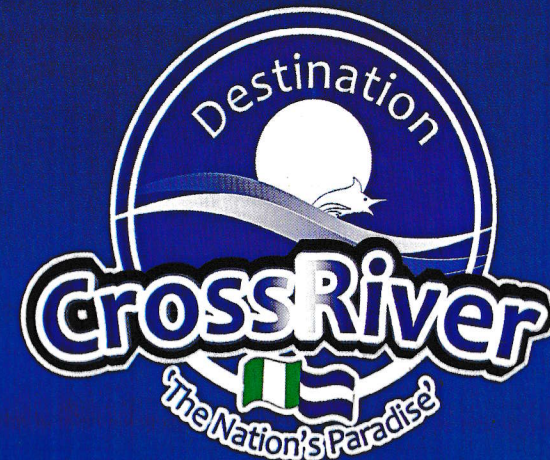




MAGISTRATE'S COURTS LAW

(PRACTICE DIRECTIONS ON SMALL CLAIMS) 2023

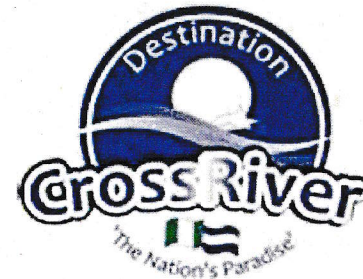


BY

HON. JUSTICE AKON BASSEY IKPEME
THE HONOURABLE CHIEF JUDGE OF CROSS RIVER STATE



**MAGISTRATES' COURTS LAW
PRACTICE DIRECTIONS
ON SMALL CLAIMS
2023**



BY

HON. JUSTICE AKON BASSEY IKPEME
THE HONOURABLE CHIEF JUDGE OF CROSS RIVER STATE



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In exercise of the powers conferred on me by Section 274 of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended), Sections 41 and 46 of the High Court Law Cap H2, Laws of Cross River State of Nigeria, 2004, and Sections 3 and 4 of the Magistrate Courts Law Cap M1 Laws of Cross River State of Nigeria, 2004, and by virtue of all other powers enabling me in that behalf, I the HON. JUSTICE AKON B. IKPEME, Chief Judge of Cross River State of Nigeria, hereby issue these Practice Directions.

Dated at Calabar this 23rd day of August, 2023

Hon. Justice Akon Bassey Ikpeme

Honourable Chief Judge of Cross River State

PREAMBLE:

Whereas I, the Hon. Chief Judge hereby designate some Magistrates' Courts as Small Claims Courts.

The 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

This Practice Direction shall come into effect on theday of2023



PROCEDURE:

ARTICLE 1:

OBJECTIVE: The objective of the Small Claims Procedure is to provide easy access to an informal, inexpensive and speedy resolution of simple debt recovery disputes in the Magistrates' Courts.

ARTICLE 2:

COMMENCEMENT OF ACTION

- 1). An action may be commenced in the Small Claims Court where:
 - a) The Claimant or one of the Claimants resides or carries on business in Cross River State;
 - b) The Defendant or one of the Defendants resides or carries on business in Cross River State;
 - c) The cause of action arose wholly or in part in Cross River State;
 - d) The claim is for a liquidated monetary demand in a sum not exceeding N5,000,000.00 (Five Million Naira), excluding interest and costs;
 - e) The Claimant has served on the Defendant, a LETTER OF DEMAND as in Form 1.
- 2). The action shall be commenced by Claim upon the completion of a Small Claims Complaint Form as in Form 2.
- 3). The Summons shall issue as in Form 3 upon the Registrar being satisfied that the requirements of Article 2 above have been met.



