

Statutory Instrument No. 55 of 2009

SMALL CLAIMS COURTS ACT
(Act No. 7 of 2009)

SMALL CLAIMS COURTS RULES, 2009
(Published on 17th July, 2009)

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IN EXERCISE of the powers conferred on the Chief Justice by section 19 of the Small Claims Courts Act, the following Rules are hereby made —

PART I — *Preliminary*

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| Citation | 1. These Rules may be cited as the Small Claims Courts Rules, 2009. |
| Interpretation | <p>2. In these Rules —</p> <p>‘clerk of Court’ means a clerk of Court appointed under section 9 of the Act and includes Assistant Clerks.</p> <p>‘Court’ means a small claims court established in terms of section 3 of the Act.</p> <p>‘Court Bailiff’ means an officer appointed in terms of section 10 of the Act.</p> <p>‘Deputy Sheriff’ means an officer appointed under section 18 of the High Court Act.</p> <p>‘presiding officer’ means a person designated as such in terms of section 8 of the Act.</p> <p>‘party’ means a natural person who is party to the proceedings and includes a corporate body or association which has been sued as a defendant.</p> <p>‘property’ means movable and immovable property.</p> |
| Cap. 04:02 | <p>3. These Rules shall apply to all proceedings of the small claims courts.</p> <p>4. (1) The forms set out in the Schedule may be used with such variations as circumstances may require.</p> <p>(2) A document used in Court shall, where practicable, be on A4 size paper.</p> <p>(3) A document used in Court shall be signed by party issuing the same with his or her name and address appearing below.</p> |
| Application
Forms and
process of Court | |

PART II — *Duties of Officers of Court*

- | | |
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| Clerk of Court | <p>5. (1) A summons or other document filed in any case shall be numbered by the clerk of the Court with consecutive numbers starting with the number one and the appropriate year of commencement of the case.</p> <p>(2) The numbers under subrule (1) shall be recorded by the clerk of the Court in a register.</p> <p>(3) Every document afterwards served or delivered in that case shall be marked with such number by the party delivering it, and shall not be received by the clerk of the Court unless so marked.</p> <p>(4) The documents referred to in subrules (1) or (3), and all minutes made by the Court shall be filed of record under the number of the respective action.</p> <p>(5) The clerk of the Court shall, upon the payment of a fee of P2 —</p> <p>(a) furnish a copy of any record to an interested party; or</p> <p>(b) permit any person to make copies of any record.</p> <p>(6) It shall be the duty of the clerk of the Court to —</p> <p>(a) issue all such process of the Court as may be sued out by any person entitled thereto; and</p> <p>(b) notify the plaintiff forthwith by post or otherwise of a judgment by default having been refused.</p> <p>(7) It shall be the duty of the clerk of the Court to sign, date and issue all such process of the Court as may be sued by any person.</p> <p>(8) Any action that the clerk of Court is required to perform may be done by the presiding officer except that the presiding officer shall not write out any affidavit, pleading or process for any party.</p> |
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PART III — *Commencing Action*

6. (1) No summons shall be issued unless a letter of demand of the plaintiff's claim in Form 1 as set out in the Schedule has been served on the defendant at least 14 days prior to the issuance of summons. Letter of demand

- (2) A letter of demand may be served —
- (a) personally on the defendant;
 - (b) by registered post at the known address of the defendant; or
 - (c) by serving it at the defendant's residence or place of business.
- (3) The contents of a letter of demand shall —
- (a) set out the facts upon which the claim is based;
 - (b) demand payment within 14 days from the date of receipt of such letter of demand.

7. (1) Where the defendant has failed to satisfy the claim within 14 days, the plaintiff may request the clerk of the Court to issue a summons against such defendant. Issuing of summons

(2) The plaintiff shall prepare a summons and three copies thereof, but if he or she is unable to do so, such plaintiff may request the clerk of the Court for assistance.

(3) The summons shall be in Form 2 as set out in the Schedule or as close to it as possible.

(4) The plaintiff shall submit the summons and its three copies to the clerk of Court and shall satisfy him or her either by an affidavit in Form 2 as set out in the Schedule or by the production of a registered-post receipt that the letter of demand was served on the defendant.

