

EBONYI STATE PRACTICE DIRECTIONS ON SMALL CLAIMS COURT

BY: HON. JUSTICE ELVIS ANAGU NGENE
THE HONOURABLE CHIEF JUDGE OF EBONYI STATE

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PRACTICE DIRECTION
EBONYI STATE JUDICIARY – SMALL CLAIMS COURT

The Honourable the Chief Judge of Ebonyi State

In exercise of the powers conferred on me by Section 274 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and by virtue of all other powers enabling me in that behalf, I HON. JUSTICE ELVIS ANAGU NGENE, Chief Judge of Ebonyi State, hereby issue the following Practice Directions.

PREAMBLE

Whereas, I, the Hon. Chief Judge hereby designate some Magistrates' Courts as Small Claims Courts. These Practice Directions shall apply and be observed in the Magistrates' Courts designated as Small Claims Courts and by the High Court, when sitting over Appeals from the Small Claims Courts.

COMMENCEMENT

These Practice Directions shall come into effect on the 26th Day of February 2024

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 dispute and/or Liquidated Money Demand in the Magistrates' Courts.

ARTICLE 2: DEFINITION OF SMALL CLAIMS COURT

A Small Claims Court, Ebonyi State is a specialized court with jurisdiction to hear commercial and liquidated money demand cases with a maximum claim value of ₦1,000,000 (One Million Naira) only. These Courts are characterized by the use of plain language, with relaxed rules of evidence, and encourages self-representation.

ARTICLE 3: PERSONNEL OF THE COURT

The Small Claims Court, Ebonyi State shall have a specialized Registry and staff mandated to carry out the objectives of the Small Claims Court.

ARTICLE 4 (1): COMMENCEMENT OF ACTION

An action may be commenced in the Small Claims Court where:-

- a) The Defendant or one of the Defendants resides or carries on business in Ebonyi State
- b) The cause of action arose/must have arisen wholly or in part in Ebonyi State.
- c) The claimant must have served on the Defendant a letter of demand as in Form (Form SCA – 1)
- d) Filing may be done by the litigant or representative with the assistance of the Registrar or any authorized officer of the court.
- e) The action shall be commenced upon completion of a Small Claims Court, Complaint Form as in Form SCA 2, following which the Registrar will issue Form SCA 3.

4(2): ABANDONMENT OF EXCESS

Where a claim or counter claim is above N1,000,000 (One Million Naira) the party will be deemed to have abandoned the excess.

ARTICLE 5: SUMMARY JUDGMENT

- a) Where a Claimant believes that there is no defence to his claim, he may file with the Summons, an application for Summary Judgment as in Form SCA 3A. The Application for Summary Judgment shall be supported by an Affidavit stating the grounds for his belief (that there is no defence to his claim) as in Form SCA 3B.
- b) If the Defendant files a Counter Affidavit specified in Article 9 (2) below, the Claimant may file a Further-Affidavit to the Defendant's Counter affidavit within 5 days of service of the Counter affidavit.
- c) Where it appears to the judge that the Defendant has a good defence and ought to be permitted to defend the claim, he may be granted leave to defend.
- d) Where it appears to the Judge that the Defendant does not have a good defence the Judge may enter judgment for the Claimant.
- e) Where it appears to a Judge that the Defendant has a good defence to part of the claim but does not have a good defence to the other parts of the claim, the Judge may enter judgment for that part of the claim to which there is no defence and grant leave to defend that part to which there is defence.
- f) Where there are several Defendants, and it appears to a Judge that one or more of the Defendants have a good defence, the

Magistrate may permit such defendants to defend and enter judgment against the other Defendants.

ARTICLE 6: MARKING AND PAYMENT OF FILING FEES

Where a case satisfies the criteria in Article 4 above, the Chief Registrar or any other duly authorized officer of the Small Claims Court in charge of the Small Claims Registry shall cause the Claim to be marked "Qualified for Small Claims" and direct the Applicant to pay appropriate filing fees.

