"SMALL CLAIMS COURTS AND THEIR IMPACT ON SERVICE DELIVERY IN THE JUSTICE SYSTEM"

A CASE STUDY OF LUWERO CHIEF MAGISTRIAL AREA

BY

KIBOMBO HAM SEMPANJI

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A RESEARCH DISSERTATION SUMMITTED TO THE SCHOOL OF LAW AS PARTIAL FULLMENT LEADING TO THE AWARD OF BACHELOR OF LAWS OF KAMPALA INTERNATIONAL UNIVERSITY

JUNE 2019
DECLARATION

I declare that this is my original work and that no any other person's work referred to has been proper cited and not plagiarized. I also declare that this work has never been submitted anywhere else for the award of any certificate, diploma or degree in any institution of learning.

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ACRYNOMS/ABBREVIATIONS

1) SCC
   SMALL CLAIMS COURT.

2) SCP
   SMALL CLAIMS PROCEDURE.

3) ADR
   ALTERNATIVE DISPUTE RESOLUTION.

4) SCPR
   SMALL CLAIMS PROCEDURE RULES.

5) CPA
   CIVIL PROCEDURE ACT.

6) CPR
   CIVIL PROCEDURE RULES.
ACKNOWLEDGEMENT

I would like to thank my lecturers of Kampala International University especially Mr serunjogi Nasser for a wonderful job of imparting in me the legal knowledge for the period of four years which I have spent at the university may the good lord reward you abundantly.

Special thanks goes to my former immediate supervisors H/W Kasule sumaya, H/W Magomu Nasuru, H/W Gidudu fred, Mr Male peter clever, my friends Kizito Steven, Biita Rogers, Lubinga Edward for courage and support in my academic excellence.

My special thanks goes to my parents Mr. David & Mrs. prossy Njuki of Buyuki Katikamu Luwero, my brothers and sisters
DEDICATION.

I dedicate this research to my family especially to my daughter Kibombo Esther Kayaga and my wife Lillian Nassali may the good lord protect you.
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CHAPTER ONE

1.1 Introduction

Small claims means "a matter whose subject matter does not exceed (10) ten million shillings and it has to be commercial in nature.

Small claims does not include, family dispute, claims against government, a suit for defamation, malicious prosecution/ imprisonment, wrongful arrest, or seduction a case involving the validity of a will, a claim in which specific performance is sought without an alternative claim for payment or damages except in the case of a claim for rendering an account or transferring movable property and dispute arising out of tenancy agreement not exceeding 10,000,000/= ten million shillings in value.\(^1\)

The parties to small claims, natural persons are the only who may institute an action in a small claims court.

A body cooperate may only become a party to an action as a defendant. it follows that when a body cooperate is sued, it has a right to counter claim.\(^2\)

Small claims court is a specialized court created by law with specific duty to resolve monetary disputes.\(^3\)

Features of small claims court

The main features of small claims court have a unique and effective because of their many features include the following,

\(^1\) Rule 3 of Small Claims Rules.
\(^2\) Rule 8 of Small Claims Rules.
\(^3\) Rule 3 [b] & c.
- **Limited jurisdiction**, small claims court do not have jurisdiction over major disputes but generally limited to simpler disputes usually involving some type of debt recovery.

- **Simplified procedure**, small claims court are generally have different set of rules that outline all legal requirements and procedures that the court and parties must use. These rules are different from those used in other courts, namely code of civil procedures in that lay individuals with no legal education or background can more easily understand and follow them, although the rules are simple and do not involve many requirements, they still ensure due process and provide the necessary procedural safeguards to the litigants.

- **Speedy resolution**, in addition to having simplified procedure, small claims courts generally have specific and short time limitations for each case process that is undertaken by the court and required by the parties. Some courts, such as the Singapore small claims court, have developed even short time limitation for certain actions. For example if a claim is filed by or involves a tourist, the court will set the case for mediation within 24 hours of filing, providing for even quicker resolution.

- **Informality**, court proceedings in small claims court are more informal than those in other first instance courts. This feature alleviates the level of apprehension on the part of self-represented parties and allows them to be more comfortable with representing themselves without fear of undermining their case.

- **Reduced costs**, the costs of filing and processing a case in small claims court I significantly lower than in other courts. As stated more courts also generally provide litigants with the option of recovery and obtaining a waiver of fees provided that they meet certain criteria required by the court.
1.2 THE HISTORICAL BACKGROUND OF SMALL CLAIMS COURT.

The small claims court/procedure was established in 1930s in America and it stemmed from the recognition that simple disputes over a small amount of money. It does not require the same procedures and rules but can instead be resolved differently.

With the understanding that the completely of court processes, can be prohibited and can also discourage parties especially those who are unrepresented by counsel or whom have limited financial means from resulting to formal justice institution.

Small claims court / procedure provides an effective and different mechanism for ensuring process to court service for all while also freeing up the systems resources to handle more complex commercial dispute.

The success of small claims procedure has been demonstrated across many countries indeed it was recently recognized good practice for courts worldwide as part of the new methodology used by World Bank’s doing business report for assessing the contract indicator.

The small claims court is that created by law with specific duties and powers to adjudicate and resolve monetary disputes.

The jurisdiction of the small claims court is limited to certain types of cases and the benefits generally include, reduced court costs for the parties, simplified and faster procedure and specific support service including mediation in many cases.

The issue of whether the parties, one required to represent themselves or have the option of hiring a lawyer is determined by law.

Small claims court is considered as an alternative dispute resolution mechanism that provides litigants with a forum and opportunity to resolve their disputes in court in a simple, quick and cheaper manner.

Small claims court is premised on straightforward procedures that are easier for litigants to follow, for example applying on complications notifying parties. In addition, they are less formal and often eliminate the need for parties to be represented by lawyers.
1.3 HISTORICAL PERSPECTIVE OF SMALLS COURT/PROCEDURE IN UGANDA.

