



THE JUDICIARY OF UGANDA

**Presentation at the Induction for Newly Appointed Chief Magistrates &
Magistrates Grade One**

20th March 2023

By

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OUTLINE OF THE PRESENTATION

- Introduction
- Background to SCP
- Establishment of SCP
- Application of SCP
- Practical Aspects of SCP
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- Conclusion



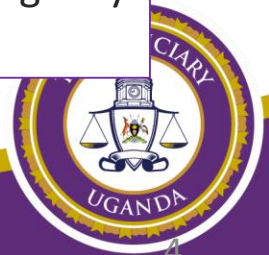
Introduction

- For many years, Uganda's Judiciary has been accused of only giving **justice to the rich**; that cases take **too long** to be completed; that our procedures are too **complicated** to be understood by ordinary citizens; too **costly**; and that our system is heavily **adversarial**.
- With the majority of the Uganda's population being **poor, illiterate** and barely able to afford legal representation, the end result has been the steady loss of public confidence in the justice system.
- Small Claims Procedure like other innovations (plea bargain, Community service ,Arbitration & Mediation) is intended to facilitate efficiency and effectiveness in disposal of cases. Small Claims Procedure targets commercial disputes of ascertainable monetary value of 10M and below.



BACKGROUND TO SCP

- In July 2003, Honorable Judges of the Commercial Division had a commercial justice study tour in London under the Commercial Justice Reform Program.
- They visited the London Civil Justice Centre where SCP in UK was explained.
- The creation of the commercial court had been lauded for creating a fast-track access to commercial justice mechanism.
- However, it had also been criticized for its limited coverage (Kampala), and perceived to be a court for large corporate and business enterprises without catering for the lower end business community.
- Following the return of the Judges from UK, Hon Justice Geoffrey Kiryabwire was assigned to draft a concept paper for introduction of Small Claims Procedure in Uganda. The concept paper dated 16th March 2004 was widely circulated and accepted among the Justice Law and Order stakeholders (7th semiannual JLOS Meeting of June 2004)) who supported the idea of establishing small claims court in Uganda.
- In January 2005 a joint collaboration tripartite taskforce involving CJRP, Commercial Court & ULRC under the chairmanship of Justice Kiryabwire was set up to spear head introduction of Small Claims Procedure.
- In November 2006, the RPD in collaboration with Danida Strengthening Judiciary Project took over the mandate. An interim report was made in May 2007, and a final report paving way for the establishment of the courts was made in November 2008.





- The Small Claims Procedure Rules were made by the Rules Committee of the Judiciary on the 5th of May 2011 in the exercise of the powers conferred upon it under Section 41 of the Judicature Act. It came into force on the 30th of May 2011.
- The rules were first piloted in the Chief Magistrate's courts of Arua, Mbale, Masaka, Lira, Kabale and Mengo, starting from November 2011.
- In the year 2013, by General Notice No. 472 of 2013 published in the Uganda Gazette, the chief magistrates' courts of Jinja, Nakawa, Makindye, Nabweru and Mbarara were added onto the list of the pilot courts.
- In 2015, more 15 Chief Magistrates courts were added onto the number of courts to apply the SCP (Mukono, Nakasongola, Bushenyi, Entebbe, Luwero, Kitgum, Iganga, Fort Portal, Soroti, Masindi, Mpigi, Gulu, Busia, Kasese and Hoima.
- In 2017, the SCP Implementation Committee made a decision to end the pilot phase and roll out the procedure countrywide. Currently SCP has a presence in 187 courts.





OF SCP

WHAT IS A SMALL CLAIM? R3

- It is a commercial dispute whose subject matter does not exceed ten million Uganda shillings.
- SCP covers ascertainable monetary claims arising from debts (supply of goods on credits, disputes over rental payments and friendly loans).
- Rule 5(2) lists matters that are excluded from operation of SCP. These include: disputes in respect to management of estates; validity of wills; claims against government; torts (defamation, malicious prosecution, wrongful arrest and imprisonment; divorce, separation or nullification of marriage; contracts of service and for services, Etc.

