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LAGOS STATE SMALL CLAIMS COURT: A MILESTONE IN DISPUTE RESOLUTION

On Monday, April 23, 2018, the Lagos State Judiciary took a significant step towards further enhancement of the process for settlement of commercial disputes, involving small claims not exceeding Five Million Naira (N5,000,000 Naira) in the State. This was done by the establishment of the Small Claims Court with the objective of providing easy access to an informal, inexpensive and speedy resolution of simple debt recovery disputes in the Magistrates' Courts. A Small Claims Court is a specialized court or local tribunal created by statute with specific duties and powers. Generally, the court is designed to provide judicial determination of disputes involving small amounts of money quickly and cheaply, with or without legal representation. Following the creation of the court, the **Magistrates' Court Law (Practice Directions on Small Claims) 2018 ("Practice Directions")** were issued by the Hon. Justice Opeyemi Oke, Chief Judge of Lagos State, as the regulatory framework for the take-off and smooth operation of the new regime.



As Nigeria's financial nerve center and economic capital, the myriad of disputes arising from business transactions, investments and all sorts of contractual relationships on a daily basis in Lagos State is generally expected. Parties to these disputes also expectedly seek settlement daily either by instituting legal actions in the court of law or by submitting to an arbitration panel, in accordance with the terms of their agreements. Notably, in many instances, not only are the amounts of claim not in contest (liquidated demands), they are also relatively small to have warranted the kind of rigour, technicality and expenses in terms of finance and time; usually associated with proceedings in the regular courts. In essence, the importance of the role of the Small Claims Court in decongesting the regular Magistrates' Courts in Lagos State of cases which could easily be resolved without much technicality, cannot be overemphasized.

This piece evaluates the impact of the establishment and operation of the Small Claims Court on the resolution of commercial disputes in Lagos State. A background is also provided on the global evolution of the Small Claims Court with comparative insight into the practice and procedures applicable in different jurisdictions.

GLOBAL EVOLUTION OF THE SMALL CLAIMS COURT

The evolution of the Small Claims Court can be traced to the small county or magistrate' courts in medieval England, which were popularly referred to as the "Court of Pie-powders". These small courts were established to judicially resolve disputes among small merchants, artisans, itinerant traders and the like, who moved from place to place, usually on foot. Historically, *pie-powder* referred to the dusty feet of travelers and vagabonds, and was only later applied to the tribunal who might have dealings with such people. In addition, since the members of the tribunal were not sitting on a bench but walking around in fairs, they would often get their feet dusty. The term *pie-powder* therefore applied to the tribunal because the court was frequented by merchants with dusty feet, who wandered from mart to mart. In 12th Century England and Scotland, a decision had to be made within a day and a half (before the third tide) of any



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accusation. If the court ruled against the defendant and the defendant could not pay the decided amount, his property could be seized, appraised, and sold to cover the costs.

When the time came for the trial, both parties (plaintiff and defendant) would be summoned. Typically, the defendant would be summoned an hour earlier. The burden of proof was on the plaintiff with documents and witnesses often being provided as evidence. After the plaintiff had made his case, the defendant then had the right to respond to the accusation and counter with evidence of his own. Trials at courts of pie-powders were short, quick and informal. For speed, judgments were oral, written affidavits and cross-examinations were not used.

By the 17th Century, when the standard district courts had well been established, most of the powers of the Courts of Pie-powders had effectively been transferred to the regular court system, for practical reasons rather than as a result of legislation. The last "active" Court of Pie-powders, at the Stag and Hounds Public House in Bristol, was reportedly abolished by the English Courts Act 1971. Consequently, the pie-powder courts and other similar agencies became transformed into Small Claims Courts and spread into other parts of the world as a distinct segment of the system of civil courts. In the United States of America, the Small Claims Court system was reportedly established in the 1930s in response to the growing need for a 'People's Court' to settle small disputes of individuals, sole proprietorships, partnerships, associations and corporations. The system was created in South Africa in 1984. In Zimbabwe, 1993. In Brazil, 1995 and in Kenya, 2016. In Nigeria, the small claims initiatives started with the Lagos Court of Arbitration ("LCA") *Small Claims Scheme* in 2012 and now, in 2018, the properly designated Small Claims Courts.

PRACTICE DIRECTIONS OF THE SMALL CLAIMS COURT IN LAGOS STATE

In Lagos State, the Small Claims Court/Track was created out of the existing Magistrates' Courts, as a division of the Court. The applicable law is the Magistrates' Court Law of Lagos State 2009, which gives the Lagos State Judicial Service Commission the mandate to establish Magistrates' Court Houses, as it considers appropriate, necessary and expedient to accommodate the needs of the State. The law also empowers the Chief Judge of the State to, in addition to the Magistrates' Court (Civil Procedure) Rules, make rules regulating the practice and procedure of the Magistrate Court so established. This sets the legal framework under which some Magistrates' Courts were in April 2018, designated as Small Claims Courts and the Practice Directions issued.