In 1966 the Uganda’s judiciary in response to an outcry by business community to have the judiciary be responsible to the quick resolution of commercial disputes, curved out of the civil division of the high court a new division (commercial court division as it is better known).

The commercial court division was specialized and extensively dealt with commercial disputes. The commercial court largely lived up to its expectation and revolutionised the resolution of commercial disputes in Uganda.

The success notwithstanding, the informal court under significant criticism as a big business court which was not suitable for the small claims and mediation enterprises (sme) and the informal business sector which comprised the bulky of local Ugandan business community.

In a bid to address this imbalance in commercial court a study led by Hon justice Kiryabwire Geoffrey and a selected committee or group of legal professionals identified the need to start a formal small claims court in Uganda to handle monetary disputes from the SME and in informal business sector.\[4\]

As a result of, in 2011 the judicature SCP (small claims procedure) rules S.i 25 of 2011 were made. The small claims procedure was a totally a home grown version of small claims court found in other parts of the world.\[5\]

These new rules put in place are new innovate procedure whereby litigants who seek to recover to recover a monetary debt of Uganda shillings 10,000,000/= (ten million shillings) or about us dollars $2700) 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 the defendant.

\[4\] The development of small claims procedure (court) by Hon Justice Kiryabwire Geoffrey.

The defendant equally through a simplified process could file to the 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 ideal was to decongest court of cases of debt recovery of the value of shillings 1-10,000,000/= ten million shillings which are the bulky of claims and medium business community.

The court started at the end of 2012 in (6) six pilot courts around the country those were Makindye, Nabweru, Masaka, Entebbe, Mukono and Jinja magistrate’s courts, and by the end of 2013 the judiciary won the public service innovation award for introducing the simplified procedure in court. [007]

The small claims procedure (courts) was a popular innovation and broke records when a few cases were actually settled on the day on which they were filed. The small claims procedure quickly acquainted itself as true truck court procedure.

As a result, the recoveries of money made through this procedure and court in general have continued to grow from Uganda shillings 1-5 billion shillings in 2013 (US $417000) in six pilot courts to about 8 eight billion shillings (US $2,222,222) in 2016 in 25 pilot courts.[008]

In 2017 the report shows that about sh 4 billion shillings was recovered in half of the year, which is an early indicator that the performance of previous year was surpassed. The overall value of the annual national recoveries points to wide use of the procedure by claimant in a manner never before achieved in Uganda.

[007] Small claims procedure paper and work plan by H/w vicent Emmy mugabo. (2012)

1.4 THE LAW GOVERNING SMALL CLAIMS/LEGAL FRAME WORK OF SMALL CLAIMS

The law governing the small claims courts (procedure) flows from the constitution of the republic of Uganda, the judicature Act and the judicature (small claims procedure) rules No 25 of 2011, herein after referred to as the rules. The rules were made by the rules committee on the 5th day of May 2011 in exercise of powers conferred upon it under s.41 of the judicature Act and rules came into force on 30th may 2011.

1.5 THE ESTABLISHMENT AND APLICATION OF THE RULES GOVERNING SMALL CLAIMS

Rule 4 of the small claims procedure establishes a procedure known as the small claims procedure. The objective of the rules are to adjudicate small claims court and not to perform any other matter that may be conferred by the chief justice.

The chief justice may be by notice published in the gazette designate a court where the rules shall apply. under rule 7 the chief justice may assign a judicial officer to preside over a case in a small claims court and carry out any other duties incidental thereto.

Parties to a small claim, under Rule 8, only natural persons may institute an action in a SCC. A body cooperate may only become a party to an action as a defendant. It follows when a body corporate is sued, it has a right to counter claim under Rule 13(b) & (c) under Rule 5(2) (b), the government cannot be sued in the SCC.

REPRESENTATION IN A SMALL CLAIM COURT,

Rule 8 (2) & (3) provides that a person to an action in a SCC shall appear in person and shall not be represented by an advocate during the proceedings. A body cooperate brought as a defendant may appear before the court by representative not being an advocate.
INSTITUTION OF A SMALL CLAIM, the SCC is an Option and not mandatory for a person to institute his /her claim in the SCC. Once a claimant opts to file SCC, the claim has be instituted in a court within local limits of whose jurisdiction the cause of action wholly or part arose. In case of a rental dispute or claim, the claim shall be instituted in a court within the local limits of whose jurisdiction the property is situated or where the defendant resides Rule (9).

Before instituting a small claim, the claimant has to give a notice of demand to the intended defendant requesting him/her to satisfy the claim within 14 days of receipt of the notice (Rule 10), The form of the notice is specified in schedule 1 to the rules. If payment is made within 14 days, that is the end of the matter.

If payment is not made after 14 days, the claimant may then file his/her claim by way of ac claim form as per schedule 2 to the rules (Rule 11). The claimant has to attach a copy of the notice of demand, the affidavit of service of the notice, copies of documents supporting the claim, and give any other information relevant for the speedy disposal of the claim.

Upon receipt of the summons, the defendant may satisfy the claim whereby the claimant will give him/her a receipt or written acknowledgement and also inform the court within 7 days of the satisfaction of the claim. That will then end the matter. If the defendant disputes the claim, he/she will file a written statement of defense (wsd), with a counter claim.

Under rule 17, where the defendant does not respond to the summons, upon proof of service, the court shall enter judgement for the claimant. Where the defendant has filed a defence and pleadings are closed, the court will fix a hearing date and have a notice served upon the parties.