ARTICLE 7: ASSIGNMENT OF SMALL CLAIMS FILES

- a. Upon the marking of the Claim, the Chief Registrar or any other duly authorized Officer of the Small Claims Court shall within twenty-four (24) hours forward the case files to the Administrative Magistrate for assignment to a Magistrate of the Small Claims Court.
- b. The Administrative Magistrate shall within twenty-four (24) hours of receipt of the case files assign the Small Claims files to a Magistrate of the Small Claims Court. Such case assignments shall be undertaken on a random basis.

ARTICLE 8: SERVICE OF THE SUMMONS

- a. The summons shall be served by the Sheriff of the Small Claims Court within seven (7) days of filing the claim.
- b. The sheriff of the Court shall file an affidavit of service within 2 days of the service as in form SCA 6.
- c. Where the Sheriff of the Small Claim Court is unable to serve the summons on the defendant within 7 days of filing the summons, he shall file an Affidavit of Non-Service as in Form SCA 4 after the expiration of the time allowed for service.
- d. In the event of (c) above, the Claimant shall apply for an Order of substituted service of the Summons on the Defendant by filing Form SCA 7 supported by an affidavit.
- e. Upon receipt of a duly completed Form SCA 7 the Magistrate shall make an order for substitute service of the Summons.
- f. Substituted service of the summons may be effected by pasting on a conspicuous area of the Defendant's last known place of abode, by registered post, electronic means via the Party's verified email, whatsapp, telegram address/account or any other

related electronic message platform as may be appropriate. PROVIDED that substituted service by means of text message (SMS) shall be used for hearing notices only.

g. Substituted service may also be effected by electronic mail. If Substituted Service is to be effected by electronic mail, the following provisions shall be applicable:

i. The application in terms of Article 8(d) above must be accompanied by an affidavit confirming the identity of the respondent, postal/physical address and the electronic mail address at which the defendant will receive service of the summons.

ii. A copy of any 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 pleadings by way of 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 9: FILING OF DEFENCE /ADMISSION/ COUNTERCLAIM/ COUNTER AFFIDAVIT TO APPLICATION FOR SUMMARY JUDGMENT

a. Upon service of the Summons, the Defendant shall file his Defence/Admission or Counterclaim within Six (6) days by completing Form SCA 5 as appropriate.

b. A Defendant who has been served with an Application for Summary Judgment shall file (along with form SCA 5 and within 6 days stipulated for him to enter a Defence) a Counter-Affidavit as in Form SCA 5A stating why Summary Judgment should not be entered against him.

c. The provision of Article 8 on Service of Summons shall apply to Service of a Counter Claim.

d. Where a Defendant fails to file an Answer to the Claim, or a counter-affidavit to the Application for Summary Judgment, such Defendant shall be held to have admitted the claim.

ARTICLE 10: COUNTERCLAIM AND REPLY

a. If at the time the action is commenced, the Defendant intends to claim against the Claimant a liquidated money demand NOT

exceeding N1,000,000 (One Million Naira) excluding interest and costs, (which is the limit of the general jurisdiction of the Magistrate Court) the Defendant may file a Counterclaim in the pending Small Claims action by completing Form SCA 5.

- b. If at time the action is commenced, the Defendant has a Counterclaim that exceeds the general jurisdiction of the Magistrate Court, the Defendant may file the Counterclaim, by filing Form SCA 5, PROVIDED that any Judgment in the Defendant's favor shall be limited to the general jurisdiction of the Magistrates' Courts.
- c. The Claimant may file a Reply to the Defendant(s) Defence and Defence to Counter-claim within five (5) days of service of the Defendant(s) Defence and Counter-Claim.
- d. No pleadings after Reply are allowed.

ARTICLE 11: NON-APPEARANCE

- a. Where the claim is called for hearing on the date fixed and neither party appears, the claim may be struck out.
- b. In the event the claim is called for hearing and the claimant appears and the defendant does not appear provided there is proof of service and the claimant can prove his case, the court can proceed with the hearing of the claim and enter judgment.
- c. Where the claim is called for hearing and the defendant appears but the claimant does not appear, the defendant shall be entitled to an order striking out the claim, and if he has a counter claim, the court may enter judgment as far as the defendant can prove his claim upon proper service of the counterclaim to the plaintiff.
- d. Where a Claim has been struck out in (a) or (c) above, it shall not be Relisted.

