



**Strathmore University**  
**Law School**

**AN ANALYSIS OF THE VIABILITY OF IMPLEMENTING THE PROPOSED  
SMALL CLAIMS COURTS IN THE KENYAN JUDICIARY**

**STUDENT'S NAME: ROBERT MUIGAI MWAURA**  
**STUDENT'S REGISTRATION NUMBER: 071021**

**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE  
BACHELOR OF LAWS DEGREE**

**SUBMITTED TO STRATHMORE UNIVERSITY**

**FACULTY OF LAW**

**SUMBTTED ON JANUARY 2016**

Contents	
ACKNOWLEDGEMENTS.....	1
DISSERTATION DECLARATION FORM.....	2
ABSTRACT .....	3
LIST OF ABBREVIATIONS .....	4
1.1 BACKGROUND TO THE STUDY.....	5
1.2 RESEARCH PROBLEM .....	6
1.3 JUSTIFICATION OF THE STUDY :.....	7
1.4 STATEMENT OF OBJECTIVES.....	7
1.4.1 General Objective .....	7
1.4.2 Specific Objectives .....	7
1.5 RESEARCH QUESTIONS .....	8
1.6 METHODOLOGY .....	8
1.7 LIMITATIONS.....	9
1.8 DEFINITION OF TERMS .....	9
1.9 CHAPTER SUMMARY .....	9
2.1 THEORETICAL FRAMEWORK.....	10
3.1 THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORKS GOVERNING SMALL CLAIMS COURTS.....	14
4.1 INTRODUCTION.....	19
4.2 DEMOGRAPHIC DATA.....	19
4.3 UNDERSTANDING OF THE SMALL CLAIMS COURTS.....	20
4.4 QUALIFICATIONS OF ADJUDICATORS.....	20
4.5 DISTRIBUTION OF SMALL CLAIMS COURTS.....	22
4.6 CASES BEFORE THE SMALL CLAIMS COURTS .....	23
4.7 PECUNIARY JURISDICTION .....	23
4.8 IMPLEMENTATION OF THE COURTS.....	24
5.1 DISCUSSION.....	25
6.1 CONCLUSION .....	31
BIBLIOGRAPHY .....	33
APPENDIX .....	36

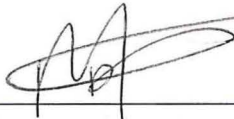
## ACKNOWLEDGEMENTS

I would first and foremost like to thank God for the gift of life and allowing me to come this far in pursuing my bachelor's degree. I would also like to thank my mother for not giving up on my dream of going to Strathmore Law School. My supervisor, Mrs. Melissa Muindi has been very instrumental in every step of the way of my writing of this dissertation. I cannot forget to thank the respondents who provided me with valuable data. Last but not least, I would like to thank the entire staff of Strathmore Law School who have played an instrumental part in my journey through law school.

## DISSERTATION DECLARATION FORM

I Robert Muigai Mwaura of admission number 071021 hereby confirm that this dissertation is my original work and has not been submitted for a degree in any other university or any other award.

Signature



Date 31/3/2016

Robert Muigai Mwaura

Student number

This thesis has been submitted for examination with my approval as university supervisor.

Signature



Date 31st March 2016

Melissa Muindi

## ABSTRACT

This dissertation sought to evaluate the viability of introducing Small Claims Courts to the Kenyan Judiciary by investigating the legislative and institutional frameworks that would govern the small claims courts and examining the pecuniary jurisdiction that the courts would operate in if they were introduced. The proposed bill was taken into account and compared to the Small Claims Courts of South Africa. South Africa was chosen an ideal country because just like Kenya, it is a common law country. Finally, this dissertation sought to provide recommendations on the implementation of the courts.

The project included a study that was carried out on 40 advocates who were practicing within the Nairobi area. Secondary sources of information such as internet resources and books were also used in this project. It was evident that there was a lack of understanding of the proposed Small Claims Courts and that the bill had a number of ambiguities. This project recommends that the bill should be reviewed and the public should be sensitized on it thereafter.