ALTERNATIVE DISPUTE RESOLUTION (ADR) in a small claim, the SCC has a room for ADR. Under Rule 22, within 14 days before the hearing of the case, a judicial officer shall in any appropriate case, refer the parties to mediation, arbitration or other forms of ADR. Where the parties reach an agreement , the judicial officer register a consent judgement, where the parties fail to settle the matter through ADR, the matter is heard by judicial officer on the date fixed for hearing.
**Hearing and judgement**, on the date of hearing, the parties appear with all their relevant documents, exhibits, witness if any, and proof of service upon the opposite party. At the hearing, the claimant on oath state the facts of his/her claim and submit any document or exhibits.

After hearing the case, the judicial officer make judgement either immediately or within 14 days after hearing the case. *(Rule 27)*. A very brief judgment is envisaged and the judicial officer show or states reasons for decision but will indulge into detailed reasoning. The judicial officer shall then make out an order in the form specified by rules.

The most interesting feature of the **SCC** is that a case can normally be heard and judgement delivered within one sitting. That is actually the norm and beauty of the **SCC** wherever it is practiced. In South Africa and Zambia hearing of case up to delivery of judgement normally takes between 30 minutes and 1 hour.

Execution of judgement & orders, where the court has granted judgement for payment of money, it has to inquire into the financial position of the judgement debtor and his/her capacity to pay without delay. The judgment debtor pays the debt, the judgement creditor is issued a receipt acknowledge payment and shall notify the court within 7 days of receipt of such payment. If the judgement debtor fails to pay, under **Rule 31 (3)**, the judgement creditor may with the guidance if court apply for execution under S.38 of the **CPA** and O.22 r 7 of **CPR**.

**Correction and review of judgments**, under **SCC**, judgment is final and cannot be appealed against. However an aggrieved party may apply for review of the judgement by the same court on grounds of judgement being passed in his/her absence, for being void, for having been obtained by fraud or as a result of a mistake common to the parties or on discovery of new and important matters or for latent errors in the judgement.

**1.6 STATEMENT OF PROBLEM.**

Uganda in the mid-1990s embarked on the reforms of commercial justice system with a view of improving access to the courts by Ugandan business community so as an unclogged capital that was locked up in disputes and ultimately released the capital back into commercial 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 system as a result was congested, not specialized and slow in resolving disputes, which negatively impacted commercial and economic growth.

1.7 OBJECTIVES OF THE STUDY

➢ To find out the success of small claims court in Luwero chief magisterial area.
➢ To find out the benefits of small claims court/procedure.
➢ To find out the challenges of small claims court/procedure.
➢ To draw a distinctive comparison between small claims court/procedure and other courts (procedures)

1.8 RESEARCH QUESTIONS

➢ What are the impacts of small claims court?
➢ Do small claims court/procedure meet its expectations and objectives?
➢ What are the possible areas of reforms?

1.9 THE SCOPE OF THE STUDY

The study intends to force within the boundaries of Luwero chief magisterial area which is specifically Luwero & Nakaseke Districts as a major sample of the study area from which I intend to draw a conclusion which is a general reflection of all other unstudied small claims courts in Uganda.
CHAPTER TWO

LITERATURE REVIEW

According to Arthur best and Deborah zalesne, Kimberly jonathan l. miller and whites stated that proponents of the establishment of small claims court in the early 1990s and modern theories of the alternative dispute resolution mechanism have all believed that a society ought to have accessible and effective mechanism for asserting legal rights. Some believed that social disorder can be avoided if people perceive the availability of civil justice.

Economist assumes that wealth will be maximized through social efficiency where there is honest and reliable enforcement of promises between buyer and seller. Thus peace, wealth and previously depend on or will be increased by, the existence of reliable and well used dispute handling institution. He stated in less inflated terms, a small claims court that function well might serve three purposes that are,

▶ Fair resolution of civil disputes.
▶ Difference of violent self-held by disputants.
▶ Identification of recurring social problems that might be proper subject for legislative administrative action.

Government across the globe have responded explicitly and implicitly to these ideas by establishing small claims courts as an addition to the stock of disputes resolution models. These courts are usually dissembled as valuable because they do not require a government either to have or obtain legal expertise.

According to john Broadway, of Duke University, Durham N.C. he states that small claims court is as placed tribunal created by statute, with specific duties and powers. It is designated to provide a judicial determination of disputes involving small amount of money. Its procedure is significant for inexpensive spat and simplicity. Historical procedure for such an organization is to be found in English market, courts, and temple powder courts. And similar agencies in united states , during the past quarter century to merchants to establish a small claims courts in urban
centers has been a significant part of the general program of remodeling a legal system established wider frontier conditions, to meet social and economic changes which have created highly in industrialized civilization.

However he pointe and warned those who may desire to create the small claims court out judicial machinery will face at least three major tasks,

- Determining whether there is a need in particular community for a new court.
- Dispensing a certain points of view opposed to the whole idea.
- Deciding the details of establishment, procedure and administration and the progress of the idea proves that these obstacles are by no means insurmountable.
CHAPTER THREE
METHODOLOGY

3.1 Introduction

There were various tools employed to collecting data pertaining small claims court. Among the tools include observation, questionnaires, and research population.

Interview interviewed a number of court users (litigants) on how they view small claims procedure and court in general for example I interviewed Mr. salabwa Paul the local leader in kikyusa sub-county and a prominent court user he stated that small claims court plays an important role in solving civil matters especially when it comes to solving matters of monetary value which does not exceed 10,000,000/= ten million shillings since the people in the area their claims always are under 10,000,000/= ten million shillings.

However he pointed out the need to do more sensitization about the procedures under small claims court such that people understands it better.

I interviewed another litigant by names of Kizito johnbosco a resident of Butuntumula village in Butuntumula sub-county in Luwero district who once had a small claim matter, he said to me that small claims court is a good court since the matter once filed it takes only 30 days for completion compared to the other procedures like summary and ordinary suit procedure which have been the mechanisms of dispute resolution.