(5) The summons shall be served on the defendant 14 days before the date of the hearing.

(6) The summons shall be signed by the clerk of the Court and shall bear the date on which it was issued.

(7) The original of the summons shall at all times be retained in the record in the office of the clerk of the Court.

8. (1) The summons shall — Contents of summons

- (a) be signed by the plaintiff; and
- (b) state the full address of the plaintiff.

(2) The address for service of either party shall not be that of the clerk of the Court or that of the Court Bailiff.

(3) The summons shall include a notice drawing the defendant's attention to the provisions of section 14 (1) of the Act.

(4) The summons shall contain particulars of claim and shall state —

- (a) the nature and amount of the claim;
- (b) the defendant's —
 - (i) full names,
 - (ii) his or her place of residence, and
 - (iii) place of business, or employment;
- (c) the rate of interest, if any, which shall not exceed 10 per cent per annum and the amount claimed up to the date of the summons;
- (d) any abandonment of part of the claim; and
- (e) any set-off.

(5) The Court Bailiff shall endorse the amount of his or her charges for service thereof on the summons.

(6) Where the summons contains more than one claim, the particulars of each claim and the relief sought in respect of each claim shall be stated separately.

(7) Where the particulars are lengthy, they may be contained in an annexure served with the summons, which annexure shall be taken to be part of the summons.

(8) Where the defendant is not an individual it shall be sued by its corporate name with its place of business or headquarters and its tax number, if any, stated.

Service of summons by plaintiff

9. (1) A plaintiff may serve the summons on the defendant —
(a) where the defendant is an individual by personally handing a copy to him or her at the defendant's residence or place of business; or
(b) where the defendant is not an individual, by handing a copy to a responsible employee at the defendant's place of business.

(2) The plaintiff shall return a copy of the summons and an affidavit of service in Part III of Form 2 as set out in the Schedule to the clerk of the Court within three days after service.

Service of summons by Court Bailiff
Cap. 04:02
(Sub. Leg.)

10. (1) If the plaintiff is unwilling or unable to serve the summons personally, he or she may, on tendering the fee prescribed in the Magistrates' Courts Rules, request the Court Bailiff to serve it for the plaintiff.

(2) A summons may be served —
(a) personally on the defendant;
(b) by registered post at the known address of the defendant; or
(c) by serving it at the defendant's residence or place of business.

PART IV — *Defending or Consenting to Action*

Written statement of defence

11. (1) Where a defendant, who has been served with a summons, wishes to defend the action, he or she may complete a written statement of his defence in Form 3 as set out in the Schedule and shall lodge two copies with the clerk of the Court.

(2) Where the defendant has lodged his or her statement of defence with the clerk of the Court, the clerk shall send by registered post one copy of the statement to the plaintiff.

(3) The contents of a statement of defence shall include —
(a) particulars of his or her defence; or
(b) a denial that he or she is the defendant.

Counterclaims

12. (1) Where a defendant wishes to make a counterclaim to the summons, he or she may, in addition to or alternatively to lodging a statement of defence, complete a statement of his or her counterclaim in Form 4 as set out in the Schedule and shall lodge two copies with the clerk of the Court.

(2) Where the defendant has lodged his or her counterclaim with the clerk of the Court in terms of subrule (1), the clerk of the Court shall post one copy to the plaintiff.

(3) The contents of a counterclaim shall include particulars of the counterclaim as are required in terms of rule 7 in respect of a claim and may follow, as appropriate, Form 4 as set out in the Schedule.

13. (1) Where a defendant admits liability to the plaintiff's claim, he or she may consent to judgment to the whole or part of the plaintiff's claim by completing Part II of Form 2 as set out in the Schedule in duplicate and lodge the same with the clerk of the Court not later than the date of the hearing.

Consent to
judgment
before hearing

(2) Where the consent relates to the whole of the claim, the Court shall give judgment in favour of the plaintiff.

(3) Where the plaintiff does not accept to abandon any part of the claim not consented to by the defendant, he or she may proceed to recover before the Court the balance of such plaintiff's claim.

