

UNDERSTANDING THE PRACTICE AND PROCEDURE IN A SMALL CLAIMS COURT

by
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Abstract

The small Claims Court was on 29th day of September, 2023 introduced in Anambra State by a Practice Direction under the hand of the Chief Judge of Anambra State, Hon. Justice O.M. Anyachebelu, FCIArb in exercise of the power granted to him under Section 274 of the Constitution of the Federal Republic of Nigeria¹ and Section 79 of the Magistrate Court Law². Two Small Claim Courts have been designated by the Chief Judge in each of the following Magisterial District, Awka, Onitsha, Ogidi and Nnewi. The small claims court is intended to facilitate easy access to justice for recovery of liquidated money demand with or without claim of interest or ancillary cost. The Practice Direction puts timeline for the determination of such claims with specimen of forms to be filled and filed thereby making access to that court user friendly. This is intended to fast track resolution of simple monetary claim in order to create an enviable and sustainable environment for commercial transaction to thrive as well as to make Anambra State the first place of choice for investment. This article is a guide for user of Small Claims Court.

KEYWORDS: PRACTICE DIRECTION, PRACTICE AND PROCEDURE AND SMALL CLAIMS COURT

1.0 Introduction

Bothered by the delays and bureaucracy that have bedeviled our Courts over the years, the creation of the Small Claims Court is to enhance easy access to justice and for easy resolution of liquidated money demands or simple debt recovery disputes in the Magistrate Courts³. Liquidated money demands is founded on a simple contract like goods paid for but not supplied or not fully paid but supplied or friendly loan granted to a defendant. It could also be to recover money agreed upon by the parties for service rendered but not paid for. A Small Claim Court does not have jurisdiction to recover rent or *mesne profit* because that is subject to another law⁴. A small Claim Court does not have jurisdiction to recover other levies and debt, though ascertainable but subject to another law to recover. Eg ground rent or business premises levy. Where the recovery of money is embodied in an agreement but with an arbitration clause, then the court shall refuse to enforce same and refer the parties back to arbitration⁵. In other words, the existence of arbitration clause in such a contract merely postpones the right of the contracting parties to resort to litigation⁶. It is not mandatory that a person must be represented by a legal practitioner in a Small Claims Court⁷. Partnership and Registered companies and incorporated trustees can be represented by either a partner, company secretary or any other principal officer as the case may be. The introduction of use of forms for each process in the Practice Direction is to simplify institution of claims before the Small Claims Court by any person including an illiterate or blind person. A look at the forms shows that the format for illiterate jurat has been put in place for those that fall within that category⁸.

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¹ 1999 as Amended.

² 2021.

³ Sec. 1 of The Anambra State Practice Directions of The Small Claims Court 2023.

⁴ Landlord and Tenant Laws of Anambra State.

⁵ Sec 29 and 30 of Arbitration and Conciliation Act, 2022.

⁶ *Onyekwuije v Benue State Government* (2015) 16 NWLR (Pt 1484) See also *Onward Enterprise Ltd v M VMatrix* (2010) 2 NWLR (Pt 1179) at 551.

⁷ Sec 11 (1) & (2) of the Practice Direction for Small Claims Court 2023.

⁸ Illiterate Protection Act.

The process is so simplified that all a party needs to do is to fill the relevant form as applies to him. The Practice Direction also provided that the Small Claims Court shall sit daily and shall strive to enter judgment in the action one way or the other within 60 days. Failure to conclude the case within 60 days shall require the presiding magistrate to forward the reason for his inability to the Chief Judge through the Chief Registrar. The magistrate shall while filling his quarterly return show work plan on how to get rid of the said matters still pending after the 60 days timeline. The magistrate court presiding over Small Claims Court are going to be on their toes just like Election Tribunal judges to conclude the matters within the specified period⁹. Note also that ruling on any interlocutory application shall be delivered alongside with judgment on the substantive claim. Again, the Small Claims Court is not bound by the provisions of the Evidence Act¹⁰. The court can as well dispense with address¹¹. The filing fees applicable to the Magistrate Court pursuant to the schedule of fees in the Magistrate Court (Civil procedure) Rules 2019 applies to the Small Claims Court.

2.0 Substantive and Territorial Jurisdiction of a Small Claims Court

A Small Claims action is for liquidated monetary action of a sum not exceeding ₦5 Million (₦5,000,000.00) excluding interest and costs. The monetary jurisdiction of a Small Claims Court is the same irrespective of the Cadre of magistrate so designated. For the Small Claims Court to exercise jurisdiction, the plaintiff or one of the plaintiffs or defendant or one of the defendants must reside or carry on business within Anambra State or the cause of action arose wholly or in part in Anambra State. The plaintiff must show evidence of service of a letter of demand¹². Note that no act done by or under the authority of a magistrate shall be void or impeachable by reason that such act was done or that any act, offence or matter in respect of or in relation to which such act was done occurred or was situated beyond the limits of the district of the jurisdiction of such magistrates¹³.