## LIST OF ABBREVIATIONS

JSC	Judicial service Commission
SOJAR	State of the Judiciary and Administration of Justice Annual Report
SPSS	Statistical Packages for Social Sciences

## 1.1 BACKGROUND TO THE STUDY

Small claims courts can be defined as the people's claims courts as they seek to provide an informal, uncomplicated forum to resolve small disputes that do not involve enough money to warrant the expense of formal litigation.<sup>1</sup> The Small Claims Court Bill (2007) defined these courts as courts subordinate to the High Court that exercise jurisdiction in respect of the bill.<sup>2</sup> The new 2015 Small Claims bill mirrors the same definition of the 2007 bill but makes an essential reference to article 169 1 (d) of the constitution that gives parliament the power to establish a Court by passing an Act of Parliament.<sup>3</sup>

Small Claims Courts have sometimes been seen to be low status because of the petty cases that they handle. They have also alternatively been granted very high priority and importance because they are generally so numerous and potentially affect all people and all phases of life.<sup>4</sup>

The Kenyan judiciary has been described as being discredited, corrupt, inefficient and overburdened.<sup>5</sup> The courts have been overburdened by the large number of cases that are currently being handled. As of 2013, 116,754 new cases were filed in courts across the country with 190,093 cases being determined, leaving 657,760 others pending.<sup>6</sup>

The current judicial system can be illustrated using a pyramid whereby the lower levels represent the smaller courts, such as the magistrate courts where many of the cases are handled. The higher you go, the fewer the cases. Just like any other pyramid, for it to stand, the wide base at the bottom must be strong, otherwise, that would lead to the entire structure crumbling down. Therefore, if small claims courts are introduced they would serve a lot of people, strengthen the judicial system and thus, make the judiciary more efficient. Figure 1 graphically depicts the court structure in Kenya.

---

<sup>1</sup> Texas Young Lawyers Association and the State Bar of Texas, 'How to Sue in Small Claims Court' Page 1

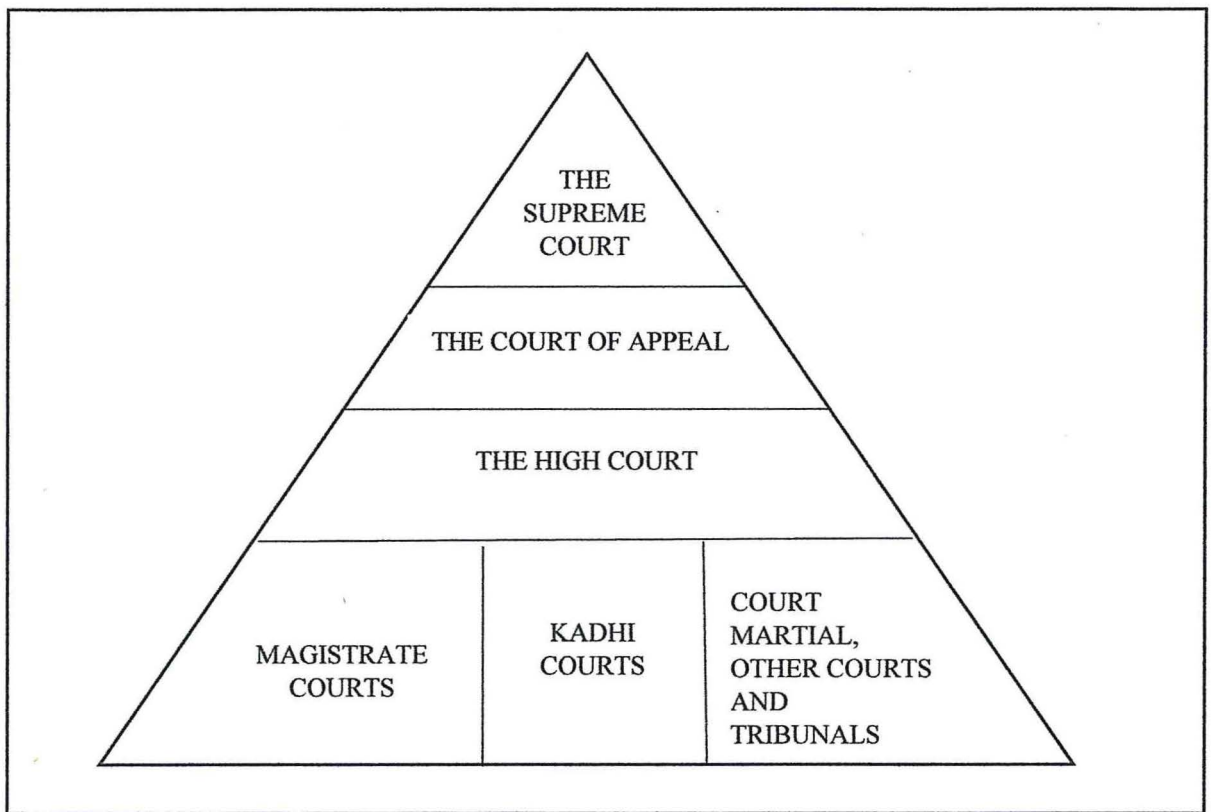
<sup>2</sup> Section 4 Small Claims Court Bill (2007)

