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DISPUTE RESOLUTION ALERT

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KENYA

Relieve at last as Kenya's Judiciary establishes a Small Claims Court

Litigants in Kenya can breathe a sigh of relief as the Judiciary establishes a Small Claims Court akin to the "People's Court". The court aims to enhance access to justice by providing a forum where disputes would be resolved through simple, less expensive, and highly flexible procedures.



CLIFFE DEKKER HOFMEYR

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KENYA

Reprieve at last as Kenya's Judiciary establishes a Small Claims Court

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Claims to be determined by the court

The Small Claims Court is established by the Small Claims Court Act 2 of 2016 (the Act). Section 12 of the Act provides that the court shall have jurisdiction to determine civil claims relating to:

- a) a contract for sale and supply of goods and services;
- b) a contract relating to money held and received;
- c) liability in tort in respect of loss of damage caused to any property or for the delivery or recovery of moveable property;
- d) compensation of for personal injuries; and
- e) set off and counterclaim under any contract.

The value of any claim to be entertained by the court shall not exceed Kenya Shillings One Million (Kes 1,000,000). Transfer of matters pending before other courts can only be done by a higher court.

Claims not to be entertained by the court

The Small Claims Court cannot entertain any claim for defamation, libel, slander, malicious prosecution, a dispute over a title to or possession of land, employment and criminal matters.

Flexible procedures

One of the unique aspects of the small claims court is that it is in full control of its procedures. The court is not tied down by the Civil Procedure Rules, 2010 or provisions of any other procedural law. The court may adopt a procedure that, in its opinion, would facilitate the objectives of the court and principles of natural justice. The court could also adopt Alternative Dispute Resolution Mechanisms (ADR) with the consent of the parties concerned. Further, the Act excludes strict application of the rules of evidence to proceedings in the court. Therefore, proceedings in this court could take a formal or informal approach as long as it is appropriate for the parties.

Timelines

Refreshingly, any matter filed before the Small Claims Court must be concluded within 60 days. This will greatly increase the ease of doing business in the country due to the speedy resolution of disputes. Further, the establishment of this court guarantees the right of access to justice as envisioned by Article 48 of the Constitution of Kenya.

Language of the court

This court does not have a particular language which is unlike the other courts in Kenya. Parties to a suit in this court could use English, Kiswahili, or any other appropriate language in the circumstances. This means that parties can choose to use a native language, Kenyan sign language, Braille, or any other language appropriate for persons with disability. This is a great step in making justice accessible to people who do not understand any other language other than their native languages.

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Under section 20 of the Act, a party can appear in court in person or through a representative. The representative does not have to be an Advocate of the High Court of Kenya.

Representation in court

Under section 20 of the Act, a party can appear in court in person or through a representative. The representative does not have to be an Advocate of the High Court of Kenya. The representative only needs to show that he/she has sufficient knowledge of the facts of the case and authority to bind the party he/she represents.

Affordable filing fees

To meet the objectives of the court, the filing fees are affordable. The fee breakdown is as follows:

Filing a Claim (Kes)	Amount (Kes)
Less than 200,000	200
Above 200,000 but below 500,000	400
Above 500,000 but below 800,000	600
Above 800,000 but below 1,000,000	1,000
Filing Counter Claim (Kes)	Amount (Kes)
Less than 200,000	200
Above 200,000 but below 500,000	400
Above 500,000 but below 800,000	600
Above 800,000 but below 1,000,000	1,000
Filing All other Responses	200
Third Party Notice	400
Service Fee	Amount (Kes)
Within 2 Kilometres	100
Over 2 Kilometres but below 10 Kilometres	300
Over 10 Kilometres	500
Fee For each exhibit	10
Fees Payable to a witness per day	200
Fees recoverable on execution of a Decree or order of the Court	Not exceeding 10% of the aggregate value of the subject matter together with disbursements on account of the fees specified in this Schedule

KENYA

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The first small claims court was launched at Milimani Commercial Courts in Nairobi on 26 April 2021.

Reliefs that the court may grant

The court may grant the following orders in a claim before it:

- a) an order to pay money as a lump sum or in instalments;
- b) an order for the restitution of moveable property;
- c) an order for recovery of money relating to performance of a contract;
- d) an order dismissing claims in proceedings before it; and
- e) any other consequential or ancillary order.

