

¹² Rule 22 of the Small Claims Procedure Rules.

important to note that all the documents referred to are found at the Court unlike the ordinary procedure of lawyers preparing and filing them in Court.

On the date fixed for hearing, if the defendant admitted the claim in her or his defence, he only confirms that position and a judgment on admission is entered. Where the defendant fails to file a defense but proof of service of summons is presented before Court, a default judgment shall be entered against the defendant. Where the defendant denies the claim, the claimant is given a chance to lead her or his evidence on oath together with the evidence of the witnesses. The defendant is then also given a chance to lead her or his evidence after which Court makes a decision. After delivering the judgement, the Court then inquires into and determines refundable expenses at nominal public rates. These include filing fees, transport expenses, and expenses on service of court process.

Then the Court inquires from defendant or the party against whom judgment has been entered about her or his capacity to pay the debt and still makes a decision basing on what both sides have told Court with a schedule of payment. It is also vital to note that Court has powers to make reference to the period of the debt prior to giving a payment schedule.

Execution of Court orders;

In the event of the failure by the judgment debtor to fulfill terms of the Court order, Rule 31 of the SCP Rules provides that execution shall be governed by the Civil Procedure Rules¹³ This statement literally means that Court bailiffs may be involved in execution proceedings. It is important to note however that because of its simplicity in nature (giving a debtor a chance to make a proposal of payment), very few files reach execution level.

No right of appeal;

Under the Rules, there is no statutory right of appeal however dissatisfaction with a small claims judgment can be remedied by way of review, and correction of judgments, decrees or orders by the same Court that heard and decided the matter. Another avenue for remedy is by way of Revision by the High Court. This is because the High Court also has general supervisory powers over Magistrate's Courts.¹⁴ A Similar position was held in the case of **Namuli Lillian and Lutalo Mark Versus Abdulhaku Kaggwa**¹⁵ where **Hon. Justice Boniface Wamala** noted inter alia that the supervisory powers of the High Court referred to under Rule 4(4) of the Rules is similar to the supervisory powers of the High Court over magistrates courts provided for under **Section 17 (1)** of

¹³ Section 38 of the Civil Procedure Act and Order 22 Rule 7 of the Civil Procedure Rules

¹⁴ Ibid note 12, Rule 4(4).

¹⁵ Small Claims Procedure Revision No. 06 OF 2019 (Arising from Mengo Chief Magistrates Court Small Claims Case No. 825 of 2019).

the Judicature Act,¹⁶ which provides that the High Court shall exercise general powers of supervision over magistrates courts.

Areas for Reform in the SCP Rules.

This section arises from the common questions asked during the rollouts of SCP in the different regions in Uganda and best practices from the different Courts that are already applying the law.

These are as follows.

a) What if we never wrote an agreement?

The SCP Rules are not specific on which types of agreements can be enforced by the Courts. **Section 5** of the Rules provides for only the maximum amount of money that can be enforced by the Court but not the types of contracts. Whether oral or written agreements. Throughout the rollouts, one of the commonly asked question is; “what if we had no written agreement”.

Often times we have referred to **Section 10** of the **Contracts Act** which defines an agreement to mean a contract made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound. Such agreements may be **oral** or **written** or **partly oral** and **partly written** or **may be implied from the conduct of the parties**.¹⁷ This law goes ahead to provide that any person who is eighteen years of age or above, of sound mind, not disqualified from contracting by any law to which he or she is subject or person of sixteen years or above pursuant to the provisions of **Article 34 (4) and (5)** of the Constitution¹⁸ has capacity to contract or be privy to an agreement.¹⁹ This position is not expressly provided for in the SCP Rules. In addition, the Rules do not clearly list which types of debts that can be enforced thereunder. It is therefore recommended that for avoidance of doubt amongst judicial officers and the staff involved in filings such case, the debts that can be handle under SCP be succinctly stated in the law.

Money Lending;

Most businesses in Uganda are small businesses with insufficient capital. So most members of the business community run to money lenders whenever they want financial assistance. Money lending institutions, Tier 4 institutions like non deposit taking financial institutions, self-help groups, community based microfinance institutions and savings and credit cooperative (SACCOs) are governed by the Tier 4 Microfinance institutions Act and Money Lenders Act,²⁰ these institutions have specific

¹⁶ The Judicature Act, Cap 13 (Laws of Uganda 2000).

¹⁷ The Contracts Act, 2010, No. 7 of 2010.

¹⁸ The Constitution of the Republic of Uganda, 1995 as amended.

¹⁹ Ibid Note 15, Section 11.

²⁰ The Tier 4 Microfinance institutions Act and Money Lenders Act, 2016.

procures for applying for licenses before they can operate.²¹ All these institutions cannot file a small claim under the SCP Rules because they are deemed not to be natural persons. The million-dollar question then is, what about village saving groups where members borrow money and other saving groups commonly referred to as “**Nigina**”. All these groups are not registered neither are they body corporates as per **Section 8** of the SCP Rules provides. Can they file a claim against their defaulters?