<sup>3</sup> Section 4 Small Claims Court Bill (2015)

<sup>4</sup> Eric H. Steele, 'The Historical Context of Small Claims Courts' American Bar Foundation Research Journal (1981), 293.

<sup>5</sup> Ahmednasir Abdullahi, 2011 <http://kenyalaw.org/kl/index.php?id=1930> on 23 February 2014.

<sup>6</sup> State of the Judiciary Report, 2012 – 2013 at page 14. The Supreme Court had 18 new cases, resolved 11 and had seven (7) pending as at the close of the reporting period. The Court of Appeal received 1,183 new cases over and above the 6,174 already pending. It resolved 1,032 cases.



**Figure 1: Courts System in Kenya**

Adapted from the court Structure in Kenya (Gabriel Lubale)<sup>7</sup>

The Civil Procedure Act and the subsequent orders have done a lot to make the judiciary more efficient with the introduction of the fast track and multi-track<sup>8</sup> which has improved the rate at which civil cases are solved. This paper seeks to see how the proposed Small Claims Courts would improve the efficient service of justice.

Small claims courts are widely used in the United States, the United Kingdom, and South Africa. This paper seeks to find out how small claims courts would fit into the Kenyan context so as to make our judiciary more efficient.

<sup>7</sup> Gabriel Lubale: Courts System in Kenya, 22 August 2012 <http://gabriellubale.com/courts-system-in-kenya/> on 2 March 2015

<sup>8</sup> Order 3 Rule 1 *Civil Procedure Act* (2012)

only be done but must be seen to be done. This is what the law seeks to do. This paper, therefore, seeks to analyse whether the introduction of small claims courts into the Kenyan Judiciary will solve the current judicial shortcomings and fulfill this principle so as to make the Judiciary more efficient.

### 1.3 JUSTIFICATION OF THE STUDY

Courts, in dispensing justice, should do so in a manner that will not harm those that it seeks to protect. Unfortunately, the courts cannot effectively do this as they are clogged up with the number of cases currently being handled. This results in cases taking years before they are finally decided.

It is commendable that Kenya already has a Small Claims Courts Bill, but this was first tabled in 2007. Eight years down the line, the bill has not yet been made into law. Instead it was reintroduced to the national assembly in 2015<sup>9</sup> with a few modifications. The judiciary, however, is still overburdened by the number of cases brought before it. Looking at recent statistics<sup>10</sup>, 116,754 new cases were filed in courts across the country. The courts heard and determined some 190, 093 cases leaving 657,760 pending. The 2013-2014 State of the Judiciary and Administration of Justice Annual Report indicated that the number of cases pending in the Kenyan Courts was 426, 508<sup>11</sup>. Even though this figure was less than the previous year's statistics by 231,252, this number is still alarming.

This does not concur with the natural law principles and thus goes against the philosophy of human rights. This study seeks to show the importance of small claims courts as well as propose some recommendations that may not be present in the bill.

### 1.4 STATEMENT OF OBJECTIVES

#### 1.4.1 General Objective

To evaluate the viability of having small claims courts in the Kenyan Judiciary.

#### 1.4.2 Specific Objectives

1. To investigate the legislative and institutional frameworks that would govern small claims courts.

---

<sup>9</sup><http://kenyalaw.org/kl/index.php?id=5189> on 27 March 2015.

<sup>10</sup> State of the Judiciary and the Administration of Justice Annual Report, 2012 – 2013, at 13.

