

Tanzania

Magistrates' Courts Act

Magistrates' Courts (Small Claims Procedure) Rules, 2022

Government Notice 159 of 2023

Legislation as at 10 March 2023

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PDF created on 7 November 2024 at 14:04.

Collection last checked for updates: 31 July 2002.

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FRBR URI: /akn/tz/act/gn/2023/159/eng@2023-03-10

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Government Notice 159 of 2023

Published in Government Gazette on 10 March 2023

Assented to on 27 February 2023

Commenced on 10 March 2023

[This is the version of this document from 10 March 2023.]

[Made under section 71(1)]

1. Citation

These Rules may be cited as the Magistrates' Courts (Small Claims Procedure) Rules, 2022.

2. Application

These Rules shall apply to the court when dealing with small claims in proceedings of civil nature except—

- (a) claims against the government; and
- (b) claims arising from land, labour, probate and administration of estates, matrimonial disputes and other proceedings for which the procedure is specifically prescribed by any other written law.

3. Administration of Rules

In administering these Rules, the court shall strive to—

- (a) implement a simple, speedy and affordable determination of disputes in small claims; and
- (b) determine such claims according to substantial justice without regard to technicalities.

4. Interpretation

In these Rules, unless the context otherwise requires—

“**Act**” means the Magistrates' Courts Act;

“**claimant**” means a person who lodges a small claim in the court and includes any person who becomes a party to the proceedings in a small claim in the capacity of a claimant;

“**court**” means a court of resident magistrate or a district court;

“**High Court**” means the High Court of the United Republic of Tanzania;

“**magistrate in-charge**” means a magistrate in charge of the court;

“**respondent**” means a party against whom the claimant has instituted a small claim;

“**small claim**” means a claim of a civil nature the value of which does not exceed one hundred million shillings but does not fall within the pecuniary jurisdiction of the primary court.

[Cap. 11]

Part II – Institution of a small claim and replies

5. Presentation of statement of claim

- (1) A claim shall be instituted electronically in accordance with the Judicature and Application of Laws (Electronic Filing) Rules, 2018 by presenting a statement of claim substantially in Form A set out under the schedule to these Rules.

[GN. 248 of 2018]

- (2) Every statement of claim shall include the whole of the claim which the claimant is entitled to make in respect of the cause of action but a claimant may omit or relinquish any portion of his claim in order to bring the claim within the meaning of small claim under these Rules.
- (3) Where a claimant omits to claim in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards claim in respect of the portion so omitted or relinquished.

6. Rejection of statement of claim

The statement of claim shall be rejected where—

- (a) it does not disclose a cause of action; or
- (b) the claim appears to be barred by any law:

Provided that, where the court is satisfied that if the claimant is permitted to amend the statement of claim, it will disclose a cause of action or the claim will cease to be barred by any law, it may allow the claimant to amend the statement of claim subject to such conditions as the court may deem fit to impose.

7. Assignment of claim

A magistrate in-charge of the court or magistrate acting in that capacity shall, within twenty-four hours after filing the claim, assign it to a magistrate for trial.

8. Service of statement of claim

- (1) The claimant shall, within seven days of filing a statement of claim, serve a copy thereof to the respondent by—
 - (a) a registered mail or electronically;
 - (b) delivering it to the respondent personally; or
 - (c) leaving it at the respondent's dwelling house or usual place of residence or business.
- (2) The statement of claim served on the respondent under subrule (1). of this rule, shall be accompanied by a notice which is substantially in Form B set out under the schedule to these Rules.
- (3) For the purposes of subrule (1), an electronic delivery status report or affidavit of service which is substantially in Form C set out under the Schedule to these Rules shall be deemed to be sufficient proof of service.

9. Failure to serve statement of claim

Where the claimant fails to serve a statement of claim under rule 8, the claim shall be deemed to have been abandoned and it shall be struck out.

10. Reply to statement of claim

- (1) Upon receipt of the statement of claim, the respondent shall, within fourteen days, file and serve the claimant with a copy of a reply to the claim substantially in Form D set out under the schedule to these Rules.
- (2) Notwithstanding the provisions of subrule (1), the respondent may—
 - (a) settle the amount claimed in full by making payment directly to the claimant or by depositing the amount claimed in court;
 - (b) admit the whole or part of the amount claimed with a proposal on the mode of payment on such terms as the parties may agree and filing an agreement on the proposal;
 - (c) deny the whole or part of the claim
 - (d) raise a counterclaim; or
 - (e) apply to join a third party.