ARTICLE 12: PROCEEDINGS

- a. At the first appearance of the parties before the Court, the Magistrate shall promote, encourage and facilitate negotiation among the parties. The process of facilitating amicable settlement of the dispute among the parties shall not exceed seven (7) days.
- b. Notwithstanding 12(A), the parties are also encouraged to

contact one another with a view to settling the matter amicably or to narrow the issues. However, 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.

- c. In the event that parties are unable to settle the dispute amicably, the Magistrate may 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 timetable, length of trial or hearing, jurisdiction, exchange of witness(es) list, formulation and settlement of issues, as it appears to the Magistrate to secure a just, expeditious and speedy disposal of the Claim or Counterclaim.
- d. Hearing shall be from day to day as far as is practicable and adjournment shall be for short periods provided that a party shall not be entitled to more than one adjournment during the hearing of the claim.
- e. The entire hearing period shall not be more than thirty (30) days from the first date of hearing inclusive of the time/period for facilitating an amicable settlement of the dispute.
- f. The entire period of proceedings from filing till judgment shall not exceed sixty (60) days.

ARTICLE 13: REPRESENTATION

- a. Parties may represent themselves at the proceedings in court. In the event of registered companies and partnership can be represented by either a partner, company secretary or any principal officers of the partnership company.
- b. Parties may also be represented by legal practitioners who are skilled in presenting the parties cases.

ARTICLE 14: EVIDENCE

- a. Parties may testify on their own behalf and tender all necessary documents and they may call other witnesses to give evidence at hearing.
- b. The Small Claims Court may depart from the strict rules of Evidence Act in the interest of justice and to promote the objective of this Practice Direction.

ARTICLE 15: JUDGMENT

- a. At the conclusion of evidence of both parties, the Magistrate shall deliver judgment in a claim within fourteen (14) days.
- b. The Judgment shall include the court's determination of issues raised in any interlocutory application(s) filed by any of the parties.
- c. The authenticated copies of the every judgment shall be made available to the parties not later than seven (7) days from the date of delivery of the judgment.
- d. The entire period of proceedings from Filing of the Claim till Judgment shall not exceed Sixty (60) days.
- e. The Judgment of the Court shall not be invalid by reason of the entire proceedings of the court having exceeded Sixty (60) days.

ARTICLE 16: ENFORCEMENT OF JUDGMENT

- a. The Defendant or Defendant to Counterclaim (as the case may be) shall comply with the Judgment and pay the Judgment sum FORTHWITH.
- b. Upon default of the Defendant or Defendant to Counterclaim to pay the Judgment sum Forthwith, the Judgment shall be enforced in like manner as any Order of the Magistrates' Court for the payment of money.

ARTICLE 17: APPEALS

- a. Where either party is aggrieved with the Judgment, such party shall file the Notice of Appeal, as in Form SCA 8 within eight (8) days of the delivery of the Judgment stating the reasons for the Appeal.
- b. The Chief Registrar or any other duly authorized Officer of the Small Claims Court in charge of the Small Claims Registry shall compile the Records of Appeal within fourteen (14) days of the submission of Form of SCA 8.
- c. The Records of Appeal shall thereafter be 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.

- d. The Judge, so designated shall cause Hearing Notices to issue to the Parties and the Appeal shall be heard at earliest convenience of the Court.
- e. The Appeal shall be by Oral hearing or written briefs of the Parties at the discretion of the Court and shall be on the Records of the Appeal.
- f. The whole Appellate Process from the assignment of the Appeal to Judgment shall not exceed thirty (30) days.