<sup>11</sup> State of the Judiciary and the Administration of Justice Annual Report, 2013- 2014, at 19.

2. To examine what would determine the value of the cases that would be brought before small claims courts in terms of the pecuniary jurisdiction.
3. To propose recommendations for the reforms that will be needed in order to implement the small claims courts.

### 1.5 RESEARCH QUESTIONS

1. What are the different legislative and institutional frameworks that would govern the small claims courts?
2. What would determine the value of the cases which would be brought before the small claims courts?
3. What recommendations would be necessary in order to implement small claims courts?

### 1.6 METHODOLOGY

Both desk based and fieldwork research techniques were used. For the desk based research, various sources of data including reports released by the Kenyan Judiciary and statistics released by different organizations concerning the judiciary were used. Further, literature on the topic and statutes from jurisdictions that already have small claims courts in place were essential for the study.

For the fieldwork based part of this study, a pilot study was carried out on 10 advocates with sample questionnaires. This was done so as to evaluate the success of the actual study. After the necessary changes were made to the questionnaires, the study was then done on 40 advocates practicing within Nairobi. The selection of advocates was done randomly so as to capture a myriad of views from different advocates practicing in different areas of law. This study only focused on advocates as they have a good understanding of the court system in Kenya by virtue of their practice and therefore their views were instrumental. Approvals by the different people interviewed were obtained so as to quote them in the research.

Face to face interviews were of benefit as they provided more information than the written questionnaires did. The information obtained was then analysed by using Statistical Packages for Social Sciences (SPSS) version 17.0. It was then presented in a Microsoft Word Document.

## 1.7 LIMITATIONS

Since this study only captured the views of the advocates practicing within the Nairobi area, it may have not necessarily reflected the views of all the advocates within the country.

## 1.8 DEFINITION OF TERMS

1. Adjudicator – Judicial officers who would be in charge of the Kenyan small claims courts.
2. Advocate – In the South African Context, these are lawyers who specialize in a particular area of law. In the Kenyan context, these are lawyers who have been admitted to the Kenyan bar.
3. Attorney – General practitioners of law in the South African context.
4. Commissioner – Judicial officer in charge of the Small Claims Courts in South Africa.
5. Lawyer – law students who have successfully completed their bachelor's degree.
6. Small Claims Court Bill – the proposed legislation that is to govern the operation of the small claims courts.
7. Small Claims Courts - courts subordinate to the High Court that exercise the jurisdiction as provided for by the proposed law.<sup>12</sup>

## 1.9 CHAPTER SUMMARY

This chapter presents an introduction to the topic on Small Claims Courts and goes further to justify the topic and its relevance to the Kenyan Judiciary. By giving the general and specific objectives, this chapter sets out the goals that the study intends to achieve and also points out the limitations that the study has in trying to achieve its objectives.

---

<sup>12</sup>Section 4 Small Claims Court Bill (2015)

## 2.1 THEORETICAL FRAMEWORK

Philosophy had for a long time had the debate of human rights before it through the different societies. Human rights as a theory was seen to have played a role by measuring the way a certain government treated its citizens. That theory of human rights focused on a search for moral standards of political organization and behavior that was independent of the contemporary society.<sup>13</sup> That resulted in people being unsatisfied with the notion that what was right or good is what the society perceived to be so at any given time.<sup>14</sup> That lack of satisfaction could have been because of the ever changing position of what the society perceived to be good at a given time as that position often changed with the growth and development of the society. Another result is that there had been a sufferance by the people as a result of the moral imperatives that bound societies and their rulers over time as well as from place to place. As those issues were being argued through, it led to the arising of fierce debates that were raging among political philosophers. An argument developed that human rights emerged from the natural rights that developed from the natural law. That argument faced serious criticism as some believed that the human rights could only come from the law of a particular society as opposed to coming from any natural or inherent source.<sup>15</sup> Therefore, it is necessary to consider the theory of the natural law school of thought so as to determine the application of this theory to the current topic of study.