(4) Where the plaintiff makes a request in terms of subrule (3), he or she shall complete Form 5 as set out in the Schedule and shall lodge it with the clerk of the Court who shall refer it to the presiding officer.

(5) A presiding officer to whom a request is referred under subrule (4) may —

- (a) enter judgment by consent ;
- (b) call on the plaintiff to first produce evidence either written or oral as to any matter relating to the validity of the consent or the claim and then enter judgment by consent;
- (c) refuse to enter judgment; or
- (d) make such other order as may be just.

(6) Where judgment by consent before the hearing has been granted in terms of subrule (5), the clerk of the Court shall advise the parties in Form 5 as set out in the Schedule that judgment has been granted and that the parties are no longer required to attend the hearing.

(7) Where a defendant has consented to judgment for an amount which is less than the plaintiff's claim, and the plaintiff does not wish to abandon the balance, the plaintiff shall not be obliged to accept the defendant's consent but in such case the plaintiff shall proceed to the hearing and the parties shall be required to attend on the set date.

14. Where a defendant who has been served with a summons fails to attend the hearing as directed in the summons the Court may, at the request of the plaintiff made at the hearing —

Judgment by
default

- (a) enter judgment for the plaintiff;
- (b) call on the plaintiff to first produce evidence, either written or oral, as to any matter relating to the service of the summons or the claim and then enter judgment;
- (c) refuse to enter judgment; or
- (d) make such other order as may be just.

15. (1) Where default judgment has been given against him, the defendant may, within 14 days of becoming aware of the judgment, apply to the Court for the judgment to be set aside by completing Form 6 as set out in the Schedule and lodging three copies of the same with the clerk of the Court.

Rescission
of judgment

(2) A defendant who applies for a rescission of judgment shall state any of the following reasons for doing so —

- (a) that judgment was obtained by fraud and specify the fraud;
- (b) that there is patent error and state the same; or
- (c) give good reasons for applying for the rescission of judgment.

(3) The clerk of the Court shall, on receipt of the copies of Form 6 as set out in the Schedule, set a date for the hearing of the application and shall endorse such date on two copies of the forms and shall send one copy each to the plaintiff and the defendant.

- (4) On the day of the hearing of the application for rescission of judgment, the presiding officer may, after hearing the parties —
- (a) grant the application;
 - (b) refuse the application; or
 - (c) make such other order as appears just.

Withdrawal of an action

(5) The clerk of the Court shall, on receipt of the judgment, notify the defendant that judgment has been granted against him or her and shall complete Form 6 as set out in the Schedule and shall send one copy each to the plaintiff and the defendant.

16. (1) If a defendant makes an offer of settlement before the hearing and the plaintiff accepts the offer or if for any other reason the plaintiff wishes to withdraw his action, the plaintiff shall without delay lodge two copies of a notice of withdrawal in Form 7 as set out in the Schedule.

Amendment of process

(2) Where the clerk of the Court receives the form under subrule (1) from the plaintiff he or she shall forthwith endorse one copy and send it to the defendant.

17. (1) A party may amend his or her summons or document before it is served.

(2) Any alteration or amendment of any summons or document before Court shall be initiated by the clerk of the Court on the original document, and unless so initialed, such alterations and amendments shall have no effect.

PART V — *Enforcement of Judgment*

Enforcement of judgment

18. (1) Where the party against whom judgment has been given fails to satisfy it forthwith or within the period ordered by the Court, as the case may be, the party in whose favour the judgment was given may apply to the clerk of the Court for the issue of writ of execution.

(2) Upon application being made to him or her in terms of subrule (1), the clerk of the Court may issue a writ of execution to the applicant, which shall be in Form 8 as set out in the Schedule.

Cap. 04:02 (Sub. Leg.)

(3) The party to whom a writ has been issued may, upon tendering the fee prescribed in the Magistrates' Courts Rules for the service of writs, require the messenger to serve and execute the writ in accordance with those Rules.

PART VI — *Witnesses and Oaths*

Attendance of witnesses
Oaths by witnesses and interpreters
Cap. 04:02 (Sub. Leg.)

19. The presiding officer may, after each party has given evidence, call a further witness or witnesses to clarify the issues raised in the evidence of the plaintiff or defendant.

