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## **MAGISTRATES' COURTS LAW**

### **PRACTICE DIRECTIONS ON SMALL CLAIMS 2022**

In exercise of the powers conferred on me by Section 274 of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended); Section 76 of the High Court of Bayelsa State 2006; Section 1 and 76(1) (2) and (3) of the Magistrates' Courts Law CAP MI, Laws of Bayelsa State 2006 and by virtue of all other legislation enabling me in that regard, I, **HON. JUSTICE KATE ABIRI, CON**, Chief Judge of Bayelsa State, do hereby issue the following Practice Direction.

#### **PREAMBLE:**

Whereas, I, the Honourable Chief Judge hereby designate some Magistrates' Courts as Small Claims Courts and some High Court as Small Claims Appellate Courts.

This practice Direction shall apply and be observed in the Magistrates' Courts designated as Small Claims Magistrates' Court and by the designated High Courts, when sitting over Appeals from the Small Claims Magistrates' Court.



## **SMALL CLAIMS PROCEDURE**

### **ARTICLE 1**

#### **OBJECTIVE**

The objective of the Small Claims procedure is to provide easy access to an informal, inexpensive and speedy resolution of simple debt recovery disputes, demands and damages in the Magistrates' Courts in Bayelsa State.

### **ARTICLE 2**

#### **COMMENCEMENT OF ACTION**

1. An action may be commenced in the Small Claims Court where:
  - (a) The Claimant or one of the Claimants resides or carries on business in Bayelsa State;
  - (b) The Defendant(s) resides or carries on business in Bayelsa State.
  - (c) The cause of action arose wholly or partly in Bayelsa State;
  - (d) The Claim is for a simple liquidated money demand and/or related matters in a sum not exceeding N5,000,000.00 (Five Million Naira), including costs;
  - (e) The Claimant must have served on the Defendant(s), a LETTER OF DEMAND as in Form BSSC1.
  
2. The action shall be commenced by Claim upon the completion of a Small Claims Complaint Form as in Form BSSC2.



3. The Summons shall be issued as in form BSSC 3 upon the Registrar of the Small Claims Court being satisfied that the requirements of Article 2 (1) and (2) above have been complied with.

### **ARTICLE 3**

#### **MARKING AND PAYMENT OF FILING FEES**

Where a case satisfies the criteria in Article 2 above, the Registrar in charge of the Small Claims Registry shall cause the Claim to be marked "Qualified for Small Claims" and direct the Claimant to pay appropriate filing fees.

### **ARTICLE 4**

#### **ASSIGNMENT OF SMALL CLAIMS FILE**

1. Upon the marking of the Claim, the Registrar in charge shall within 24 hours forward the case file to the designated Small Claims Magistrate in the Magisterial District or to the Presiding Magistrate of the Small Claims Court or the Chief Registrar for assignment.
2. The Magistrate of the Small Claims Court shall within 24 hours of receipt of the case file, fix a date for the hearing of the case and direct the Bailiff of the Small Claims Court to serve the Defendant(s) with a Summons.

### **ARTICLE 5**

#### **SERVICE OF THE SUMMONS**

1. The Summons shall be served by the Bailiff of the Small Claims Court within (7) days of filing except for service outside jurisdiction which shall be within ten (10) days after the leave of court must have been sought and obtained.
2. Upon service, the Bailiff of the Small Claims Court shall file an Affidavit of Service as in Form BSSC6 within 48 hours of service.



3. The provision of the Magistrates' Courts (Civil Procedure) Rules regarding mode of service, except as provided herein shall apply to any process of whatever description issued by the Small Claims Court.
4. Where the Bailiff of the Small Claims Court is unable to serve the Summons on the Defendant within the time specified in (1) above, he shall file an Affidavit of Non-Service as in Form BSSC4 after the expiration of the time allowed for service.
5. In the event of (4) above, the Plaintiff shall apply for an Order of substituted service of the Summons on the Defendant by filing Form BSSC 7 supported by an affidavit.
6. Upon receipt of a duly completed Form RSSC7, the Presiding Magistrate of the Small Claims Court shall make an order for substituted service of the Summons.
7. Substituted service includes service by electronic means via the parties verified and verifiable e-mail, Twitter, Instagram, Whatsapp, Telegram address/account or any other related electronic message device by means of text message (sms) shall be used for Hearing Notices only.
  - i. The application for substituted service in Article (5) above shall be accompanied by an Affidavit confirming the identity of the Defendant/Respondent, postal/physical address, electronic mail address, and existing phone number(s) with which the Defendant will receive service of the Summons.
  - ii. A copy of any previous electronic mail correspondence including attachments between the parties may be attached as proof of the validity of the electronic mail address.
  - iii. The Bailiff of the Small Claims Court shall serve the Summons, annexures and Claims by electronic mail on the address as ordered by the Court, indicating what processes have been served by way of electronic mail and the number of pages that were mailed.