St. Thomas Aquinas was one of the leading thinkers in the natural law school of thought. He was of the opinion that behaviors were naturally right or wrong because God ordained them so.<sup>16</sup> What was naturally right could be ascertained by humans through right reason, that is, thinking properly. Another thinker to consider would be Grotius. He played a critical role as the concept of natural law moved from the medieval to the modern times.<sup>17</sup> He believed that

---

<sup>13</sup> Human Rights: Chimeras in Sheep's Clothing? - <http://www.sfu.ca/~aheard/intro.html>. Accessed on February 4, 2015.

<sup>14</sup> Human Rights: Chimeras in Sheep's Clothing? - <http://www.sfu.ca/~aheard/intro.html>. Accessed on November 16, 2015.

<sup>15</sup> Human Rights: Chimeras in Sheep's Clothing? - <http://www.sfu.ca/~aheard/intro.html>. Accessed on November 16, 2015.

<sup>16</sup> St. Thomas Aquinas, *Summa Theologica*, translated by The Fathers of the English Dominican Province [1947], first part of the second part, question 94.

<sup>17</sup> 'Miller Jon: Hugo Grotius' *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition) <http://plato.stanford.edu/archives/spr2014/entries/grotius/> on 9 January 2015.

people have a right reason for doing things.<sup>18</sup> He also suggested the possibility of having a secularized natural law that would still have the capabilities of being fully binding on man. This effectively separated natural law from the theologians because he Hugo used natural law for a secular purpose. This purpose was the use of natural law to create an international legal system, as opposed to using it as a supplement to theological speculation. His position on how natural law should be applied can be understood by looking at his assertion that there were several levels of natural or divine law which could be known through reason and inspiration. This made him realise that natural law was of little importance if man could not apply its principles in the making of human laws. Therefore, natural law was a higher law to which the man-made laws were supposed to conform to.<sup>19</sup>

Further, Thomas Hobbes suggested that we, as humans, have basic fundamental rights because we are born human.<sup>20</sup> He also was of the view that self-preservation was everyone's fundamental natural instinct and that the political philosophy should be grounded on this basic principle. He also contributed to this school of thought by distinguishing the law of nature, which are the rules that inform us on how to preserve ourselves, from the right of nature. The right of nature is the freedom to do anything, which might include killing or eating others, that seems necessary to preserve ourselves. This line of thinking that led him to conclude that natural law, which is also called *lexnaturalis* in Latin, is a general rule that is found out by human reasoning. Through this reasoning, man is not allowed to do anything that would destroy for his life or that would take away the means of preserving his life. His view diverted from the traditional natural law thinkers who saw natural law as the basic moral precepts that every civilized nation acknowledged. Some of these traditional thinkers also came in and equated natural law with the Ten Commandments. Hobbes diverted from this thinking by arguing that by self-preservation, one could also deduce the obligation to seek peace, avoid gluttony as well as other social vices.

---

<sup>18</sup>Grotius H, *The Rights of War and Peace*, translated from the Original Latin of Grotius, (1901 ed.) [1625], 85.

<sup>19</sup>[http://www.newworldencyclopedia.org/entry/Natural\\_law](http://www.newworldencyclopedia.org/entry/Natural_law) on 9 January 2015.

<sup>20</sup><https://www.humanrights.gov.au/human-rights-explained-fact-sheet-3-human-rights-philosophies> on 5 March 2014.

The theory of natural law holds that there is a kind of perfect justice given to man by nature and that man's laws should conform to this as closely as possible.<sup>21</sup> Thomas Hobbes espouses the natural law theory of social contract<sup>22</sup>. This theory presupposes that our predecessors agreed to establish a particular political structure complete with its policy, legal and organisational frameworks to which we submit and owe obedience by virtue of its legitimacy. This implies that people submit to political power. Placing this in the Kenyan context, it is clear that parliament makes and passes laws, and thus, we follow these laws due to parliament's legitimacy. This theory also presupposes that no man can be subjected to the political power and authority of another without his consent.<sup>23</sup>

Aristotle talks about natural justice by using an analogy of a fire burning here and in Persia.<sup>24</sup> This fire, even though it is burning in two different places, still has the same elements. This analogy can be interpreted to mean that natural justice is a principle of law that applies everywhere. Theories of natural justice apply irrespective of any rule or rules a committee may create. In his book, 'Nicomachean Ethics, he argued that the law supports a virtuous existence and it also advances the lives of individuals and further protects the 'perfect community'.<sup>25</sup> He was of the opinion that people should employ practical wisdom or active reason so as to behave in a way that is consistent with a virtuous existence.<sup>26</sup> This reasoning is what led him to define justice as a state of mind that encourages man to perform just actions. 'Just' in this sense means being lawful, fair and virtuous.<sup>27</sup> In his other book, 'The Politics' he proposed that the law should function in a way that promotes the 'perfect community'. This perfect community, according to him was a city-state that was ruled by a balance between tyranny and democracy. Combining these two things would create the most stable state.