Instituting a Case

Accordingly, an action for the determination of a dispute between litigants could henceforth be commenced in a designated Small Claims Court in Lagos State where:

- The Claimant or one of the Claimants resides or carries on business in the State;
- The Defendant or one of the Defendants resides or carries on business in the State;
- The cause of action arose wholly or in part in the State;



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- The claim is for a liquidated monetary demand in a sum not exceeding ₦5,000,000 (Five Million Naira), excluding interest and costs; and
- The claimant has served on the Defendant, a Letter of Demand, in the prescribed form.

Given the objective of the Small Claims Court and the target-class of claims and litigants, the procedure has essentially been simplified by reducing same into standard forms, which the Claimant or Defendant/Counter-claimant, as the case may be, can simply fill out and file at the Registry of a Magistrate Court having jurisdiction to hear small claims suits. These include *Form SCA 1* for Letter of Demand; *Form SCA 2* for Complaint Form; *Form SCA 3* for Summons; *Form SCA 5* for Defence/Counterclaim; *Form SCA 7* for Order of Substituted Service; and *Form SCA 8* for Appeal Form, among others.

Where a case satisfies the stipulated criteria for Commencement of Action (stated under Article 2) as enumerated above, the Claim thereof shall be marked “**Qualified for Small Claims**” by the person in charge of the Small Claims Registry and the Applicant shall thereafter be directed to pay appropriate filing fees. The case files in respect of a duly marked Claim is required to be forwarded, within 24 hours, from the Registry to the Administrative Magistrate, who in turn shall also within 24 hours of the receipt of the forwarded case files, assign the case to a Magistrate of the Small Claims Court. Such case assignments are required, by the Practice Directions, to be undertaken on a random basis. More so, the Registry is mandated to effect the service of the Summons on the named Defendant(s) through the Sheriff of the Small Claims Court, within seven (7) days of filing. Where personal service of the Summons is proven to be impracticable, the Claimant shall apply for an Order of substituted service.

Defence/Counterclaim, Representation and Hearing of Cases

A Defendant duly served with a Summons from a Small Claims Court Registry is required to file his Defence/Admission or Counterclaim, in the prescribed form, within seven (7) days. Where a Defendant fails to file an Answer to the Claim, he may be held to have admitted the Claim. A Claimant who wishes to respond to a Defendant’s Counter-claim has within five (5) days to file a Reply to same. The filing of the Claimant’s Reply marks the close of pleadings.

At the proceedings before the Small Claims Court, parties are at liberty to represent themselves. Partnerships and Registered Companies can be represented by either a Partner, the Company Secretary or any other Principal Officer of the Partnership or Company. While parties may testify on their own behalf and tender all necessary documents, they may also call other witnesses to give evidence at the hearing. The Magistrate is obliged to promote, encourage and facilitate amicable settlement of a dispute among the parties by providing settlement options to the parties as he deems fit, at the first appearance of the parties before the Court. This process of facilitating amicable settlement shall not exceed seven (7) days. Where parties are able to resolve their dispute, the terms of settlement shall be entered as consent judgment by the Court accordingly. However, in a situation where parties are unable to amicably settle their dispute, the Magistrate shall hold a preliminary hearing for the purpose of giving directions for hearing of the Claim or Counter-claim within the timelines stipulated in the Practice Directions.

It should be noted that the Magistrate’s role in facilitating amicable settlement between parties is limited to “**Facilitated Negotiation**”. In other words, the Magistrate is neither a Mediator nor an Arbitrator. He



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should therefore not see himself as someone conducting either mediation or arbitration or Early Neutral Evaluation (ENE) or any other form of Alternative Dispute Resolution (“ADR”). While Facilitated Negotiation takes place only between the parties and is only guided by the Magistrate, ADR mechanisms involve the inputs of third parties who are experts in the technicality and formality of legal and/or arbitral rules.

Judgement, Enforcement and Appeal

A Magistrate of the Small Claims Court is required to deliver judgment in a dispute before it within fourteen (14) days of the completion of hearing. This is required to include the Court’s determination of issues raised in any interlocutory application(s) filed by any of the parties. Notably, the Practice Directions provide that the entire period of proceedings from filing till judgment shall not exceed sixty (60) days). However, a judgment of the Small Claims Court shall not be invalid by reason of the entire proceedings of the court having exceeded sixty (60) days. The Magistrate is equally required to issue authenticated copies of the judgment immediately after its delivery but in any event not exceeding seven (7) days from the date of the delivery of the judgment.

A judgement debtor in a small claims dispute is obliged to comply with the judgment of the Court and pay the judgment sum within fourteen (14) days of delivery of judgment and where there is default in compliance, the relevant judgment shall be enforced in like manner as a judgement of the Magistrate’s Court for the payment of money.

A party who is aggrieved with the judgement of the Court shall file an Appeal by filling the prescribed form within 14 (fourteen days) of the delivery of the Judgment, stating the reasons for the Appeal. The records of appeal are required to be compiled, within fourteen (14) days of the submission of the Appeal Form, by the Small Claims Registry and thereafter forwarded to the *Fast Track Registry of the High Court*, where it is then assigned to a Judge of the Fast Track Court designated to hear appeals from the Small Claims Court. The Judge so designated shall cause Hearing Notices to issue to the parties and the Appeal shall be heard at the earliest convenience of the Court, based on the oral hearing of the parties and the records of the appeal. The Practice Directions state that the whole appellate process, from the assignment of the Appeal to judgment, shall not exceed thirty (30) days.

