

# **The Development of Small Claims Procedure in Uganda**

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## Statement of the problem.

Uganda in the mid-1990s embarked on the reform of the commercial justice system with a view to improving access to justice to the courts by the Ugandan business community so as to unclogged capital that was locked up in disputes and ultimately release that capital back into commerce and trade so as to facilitate overall economic growth for the country. Previously all commercial disputes were handled as part of the civil justice system together with claims in torts, land disputes and family disputes. The civil justice system as a result was congested, not specialised and slow in resolving disputes, which negatively impacted commercial and economic growth.

## Re-engineering the civil justice system.

In 1996 the Uganda Judiciary in response to an outcry by the business community to have the Judiciary be responsive to the quick resolution of commercial disputes, carved out of the civil division of the High Court a new division known as the Commercial Court Division (or Commercial Court as it is better known). The Commercial Court was specialised and exclusively dealt with commercial disputes. The Commercial Court largely lived up to its expectations and revolutionised the resolution of commercial disputes in Uganda. This success notwithstanding, the Commercial Court came under significant criticism as a big business court, which was not suitable for the small and medium type Enterprises (SMEs) and the informal business sector which comprised the bulk of the local Ugandan business community. In a bid to address this imbalance in the Commercial Court a study led by myself (Justice Geoffrey Kiryabwire) and a select group of legal professionals identified the need to start a form of small claims court in Uganda to handle monetary disputes from the SME and informal business sector.

As a result of the study, in 2011 **The Judicature (Small Claims Procedure) Rules** [SI 25 of 2011] were made. The Small Claims Procedure was a totally home grown version of small claims court found in other parts of the world. These new Rules put in place a new innovate procedure whereby litigants who seek to recover a monetary debt of Ug Shs 10,000,000/= (Ten Million shillings or about US \$ 2,700) and below from another person could institute a fairly simplified case in court by themselves and use the court services to have it served on a defendant. The defendant equally through a simplified process could file a defence to the claim against him or her. The procedure was simplified to such an extent that the parties to the case do not need to hire a lawyer and indeed the procedure excludes representation by lawyers in such courts. The idea was decongest courts of cases of debt recovery of the value of Shs 1 to 10,000,000/= which are the bulk of claims of the small and medium business community. The procedure started at the end of 2012 in 6 pilot courts around the country and by the end of 2013 the Judiciary, won the Public Service Innovation Award for introducing this simplified procedure in the courts. The Small Claims Procedure was a popular innovation and broke records when a few cases were actually settled on the same day in which they were filed. The Small Claims Procedure quickly acquitted itself as true fast track court procedure.

#### The Results of the Procedure.

The recoveries of money made through this procedure have continued to grow from Ug Shs 1.5 billion in 2013 (US \$ 417,000) in 6 pilot courts to about Ug Shs 8.0 Billion (US \$ 2,222,222) on 2016 in 25 pilot courts. The half year report for 2017 shows that already about Ug Shs 4 Billion has been recovered, which is an early indicator that the performance of the previous year will be surpassed. Given that these figures represent fairly small amounts of monies that are claimed, the overall value of the annual national recoveries points to wide use of the procedure by claimants in a manner never before achieved in Uganda.

An independent evaluation baseline study carried out by **M/s Akijul Ltd** in partnership with **LASER** and **LDP** of the UK in 2016, shows that the Small Claims Procedure is highly rated with an 80% satisfaction rate by polled respondents.

This independent study is also backed up by experiences in our magistrates' courts, where the filing of small claims led to a 55% decline in the number of claims filed in court using the regular track for the equivalent amounts. The study also found that the Small Claims Procedure increased access to civil –commercial justice in the pilot courts and improved the business environment for its users. The procedure has improved access to justice to a more marginalised business sector in Uganda, is fast, efficient and cost effective. The Independent Study also established that the value of claims finalised under the small claims procedure in the Government financial year 2015/16 exceed the costs of running the programme by 11:1. The Small Claims Procedure in Uganda has already started to be recognised as a significant innovation by other African Countries and has inspired the creation of small claims procedure in the Kingdom of Lesotho and the benchmarking of the Ugandan model from the judiciary of Rwanda.

#### Challenges.

What remains is the need to roll out this procedure to all magistrates' courts in Uganda. Though the most significant magistrate's courts now operate the small claims procedure in Uganda, this still amounts to less than half of the said courts in Uganda. The roll out of the small claims procedure to other courts has been slow largely due to limited funding. The independent study established that the cost benefit return of rolling the procedure country wide would exceed costs by 8:1. Development Partner support in this area in addition to Government budgetary support would led to a faster roll out of the procedure throughout the country.

#### Conclusion.

The award winning small claims procedure in Uganda has become a “people's court” responsive to the needs of the SMEs and informal sector. It has also improved the culture of contract compliance in the country and facilitated business growth and credit worthiness. The future projections of this fast track is bright and it undoubtedly improve Uganda's overall business climate.