---

<sup>21</sup> Martin E, A Dictionary of Law 4th edition, Oxford University Press New York, 1997, 326.

<sup>22</sup> Hobbes T, *Leviathan*, Cambridge University Press, 2007, 253

<sup>23</sup> Kibaya Almaana Laibuta, 'Access to Civil Justice in Kenya: An Appraisal of the Policy and Legal Frameworks' published LLD thesis, University of Nairobi, November 2012, 26.

<sup>24</sup> Peter Simpson, *Aristotle on Natural Justice*, Estudios Públicos 130 (Autumn, 2013), 1–22.

<sup>25</sup> John Finnis, 'Natural Law and Legal Reasoning' in Kenneth Himma and Brian Bix (eds), *Law and Morality* (Ashgate, 2005) 3, 4.

<sup>26</sup> Marett Leiboff and Mark Thomas, *Legal Theories in Principle* (Lawbook, 2004) 54; Cf John Finnis, 'Natural Law: The Classical Tradition' in Jules Coleman and Scott Shapiro (eds), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford University Press, 2002) 54.

<sup>27</sup> Thomson J, 'The Ethics of Aristotle' Penguin Classics (1953) book V, at 120-2.

The different theorists mentioned above have contributed to the theory of natural justice. One of the principles of natural justice is that justice must not only be done but be seen to be done. Small claims courts come in to fulfill this principle by complementing the judicial system and ensuring that the citizens with 'small claims' against each other are able to have their conflicts settled in a timely manner and in a way that is not complicated. By ensuring that citizens are able to get justice, the small claims courts also incorporate the philosophy of human rights. This is because justice in itself is a key element in the philosophy of human rights which is also a key element in the theory of human rights.

Small claims courts in other jurisdictions, such as the United Kingdom, have been viewed as a matter of right more than as a matter of privilege. In South Africa, they are readily available to those indigent persons who cannot afford the cost of litigation.<sup>28</sup> Since small claims courts allow even those people in the grass roots areas to get their cases heard, they support this principle of natural justice. Therefore, small claims courts fulfill one of the principles of natural justice, and thus, also advocate for human rights.

---

<sup>28</sup> The Cost of Litigation was one of the justifications for having small claims courts in South Africa as it the main courts were seen as being too expensive.

### 3.1 THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORKS GOVERNING SMALL CLAIMS COURTS

The leading legislation that would provide the basic basis for the small claims courts would be the Constitution of Kenya 2010. Article 2 (1) of the constitution of Kenya provides that the constitution is the supreme law of Kenya and it binds all persons and state organs.<sup>29</sup> Article 159 further provides that judicial authority is derived from the people and vested in the courts and tribunals established by or under the constitution.<sup>30</sup> It is these courts that are mandated with exercising judicial authority.

Therefore, the small claims courts would need to be established under the constitution. In order to determine the provision that would deal with this, it is necessary to consider the hierarchy of the courts as outlined in chapter one and where the small claims courts would fall under. This establishment would be dealt with under article 169 which provides for the establishment of the subordinate courts, as in the real sense the small claims courts aim to subordinate the entire judiciary by allowing for the provision of justice even at the basic level. This article of the constitution outlines the courts that are of subordinate status. These are; the Magistrates' courts, the Kadhis' courts, the Courts Martial, and any other court or tribunal as established by an act of parliament other than those established under article 162 (2).<sup>31</sup> Article 162 (2) refers to courts established by parliament with the status of the High Court that deal with disputes relating to employment and labour relations, the environment and the use and occupation of land as well as the title to land.<sup>32</sup> Section 169 should, therefore, include small claims courts as that is where they would ideally rank in the current court system.