20. (1) A witness called to give evidence shall take an oath or affirmation in the same manner as prescribed in the Magistrates' Courts Rules.

(2) An interpreter shall, before taking up his or her duties, take an oath prescribed in the Magistrates' Courts Rules.

PART VII — *General*

Languages used in Courts

21. (1) Proceedings in a small claims Court may be conducted in any official language, agreed upon by the parties and the presiding officer.

(2) Any other language of Botswana may be used with free interpretation provided in respect of such language.

Fees
Cap. 04:02 (Sub. Leg.)

22. (1) The fees and travelling expenses to be taken by a Court Bailiff or deputy sheriff shall be those prescribed in the Magistrates' Courts Rules.

(2) Fees for the furnishing of copies of records or for permitting copies to be taken shall be the appropriate fee specified in the Magistrates' Courts Rules.

Monetary limit

23. The monetary limit under section 11 of the Act shall not exceed P10,000.

SCHEDULE
FORMS

<i>Form Number</i>	<i>Types of forms</i>
1	Letter of demand
2	Summons
3	Statement of defence
4	Statement of defence with counterclaim (denying plaintiff's claim)
5	Advice that judgment by consent has been granted before hearing
6	Application for rescission of judgment
7	Withdrawal of action
8	Writ of execution and ejectment

**LETTER OF DEMAND IN TERMS OF RULE 6 (1) OF THE SMALL CLAIMS
COURT RULES**

(Heading)

Dear Sir/Madam

I, the undersigned, hereby demand:

a. Payment of the amount of P.....being in respect of:

.....
.....

b. Or delivery of the following goods:

.....
.....

c. Or that you vacate my property, namely.....forthwith.

Please note that unless the amount is paid to me within 14 days from today, a summons
will be issued against you for the recovery of my claim in the Small Claims Court of

.....

Yours faithfully

.....
Signature

Note:

(1) delete paragraph a, b or c or whichever is not applicable.

SUMMONS

(Heading)

SUMMONS TO APPEAR AT THE SMALL CLAIMS COURT AT.....

PARTIES:

Plaintiff (Name)
(Address)
.....
.....

Defendant (Name).....
(Address)
.....
.....

PART I

NOTICE OF THE DEFENDANT

1. You are directed to appear before the Small Claims Court, held at
Magistrates' Court,.....on theDay of.....
20..... atto admit or deny your liability for the claim mentioned
in this summons.
2. If you deny liability, you may, before the trial, deliver to the clerk of Court at the
.....Magistrates' Court, your defence and the reasons
for denying your liability and serve a copy of this document on the plaintiff.

C.560

PLAINTIFF'S CLAIM:

Plaintiff's claim is for.....
.....
.....

Wherefore the plaintiff claims for:

.....
.....
.....

3. (a) Note that if you fail to appear in Court on the trial date after a summons has been served on you, judgment may be given against you by the Court.
- (b) If you want to pay money in settlement of the claim, you may pay directly to the judgment creditor.
- (c) If you admit the claim and wish to consent to the judgment or wish to undertake or pay the claim in instalments or make other arrangement, you may approach the plaintiff.
4. If you fail to settle the judgment or order of the Court, a writ of execution against your movable and later on your immovable property may be issued by the clerk of Court for the attachment of your movable and later on your immovable property to satisfy the plaintiff's claim.

Execution may be levied for the whole judgment debt and for costs which have not been paid or for any instalment which have not been paid.

PART II

CONSENT TO JUDGMENT

I admit that I am liable to the plaintiff as alleged in the summons for the amount of P.....
and costs to date and I accordingly consent to judgment.

.....
Signature

Dated at**this****date of** **20**.....

PART III

AFFIDAVIT OF SERVICE

I, the undersigned,.....
Hereby declare that I personally delivered a copy of the summons (attached original Summons
marked Annexure 'A') to the defendant by serving it on him/her on the.....
day of.....20.....at.....am/pm.....at(place)

SIGNATURE:.....

FULL NAME.....

Signed before me aton this
.....day of20.....at.....am/pm

.....
COMMISSIONER OF OATHS

FULL NAME

ADDRESS

.....