3.0 Practice and Procedure in a Small Claims Court

A person desirous of initiating action in a Small Claims Court shall first serve on the defendant a letter of demand¹⁴. This Letter of Demand is a condition precedent to any action by the plaintiff. The plaintiff shall also serve the defendant with a summon¹⁵ by the bailiff of the court not later than 7 days after filling same and the bailiff shall within 24 hours of service depose to affidavit of service or non-service as the case may be if the defendant could not be served personally¹⁶. If the defendant could not be served, the plaintiff shall apply for substituted service¹⁷. Note that upon proof of service of summon, the defendant shall file his defence/admission or counterclaim within 7 days¹⁸. Note that where a Defendant fails to file an answer to the claim or file a Counter-Affidavit¹⁹, he may be held to have admitted the claim.

⁹ *Op.cit*, Sec 13.

¹⁰ Sec 12 of the Small Claim Court Practice Direction 2023.

¹¹ *Ibid*, Sec 10 (7).

¹² *Ibid*, Form SCC 1. See generally sec 2 sub 1 of the Practice Direction on Small Claims Court 2023

¹³ Sec 29 (1) of the Magistrates' Court Law 2021.

¹⁴ *Op.cit*, Form SCC 1 of the Practice Direction of the Small Claims Court, 2023

¹⁵ *Ibid*, see Form SCC 2.

¹⁶ *Ibid*, see Form SCC 6 and SCC 7 respectively.

¹⁷ *Ibid*, see form SCC 8.

¹⁸ *Ibid*, see form SCC 9.

¹⁹ *Ibid*, see Form SCC 9.

Where a Plaintiff believes that there is no defence to his claim, he may file with the summons, an Application for Summary Judgement²⁰. An Application for Summary Judgment shall be supported by an Affidavit stating the grounds for his belief (that there is no Defence to his Claim)²¹. Then if a defendant is served with application for summary judgment²², such a defendant shall within 7 days of service of the application for summary judgment file his Defendant counter affidavit in opposition to summary judgment²³.

If the Defendant files a Counter-affidavit specified in section 7(2) below, the Plaintiff may file a Further-affidavit to the Defendant's Counter- affidavit within 5 days of service of the Counter-affidavit.

Where it appears to a Magistrate that the Defendant has a good defence and ought to be permitted to defend the Claim, he may be granted Leave to defend.

Where it appears to a Magistrate that the Defendant does not have a good defence, the Magistrate may enter Judgment for the Plaintiff.

Where it appears to a Magistrate that the Defendant has a good defence to part of the Claim but does not have a good defence to other parts of the Claim, the Magistrate may enter Judgment for that part to which there is no defence and grant Leave to defend that part to which there is a defence.

Where there are several Defendants, and it appears to a Magistrate that one or more of the Defendants have a good defence, the Magistrate may permit such Defendant to defend and enter Judgment against the other Defendants.

When the Claim is called for hearing on the date fixed and neither party appears, the Judge shall, unless he sees good reason to the contrary, strike out the Claim.

When the Claim is called for hearing and the Plaintiff appears but the Defendant does not appear, provided there is proof of service, the Judge shall proceed with the hearing of the Claim and may enter Judgment as far as the Plaintiff can prove his Claim.

Where the Plaintiff fails to appear and the Defendant has a counterclaim, the Magistrate shall proceed to hear the counterclaim and entered judgment accordingly as long as the Defendant can prove his Counterclaim

Where defendant appears with no Counterclaim and claimant fails to appear, the Court may proceed to strike out the claim.

4.0 Stay of Execution in a Small Claims Court

The import of the Practice Direction on Small claims Court is to the effect that a judgment creditor cannot be deprived of the fruit of his judgment²⁴. The judgment of a small claim court can be executed by the judgment creditor just like any other monetary judgment of the court. The small claim court shall deliver judgment within 14 days of the completion of hearing²⁵. The court in question shall endeavour to issue authenticated copies of the judgment 7 days after delivery of the said judgment. Appeal shall lie to the high court within 14 days of the delivery of the judgment stating the reasons for the Appeal²⁶. Since the decision of a Small Claim Court is a monetary judgment, the terms upon which the court will grant a stay of execution are easier to determine

²⁰ *Ibid*, see Form SCC 4.

²¹ *Ibid*, see Form SCC 5.

²² *Ibid*, see form SCC4.

²³ *Ibid*, see Form SCC 5A.

²⁴ *Ibid*, Sec 14(1).

²⁵ *Ibid*, sec 13(1).

²⁶ *Ibid*, See form SCC10

than in other judgments where the *res* is perishable or prone to alterations. As a general rule, every judgment of court is presumed to have been rightly made and the court is only to consider such circumstance which goes to the enforcement of the judgment and not those which go to its correctness²⁷. The major considerations are whether it would be difficult to secure the refund of the judgment debt and costs from the respondent, if the appeal succeeds. Indeed, the financial ability of the respondent should be considered²⁸. The law is trite that in considering the financial disability of the applicant, poverty or the imperious state of the applicant alone is not a ground for a stay to be granted²⁹. Note that a stay of execution is not to be granted automatically upon filing an appeal³⁰. The practice of not enforcing a judgment in which there is a pending appeal is not provided in any legislation. A lower Court like a Small Claim Court may however refuse to follow the said practice especially in recovery of monetary judgment. To hold otherwise is to render futile effort of the Practice Direction to encourage small scale business transactions to thrive. An appeal *per se* does not operate as a stay³¹.