The next step in determining the legal framework would be to identify the values that would govern the operation of the small claims courts. This is found under article 159 of the constitution that provides that justice should be done to all irrespective of their status in society and that it should not be delayed. It also outlines that justice shall be administered

---

<sup>29</sup> Article 2 (1), *Constitution of Kenya* (2010)

<sup>30</sup> Article 159 (1), *Constitution of Kenya* (2010)

<sup>31</sup> Article 169 (1), *Constitution of Kenya* (2010)

<sup>32</sup> Article 162 (2), *Constitution of Kenya* (2010)

without undue regard to procedural technicalities.<sup>33</sup> Chapter 6 of the constitution would also be essential to refer to as it is dedicated to leadership and integrity. Under this chapter, it is outlined that a state officer, who in this case would be the judges of the small claims courts, should exercise their authority in a manner that is consistent with the purpose and objects of the constitution and demonstrates respect for the people. In carrying out their functions, the judges should also ensure that they bring honour and dignity to the office, as well as promoting the public's confidence in the courts. The courts should strive to serve the people rather than rule them.<sup>34</sup> The judges should also ensure that there is no conflict of interest between personal interests and public or official duties.<sup>35</sup> It is important to note that judges are not allowed to hold office in a political party.<sup>36</sup>

As the small claims courts would fall under the judiciary, then it would follow that the values that govern the operation of the different people in the judiciary should also apply to those working in the small claims courts. These values can be found in the Kenyan Judicial Service Code of Conduct and Ethics. This code is found under the subsidiary legislation as provided for in the Public Officer Ethics Act<sup>37</sup> This Act requires the judicial officers to be true and faithful to their oath of allegiance and the judicial oath they took on their appointment.<sup>38</sup> They should also be seen to be free from any influence.<sup>39</sup> This means that they should not be improperly influenced by people on the basis of their sex, ethnic or national origin, religious beliefs and their political associations. They should also not succumb to pressure from any individual or group of people who claim to have an interest in a particular case.<sup>40</sup> Further judicial officers must refrain from consulting, discussing or seeking views outside the judicial circles. This restriction is not limited to the matters that are before them but also includes other matters before any other court.<sup>41</sup>

Judicial officers should also not allow any relationships, be they family, political, or social, to influence their conduct or judgement. They are also not allowed to hold membership in any

---

<sup>33</sup> Article 159 (2), *Constitution of Kenya* (2010)

<sup>34</sup> Article 73, *Constitution of Kenya* (2010)

<sup>35</sup> Article 75, *Constitution of Kenya* (2010)

<sup>36</sup> Article 77 (2), *Constitution of Kenya* (2010)

<sup>37</sup> *The Public Officer Ethics Act*, Chapter 183 (2003)

<sup>38</sup> Rule 2, *Judicial Service Code of Conduct and Ethics* (2009)

<sup>39</sup> Rule 3, *Judicial Service Code of Conduct and Ethics* (2009)

<sup>40</sup> Rule 3, *Judicial Service Code of Conduct and Ethics* (2009)

<sup>41</sup> Rule 3, *Judicial Service Code of Conduct and Ethics* (2009)

organisations which are known to practice discrimination on the basis of race, sex, religion or ethnic or national origin. Discrimination is a vice that the judiciary as a collective should strive to eliminate. Also judicial officers should also place their judicial duties before any other duties that they may have.

The Judicial Code also requires judicial officers to carry out a reporting role as outlined under rule 4 of the Judicial Code of Conduct and Ethics.<sup>42</sup> They are required to have information that would establish a likelihood that another judicial officer has violated the code as well as information concerning the lack of fitness to hold judicial office by another judicial officer. The lack of fitness to hold the judicial office includes the physical or mental weakness, soliciting for or accepting a bribe, acting dishonestly in reaching a decision, the misuse of power to advance someone else's interests as well as committing a felony. They should then report to the Chief Justice. If a judicial officer believes that the misconduct has been reported, he is not bound to report it. The final piece of legislation that would then be enacted would be the Small Claims Courts Act which as now is still a bill and is, therefore, not applicable in the Kenyan system as it is not part of the Kenyan Law.