ARTICLE 3

MARKING AND PAYMENT OF FILING FEES

Where a case satisfies the criteria in Article 2 above, the Assistant Chief Registrar or any person 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 4

ASSIGNMENT OF SMALL CLAIMS FILES

- 1) Upon the marking of the Claim, the Assistant Chief Registrar shall within 24 hours forward the case files to the Administrative Magistrate for assignment to a Magistrate of the Small Claims Court.
- 2) The Administrative Magistrate shall within 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 5

SERVICE OF THE SUMMONS

- 1) The Summons shall be served by the Registry of the Small Claims Court within seven (7) days of filing by the Sheriff/Bailiff of the Court, or any other designated officer of the Small Claims Court.
- 2) Upon service, the Bailiff of the Court shall file an



Affidavit of service as in Form 6 within 2 days of service.

- 3) The provision of the Magistrates' Courts (Civil Procedure) Rules regarding mode of service, except as provided herein shall apply to any process of whatever description issued by the Small Claims Court.
- 4) Where the Sheriff/Bailiff of the Small Claims Court is unable to serve the Summons on the Defendant within the time specified in (1) above, he shall file an Affidavit of Non-Service as in Form 4 after the expiration of the time allowed for service.
- 5) In the event of (4) above, the Claimant shall apply for an Order of substituted service of the Summons on the Defendant by filling Form 7.

ARTICLE 6 FILING OF DEFENCE/ ADMISSION/COUNTERCLAIM

- 1) Upon service of the Summons, the Defendant shall file his Defence/Admission or Counterclaim within Seven (7) days by completing Form 5 as appropriate.
- 2) The provision of Article 5 on service of Summons shall apply to service of a Counterclaim.
- 3) Where a Defendant fails to file an Answer to the



Claim, such Defendant may be held to have admitted the Claim.

ARTICLE 7 COUNTERCLAIM

- 1) If at the time the action is commenced the Defendant intends to claim against the Claimant a liquidated money demand not exceeding N5,000,000.00 (Five Million Naira) (excluding interest and costs) and which claim arises out of the same transaction or series of transactions, the Defendant shall fill and file a counterclaim as in Form 5 in answer to the Claim.
- 2) If at the time the action is commenced, the Defendant intends to claim against the Claimant a liquidated monetary demand exceeding N5,000,000.00 (Five Million Naira) but not more than N10,000,000.00 (Ten 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 and filling Form 5.
- 3) 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 filling Form 5,



PROVIDED that any Judgment in the Defendant's favour shall be limited to the general jurisdiction of the Magistrates' Courts.

- 4) In the event of (3) above, the Defendant/ Counterclaimant shall be deemed to have abandoned the excess of the counterclaim.
- 5) The Defendant(s) counterclaim shall be limited to the Claimant(s) on record.
- 6) The Claimant may file a reply to the Defendant(s) Defence and Counterclaim within 5 days of service of the Defendant(s) defence and Counterclaim.
No pleadings after reply are allowed.

ARTICLE 8 NON-APPEARANCE

- 1) When the claim is called for hearing on the date fixed and neither party appears, the Magistrate shall unless he sees good reason to the contrary, strike out the claim.
- 2) Where the claim is called for hearing and the Claimant appears but the Defendant does not appear, provided there is proof of service, the Magistrate shall proceed with the hearing of the claim and enter Judgment as far as the Claimant can prove his claim.
- 3) 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. If the defendant has a counterclaim, the Magistrate shall proceed to hear the counterclaim and enter Judgment accordingly, as far as the Defendant can prove his counterclaim.

ARTICLE 9 PROCEEDINGS AT THE HEARING

- 1) At the first appearance of the parties before the Court, the Magistrate shall promote, encourage and facilitate amicable settlement of the dispute among the parties by mediating and providing settlement options to the parties as he deems fit. The process of mediating and facilitating amicable settlement of the dispute among the parties shall not exceed seven (7) days.
- 2) Notwithstanding 9(1), 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.
- 3) In the event that parties are unable to settle the dispute amicably, the Magistrate shall hold a pretrial conference for the purpose of giving directions for



hearing of the claim or counterclaim (as the case may be) including a hearing time table, length of trial or hearing, exchange of witness(es) list, formulation and settlement of issues, as appears to the Magistrate to secure the just, expeditious and speedy disposal of the Claim or Counterclaim.