5.0 Duties of the ACR of Small Claims Court

There shall be an Assistant Chief Registrar for the Small Claims Court in every Magisterial District of a Small Claims Court. The forms for small claims court can be obtained from the desk of Assistant Chief Registrar of the Small Claims Court. It can also be photocopied from the Practice Direction for Small Claims Court, 2023 or may be downloaded from the Anambra State Judiciary.³² It is also the duty of the ACR of the Small Claim Court to mark the claim QFSC (Qualified for Small Claims) and direct the applicant to pay appropriate filing fees. Upon completion of filing, the ACR shall forthwith within 24 hours transmit the case file to the most senior presiding magistrate of the Small Claims Court who shall assign same to his court or to another designated magistrate of the Small Claims Court. Same See sec 4 and sec 5 (2) of the Practice Direction on Small Claim Court 2023. It is the duty of the ACR of the Small Claims Court to compile record of Appeal within 14 days of filing of Notice of Appeal as in form SCC 10. Then the Record of Appeal shall be transmitted to the Fast Track Registry in the High Court for Assignment to a judge. The Judge to whom the appeal is assigned to shall issue hearing notice to the parties and the appeal shall be heard at the earliest opportunity but not later than 21 days from the date of assignment. Appeal must be by appellant's written brief which shall be filed within 7 days of the receipt of record of appeal. The appeal shall be determined not more than 45 days from the date of assignment of the appeal.

6.0 Where No Rule Exist in the Practice Direction

Where no specific rule is made or where the applicable rule is silent in the Practice Direction for the Small Claims Court then recourse should be made to provisions of the Magistrate's Court (Civil Procedure) Rules; The High Court Rules or any other written law for the time being in force³³. For instance Order 24 rule 1 and 2 of the Magistrates' Court (Civil Procedure) Rules 2019 provides generally that where in the beginning or purporting to begin any proceeding there has been a failure to comply with the requirement of these Rules, the failure shall not nullify the proceedings. Again where in beginning or purporting to begin any proceeding there has by reason of anything done or

²⁷ *Olonloye v Ademiran* (2001) 14 NWLR (PT 734) at 699 per Uwaifo JSC (as he then was).

²⁸ *Alhaji Ali Mukhtar Sheshe v Alhaji Hassan Ibrahim & Anor.* (2012) ALL FWLR (PT 655)

²⁹ *Olojede v Olaleye* (2010) ALL FWLR (PT 551) at page 1504 PER AGUBE JCA.

³⁰ See *Ikere Local Government v Adelus* (2008) ALL FWLR (PT 404.) At 1534

³¹ See *Josiah Cornelious Ltd v Ezenwa* (1996) 4 NWLR (PT 443) 391 PER Ogundare JSC (as he then was)

³² <https://www.anambrajudiciary.an.gov.ng>.

³³ See sec 17 of the small claim court Practice Direction 2023.

left undone been a failure to call with requirement as to time, place, manner or form , the failure shall be treated as an irregularity and may not nullify such step taken in the proceedings. The Magistrate shall give any direction as he deems fit to regularize such step.

Rules of Court are made by courts to assist them in their efforts to determine issues or controversies before them. In other words, the provisions of the rules make it emphatic that prima facie, they are meant to be obeyed and followed³⁴. Rules of court are meant to regulate matters in court and help parties in the presentation of their cases within a procedure made for the purpose of a fair and quick trial. They are meant to be obeyed, as strict compliance makes for quicker administration of justice. However, it is not every irregularity or noncompliance with rules that will nullify an entire proceeding³⁵. Again a decision of a court will not be set aside merely by reason of noncompliance to a step or a number of steps to be taken³⁶. It follows that rules are handmaid of justice -obedience not to be slavish. Accordingly, courts who employ the rules should not turn it to be the master of the court. Due discretion should be properly exercised so as not to create an absurd situation³⁷. Note that a party who responds to an irregular process cannot allege noncompliance³⁸.

7.0 Conclusion

The essence of this Practice Direction on small Claim Court is to step out of the normal and introduce a faster and more efficient means of handling disputes of monetary claims in a fast-evolving world. The success of the small claims Court lies hugely on the Magistrate who will as always be the masters of the proceedings and the rules. The Magistrate will need to exercise a lot of discretion within the ambit of the Practice Direction. Ultimately, the key is that the common man on the street can confidently say that Justice was done in a fast and affordable manner

³⁴ *Oyegun v Nzeribe* (2010) 7 NWLR PT 1194

³⁵ *Anyankwo v Okoye* (2010) 5 NWLR PT 1188

³⁶ See *Briggs v Briggs* (1992) 3 NWLR PT 228 PER Akpata JSC at pg 153 paragraph A.

³⁷ See *Abah v Monday* (2015) 14 NWLR (PT 1480) Per Fabiyi JSC

³⁸ *Cooperative & Commerce Bank LTD v AG Anambra State* (1992) 8 NWLR (PT 261) Per Karibi - White JSC