C.562

Form 3
(Rule 11(1))

STATEMENT OF DEFENCE

(Heading)

PARTIES:

Plaintiff (Name):

Address.....

Defendant (Name):

Address:.....

.....

.....

Defendant denies he/she/it* is liable to the plaintiff as claimed in the summons.

*** delete whichever is not applicable**

PARTICULARS OF DEFENCE:

.....

.....

.....

.....
Date

.....
Signature of the Defendant

.....
Signature of the Clerk of Court
Official stamp

**STATEMENT OF DEFENCE WITH COUNTERCLAIM
(DENYING PLAINTIFF'S CLAIM)**

(Heading)

1. PARTIES:

Plaintiff (Name):.....

Address.....

Defendant (Name):.....

Address:.....

Defendant denies he/she/it* is liable to the plaintiff as claimed in the summons.

*** delete whichever is not applicable**

PARTICULARS OF DEFENCE:

(a)

(b)

(c)

(d)

COUNTERCLAIM:

In addition to denying liability, defendant counterclaims for the sum of P.....
against the plaintiff.

PARTICULARS OF COUNTERCLAIM:

1

2

3

.....
Date

.....
Signature of the Defendant

**ADVICE THAT JUDGMENT BY CONSENT HAS BEEN
GRANTED BEFORE HEARING**

(Heading)

I. PARTIES:

Plaintiff (Name):

Address:.....
.....
.....

Defendant (Name):

II. JUDGMENT BY CONSENT:

(i) The parties are notified that judgment by consent has been granted by the Court
for the plaintiff for the amount of Pin terms of the
defendant's consent to judgment dated
and lodged with the Clerk of Court.

III. NO ATTENDANCE

The parties are not required to attend the hearing filed for the

Dated at this day of 20.....

.....
Signature of Clerk of Court

Official Stamp

APPLICATION FOR RESCISSION OF DEFAULT JUDGMENT

IV. PARTIES :

Plaintiff (Name):

Address:.....

Defendant (Name):

V. REASONS WHY JUDGMENT SHOULD BE SET ASIDE

(i)

(ii)

(iii)

Dated at this day of 20

.....
Signature of Defendant

THIS PORTION TO BE ENDORSED BY CLERK OF COURT AND COPIES SENT TO PLAINTIFF AND DEFENDANT

TAKE NOTICE that the application for rescission will be heard at
(place)

on the
(date)

You are required to attend the hearing on

.....
Signature of Clerk of Court

WITHDRAWAL OF ACTION

PARTIES :

Plaintiff (Name):

Address:.....

Defendant (Name):

Address:

NOTICE OF WITHDRAWAL

TAKE NOTICE that I have withdrawn the action against the defendant and do not wish to proceed with claim.

Dated at thisday of 20

.....
Signature of Plaintiff

THIS PORTION SHOULD BE ENDORSED BY THE CLERK OF COURT AND COPIES SENT TO DEFENDANT

TAKE NOTICE that plaintiff has withdrawn the above claim against you.

You are no longer required to attend the hearing.

Dated at thisday of 20

.....
Signature of the Clerk of Court

Official Stamp

Case No..... 20.....

WRIT OF EXECUTION AND EJECTMENT

PARTIES :

Plaintiff (Name):

.....

Address:

.....

Defendant (Name):

.....

Address:

.....

TO THE COURT BAILIFF.....

In the case between the above-named parties the Court ordered defendant to pay the sum of P to the plaintiff and ordered the ejectment of the defendant from the plaintiff's house at
(State physical address of the premises)

You are authorized and required:

(a) To attach and take into execution the property of the said defendant and to raise the sum of together with the interest at the rate of calculated from plus costs.

(b) To eject the defendant from the plaintiff's house. You are authorized and required to perform your duties under this writ in accordance with Magistrates' Court (Civil) Rules. This writ has been issued by the Clerk of Court, Small Claims

Court at on the day of 20.....

By Order of the Court

.....
Signature of Plaintiff

.....
Signature of the Clerk of Court

MADE this 8th day of July, 2009.

JULIAN NGANUNU,
Chief Justice.