- 4) Magistrate to secure the just, expeditious and speedy disposal of the claim or counterclaim.
- 5) Hearing shall be conducted by the court from day to day as far as is practicable and may only be adjourned as a last resort and for the shortest possible time.
- 6) Adjournment can only be granted during proceedings in unforeseen and exceptional circumstances and a party may not be granted more than one adjournment during the entire proceedings.
- 7) The entire hearing period shall not be more than thirty (30) days from the first date of hearing inclusive of the seven (7) days for amicable settlement.

ARTICLE 10 REPRESENTATION

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



ARTICLE 11 EVIDENCE

Parties may testify on their own behalf and tender all necessary documents and they may call other witnesses to give evidence at the hearing.

ARTICLE 12 JUDGMENT

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

ARTICLE 13 ENFORCEMENT OF JUDGMENT

- 1) The Defendant or Defendant to counterclaim (as the case may be) shall comply with the Judgment and pay the Judgment sum within fourteen (14) days of delivery of Judgment.
- 2) Upon default of the Defendant or Defendant to



counterclaim to pay the Judgment sum within the time specified, the Judgment shall be enforced in like manner as any order of the Magistrate's Court for the payment of money.

**ARTICLE 14
APPEALS**

- 1) Where either party is aggrieved with the Judgment, such party shall fill the Appeal form, as in Form 8 within fourteen (14) days of the delivery of the Judgment stating the reasons for the Appeal.
- 2) The Assistant Registrar of the Small Claims Registry shall compile the records of appeal within fourteen (14) days of the submission of Form 8
- 3) 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.
- 4) 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.
- 5) The Appeal shall be by oral hearing of the parties and on the records of the appeal.
- 6) The whole Appellate Process from the assignment of the Appeal to Judgment shall not exceed thirty (30) days

FORM 1

**SMALL CLAIMS COURT
LETTER OF DEMAND**

FROM:

.....

WORK ADDRESS.....

RESIDENTIAL ADDRESS.....

TELEPHONE NO. (S) AND E-MAIL.....

TO

.....

WORK ADDRESS.....

RESIDENTIAL ADDRESS.....

TELEPHONE NO. (S) AND E-MAIL.....

SIR/ MADAM

DEMAND

I hereby claim from you

.....

.....

(PLEASE STATE

PARTICULARS)

.....

.....

Unless you comply with this demand within fourteen (14) days after the receipt of this letter, summons will be issued against you in the Small Claims Court.

.....
CLAIMANT'S SIGNATURE

FORM 2

**IN THE MAGISTRATE COURT OF CROSS RIVER STATE (SMALL CLAIMS)
COMPLAINT FORM (TO ACCOMPANY FORM 3)**

- NB 1. Please fill the Form legibly.
- 2. Please attach copies of the documents (contracts, receipts, expert's report (if applicable) etc. upon which the claims is based.
- 3. Submit this form at the Registry of the Small Claims Court.

A. PARTICULARS OF CLAIMANT (S)

FULL NAME.....

WORK ADDRESS.....

RESIDENTIAL ADDRESS.....

TELEPHONE NO: (S)AND E-MAIL ADDRESS.....

Please attach a list of other Claimants (if more than one) with the required particulars

B. PARTICULARS OF THE DEFENDANT (S)

FULL NAME.....

WORK ADDRESS.....

RESIDENTIAL ADDRESS.....

TELEPHONE NO. (S)AND E-MAIL ADDRESS.....

Please attach a list of other Defendant (s) (if more than one) with the required particulars

**PLEASE SUMMARIZE YOUR COMPLAINT AND STATE THE STEPS YOU
HAVE TAKEN TO RECOVER THE CLAIM.**

.....