## **ARTICLE 6**

### **FILING OF DEFENCE/ADMISSION/COUNTERCLAIM**

1. Upon service of the Summons, the Defendant shall file his defense or admission or counterclaim within Seven (7) days by completing Form BSSC5 as appropriate.
2. The provision of Article 5 on service of Summons shall apply to service of a Counterclaim.
3. Where a Defendant fails to file an answer to the Claim, such Defendant may be held to have admitted the Claim.

## **ARTICLE 7**

### **COUNTER CLAIM**

1. If at the time the action is commenced the Defendant intends to counter-claim against the Claimant in a simple liquidated money demand not exceeding Five Million Naira (₦5,000,000.00) including costs and which counter-Claim arises out of the same transaction or series of transactions, the Defendant shall file a Counter as in Form BSSC5 in answer to the Claimant's Claim.
2. If at the time the action is commenced, the Defendant has a Counter-Claim that exceeds the general jurisdiction of the Small Claims Court, the Defendant may file the Counter-Claim, by filing Form BSSC5, PROVIDED that any Judgment in the Defendant's favour shall be limited to the general jurisdiction of the Small Claims Court.
3. In the event of (2) above, the Defendant/Counter-Claimant shall be deemed to have abandoned the excess of the Counter-Claim.
4. The Defendant(s) Counterclaim shall be limited to the Claim(s) on record.



5. The Plaintiff may file a Reply to the Defendant(s) Defence and Defence to Counterclaim within 5 days of service of the Defendant(s) Defence and Counterclaim.
6. No further Reply shall be allowed after the Reply filed by the Plaintiff.

## **ARTICLE 8**

### **NON –APPEARANCE**

1. When the Claim is called for hearing on the date fixed and neither party appears, the Magistrate shall, unless he sees good reason to the contrary, strike out the Claim.
2. When the Claim is called for hearing and the Plaintiff appears but the defendant does not appear, provided there is proof of service, the Magistrate shall proceed with the hearing of the Claim and enter Judgment as far as the Plaintiff can prove his Claim.
3. When the Claim is called for hearing, and the Defendant appears but the Plaintiff does not appear, the Defendant if he has no Counterclaim, shall be entitled to an Order striking out the Claim, but if he has a Counterclaim, the Magistrate shall proceed to hear the Counterclaim and enter judgment accordingly, as far as the Defendant can prove his Counterclaim.
4. A Claim struck out on grounds of non-appearance or want of diligent prosecution shall not be relisted but may be refiled upon payment of prescribed fees and incidental costs.

## **ARTICLE 9**

### **PROCEEDINGS AT THE HEARING**

1. At the first appearance of the parties before the Court, the Magistrate shall promote, encourage and facilitate amicable settlement of the dispute among the parties by mediating and providing settlement



options to the parties as he deems fit. The process of mediating and facilitating amicable settlement of the dispute among the parties shall not exceed Seven (7) days.

2. Notwithstanding (1) above, the parties are also encouraged to contact one another with a view to settling the matter amicably or to narrow the issues. The Court must be informed on the hearing date if the case is settled by agreement before that date, and a Consent Judgment may be entered by the Court accordingly.
3. In the event that parties are unable to settle the dispute amicably, the Magistrate of the Small Claims Court shall hold a preliminary hearing for the purpose of giving directions for hearing of the Claim or Counterclaim (as the case may be) including a hearing time table, length of trial or hearing, exchange of witness (es) and all documents to be relied on by the parties.
4. Hearing shall be conducted by the Court from day to day as far as is practicable and may only be adjourned as a last resort and for the shortest possible time.
5. Adjournment can only be granted during proceedings in unforeseen or exceptional circumstance and a party may not be granted more than one adjournment during the entire proceedings.
6. The entire hearing period shall not be more than Thirty (30) days from the first date of hearing, inclusive of the Seven (7) days for amicable settlement.

