



A QUICK GUIDE TO CIVIL LAWSUIT PROCEDURE IN KENYA

The guidelines of civil suits in Kenya are majorly drawn from the Civil Procedure Rules of Kenya 2010. The Rules [therein](#) detail the procedure of civil suits from commencement until conclusion. The wholistic aim of the said Rules is to safeguard the principle of fair and efficient administration of justice, which is the prime requirement that binds the Courts in Kenya.

PRELIMINARIES

Demand Letter

As soon as a party becomes aggrieved, they are required to issue a demand letter to the other party clearly stating the wrong action, and how they expect the other party to remedy the situation within a specified time frame.

When the other party defaults in resolving the issue, the aggrieved party will ascertain the cause of action on which the claim will be founded upon. The said claim shall have to be filed before a court of competent jurisdiction as soon as practicable, since presentation of the same in a delayed fashion will be struck out on grounds of being time barred.

COMMENCEMENT OF CIVIL PROCEEDINGS

Plaint

There are different pleadings that can be utilized to file a claim before a Court, depending on the nature, however a *plaint* is the most used pleading.



The aggrieved party is required to correctly identify the Defendant, present the alleged violation in a detailed manner, and conclude with prayers/compensation that they expect the court to grant against the Defendant.

The *Plaint* is typically accompanied by other documents in support thereof.

Upon service (to the defendant(s)), summons to enter appearance are attached to enable the Defendant to enter appearance.

Defence

The Defendant within a period of fifteen (15) days after receipt of the Plaint and other documents from the Plaintiff, is required to enter appearance vide a memorandum of appearance and file a defence in response to the Plaintiff's Claim.

Prior to delving into the substance of procedure, after filing and service of the Plaint, it is essential to outline the consequences of non-appearance on the part of the Defendant. The consequences are two-pronged depending on the nature of the claim:



1. **Liquidated claim**

Where the claim is for a specified amount, upon default of appearance and/or filing a defence, the court will enter judgement against the Defendant of the sum as claimed in the Plaint together with interests of filing the suit.

2. **Unliquidated claim**

Where the claim is unliquidated, upon failure to enter appearance, the plaintiff shall request the court to enter judgement against the Defendant i.e., after assessment of damages and/or value of the goods.

Amendment of Pleadings.

The Civil Procedure Rules of Kenya 2010 state that amendment of pleadings can be done at any point during trial, however parties must take into consideration whether pleadings have been closed, this will be based on whether the defence or any further reply has been filed. Where pleadings have been closed, leave of court will subsequently be sought to enable parties to amend their pleadings.

PRE-TRIAL

The first stages of the pre-trial process involve parties exchanging the pre-trial questionnaire and list of agreed issues. The main purpose of this stage is to narrow down the issues in contention between the parties.

Subsequently, within a period of 30 days after close of pleadings, a pre-trial conference ensues. The purpose of this stage is to enable the court to identify the disputed issues between the parties and map out the best way within which it will conduct the proceedings. Further, at is also at this stage that the court can assist the parties to solve their issues wholly or partly.

Once the pre-trial stage is concluded and the parties confirm to have complied with the preliminaries, the suit is set for hearing.

TRIAL

Hearing

During the hearing of the suit, the Plaintiff commences the proceedings and presents its case against the Defendant. Through this stage the Plaintiff may present oral or written evidence and both counsel for the parties are accorded the opportunity to examine in a manner that best assists their cases. Thereafter, the Plaintiff's case is closed.

Similarly, the Defendant proceeds in the same manner. The mode of presentation of evidence is similar and the said defendant is equally examined.



Scene inside a courtroom house in the High Court of Kenya. Credit: Bryan Mutiso

Within a period of 60 days, trial is concluded and the court proceeds to set down the matter for judgement.

After consideration of the issues raised, vis a vis the evidence produced before it, the court thereafter proceeds to issue out orders exhibiting its seal. The said orders are in reflection of the judgment.

The Decree, however, is drafted by either party to the suit and ought to be exchanged between them for approval. Afterwards it is submitted to the Registrar who then draws it in accordance with the judgment of the court.

Where any party is aggrieved by the orders of the court, the Civil Procedure Rules 2010 provide the following avenues within which the parties can challenge the decision.

- Apply for Review of Judgement in the same court that issued it; or
- Appeal against the decision in accordance with court hierarchy.

It is essential to also discuss that applications can be filed before the court, seeking necessary orders for the purposes of preservation of the subject matter of the suit. The same is filed on an urgent basis

in proof of the fact that, if relevant orders are not obtained, then the entire suit shall be rendered nugatory.

When an application is filed, the court shall proceed and dispense with the same and thereafter continue with the primary suit.

CONCLUSION

Parties to a suit can also withdraw the matter before it is concluded. However, they ought to notify the court of ongoing negotiations.

Once a conclusion is arrived at, the parties are required to draft a consent and file the same. Thereafter the court will adopt it as judgement. This can be considered to be in light of Article 159 of the Constitution of Kenya 2010, which promotes alternative forms of dispute resolution.

Whereas the procedural requirements are straightforward to most practitioners, they can present daunting challenges to those unfamiliar with the inner workings of litigation.

In an attempt to simplify the procedures and fast track disputes over simple matters, the law has created the Small Claims Court which we examine in our [next guide](#).

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