11. Reply to counterclaim

- (1) A respondent who is served with a reply to the statement of claim and counterclaim may take one or more of the following actions—
 - (a) settle the amount in the counterclaim in full by making payment directly to the respondent or by depositing the amount counterclaimed in court;
 - (b) admit the whole or part of the amount counterclaimed with a proposal on the mode of payment on such terms as the parties may agree and filing an agreement; or
 - (c) deny the whole or part of the counterclaim.
- (2) A claimant who has taken any of the actions specified in subrule (1) (c) shall, within seven days from the date of receipt of services, reply to the counterclaim substantially as informed in the Schedule to the Rules

12. Failure to file reply to statement of claim

- (1) Where the respondent fails to file a reply within the prescribed time the court shall make an order to proceed with the claim *ex-parte*.
- (2) Notwithstanding the provisions of subrule (1) the court may, within fourteen days of the *ex-parte* order and upon the respondent showing good cause, set aside the *ex-parte* order.

13. Settlement of claims

- (1) Parties may agree to settle the claim at any time before judgment.
- (2) The settlement of claim shall be in writing and signed by the parties.
- (3) The agreement for the settlement of the claim shall be filed in court and, upon approval by the court, the court shall cause such agreement to be recorded, and shall pass a decree in accordance therewith so far as it relates to the claim.
- (4) Without prejudice to the provisions of sub-rules (1), (2) and (3) of this rule, where the parties agree in court orally to settle their dispute amicably, the court shall record such agreement and cause it to be signed by the parties.

Part III – Hearing

14. Appearance and consequences of non-appearance

- (1) Appearance of parties may be by the party in person, recognised agent or an advocate duly appointed to act on that behalf or, where the Attorney-General is a party, by a public officer duly authorised by him in that behalf.
- (2) Where the claimant does not appear on the date fixed for hearing, the court may dismiss the claim unless it see fit to adjourn the hearing.
- (3) Where the respondent does not appear on the date fixed for hearing the court may, on proof of service, proceed *ex-parte*.
- (4) Where neither party appears, the court shall dismiss the claim.

15. Setting aside *ex-parte* judgment and dismissal order

- (1) Where a claim has been dismissed under rule 14(2) or an *ex-parte* judgment entered under rule 14(3), the aggrieved party may within fourteen days of the order or judgment apply to the court to set aside the dismissal order or *ex-parte* judgment.
- (2) The court may, upon the applicant showing good cause, set aside the dismissal order or *ex-parte* judgment.

16. Hearing of claim

- (1) A claim duly instituted under these Rules shall be heard and determined within five months from the date of its institution: Provided that, the court may, in exceptional circumstances, extend the time for not more than thirty days.
- (2) The procedure for conducting hearing and questioning of witnesses shall be informal with the sole objective of timely dispensation of substantial justice.
- (3) Where both parties are in attendance, the claimant shall open his case and call witnesses, if any, who may be examined by the parties.
- (4) At the closure of the claimant's case, the respondent shall present a reply, counterclaim and set-off, if any, and may call witnesses who may be examined by the parties.
- (5) The court may issue summons to appear to any witness and shall have power to compel attendance of witnesses.
- (6) Evidence shall be given orally, under oath or affirmation, or by affidavit of witnesses: Provided that, a witness who gives evidence by affidavit may be summoned for cross examination at the instance of the court or the opposite party.
- (7) Except with the leave of the court, no party shall address the court after the closure of hearing.

17. Prohibition of adjournments

When hearing has begun, all the witness in attendance shall be examined, unless, for reasons to be recorded, the court finds it necessary to adjourn the hearing.

Part IV – Judgments and execution of decrees

18. Judgments and decrees

After the case is heard, the court shall, within thirty days render judgment and a decree of such case.

19. Costs

Issuance of orders for costs of and incidental to claims under these Rules shall be regulated by the Civil Procedure Code.

[Cap. 33]

20. Execution of decrees

A decree issued under these Rules shall be executed in the manner provided for in the Civil Procedure Code.

[Cap. 33]

Part V – Appeals and revisions

21. Procedure for appeals and revisions

- (1) Any party aggrieved by an order or decision of the court under these Rules may appeal to the High Court.
- (2) The provisions of the Magistrates' Courts Act and the Civil Procedure Code relating appeals and revisions on proceedings originating from the court of the resident magistrate and district court shall apply to appeals and revisions under these Rules.

[Cap. 11]

[Cap. 33]

Part VI – Miscellaneous provisions

22. Mode of applications

- (1) Every application to the court under these Rules shall be made orally in court in the presence of the parties, heard and determined on the same day, save that the court may, where justice so demands, allow an application to be made in writing by way of a chamber summons supported by an affidavit.
- (2) Notwithstanding the provisions of subrule (1), applications under rules 12 and 15 of these Rules shall be in writing by way of a chamber summons supported by an affidavit.

23. Fees

The provisions of the Court Fees Rules, 2018 shall apply to fees payable under these Rules.

[GN. 247 of 2018]

Forms

[Editorial note: The forms have not been reproduced.]