ARTICLE 18: GENERAL PROVISIONS

- a. Every Magistrate presiding in a Small Claims Court shall take judicial control and management of all cases assigned to the Magistrate by the Administrative Magistrate.
- b. The Magistrate shall fill the Small Claims Court Cases Assessment Form attached to the Case file.
- c. The Magistrate shall record on the Small Claims Court Assessment Form the day when the proceedings commenced and was concluded.
- d. Where 60 days have expired from the date of filing of a Claim and no Judgment has been delivered, the Magistrate shall report to the Administrative Magistrate stating the reason(s) for the delay in not concluding the matter within 60 days.
- e. The Administrative Magistrate, upon receiving the report from the Magistrate, may reassign the case file to the Magistrate for adjudication as a General Civil matter.
- f. The Magistrate shall include such a case file in the monthly returns as a matter converted to the general civil cause list.
- g. The monthly returns shall be collated and submitted to the Collation Unit of the Small Claims Court Secretariat (not later than the seventh day of the subsequent month) for online publication on the Ebonyi State Judiciary website.
- h. In the event where the small claims Magistrate believes that as a result of absence or leave, the trial may exceed the timelines stated in the Practice Direction, the Magistrate may remit the case file to be heard by another Magistrate before proceeding on leave, provided that he has not commenced hearing in the case

ARTICLE 19: WHERE NO PROVISION EXISTS

Where no provision is made in this Practice Directions, the Provisions of the Magistrates Court (Civil Procedure Rules); the High Court (Appeal) Rules or any other Written Law for the time being in force shall so far as they can be applied, be in force in the Small Claims Court.

INTERPRETATION

In this Practice Direction, unless the context otherwise requires:

“Admission” means a concession or voluntary acknowledgment of the Claimant's claim.

“Appeal” means applying to a High Court for a reversal of the decision of the Small Claims Court.

“Claimant” means a person making a claim in the Small Claims Court.

“Counterclaimant” means a Defendant in a Small Claims Court proceedings that sets up a claim against the original Claimant.

“Court” means the Small Claims Court

“Defendant” means an Individual, Company, or Institution sued in the Small Claims Court.

“Defendant to Counterclaim” means the original Claimant who has been sued by a Defendant.

“Electronic Mail” means email, whatsapp, telegram address/account or any other related electronic message platform as may be appropriate.

“Fast-Track Court” means High Court of Ebonyi State designated to hear Appeals from Small Claims Court.

“Fast-Track Registry” means the Fast-Track Registry of the High Court of Ebonyi State

“High Court” means the High Court of Ebonyi State

“Judicial Service Commission” means the Ebonyi State Judicial

Service Commission.

“Judge” means a Judge of the High Court of Ebonyi State

“Magistrate” means a Magistrate or any cadre of Magistrate sitting in the Small Claims Court.

“Magistrates' Court” means a Court established by the Magistrates' Courts Law for the time being in force in Ebonyi State.

“Liquidated Money Demand” means a debt or other specific sum of money due and payable and its amount must be already ascertained or capable of being ascertained as a mere matter of arithmetic without any other or further investigation.

“Registry” means the Small Claims Court Registry

“Set-off” means an amount that is or may be set off against another in the settlement of claims

“Bailiff” means an Officer of the Court, having various administrative functions, including service of Court processes.

“Substituted Service” means the service of a Court process or summons otherwise than by Personal Service (as by mail or electronic means, or publication or by leaving it at a Defendant's place of business or residence or with an agent).

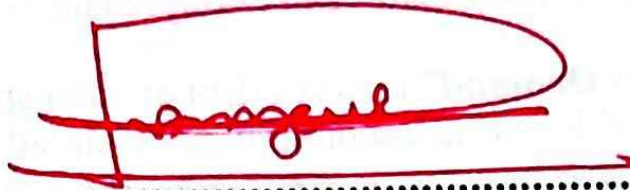
“Summons” means an order to appear before the Magistrate of the Small Claims Court.

“Summary Judgment” means a judgment entered in favour of the Claimant and against the Defendant summarily on affidavit evidence, i.e., without a full trial.

CITATION: This Practice Directions may be cited as the “Ebonyi State Practice Directions on Small Claims Court 2024”.

Issued This ^{26th} Day of ^{February}2024

Under the HAND AND SEAL OF:

A handwritten signature in red ink, appearing to read 'Anagu', is written over a horizontal dotted line. The signature is enclosed within a red rectangular box that has a long horizontal tail extending to the right.

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Honourable Justice Elvis Anagu Ngene
The Honourable Chief Judge of Ebonyi State