WHO ARE THE PARTIES TO A SMALL CLAIM? R8

- Only natural persons can sue.
- Corporate bodies can only become defendants but cannot sue.
- **NB.** The rules forbid legal representation however the recent Constitutional Court Ruling in Israel Ssejemba Vs Attorney General, Constitutional Petition Number 37 of 2017 declared **Rs 8(2)** and 24 unconstitutional, however the Attorney General has since appealed against the decision and the case is yet to be heard by the supreme Court (Attorney General vs Isreal Ssejemba SCCA NO. 0008 of 2021).



WHAT IS THE JURISDICTION OF SCP? R 5(1),9,10,12,13,18,19

- The SCP is applicable to claims not exceeding Ug.shs.10,000,000 in value.
- A Small Claim case is instituted within the local limits of whose jurisdiction the cause of action wholly or in part arises.
- For rental disputes a party may institute the claim where the property is situated or where the defendant resides.
- The SCP Rules prohibit splitting of claims for purposes of fitting them within SCP. The Rules however permit joining of claims, if they originate from different causes of action provided cumulatively, they fit within the monetary limits of SCP.

KEY ASPECTS BEFORE HEARING

- A party shall before instituting a claim under the SCP Rules give a demand notice to the defendant and the life span of the demand notice is 14days.
- A claimant shall in person or through a designated process server serve the summons upon the defendant and the claimant or process server shall within 7 days file an affidavit.
- The defendant shall upon receipt of summons satisfy the debt or claim owed to the claimant or deliver to court a written statement of defence and counter claim

HEARING IN SCP ? Rs 20,21, 22, 23 ,24

- At the Hearing the parties shall appear in person and ensure that witnesses in support of their case are present in court
- The Judicial Officer should encourage ADR as much as possible, and maintain simplicity and non-technical approach—R22.
- Cross examination between the parties or of any witness is not permitted but the Judicial Officer may inquire into any aspect of the evidence that has been adduced.
- Observe rules of natural justice. Hear both parties and their witnesses except where with proof of service exparte hearing is done—R25.
- As much as possible maintain an inquisitorial adjudication process as opposed to adversarial.
- Make judgement Immediately or not later than 14 days from closure of evidence—R27.
- Assess expenses immediately after pronouncing judgement because in SCP no bills of costs are filed—R28 & 29.
- Inquire into the ability to pay and draw a payment schedule so that parties leave court knowing their respective obligations—R28.
- Where the debtor does not respect the payment schedule set, then formal execution follows using the CPRs -R31



PRACTICAL



ASPECTS OF SCP

- Use customized SCP & Demand Notice Registers, as well as customized templates for SCP (Demand Notice, Claim Form, Defense Form, summons, affidavits, judgement etc.)
- The SCP Process should always start with issuance of demand notice.
- Its life span is 14 days from date of issuance.
- Judgement is given instantly or within 14 days.
- Expenses such as transport and filing fees are assessed immediately
- The Payment schedules are agreed upon and followed, or
- Execution follows with strict adherence to the civil procedure rules.
- Ensuring that data is captured and updated as soon as an event(filing , hearing ,delivery of Judgment)happens to ensure accuracy.
- The SCP and Demand Notice Registers as well at the Small Claims Data Management System are harmonized at all times.
- The clerk should update the Registers by closing the Demand notices 14 days after issuance.
- The clerk should endeavor to fill every small detail of the Register.
- The statistics are reviewed by the Head of the Court before submission to the SCP Registry.



Continuation...

- Judicial officers should avoid Cross examination during the SCP hearing
- The summons should be served together with the copy of the defence
- It's a good practice to entertain applications for review
- No legal representation and therefore the parties represent themselves
- Matters are resolved within 30days and there is no room for appeal
- User friendly litigation; litigants are allowed to use native languages in court
- Quick access to litigation
- SCP is significant for being speedy, simple and not expensive therefore Judicial officers should avoid entertaining bill of costs
- There should be a specified judicial officer designated to manage SCP matters making administration and management of cases easier



Continuation...

