

## SPEEDY DISPUTE RESOLUTION THROUGH SMALL CLAIMS COURTS



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Speedy resolution of disputes by the courts can significantly contribute to a more conducive environment for business and investment in Kenya, in addition to other progressive outcomes. It is undesirable that Kenyan courts have traditionally been characterised by lengthy proceedings, numerous adjournments and delayed judgments. Consequently, local and global critics have often berated the relevant Kenyan governance organs for doing little to alleviate the perennial menace of cases backlog by accelerating the wheels of justice. As the old cliché states, justice delayed is justice denied.

It was against the backdrop of the sustained criticism of sluggish resolution of disputes that the Small Claims Court Act was enacted in 2016. The new law was aimed at enabling and facilitating the establishment of the Small Claims Courts across the country. In particular, the legislation had the objective of reducing the high influx of small claims in the mainstream courts. In a bid to facilitate the establishment, utility and efficacy of the envisaged Courts, the legislation was in April 2020 amended through the Small Claims Court (Amendment) Act.

### ENHANCING UTILITY

The 2020 amendment has introduced several changes to the original Act, which is likely to have the outcome of enhancing reliance on, and the utility of, the Small Claims Courts in the resolution of business and investment disputes. For instance, by virtue of the amendment, the Small Claims Courts may now resolve disputes concerning claims of upto Kenya Shillings One Million (Kshs 1,000,000.00), a significant change from the original monetary jurisdiction of Kenya Shillings Two Hundred Thousand (Kshs 200,000.00). Consequently, businessmen and investors have the option of submitting claims of less than Kshs 1,000,000.00 to such Courts. That offers opportunity for decongesting the general courts system and thus enhancing opportunities for faster resolution of disputes, which will be beneficial to businesses and investments.

### ADVOCATES PERMITTED

The amendment has also allowed advocates to represent parties to proceedings before the Courts. This is a major departure from the provisions of the original legislation, which had limited the representation of disputants in the Small Claims Courts to their authorised representative who were not to be advocates. This amendment will certainly enhance the utility

of the Small Claims Courts as credible avenue for dispute settlement among business people and investors, as they can opt to be duly represented by their advocates if they feel that their rights and interests will best be protected through such professional representation.

Further, it is noteworthy that the amendment has empowered the Small Claims Courts to award costs to the successful party in any proceedings, just like any other court. The original legislation had provided that the Small Claims Courts could only award costs to the successful party in proceedings if it was satisfied that the claim to which such costs related was vexatious, frivolous or an abuse of the due process of the Court. It is likely that this increased opportunity of being awarded costs of the proceedings will encourage aggrieved business people and entrepreneurs to resort to such Courts in the enforcement of their rights and interests, as the ensuing proceedings will not be viewed as unmitigated additional operational cost.

### **CURBING ADJOURNMENTS**

Finally, a significant achievement of the amendment is that it has sought to curb the widespread litany of adjournments in court proceedings, which has kept even simple matters in the courtrooms for years and fundamentally contributed to the clogging of the wheels of justice. The amendment has restricted opportunities for the grant of adjournments in the Small Claims Courts. It provides that the Small Claims Courts may only adjourn the hearing of any matter in light of

exceptional and unforeseen circumstances, which shall be recorded and be limited to a maximum of three adjournments. In that context, the amendment proceeds to prescribe the circumstances that constitute exceptional and unforeseen circumstances that warrant the grant of an adjournment. The province of adjournments under the original legislation was largely amorphous and prone to abuse as there was no stipulation of the nature of exceptional circumstances under which an adjournment could be granted.

In sum, the law including its subsequent amendment is a suitable legislation that may contribute to the decongesting of the Kenyan courts, and in particular offers opportunities for speedy resolution of disputes. In addition, permitting the involvement of advocates in proceedings before the Small Claims Courts will infuse efficiency and effective protection of rights and interests of the claimants. A speedy establishment and operationalisation of the Courts is essential as it will significantly be beneficial to businesses and investments given their potential to decongest the general courts systems and contribute to the speedy resolution of commercial disputes

### **OUR SERVICES**

At Lesinko, Njoroge and Gathogo (LNG) Advocates, we are committed to assisting our clients resolve business and investment disputes in a speedy and cost effective manner.

*This information does not constitute legal advice and is for general information only. For specific information regarding Small Claims Courts, and commercial disputes resolution generally, please get in touch with Dr Tom Kabau at: [tomkabau@lesinkonjoroge.com](mailto:tomkabau@lesinkonjoroge.com) or Chege Njoroge at: [njoroge@lesinkonjoroge.com](mailto:njoroge@lesinkonjoroge.com)*