Jurisdiction of LC Courts Compared With That of SCP

Many local council leaders are left wondering during the different rollouts of SCP as to whether upon the enactment of SCP law, they still have jurisdiction to entertain cases involving debts. The Local Council Courts are governed by the Local Council Courts Act, 2006.²² This Act provides for the legal jurisdiction of Local Council Courts as follows;

Legal jurisdiction

- (1) Subject to the provisions of this Act and of any other written law, every local council court shall have jurisdiction for the trial and determination of—
 - (a) causes and matters of a civil nature specified in the Second Schedule to this Act;...
 - (2) In any suit relating to causes and matters specified in the Second and Third Schedules—
 - (a) the jurisdiction of the local council court shall, in respect of causes and matters specified in the Second Schedule be restricted to causes and matters where the value of the subject matter in dispute does not exceed **one hundred currency points**.²³ (A currency point is the equivalent of Ushs. 20,000/= (Uganda Shilling Twenty Thousand Only)²⁴.

This means that the Local Council Courts can enforce debt agreements provided the subject matter does not exceed Ushs. 2,000,000/= (Uganda Shilling Two Million). This is equally not clear in the SCP Rules. Considering the fact that under SCP, a party goes directly to Court, this has left Local Council Leaders wondering whether they still have jurisdiction to entertain matters involving debts. It is therefore important that a reform of the law is done to rectify that position.

Filing fees and execution fees no reference to the judicature court fees rules

The position of the law is that SCP handles small debts below Ushs. 10,000,000/=. There is however no legal provision in the law that stipulates the filing fees and execution fees in such cases that are regarded small claims. Whereas in practice, some

²¹ Ibid Sections 4, 40, 62, and 82 of the Act.

²² The Local Council Courts Act, 2006, Act No. 13 of 2006, Laws of Uganda.

²³ Ibid, Section 10.

²⁴ Ibid, First Schedule.

Courts have referred to the Judicature (Court fees) Rules²⁵ Still the SCP Rules make no reference to the Judicature (Court fees) Rules. This being a people's court, many have made concerns on the issue of having special filing and execution fees so as to encourage those that cannot afford such fees to benefit from the procedure. In addition, **Rule 31** of the SCP provides inter alia that execution in SCP cases is governed by **Section 38** of the Civil Procedure Act, under ordinary civil procedure, upon committal of a judgment debtor to civil prison, the judgment creditor is required to pay subsistence fees of Ushs. 3,000/= per day is way too high and an addition expense on the judgment creditor. Still there is no provision in regards to expenses incurred at execution level or rental arrears that accrue during the month of within which the matter is heard.

Transfer of an already existing civil suit to the SCP.

Upon court users learning about the benefits of SCP, they usually wish to immediately switch their matters from the ordinary civil procedure into SCP. The law does not give an answer to this question.

Contracts of and contracts for services.

The SCP Rules provide that for those disputes which cannot be handled under SCP and among others are contracts of service and contracts for service.²⁶ The issue however is that most of the contacts worth Ushs. 10,000,000/= and below fall in this category. Some of these contracts are provision of painting, local construction, digging or cultivating small pieces of land, services offered by maids who are later not paid by their bosses and among other services. Such services ordinarily go for less than Ushs. 1,000,000/= (Uganda Shillings One Million Only but cannot be entertained under SCP. There is an outcry by the community to the law makers to consider these contracts so as to help people who earn little incomes.

Defendants changing addresses.

Service of summons and any Court process is made by a designated Court process server or the claimant. The law allows these two to file affidavits of service as proof of service. There are instances however when the defendant cannot be traced for purposes of service. The law does not give any other alternative way of serving a party who cannot be traced. This makes the life of a party who wishes to have her or his case concluded within 30 days very difficult.

Costs and expenses.

Under Rule 29 of the SCP Rules provides that a party to a claim under these Rules shall bear his or her own expenses. On the other hand, **Section 28(1)** and **(2)(a)** make provision for costs. These two provisions contradict each other. There is still no clear difference in the law between costs and expenses. It is therefore not clear to the Court

²⁵ Statutory Instrument No. 13-1, (Under section 48(1)(d) of the Act).

²⁶ Ibid, Section 5(2)(g).

whether Courts can make orders for reimbursement of expenses or costs to the person who wins the case. These expenses may include filing fees, transport costs to the bank to pay filing fees, costs of service and court attendance. If all the claimant is to recover is the exact outstanding debt as per the agreement yet she or he continues to incur the above expenses, then SCP will lose meaning if the law isn't amended to correct that position.