- To defy allegations of corruption by claimants, the Magistrates should advise claimants to pay the requisite court fees by themselves in the bank
- The judicial officer in charge SCP should advise and encourage the litigants to serve their documents and also allow them to swear affidavits, this will lessens the expenses and also make the parties feel that they are in charge of their cases
- To address high and unpredictable execution costs, courts should come up with standardized costs for execution ranging from Ugx.shs 200,000 to 300,000
- It is also a good practice for the judicial officers to weed out non starter SCP files on a quarterly basis
- SCP Rules prohibit splitting of claims for purposes of fitting them within SCP. The Rules however permit joining of claims, if they originate from different causes of action provided cumulatively, they fit within the monetary limits of SCP



Common pitfalls

- Registering claims that have not originated from a demand notice. The danger is that the process may be hijacked by bush lawyers.
- Some templates are not used as should be, especially for judgements and affidavits.
- Failure to adhere to the timelines set in the rules.
- Failure to use the inquisitorial adjudication process.
- Arbitrary fixing of refundable expenses.
- Registering claims not fit for small claims procedure.
- Skipping the procedure for assessment of ability to pay.
- Refusal to review decisions(conditions for review; exparte judgements, judgement is void, obtained by fraud or mistake common to parties, discovery of new and important matter, correction of errors.)



Small Claims Procedure in other Jurisdictions

SCP in England

-The procedure was first introduced in 1973 and the monetary value of the claim that could be dealt with under the procedure was 75 pounds. Currently cases allocated to the small claim' track are those where the monetary value of the claim doesnot exceed 5000 pounds.

Cases brought under small claims

- Sale of products
- Debt recovery
- Damage to property, faulty goods or workmanship
- Disputes between landlords and tenants
- Road traffic accident claims
- Unpaid wages

Presiding officer

-The small claims cases are heard by district judges under an informal procedure.

Representation

In England and wales, there is no legal bar to advocates appearing before courts handling small claims, rather their non-participation is a matter of choice occasioned by the rule against award of costs.

Salient features of the procedure

- Parties are unable to recover their legal costs, regardless of who wins or loses.
- The winning party will, however ,generally be able to recover fees and expenses
- A party can not choose whether or not to take the SC track. The decision is made by the district judge as part of case management based on the amount and the complexity of the claim.



Small Claims Procedure in other Jurisdictions Contn'

SCP in South Africa

-The Small Claims procedure Act was passed in 1984 and the monetary jurisdiction of the SC courts has been increasing over the years from R 1,000 in 1985 to R 20,000 in 2019.

Presiding Officer

- The presiding officer in the SC courts is called Commissioner and she or he is appointed by the Minister. The Commissioners are drawn from the ranks of attorneys, advocates, serving and retired Magistrates and legal academics.
- The services of the Commissioner are rendered for free of charge.

Representation

- No legal representation is allowed in the SC courts.

Salient Features

- The SC court is housed with in Magistrate courts, however the SC cases are handled in the evening after the ordinary courts have closed the days' work.
- A judgement of the SC court can not be appealed against, however the commissioner's decision may be taken on review to the high court on the following grounds;
 - i) Absence of jurisdiction
 - ii) interest in the case, bias, malice, or corruption on the part of the commissioner.
 - lii) Gross irregularity in the proceedings.

Therefore the review of the two jurisdictions above shows that there is vast similarity and the main intention being to achieve simplicity, cost-effective and use of an inquisitorial approach in Small Claims.





- In spite of the challenges,
- Opportunities for the growth and more usage of SCP are immense. Formal evaluation of the procedure is done annually and the reports are available.
- Best practices for benchmarking have been periodically availed, reviewed, shared and standardised.
- The ball is in each stakeholder's court.



Thank
You