He further told me that small claims court is less costly compared to other courts since a dispute can be completed on demand in that if a demand notice is sent to the defendant he or she is required to comply within 14 days (two weeks) if the defendant comply then the dispute is resolved their and then yet they are issued by court at no cost .Compared to summary suit which involves paying court fees before filing any matter.

However Miss Wanyana Yudaya of kikyusa narrates that small claim court is not and not effective when it comes to service delivery in justice system. She told me that under small claim court any person can forge a claim and coach his or her witnesses and court can easily be taken
by that evidence and hence secure success since the procedure / court is not bound by the rules of evidence like in other courts (procedures). She told me that her maid forged a case that she lent her 3,000,000/= (three million shillings) with no document supporting the claim, small claim court ordered her to pay the claimant the said amount of money.

She told me that there is a lot of injustice in small claims courts since there is no right of appeal and the court of first instance is final.

She further stated that small court is too unjust in that if the presiding judicial officer is biased against the litigants in the first instance no justice can prevail.

1) Observation, in this method I was given an opportunity to visit the civil case registers where I discovered that in the year 2018 more than 200 small claims cases were filed and all were settled in that year compared to 103 civil cases which were filed under summary suit procedure and out of 103 civil suit only 40 suits were determined. From this observation exhibits that there is speedy trial and determination of small claims suit hence justice prevail. There was also a reduction in the number of cases filed using other mechanisms between the year 2016-2018 since it was inaugurated.

2) Questionnaire, question forms were set and sent to several litigants for answers about small claims court, the questionnaires were sent to more than 50 litigants.

3.2 CHALLENGES FACED DURING IN DATA COLLECTION

> Illiteracy of court users (litigants) most court users are literate in than few can answer the questions set and sent them for answer and due to illiteracy problem some questionnaires were brought back un answered.

> Limited finances, since the chef magisterial area covers two political districts it involved moving long distances to collect data.
CHAPTER FOUR

4.1 Benefits of Small Claims Court.

- Providing an effective and efficient alternative mechanism for resolving small, less complex disputes. In that small claims court /procedure came as another mechanism in the civil litigation field hence the litigants have alternative how to go with, other than the previous available dispute resolution mechanisms.

- Elimination or significantly reduced the financial burden of litigating a case for the parties. Small claims right from its initiation of small claims matter does not need the hiring of legal representation since the lawyers are not allowed hence it’s cheap for the needy.

Small claims court is less financial and user friendly since the technical rules of evidence and procedure are discouraged. Parties just walk in with his or her claims and walk away with his or her judgment within a very short time.

Small claims court has freed up court resources (financial and human) so that they may be dedicated to resolving larger and more complex disputes.

Small claims court/procedure has increased access to court services and ensuring that the needs of all court users, especially those with little financial means or legal knowledge can avail themselves of services of the service provided by justice institution.

Small claims court has provided access to alternative dispute resolution (ADR) services at low or no cost. In that small claim court is more of mediation court since it involves little sums of monetary disputes and matters or claims are determined on.

Small claims court has reduced the judiciary case backlog. In that small claims court matter are determined within the maximum period of 30 days. So no claim can remain unsettled or determined for the period beyond 30 days hence court /judiciary is relieved of cases which would have remained in the system for longer period of time as it’s other judicial mechanisms of dispute resolution.

- The small claims court has boosted public confidence in the courts system.
4.2 CHALLENGES OF SMALL CLAIM COURT

Small claims court has faced challenges and amongst which includes,

➢ **Service of process**, there is an apparent problem with service of process by a party in person yet it is also clear that the facilitation of court process servers by the parties has made the procedure expensive and unaffordable to some parties. Service to parties who can be traced is also a problem. This has limited the success of small claims court when it comes to service delivery.

➢ **Court fees**, small claims court or procedure and rules are silent when it comes to the amount of court filing fees, this has led to normal court fees structure always prevails hence if a party does not have the fees he or she cannot file a claim hence it becomes expensive to the indigents.

➢ **Manipulation of the rules**, there is a possibility of the parties or their advisors, to manipulate the process so that their cases can fit into the S.C.C (small claims court) when actually they are not meant to go there, hence casing backlog.

➢ **Re-opening of cases** by way of review, the rules under rule 30 give a party up to maximum period of 1 one year within which he or she is at liberty to seek review of the court judgment instances set out therein, this likely to be used by parties to derail the SCC process and justice.

➢ **Execution process**, no doubt this is minified of problems to the SCC, litigants do not have a culture or willingly paying their debts even which ordered. Yet it is clear that the application of the CPR. In this regard it has brought a sour test the SCC/P.

**Limitation of appeal** there is no right of appeal in small claims court which has brought dissatisfactions amongst the litigants in that a small claim court of first instance it acts as also appellant court even if a litigant is dissatisfied with the decision of the presiding judicial officer he or she has nowhere to appeal since the

**Statute does not allow appeal.** This is considered by litigants as an injustice and a blockade on delivery of justice service.
In conclusion, resorting to litigation as the conventional way of resolving disputes is more often than not a time consuming, complicated and costly process to all litigants, particularly those involved in minor disputes and those with little financial means to have legal representation.\[89\]

Establishing a small claims court has not only reduced the burden of litigation or those parties by providing greater access to judicial services, but it also frees up the courts resources so that they may instead be more efficiently allocated to resolving larger and more complex cases.

Despite the fact that small claims court vary from one jurisdiction to another, as they should be based on the varying needs of the public, the reason for their establishment and their benefits remains the same.