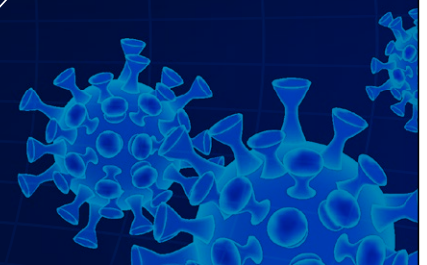
The first Small Claims Court was launched at Milimani Commercial Courts in Nairobi by the Ag. CJ Philomena Mbete Mwilu on 26 April 2021. The court is now operational and anyone with a claim falling within its jurisdiction can approach the court for reprieve.

The above alert is meant for general information and does not constitute legal advice. In case of any inquiries or if you require any further information or advice on how the Court could affect your business, please feel free to contact Desmond Odhiambo.

*Desmond Odhiambo,
Christine Mugenyu and
Johnstone Odeya*

CDH'S COVID-19 RESOURCE HUB

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2021 RESULTS

CHAMBERS GLOBAL 2017 - 2021 ranked our Dispute Resolution practice in Band 1: Dispute Resolution.

CHAMBERS GLOBAL 2018 - 2021 ranked our Dispute Resolution practice in Band 2: Insurance.

CHAMBERS GLOBAL 2017 - 2021 ranked our Dispute Resolution practice in Band 2: Restructuring/Insolvency.

CHAMBERS GLOBAL 2020 - 2021 ranked our Corporate Investigations sector in Band 3: Corporate Investigations.

Chambers Global 2021 ranked our Construction sector in Band 3: Construction.

Chambers Global 2021 ranked our Administrative & Public Law sector in Band 3: Administrative & Public Law.

Pieter Conradie ranked by CHAMBERS GLOBAL 2019 - 2021 as Senior Statespeople: Dispute Resolution.

Clive Rumsey ranked by CHAMBERS GLOBAL 2013-2021 in Band 1: Construction and Band 4: Dispute Resolution.

Jonathan Witts-Hewinson ranked by CHAMBERS GLOBAL 2021 in Band 3: Dispute Resolution.

Tim Fletcher ranked by CHAMBERS GLOBAL 2019 - 2021 in Band 3: Dispute Resolution.

Joe Whittle ranked by CHAMBERS GLOBAL 2020 - 2021 in Band 3: Construction

Tobie Jordaan ranked by CHAMBERS GLOBAL 2020 - 2021 as an up and coming Restructuring/Insolvency lawyer.



Cliffe Dekker Hofmeyr's Dispute Resolution rankings in THE LEGAL 500 EMEA 2020:

CDH's Dispute Resolution practice is ranked as a Top-Tier firm in THE LEGAL 500 EMEA 2020.

Tim Fletcher is ranked as a Leading Individual in Dispute Resolution in THE LEGAL 500 EMEA 2020.

Eugene Bester is recommended in Dispute Resolution in THE LEGAL 500 EMEA 2020.

Jonathan Witts-Hewinson is recommended in Dispute Resolution in THE LEGAL 500 EMEA 2020.

Pieter Conradie is recommended in Dispute Resolution in THE LEGAL 500 EMEA 2020.

Rishaban Moodley is recommended in Dispute Resolution in THE LEGAL 500 EMEA 2020.

Kgosi Nkaiseng is ranked as a Next Generation Partner in THE LEGAL 500 EMEA 2020.

Tim Smit is ranked as a Next Generation Partner in THE LEGAL 500 EMEA 2020.

Gareth Howard is ranked as a Rising Star in THE LEGAL 500 EMEA 2020.

CDH's Construction practice is ranked in Tier 2 in THE LEGAL 500 EMEA 2020.

Clive Rumsey is ranked as a Leading Individual in Construction in THE LEGAL 500 EMEA 2020.

Joe Whittle is recommended in Construction in THE LEGAL 500 EMEA 2020.

Timothy Baker is recommended in Construction in THE LEGAL 500 EMEA 2020.

Siviwe Mcetywa is ranked as a Rising Star in Construction in THE LEGAL 500 EMEA 2020.



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Insuralex Global Insurance Lawyers Group
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BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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