

Legal redress for all – the small claims court

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Recently whilst in the company of lawyers discussing the practice of law in South Africa, I said that I thought that the small claims court was "one of the most important courts in South Africa". Having made the statement I reflected a little sheepishly on what I had said, thinking that lawyers who appear regularly in the high court, the Supreme Court of Appeal and the Constitutional Court might think the statement ill considered. However, on further reflection, there appeared to be a good reason for the statement and my motivation appears in this article.

I sit once a month as a commissioner of the small claims court in Randburg. I have been doing so for about four years. The court is situated near the Randburg magistrates' court in a grimy, rundown, poorly lit and unsecured building. Each week litigants ranging from businesspeople, artisans and housewives, to labourers, squatters and unemployed persons gather at the court building to eagerly wait their turn to present their cases or defend actions instituted against them.

The court sits from Monday to Wednesday and two commissioners are assigned to hear cases, commencing from 17h00 onwards. The number of cases on the roll varies considerably. However, in my experience there are an average about three or four defended cases during each sitting, involving the hearing of oral testimony under oath and the submission of documentary evidence. In a larger number of cases, default judgments are granted or matters are postponed or removed from the roll due to procedural irregularities or the non-appearance of parties. There is very little formality and evidence is adduced in an inquisitorial manner. Litigants are not entitled to legal representation and they are required to present and argue their own cases, often with the assistance of the commissioner.

One or two interpreters are available and the many litigants who speak African languages make their presence indispensable. At the end of a hearing the commissioner usually delivers an *ex tempore* judgment, on occasion in the face of a little protestation, but more generally with a palpable sense that justice has taken its

course and that the matter is now finalised. Proceedings are not mechanically recorded and there is no right of appeal.

The jurisdiction of the small claims court is R3 000 and the court is entitled to award costs which may only include court fees, the prescribed amount for the issue of summons and the fees and travelling expenses relating to the service of summons.

Commissioners are not paid for their services, which are offered entirely on a voluntary basis. It is not uncommon for one of the assigned commissioners to miss a session, which burdens the other commissioner with the task of handling all the business of the court on that particular day.

The circumstances in which the small claims court operates leaves one with the distinct impression that the authorities regard this court as an insignificant adjunct to the legal system and as an institution of relatively minor importance. This is a matter, which in my view needs to be urgently addressed.

It is all too easy to dismiss the importance of legal dispute resolution where amounts involved are small, on the basis that the matters are petty and trivial or, that the administration of disputes involving small amounts must necessarily be subsidiary to the administration of disputes involving larger amounts. In my view, however, there are a number of considerations which require that immediate attention be given to the importance of the small claims court, and these are in broad outline as follows:

- 1 There are a vast number of claims involving small amounts. Often these disputes are not satisfactorily resolved because the cost of recovery in time and money outweighs the quantum of the claim. It is submitted that the sheer volume of claims involving small amounts calls for the provision to the public of cheap and effective dispute resolution procedures;
- 2 The relatively small amounts involved in small claims court proceedings may appear to be paltry. However, they are often very significant to the litigants who pursue their claims, either because

there may be a matter of principle involved or, because the amount is significant in relation to the litigants overall means;

- 3 If one considers the fact that the recovery of any amount in excess of R3000,00 must be proceeded with in the magistrate's court and the cost involved in doing so, it can be argued that there is no adequate method for the recovery of debts at the low end of the scale (in excess of R3 000), where the cost of recovery is often vastly disproportionate to the amount of the claim. It is suggested that this could be redressed by raising the limit of the jurisdiction of the Small Claims Court to the amount of R10 000;
- 4 It should be remembered that the small claims court not only has the jurisdiction to entertain monetary claims but is also empowered to deal with claims for the delivery or transfer of movable or immovable property and for ejection. In theory, this substantially increases the ability of the court to make decisions affecting people's lives and livelihood;
- 5 It is in the public interest to provide a fast, effective and inexpensive method of dispute resolution for the average citizen who in most instances cannot afford the services of a lawyer. In a country where people often show little respect for the law, the small claims court is an institution, which is capable of restoring faith and confidence in the ability of the legal system to redress their grievances. The process which

requires litigants to take the initiative and get actively involved in the presentation of their cases has, in my view, the effect of making them aware of their rights and is tremendously empowering;

- 6 If the limit were raised, it is submitted that the pressure on the magistrates court could to some extent be alleviated, enabling it to concentrate its resources on larger claims. Personnel and resources which are taxed with the burden of processing small claims in the magistrates court, could be diverted to the small claims court.

There is a massive section of the population who have little or no hope of gaining access to legal services, and the small claims court performs a critical roll in

providing these people with an opportunity to seek redress. Legal Aid no longer provides assistance to indigent litigants in civil matters, and in a country where the majority of the population has been denied access to legal services for so long, the small claims court assumes an even more important roll.

It must be borne in mind that if the limit of the jurisdiction of the small claims court were to be raised, the volume of litigation would be likely to increase substantially. This would require that attention would have to be given to, inter alia, the following:

- (a) The upgrading and improvement of facilities and personnel at the small claims court.
- (b) Appointment and training of many more commissioners.

- (c) Education of the public about procedures relating to their rights and the institution of small claims court proceedings.

- (d) Making provision for a substantially increased budget to pay for all of the above. It is submitted that in the process of the upgrading the small claims court, it will become imperative to pay commissioners for the service they render.

It is hoped that if the issues raised above sound a chord in other like minded legal practitioners and officials involved with the administration of justice, they will be prompted to take up the cudgels and campaign for a better small claims court system with an increased jurisdiction. 

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