Like other courts, the key to their success rest on having a clear and detailed legal frame work that leaves no room for varying interpretation and room for delay providing opportunities to even mediate the dispute through the various stages of case process involving unnecessary formalities generally associated with the justice system and providing a greater level of assistance to users are instrumental to the success of a small claims court.

\[89\] The development of small claims court in Uganda, Hon justice Kiryabwire Geoffrey 2010.
1) FORDMAN URBAN LAW JOURNAL (1994)
2) BENEFITS, FUNCTIONS AND PROCEDURE OF SMALL CLAIMS COURTS BY JOHN S.BRADWAY,(DUKE UNIVERSITY).
4) THE DEVELOPMENT OF SMALL CLAIMS COURT (PROCEDURE) BY Hon Justice Kiryabwire Geoffrey.
6) Paper note about small claims court (procedure) by H/w Emmy Vincent Mugabo.
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JUNE 2019
DECLARATION

I declare that this is my original work and that no any other person’s work referred to has been proper cited and not plagiarized. I also declare that this work has never been submitted anywhere else for the award of any certificate, diploma or degree in any institution of learning.

Signature............................................ Date: 26/02/19

Kibombo Ham Sempanji

(Student)
APPROVAL

This research report was prepared by the candidate, Kibombo Ham Sempanji under my supervision as university supervisor.

Signature: [Signature]

Date: 27/06/2007

Mr. Serunjogi Nasser
(Supervisor).
ACRONYMS/ABREVIATIONS

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ACKNOWLEDGEMENT

I would like to thank my lecturers of Kampala International University especially Mr. Serunjogi Nasser for a wonderful job of imparting in me the legal knowledge for the period of four years which I have spent at the university may the good lord reward you abundantly.

Special thanks goes to my former immediate supervisors H/W Kasule Sumaya, H/W Magomu Nasuru, H/W Gidudu Fred, Mr. Male Peter Clever, my friends Kizito Steven, Biita Rogers, Lubinga Edward for courage and support in my academic excellence.

My special thanks goes to my parents Mr. David & Mrs. Prossy Njuki of Buyuki Katikamu Luwero, my brothers and sisters
DEDICATION.

I dedicate this research to my family especially to my daughter Kibombo Esther Kayaga and my wife Lillian Nassali may the good lord protect you.
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CHAPTER ONE

1.1 Introduction

Small claims means "a matter whose subject matter does not exceed (10) ten million shillings and it has to be commercial in nature.

Small claims does not include, family dispute, claims against government, a suit for defamation, malicious prosecution/imprisonment, wrongful arrest, or seduction a case involving the validity of a will, a claim in which specific performance is sought without an alternative claim for payment or damages except in the case of a claim for rendering an account or transferring movable property and dispute arising out of tenancy agreement not exceeding 10,000,000/= ten million shillings in value.\(^1\)

The parties to small claims, natural persons are the only who may institute an action in a small claims court.

A body cooperate may only become a party to an action as a defendant it follows that when a body cooperate is sued, it has a right to counter claim.\(^2\)

Small claims court is a specialized court created by law with specific duty to resolve monetary disputes.\(^3\)

Features of small claims court

The main features of small claims court have a unique and effective because of their many features include the following,

\(^1\) Rule 3 of Small Claims Rules.
\(^2\) Rule 8 of Small Claims Rules.
\(^3\) Rule 3 (b) & c.
- **Limited jurisdiction**, small claims court do not have jurisdiction over major disputes but generally limited to simpler disputes usually involving some type of debt recovery.

- **Simplified procedure**, small claims court are generally have different set of rules that outline all legal requirements and procedures that the court and parties must use. These rules are different from those used in other courts, namely code of civil procedures in that lay individuals with no legal education or background can more easily understand and follow them, although the rules are simple and do not involve many requirements, they still ensure due process and provide the necessary procedural safeguards to the litigants.

- **Speedy resolution**, in addition to having simplified procedure, small claims courts generally have specific and short time limitations for each case process that is undertaken by the court and required by the parties. Some courts, such as the Singapore small claims court, have developed even short time limitation for certain actions. For example if a claim is filed by or involves a tourist, the court will set the case for mediation within 24 hours of filing, providing for even quicker resolution.

- **Informality**, court proceedings in small claims court are more informal than those in other first instance courts. This feature alleviates the level of apprehension on the part of self-represented parties and allows them to be more comfortable with representing themselves without fear of undermining their case.

- **Reduced costs**, the costs of filing and processing a case in small claims court I significantly lower than in other courts. As stated more courts also generally provide litigants with the option of recovery and obtaining a waiver of fees provided that they meet certain criteria required by the court.
1.2 THE HISTORICAL BACKGROUND OF SMALL CLAIMS COURT.

The small claims court/procedure was established in 1930s in America and it stemmed from the recognition that simple disputes over a small amount of money. It does not require the same procedures and rules but can instead be resolved differently.

With the understanding that the completely of court processes, can be prohibited and can also discourage parties especially those who are unrepresented by counsel or whom have limited financial means from resulting to formal justice institution.

Small claims court/procedure provides an effective and different mechanism for ensuring process to court service for all while also freeing up the systems resources to handle more complex commercial dispute.

The success of small claims procedure has been demonstrated across many countries indeed it was recently recognized good practice for courts worldwide as part of the new methodology used by World Bank’s doing business report for assessing the contract indicator.

The small claims court is that created by law with specific duties and powers to adjudicate and resolve monetary disputes.

The jurisdiction of the small claims court is limited to certain types of cases and the benefits generally include, reduced court costs for the parties, simplified and faster procedure and specific support service including mediation in many cases.

The issue of whether the parties, one required to represent themselves or have the option of hiring a lawyer is determined by law.

Small claims court is considered as an alternative dispute resolution mechanism that provides litigants with a forum and opportunity to resolve their disputes in court in a simple, quick and cheaper manner.

Small claims court is premised on straightforward procedures that are easier for litigants to follow, for example applying on complications notifying parties. In addition, they are less formal and often eliminate the need for parties to be represented by lawyers.
1.3 HISTORICAL PERSPECTIVE OF SMALLS COURT/PROCEDURE IN UGANDA.