.....

.....

.....

.....

.....

.....

.....
**CLAIMANT'S SIGNATURE/
THUMBPRINT**

.....
DATE

Sworn to at the Small Claims Court Registry

.....this.....Day of.....20.....

The foregoing having been read and interpreted by me to the Deponent in..... Language he being Illiterate/Blind and he having appeared perfectly to have understood before affixing his thumb print impression.

JURAT (if applicable)

Commissioner for Oaths.

FORM 3

IN THE MAGISTRATE COURT OF CROSS RIVER STATE (SMALL CLAIMS)

SUMMONS

(TO BE SERVED WITHIN SEVEN DAYS OF FILING)

CLAIM NO.....

BETWEEN:

.....CLAIMANT

AND

.....DEFENDANT

The claimant claims:

Debt (particulars are attached).....

Court Fees.....

Costs.....

Total: N.....

To

.....

.....

1. You are hereby summoned to appear personally before this court on theday of20.....at.....to admit or deny your liability for the above mentioned claim.
2. If you deny liability or have a counterclaim you are advised to complete and return Form 5 to the Registry of the Small Claims Court within seven (7) days after the service of this summon inclusive of the day of service. If you require a longer time for payment, complete the form of ADMISSION as in Form 5.
3. (a) Take note that if you fail to appear in court on the hearing date after the summons has been served you, Judgment may be obtained against you by the Claimant.
 (b) Money payable in terms of a Judgment or Order of Court may be paid directly to the Judgment Creditor.
 (c) The Judgment Debtor must notify the Judgment Creditor fully and correctly; within 7 days after he has changed his place of work, employment or residence, of his new place of work, employment or residence.

Dated at..... this Day of20.....

FORM 4

IN THE MAGISTRATE COURT OF CROSS RIVER STATE (SMALL CLAIMS)

AFFIDAVIT OF NON – SERVICE

CLAIM NO

BETWEEN:

.....CLAIMANT/APPLICANT

AND

..... DEFENDANT/ RESPONDENT

.....

Make Oath and say, that on theday of20.....

At.....O'clock I attempted to serve upon

Summons for small Claims

.....True copy whereof annexed issued out of this court

at.....

I have been unable to serve the Summons.....

Because

.....

.....
Sherriff/Bailiff

SWORN TO AT THE MAGISTRATE COURT OF CROSS RIVER STATE, (SMALL CLAIMS) REGISTRY

THIS DAY.....20.....

FORM 5

IN THE MAGISTRATE COURT OF CROSS RIVER STATE (SMALL CLAIMS)

FORM OF ADMISSION, DEFENCE AND COUNTERCLAIM TO ACCOMPANY FORM 3 (TO BE SERVED ON THE CLAIMANT WITHIN SEVEN DAYS OF SERVICE OF FORM 3)

CLAIM NO.....

BETWEEN:

..... CLAIMANT

AND

..... DEFENDANT

(a) ADMISSION

I admit the Claimant's claim (or) part of the Claimant's claim and I ask for permission to pay the sum with costs on that amount on the day of20..... (or by installments of N..... Per) because,

1.
2.
3.

(State why you cannot pay at once)

(b) DEFENCE

I have a defence.....

.....
.....
.....
.....

Or I dispute part of the Claimant's claim)because

.....
(State briefly the facts you wish to put before the court).

(C) COUNTERCLAIM OR SET OFF

I have a counter-claim or set off against the claimant for N.....

.....
.....
.....
.....
.....

(State the particulars of the Counterclaim or Set off)

.....
CLAIMANT'S SIGNATURE/ THUMBPRINT **DATE**

JURAT (IF APPLICABLE)

The forgoing having been read and interpreted by me to the Deponent in Language he being Illiterate/ Blind and he having appeared perfectly to have understood before affixing his thumb print impression.

Commissioner for oaths

Defendants address for service in Cross River
State.....