## **ARTICLE 10**

### **REPRESENTATION**

Parties may represent themselves at the proceedings in the Small Claims Court. Partnerships, Associations and Registered Companies can be represented by either a Partner, Executive members of the Association, Company Secretary or any other Principal Officer of the Company or the Partnership Firm.



## **ARTICLE 11**

### **EVIDENCE**

Parties may testify on their own (either orally or by disposition on Oath) and tender all necessary documents and may also call other witnesses to give evidence at the hearing.

## **ARTICLE 12**

### **FINAL ADDRESS**

1. At the close of evidence, parties may have opportunity for final address which may be written or oral as the Court deems fit.
2. Where the Court directs the filing of written address, same shall not exceed 3 pages and shall be filed and exchanged within 3 days each; failing which the right to address shall be deemed abandoned by the defaulting party.
3. Where the Court directs oral address, each party may address the Court for not more than ten (10) minutes.

## **ARTICLE 13**

### **JUDGMENT**

1. The Magistrate of the Small Claims Court shall deliver Judgment within fourteen (14) days of the completion of hearing.
2. The Judgment shall include the Court's determination of issues raised in any interlocutory application(s) filed by any of the parties.
3. The entire period of proceedings from filing till judgment shall not exceed Sixty (60) days.
4. The judgment of the Court shall not be invalid by reason of the entire proceedings of the court having exceeded Sixty (60) days.



5. The Magistrate of the Small Claims Court shall make available copies of the Judgment to the parties within seven (7) days from the date of the delivery of the Judgment.

#### **ARTICLE 14**

##### **ENFORCEMENT OF JUDGMENT**

1. The Defendant(s) to the Counterclaim (as the case may be), shall comply with the Judgment and pay the Judgment sum forthwith or as may be ordered by the Court.
2. Upon default by the Defendant(s) to the Claim or Counterclaim to pay the Judgment sum as specified in (1) above, the Judgment shall be enforced in a like manner as any other Judgement or order of the Magistrate's Court for the payment of the Judgment sum.

#### **ARTICLE 15**

##### **APPEALS**

1. Where either party is aggrieved with the Judgment, such party shall fill and submit the Notice of Appeal as in Form BSSC 8 within fourteen (14) days of the delivery of the Judgement stating the reasons(s) for the Appeal.
2. The Registrar in charge of the Small Claims Court Registry shall compile the Records of appeal within fourteen (14) days of the submission of Form BSSC 8.
3. The Records of Appeal shall thereafter be forwarded to the Appeal Section of the Small Claims Court Registry. It shall then be assigned by the most senior Judge of the Small Claims Appellate Court designated to hear Appeals from the Small Claims Court.



4. The Judge so designated shall cause Hearing Notices to be issued to the parties and the Appeal shall be heard at the earliest convenience of the Court.
5. The Appeal shall be determined based on the Records of Appeal and such oral clarification from the parties as the Judge may deem fit for the just determination of the Appeal.
6. The Appeal proceeding from the assignment of the Appeal to Judgement shall not exceed thirty (30) days.
7. The Judgement of the Appellate Court shall not be invalid by reason of the entire proceedings of the court having exceeded thirty (30) days.

## **ARTICLE 16**

### **GENERAL PROVISIONS**

1. Every Judge or Magistrate of the Small Claims Court shall take charge of all cases assigned to him.
2. The Judge or Magistrate shall record the proceedings and must note in the Small Claims Record Book the duration of each sitting. The Record Book shall provide detailed information on the progress of each case from filing to Judgement.
3. Where no provision is made in these Practice Directions, the provisions of the Magistrates' Court (Civil Procedure) Rules; shall apply to the proceedings at the Small Claims Court while the High Court (Civil Procedure) Rules or any other Written Laws for the time being in force shall so far as they can be conveniently applied, be in force at the Small Claims Appellate Court.
4. Each Magistrate of the Small Claims Court must submit to the Chief Registrar or any Officer designated by the Judicial Committee on the



Small Claims Court, monthly returns including any information, assignment material, statistics and records showing compliance with the timelines for the Small Claims proceedings, and any other reports that may be required from time to time to assess the functioning and efficiency of the Small Claims Courts.

### **COMMENCEMENT**

This Practice Direction shall take effect from the 8<sup>th</sup> day of December, 2022.

### **CITATION**

This Practice Direction shall be cited as the Magistrates' Courts (Small Claims) Practice Direction No. 1 of 2022.

Dated the 8<sup>th</sup> day of December, 2022.

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**Honourable Justice Kate Abiri, CON**  
Chief Judge, Bayelsa State