In 1966 the Uganda’s judiciary in response to an outcry by business community to have the judiciary be responsible to the quick resolution of commercial disputes, curved out of the civil division of the high court a new division (commercial court division as it is better known).

The commercial court division was specialized and extensively dealt with commercial disputes. The commercial court largely lived up to its expectation and revolutionised the resolution of commercial disputes in Uganda.

The success notwithstanding, the informal court under significant criticism as a big business court which was not suitable for the small claims and mediation enterprises (sme) and the informal business sector which comprised the bulkiy of local Ugandan business community.

In a bid to address this imbalance in commercial court a study led by Hon justice Kityabwire Geoffrey and a selected committee or group of legal professionals identified the need to start a formal small claims court in Uganda to handle monetary disputes from the SME and in informal business sector.[4]

As a result of, in 2011 the judicature SCP (small claims procedure) rules S.i 25 of 2011 were made. The small claims procedure was a totally a home grown version of small claims court found in other parts of the world.[5]

These new rules put in place are new innovate procedure whereby litigants who seek to recover to recover a monetary debt of Uganda shillings 10,000,000/= (ten million shillings) or about us dollars $2700) 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 the defendant.


The defendant equally through a simplified process could file to the 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 ideal was to decongest court of cases of debt recovery of the value of shillings 1-10,000,000/= ten million shillings which are the bulky of claims and medium business community.

The court started at the end of 2012 in (6) six pilot courts around the country those were Makindye, Nabweru, Masaka, Entebbe, Mukono and Jinja magistrate’s courts, and by the end of 2013 the judiciary won the public service innovation award for introducing the simplified procedure in court. [07]

The small claims procedure (courts) was a popular innovation and broke records when a few cases were actually settled on the day on which they were filed. The small claims procedure quickly acquainted itself as true truck court procedure.

As a result, the recoveries of money made through this procedure and court in general have continued to grow from Uganda shillings 1-5 billion shillings in 2013 (US $417000) in six pilot courts to about 8 eight billion shillings (US $2,222,222) in 2016 in 25 pilot courts. [08]

In 2017 the report shows that about sh 4 billion shillings was recovered in half of the year, which is an early indicator that the performance of previous year was surpassed. The overall value of the annual national recoveries points to wide use of the procedure by claimant in a manner never before achieved in Uganda.

[07] Small claims procedure paper and work plan by H/w vicent Emmy mugabo. (2012)

1.4 THE LAW GOVERNING SMALL CLAIMS/LEGAL FRAME WORK OF SMALL CLAIMS

The law governing the small claims courts (procedure) flows from the constitution of the republic of Uganda, the judicature Act and the judicature (small claims procedure) rules No 25 of 2011, herein after referred to as the rules. The rules were made by the rules committee on the 5th day of May 2011 in exercise of powers conferred upon it under s.41 of the judicature Act and rules came into force on 30th may 2011.

1.5 THE ESTABLISHMENT AND APLICATION OF THE RULES GOVERNING SMALL CLAIMS

Rule 4 of the small claims procedure establishes a procedure known as the small claims procedure. The objective of the rules are to adjudicate small claims court and not to perform any other matter that may be conferred by the chief justice.

The chief justice may be by notice published in the gazette designate a court where the rules shall apply. Under rule 7 the chief justice may assign a judicial officer to preside over a case in a small claims court and carry out any other duties incidental thereto.

Parties to a small claim, under Rule 8, only natural persons may institute an action in a SCC. A body corporate may only become a party to an action as a defendant. It follows when a body corporate is sued, it has a right to counter claim under Rule 13(b) & (c) under Rule 5(2) (b), the government cannot be sued in the SCC.

REPRESENTATION IN A SMALL CLAIM COURT,

Rule 8 (2) & (3) provides that a person to an action in a SCC shall appear in person and shall not be represented by an advocate during the proceedings. A body cooperate brought as a defendant may appear before the court by representative not being an advocate.
INSTITUTION OF A SMALL CLAIM, the SCP is an Option and not mandatory for a person to institute his /her claim in the SCC. Once a claimant opts to file SCC, the claim has be instituted in a court within local limits of whose jurisdiction the cause of action wholly or part arose. In case of a rental dispute or claim, the claim shall be instituted in a court within the local limits of whose jurisdiction the property is situated or where the defendant resides Rule (9)

Before instituting a small claim, the claimant has to give a notice of demand to the intended defendant requesting him/he to satisfy the claim within 14 days of receipt of the notice (Rule 10), The form of the notice is specified in schedule 1 to the rules. If payment is made within 14 days, that is the end of the matter.

If payment is not made after 14 days, the claimant may then file his/her claim by way of an claim form as per schedule 2 to the rules (Rule 11). The claimant has to attach a copy of the notice of demand, the affidavit of service of the notice, copies of documents supporting the claim, and give any other information relevant for the speedy disposal of the claim.

Upon receipt of the summons, the defendant may satisfy the claim whereby the claimant will give him/her a receipt or written acknowledgement and also inform the court within 7 days of the satisfaction of the claim. That will then end the matter. If the defendant disputes the claim, he/she will file a written statement of defense (wst), with a counter claim.

Under rule 17, where the defendant does not respond to the summons, upon proof of service, the court shall enter judgement for the claimant. Where the defendant has filed a defence and pleadings are closed, the court will fix a hearing date and have a notice served upon the parties.

ALTERNATIVE DISPUTE RESOLUTION (ADR) in a small claim, the SCC has a room for ADR. Under Rule 22, within 14 days before the hearing of the case, a judicial officer shall in any appropriate case, refer the parties to mediation, arbitration or other forms of ADR. Where the parties reach an agreement , the judicial officer register a consent judgement, where the parties fail to settle the matter through ADR, the matter is heard by judicial officer on the date fixed for hearing.
Hearing and judgement, on the date of hearing, the parties appear with all their relevant documents, exhibits, witness if any, and proof of service upon the opposite party. At the hearing, the claimant on oath state the facts of his/her claim and submit any document or exhibits.