Dated this Day of.....20.....

FORM 6

IN THE MAGISTRATE COURT OF CROSS RIVER STATE (SMALL CLAIMS)

AFFIDAVIT OF SERVICE

(PROOF OF SERVICE TO BE FILED WITHIN TWO DAYS OF SERVICE)

CLAIM NO.....

BETWEEN:

..... CLAIMANT

AND

..... DEFENDANT/ RESPONDENT

I

Make Oath and say, that on the Day of20.....

At O' clock I served upon

Summons for small claims.....

True copy whereof annexed issued out of court at

Upon.....

..... on the complaint of

By delivering the same personally to

Before the day I served the summons.....

..... I did not know

..... personally, but after he was pointed out to me by

.....

.....

.....asked him if he was

.....and he said, he was.

.....
Sheriff/ Bailiff

**SWORN TO AT THE SMALL CLAIMS
COURT REGISTRY.**

THIS DAY..... 20

FORM 7

IN THE MAGISTRATE COURT OF CROSS RIVER STATE (SMALL CLAIMS)

IN THE MAGISTRATE DISTRICT
HOLDEN AT

BETWEEN: CLAIM NO.....

..... CLAIMANT/APPLICANT

AND

..... DEFENDANT/ RESPONDENT

MOTION EX-PARTE

BROUGHT PURSUANT TO ORDER 5 RULE 2 OF THE MAGISTRATE COURT OF CROSS RIVER STATE (CIVIL PROCEDURE) RULES, 2012 AND UNDER THE INHERENT JURISDICTION OF THE COURT

Take notice that the Honorable Court will be moved on the day of20 at 9 O' clock in the afternoon or soon thereafter as Claimant/Applicant may be heard praying the court for the following:

An Order of the Court granting leave to the Claimant/ Applicant to serve the summons on the Defendant by substituted means, to wit: pasting same at

being last known address of the defendant or by any means of service, as is hereby stated

AND FOR SUCH ORDER OR ORDERS as this Honorable Court may deem fit to make in the circumstances in this claim.

Dated day of20.....

.....
Claimant's Signature

FORM 8

IN THE HIGH COURT OF CROSS RIVER STATE
COMMERCIAL DIVISION (FAST TRACK COURT)
HOLDEN AT

APPEAL NO.....

BETWEEN:

..... APPELLANT

AND

..... RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE that the / Appellant being dissatisfied with the decision of the Magistrate's Court (Small Claims Court)..... Magisterial District as contained in the Judgment delivered on the..... by..... do hereby appeal to the High Court of Cross River State, upon the grounds set out in paragraph 2 and will at the hearing of the Appeal seek reliefs set out in paragraph 3.

AND the Appellant further states that the names and addresses of the persons who would be directly affected by the appeal are those set out in paragraph 4 of this Notice

1. PART OF THE DECISION OF THE LOWER COURT COMPLAINED OF:

.....
.....

2. GROUNDS OF APPEAL

(1) The learned Magistrate erred in law when his Worship held that

.....
.....

PARTICULARS OF ERROR

(a)
.....
.....

b)
.....
.....

3. RELIEFS SOUGHT FROM THE HIGH COURT OF CROSS RIVER STATE

- (a) An Order of the Honourable Court
.....
.....
- (b) An Order
.....
.....

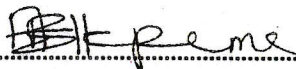
1. PERSONS DIRECTLY AFFECTED BY THE APPEAL

NAMES	ADDRESS
.....
.....

Dated this..... day of20.....

ADDRESS FOR SERVICE
APPELLANT'S SIGNATURE

ISSUED BY


.....
HON. JUSTICE AKON BASSEY IKPEME
THE HON. CHIEF JUDGE OF CROSS RIVER STATE
ON THE 23RD DAY OF AUGUST 2023
AT CALABAR, CROSS RIVER STATE OF NIGERIA