COMPARISON WITH OTHER JURISDICTIONS

The concept of the Small Claims Court has over the years developed into a standard global practice. Whilst there are manifest similarities in the practices and procedures applicable in many jurisdictions across the globe, there exist also differences caused by the local peculiarities and national aspirations.

In England and Wales, cases placed on the small claims track at the County Court include Claims in which the financial value is less than £10,000 (equivalent of ₦5,000,000) and cases involving personal injuries or disputes between landlords and tenants where the amount involved does not exceed £1,000 (equivalent of ₦500,000).

In the United States of America, the jurisdiction of the Small Claims Court varies from one State to another. Whilst it is US\$ 5,000 (₦1,800,000) exclusive of interest and costs in New York, it is US\$ 10,000 (₦3,600,000) in Texas. Notably, in the New York Small Claims Courts, for a counterclaim to be competent

and maintainable, such must be for money only and which must not exceed the monetary jurisdiction of the court.

In Kenya, the court's pecuniary jurisdiction is limited to KES 200,000 (equivalent to ₦720,000) and the court deals only with cases arising from contracts for sale and supply of goods or services; liability in tort arising from loss or damage to any property or for delivery or recovery of movable property; compensation for personal injuries; set-off or counterclaims under any contract; and any other civil matters as prescribed by law.

In Brazil, the jurisdiction of Small Claims Court involves low-value damage (up to BRL 35 200 equivalent to ₦3,699,421.86). In a very similar fashion to the procedure under the Practice Directions applicable in Lagos State, the proceeding in Brazil is also preceded by Facilitated Negotiation and ended in litigation only where amicable settlement of disputes cannot be reached.

The Small Claims Court in South Africa entertains actions for repayment of monies lent, which originally, at inception in October 1985, should not exceed R12, 000. This figure has since April 2014 been increased to R15, 000 (approximately ₦424,000). Other cases that are also entertained are actions for the delivery of movable or immovable property, claims arising from liquid documents such as bonds, promissory notes, acknowledgement of debts and cheques etc., as well as actions against occupiers of properties; where the value of the claims do not exceed R15, 000.

Also in in Zimbabwe, the jurisdiction of the Small Claims Court is exercisable in respect of proceedings for the delivery of movable property, recovery of arrear rentals and ejection, as well as proceedings based on acknowledgments of debt or cheques; where the claim does not exceed US\$1 000 (₦360,000).

At the LCA, the forerunner to the Small Claims Court of Lagos State, the small claims initiative introduced was developed to resolve disputes for claims involving amounts not exceeding ₦5, 000,000 and is applicable where both parties agree to settle their dispute in accordance with the Scheme, either before or after the dispute has arisen. This threshold is same with that prescribed under the 2018 Lagos State Small Claims Court Practice Directions.

Notably, the jurisdictional limit of the Small Claims Court in Lagos is higher than the limits set in the other African countries and only lower than the thresholds in the more developed emerging economies and the advanced nations of the world. This is understandable, given Nigeria's position as Africa's most populous nation and largest economy.

REMARKS

The establishment of the Small Claims Court in Lagos State, the first of its kind in the Nigerian judicial system, is without doubt a watershed. Notably, "enforcement of contracts" through introduction of specialized small claims commercial courts, was part of the reform initiatives recommended by the Presidential Enabling Business Environment Council ("PEBEC"), through its organ, the Enabling Business Environment Secretariat (EBES), in the National Action Plans on the Ease of Doing Business in Nigeria (NAPs). Lagos State and Kano State are the two pilot States in the country, selected by PEBES/EBES in association with the World Bank, for the purpose of implementing the reform initiatives of the NAPs. It is therefore expected that the



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speedy, cheap, and seamless system of adjudicating on the avalanche of small commercial disputes in Lagos State, the nation's center of commerce and investment, would improve on the sanctity of contracts in the country, and consequently further boost the confidence of foreign investors in the Nigerian economy.

Whilst the Small Claims Court has its pros and cons, it has indeed worked in many jurisdictions the world over and there is no doubt that with hard work, commitment and determination, it will equally work successfully in Lagos State.

We note that while parties are encouraged to represent themselves before the Small Claims Court, businesses and corporations are still likely to engage the services of lawyers in establishing their claims before the Court. The same goes for illiterate litigants, who in spite of the aid of an interpreter and court registrars, may find it extremely difficult to properly gather and file their documentary evidence as well as present their oral submission before the Court. This can put an unrepresented Claimant at a disadvantage.

Finally, we submit that adequate and periodic training in the practice and procedure of the Small Claims Court for Magistrates, Registrars, Clerks, Sheriffs and other relevant judiciary staff, would be critical to the successful working of small claims commercial disputes resolution in Lagos State, and by extension, Nigeria.



For further enquiries, please contact: litigation@banwo-ighodalo.com

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