After hearing the case, the judicial officer make judgement either immediately or within 14 days after hearing the case. (Rule 27). A very brief judgment is envisaged and the judicial officer show or states reasons for decision but will indulge into detailed reasoning. The judicial officer shall then make out an order in the form specified by rules.

The most interesting feature of the SCC is that a case can normally be heard and judgement delivered within one sitting. That is actually the norm and beauty of the SCC wherever it is practiced. In South Africa and Zambia hearing of case up to delivery of judgement normally takes between 30 minutes and 1 hour.

Execution of judgement & orders, where the court has granted judgement for payment of money, it has to inquire into the financial position of the judgement debtor and his/her capacity to pay without delay. The judgment debtor pays the debt, the judgement creditor is issued a receipt acknowledge payment and shall notify the court within 7 days of receipt of such payment. If the judgement debtor fails to pay, under Rule 31 (3), the judgement creditor may with the guidance if court apply for execution under S.38 of the CPA and O.22 r 7 of CPR.

Correction and review of judgments, under SCC, judgment is final and cannot be appealed against. However an aggrieved party may apply for review of the judgement by the same court on grounds of judgement being passed in his/her absence, for being void, for having been obtained by fraud or as a result of a mistake common to the parties or on discovery of new and important matters or for latent errors in the judgement.

1.6 STATEMENT OF PROBLEM.

Uganda in the mid-1990s embarked on the reforms of commercial justice system with a view of improving access to the courts by Ugandan business community so as an unclogged capital that was locked up in disputes and ultimately released the capital back into commercial 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 system as a result was congested, not specialized and slow in resolving disputes, which negatively impacted commercial and economic growth.

1.7 OBJECTIVES OF THE STUDY

➢ To find out the success of small claims court in Luwero chief magisterial area.
➢ To find out the benefits of small claims court /procedure.
➢ To find out the challenges of small claims court/procedure.
➢ To draw a distinctive comparison between small claims court/procedure and other courts (procedures)

1.8 RESEARCH QUESTIONS

➢ What are the impacts of small claims court?
➢ Do small claims court /procedure meet its expectations and objectives?
➢ What are the possible areas of reforms?

1.9 THE SCOPE OF THE STUDY

The study intends to force within the boundaries of Luwero chief magisterial area which is specifically Luwero & Nakaseke Districts as a major sample of the study area from which I intend to draw a conclusion which is a general reflection of all other unstudied small claims courts in Uganda.
CHAPTER TWO

LITERATURE REVIEW

According to Arthur Best and Deborah Zalesne, Kimberly Jonathan Miller and Whites stated that proponents of the establishment of small claims court in the early 1990s and modern theories of the alternative dispute resolution mechanism have all believed that a society ought to have accessible and effective mechanism for asserting legal rights. Some believed that social disorder can be avoided if people perceive the availability of civil justice.

Economist assumes that wealth will be maximized through social efficiency where there is honest and reliable enforcement of promises between buyer and seller. Thus peace, wealth and previously depend on or will be increased by, the existence of reliable and well used dispute handling institution. He stated in less inflated terms, a small claims court that function well might serve three purposes that are,

▷ Fair resolution of civil disputes.
▷ Difference of violent self-held by disputants.
▷ Identification of recurring social problems that might be proper subject for legislative administrative action.

Government across the globe have responded explicitly and implicitly to these ideas by establishing small claims courts as an addition to the stock of disputes resolution models. These courts are usually dissembled as valuable because they do not require a government either to have or obtain legal expertise.

According to John Broadway, of Duke University, Durham N.C. he states that small claims court is as placed tribunal created by statute, with specific duties and powers. It is designated to provide a judicial determination of disputes involving small amount of money. Its procedure is significant for inexpensive spat and simplicity. Historical procedure for such an organization is to be found in English market, courts, and temple powder courts. And similar agencies in united states, during the past quarter century to merchants to establish a small claims courts in urban
centers has been a significant part of the general program of remodeling a legal system
established wider frontier conditions, to meet social and economic changes which have created
highly in industrialized civilization.

However he pointe and warned those who may desire to create the small claims court out judicial
machinery will face at least three major tasks,

➢ Determining whether there is a need in particular community for a new court.
➢ Dispensing a certain points of view opposed to the whole idea.
➢ Deciding the details of establishment, procedure and administration and the progress of the
idea proves that these obstacles are by no means insurmountable.
CHAPTER THREE

METHODOLOGY

3.1 Introduction

There were various tools employed to collecting data pertaining small claims court. Among the tools include observation, questionnaires, and research population.

Interviewed a number of court users (litigants) on how they view small claims procedure and court in general for example I interviewed Mr. Salabwa Paul the local leader in kikyusa sub-county and a prominent court user he stated that small claims court plays an important role in solving civil matters especially when it comes to solving matters of monetary value which does not exceed 10,000,000/= ten million shillings since the people in the area their claims always are under 10,000,000/= ten million shillings.

However he pointed out the need to do more sensitization about the procedures under small claims court such that people understands it better.

Interviewed another litigant by names of Kizito Johnbosco a resident of Butuntumula village in Butuntumula sub-county in Luwero district who once had a small claim matter, he said to me that small claims court is a good court since the matter once filed it takes only 30 days for completion compared to the other procedures like summary and ordinary suit procedure which have been the mechanisms of dispute resolution.

He further told me that small claims court is less costly compared to other courts since a dispute can be completed on demand in that if a demand notice is sent to the defendant he or she is required to comply within 14 days (two weeks) if the defendant comply then the dispute is resolved their and then yet they are issued by court at no cost. Compared to summary suit which involves paying court fees before filing any matter.