Powers of Attorney;

The SCP Rules are very silent on what happens if a party to a claim fails to make it to Court on the day fixed for hearing. This leaves the Court wondering about what is to happen next in such a case supposed to be completed within 30 days. In ordinary civil matters, a party is allowed to donate powers of attorney to another for any reason including representing her or him in Court. The unfortunate lacuna with powers of attorney in SCP is that parties will start donating such powers to advocates which will again make **Section 8(2)** redundant. It is thus advisable that the law gives provision for a family member to that party to represent her or him without necessarily presenting registered powers for this also involves sums of money in registering such documents with the companies registry.

Dismissal of Small claim for nonattendance of a claimant.

The current law makes no provision for an instance where a case is dismissed for nonappearance of the claimant for one reason or another.

Complex matters

Section 26(1) of the SCP Rules provides inter alia that where Court is of the opinion that a matter contains complex questions of law or fact that can't be adequately adjudicated upon by it, it shall suspend proceedings and the claimant is advised to file a fresh suit in another court with appropriate jurisdiction. It is upon filing of a fresh suit that the SCP claim is considered withdrawn as per **Section 26(3)**. The questions usually are; how does the SCP Court get to know that a fresh suit has been filed?, Should the small claim remain pending in the system if there is no fresh suit filed by the claimant? Which type of completion of a case would that be especially as the SCP Court awaits the filing of the fresh suit?

Procedure for review, revision, setting aside a judgment and orders of court or reinstatement.

There is no proper procedure for review, revision and or setting aside a judgment of small claim among others. Still the law makes no reference to the Civil Procedure Act & Rules. Likewise, there is no specific time within which to file such an application.

Time for effecting service and effect of failure.

The current SCP Rules don't provide for time within which to effect service of

summons, filing of a defense or counter claim and a reply. This has been a very big challenge especially at the time of hearing because most defendants are never informed by the person who serves them of their obligation to appear at Court to file a defense prior to the hearing date. So most of the files are concluded in the presence of the defendants but without a defense on the Court file.

Recommendations.

1. Inclusion of matters arising out of contracts of service and contracts for service. Cases like failure to pay maids, provision of painting services, digging manholes among others should be filed in SCP.
2. Provision for other modes of service especially where the defendant cannot easily be traced or refuses to sign on the summons. Courts notice board, directly calling the defendants. Instead of advertising in the papers which is very expensive for an ordinary litigant, SCP can take the line of making an advert with the village speaker announcements in the area where that person resides or used to reside. Similarly that person can be served by leaving a copy of the summons on the door to his house. For clarity purposes, these modes of service should be included in the law.
3. Specify which contracts are enforceable under SCP Rules, oral or written and which types of debts are acceptable the SCP law?
4. Specify on the jurisdiction of Local Council Courts vis avis SCP Rules.
5. Either make reference to the existing laws on filing fees or Bailiffs Rules or make a separate schedule for such fees under SCP.
6. Amend Rule 29 to cater for expenses like filing fees, transport expenses of different categories. If not ignore it and leave only Section 28 of the Rules but still refer to them as expenses and not costs..
7. Make provision for instances where a party is unable to physically attend Court.
8. Provide a remedy for re-instatement of a dismissed case for nonappearance of a claimant.
9. Make provision for limitation of time for review, revision among others.
10. Under Rule 26 of the Rules, the filing fees for the fresh suit should be waived so that the person who is seeking justice is not made to pay filing fees twice. Also, closing of the file under that law should be deemed a dismissal and not a withdrawal as it has been in the law.
11. Consider hearing of SCP matters during Court vacation since a case must by law be completed within 30 days.

12. Inclusion of Village groups as would be claimants so that the community members are able to access justice through this faster way of hearing cases.
13. Rule 7; why should the CJ assign a Judicial Officer to handle a small. Yet the definition of a judicial officer is very clear. Meaning any judicial officer can entertain a SCP matter. Therefore, Rule 7 of the Rules should be repealed.
14. Rule 4(3) as against Rule 3 on the definition of Court should be considered for review. Similarly, the definition of Court (Commercial Court) in the existing law needs to be reviewed. This is because any Judge can by law handle a revision application in a small claims matter pursuant to the definition of a judicial officer in the interpretation section.
15. Being a people's court, documents that are not in the language of Court should be allowed so as not to let litigants incur costs of translation into English language.

Conclusions,

Small claims procedure is a very fast way of accessing justice particularly in matters involving recovery of debts. Members of the community are always glad to not only receive but also embrace the procedure. There is however dire need to review the existing law so as to make some provisions clear and to facilitate the smooth operation of the procedure. With the testimonies in the most recent annual performance report of how the procedure has helped the judiciary to recover monies that would have ordinarily remained in the hands of debtors, making the proposed changes in the law would even bring more light to the Court about the procedure.