However, Miss Wanyana Yudaya of kikyusa narrates that small claim court is not and not effective when it comes to service delivery in justice system. She told me that under small claim court any person can forge a claim and coach his or her witnesses and court can easily be taken.

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by that evidence and hence secure success since the procedure / court is not bound by the rules of evidence like in other courts (procedures). She told me that her maid forged a case that she lent her 3,000,000/= (three million shillings) with no document supporting the claim, small claim court ordered her to pay the claimant the said amount of money.

She told me that there is a lot of injustice in small claims courts since there is no right of appeal and the court of first instance is final, 

She further stated that small court is too unjust in that if the presiding judicial officer is biased against the litigants in the first instance no justice can prevail.

1) **Observation**, in this method I was given an opportunity to visit the civil case registers where I discovered that in the year 2018 more than 200 small claims cases were filed and all were settled in that very year compared to 103 civil cases which were filed under summary suit procedure and out of 103 civil suit only 40 suits were determined. From this observation exhibits that there is speedy trial and determination of small claims suit hence justice prevail. There was also a reduction in the number of cases filed using other mechanisms between the year 2016-2018 since it was inaugurated.

2) **Questionnaire**, question forms were set and sent to several litigants for answers about small claims court, the questionnaires were sent to more than 50 litigants.

### 3.2 CHALLENGES FACED DURING IN DATA COLLECTION

- **Illiteracy** of court users (litigants) most court users are literate in than few can answer the questions set and sent them for answer and due to illiteracy problem some questionnaires were brought back un answered.

- Limited finances, since the chef magisterial area covers two political districts it involved moving long distances to collect data.
CHAPTER FOUR

4.1 Benefits of Small Claims Court.

➢ Providing an effective and efficient alternative mechanism for resolving small, less complex disputes. In that small claims court/procedure came as another mechanism in the civil litigation field hence the litigants have alternative how to go with, other than the previous available dispute resolution mechanisms.

➢ Elimination or significantly reduced the financial burden of litigating a case for the parties. Small claims right from its initiation of small claims matter does not need the hiring of legal representation since the lawyers are not allowed hence it’s cheap for the needy.

Small claims court is less financial and user friendly since the technical rules of evidence and procedure are discouraged. Parties just walk in with his or her claims and walk away with his or her judgment within a very short time.

➢ Small claims court has freed up court resources (financial and human) so that they may be dedicated to resolving larger and more complex disputes.

➢ Small claims court/procedure has increased access to court services and ensuring that the needs of all court users, especially those with little financial means or legal knowledge can avail themselves of services of the service provided by justice institution.

Small claims court has provided access to alternative dispute resolution (ADR) services at low or no cost. In that small claim court is more of mediation court since it involves little sums of monetary disputes and matters or claims are determined on.

Small claims court has reduced the judiciary case backlog. In that small claims court matter are determined within the maximum period of 30 days. So no claim can remain unsettled or determined for the period beyond 30 days hence court/judiciary is relieved of cases which would have remained in the system for longer period of time as it’s other judicial mechanisms of dispute resolution.

➢ The small claims court has boosted public confidence in the courts system.
4.2 CHALLENGES OF SMALL CLAIM COURT

Small claims court has faced challenges and amongst which includes,

➢ **Service of process**, there is an apparent problem with service of process by a party in person yet it is also clear that the facilitation of court process severs by the parties has made the procedure expensive and unaffordable to some parties. Service to parties who can be traced is also a problem. This has limited the success of small claims court when it comes to service delivery.

➢ **Court fees**, small claims court or procedure and rules are silent when it comes to the amount of court filing fees, this has led to normal court fees structure always prevails hence if a party does not have the fees he or she cannot file a claim hence it becomes expensive to the indigents.

➢ **Manipulation of the rules**, there is a possibility of the parties or their advisors, to manipulate the process so that their cases can fit into the S.C.C (small claims court) when actually they are not meant to go there, hence casing backlog.

➢ **Re-opening of cases** by way of review, the rules under rule 30 give a party up to maximum period of one year within which he or she is at liberty to seek review of the court judgment instances set out therein, this likely to be used by parties to derail the SCC process and justice.

➢ **Execution process**, no doubt this is minified of problems to the SCC, litigants do not have a culture or willingly paying their debts even which ordered. Yet it is clear that the application of the CPR. In this regard it has brought a sour test the SCC/P.

**Limitation, of appeal** there is no right of appeal in small claims court which has brought dissatisfactions amongst the litigants in that a small claim court of first instance it acts as also appellant court even if a litigant is dissatisfied with the decision of the presiding judicial officer he or she has nowhere to appeal since the

**Statute does not allow appeal.** This is considered by litigants as an injustice and a blockade on delivery of justice service.
In conclusion, resorting to litigation as the conventional way of resolving disputes is more often than not a time consuming, complicated and costly process to all litigants, particularly those involved in minor disputes and those with little financial means to have legal representation.\(^{[09]}\)

Establishing a small claims court has not only reduced the burden of litigation or those parties by providing greater access to judicial services, but it also frees up the courts resources so that they may instead be more efficiently allocated to resolving larger and more complex cases.

Despite the fact that small claims court vary from one jurisdiction to another, as they should be based on the varying needs of the public, the reason for their establishment and their benefits remains the same.

Like other courts, the key to their success rest on having a clear and detailed legal frame work that leaves no room for varying interpretation and room for delay providing opportunities to even mediate the dispute through the various stages of case process involving unnecessary formalities generally associated with the justice system and providing a greater level of assistance to users are instrumental to the success of a small claims court.

\(^{[09]}\)The development of small claims court in Uganda, Hon justice Kiryabwire Geoffrey 2010.
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