Another key factor to consider would be the number of Small Claims courts that would be needed in the country. This is greatly influenced by the geographical structure of Kenya. In South Africa, the courts' geographical jurisdiction is limited to the districts that they operate in or a part of a district as directed by the minister of justice. Kenya is divided into 47 Counties<sup>43</sup>. These counties are; Mombasa, Kwale, Kilifi, Tana River, Lamu, Taita/Taveta, Garissa, Wajir, Mandera, Marsabit, Isiolo, Meru, Tharaka-Nithi, Embu, Kitui, Machakos, Makueni, Nyandarua, Nyeri, Kirinyaga, Murang'a, Kiambu, Turkana, West Pokot, Samburu, TransNzoia, UasinGishu, Elgeyo/Marakwet, Nandi, Baringo, Laikipia, Nakuru, Narok, Kajiado, Kericho, Bomet, Kakamega, Vihiga, Bungoma, Busia, Siaya, Kisumu, Homa Bay, Migori, Kisii, Nyamira and Nairobi City. A possible geographical location would be having one Small Claims Courts that would be operational in each of the counties.

---

<sup>42</sup> Rule 4, Judicial Service Code of Conduct and Ethics

<sup>43</sup> First Schedule, Constitution of Kenya (2010)

The Kenya Small Claims Court Bill of 2015 would give the chief justice the Chief justice the power to determine the location of the small claims courts.<sup>44</sup>

The qualifications of the people tasked with presiding over the courts would also be an important issue to consider. In South Africa, a commissioner appointed by the Minister of Justice is in charge of the proceedings of the Small Claims Courts. To be eligible for the post of a commissioner, one has to be qualified to practice as an advocate or an attorney or to be appointed as a magistrate. There is also a time period that is required. For one to qualify for this post, he or she has to have practiced as an advocate or attorney or occupied the post of a magistrate for a period of five years. The South African act also allows for those involved in the teaching of law and practiced law to sit as commissioners before the court if the Minister of Justice thinks such a person has experience.<sup>45</sup> The Kenyan bill creates the position of adjudicators who would be in charge of the Small Claims Courts. The 2007 bill set the qualifications for this post as any candidate who was a lawyer or advocate of five years.<sup>46</sup> The 2015 bill is clearer with the qualifications by requiring that the candidates should be advocates of the High Court of Kenya with 5 years' experience<sup>47</sup>. Even though the qualifications are different in the two jurisdictions, the minimum period of time of five years resonates in the two countries.

The issue of the tenure of the adjudicators would be another important issue to consider. This is in light of the heated debate that has arisen over the tenure of the judges in the Kenyan judicial system. On October 19<sup>th</sup>, 2015, the Supreme Court of Kenya ruled that the Judicial Service Commission (JSC) has no powers to interfere with the judge's tenure of office. It can also be argued that this decision was unjustifiable as it goes against the well-known principle of law that one cannot be a judge in his or her own cause.<sup>48</sup> In South Africa, the commissioner is allowed to hold office during the Minister of Justice pleasure<sup>49</sup> and may

---

<sup>44</sup> Section 4 (2), Part 2, Small Claims Court Bill 2015 (Kenya)

<sup>45</sup> Section 9 (2), Chapter 2, Small Claims Courts Act (South Africa)

<sup>46</sup> Section 5 (2) Part 2, Small Claims Court Bill 2007 (Kenya)

<sup>47</sup> Section 5 (2) Small Claims Court Bill 2015 (Kenya)

<sup>48</sup> 'Moses Kurgat: Top Court Adds More Fire to Debate on Judges Tenure' Standard Digital News, 20 October 2015 [http://www.standardmedia.co.ke/article/2000180141/top-court-adds-more-fire-to-debate-on-judges-tenure?articleID=2000180141&story\\_title=top-court-adds-more-fire-to-debate-on-judges-tenure&pageNo=2](http://www.standardmedia.co.ke/article/2000180141/top-court-adds-more-fire-to-debate-on-judges-tenure?articleID=2000180141&story_title=top-court-adds-more-fire-to-debate-on-judges-tenure&pageNo=2) on 2 December 2015.

<sup>49</sup> Section 9 (3), Chapter 2, Small Claims Courts Act (South Africa)

resign by writing a letter to the minister.<sup>50</sup> However, a minister can revoke the appointment of a commissioner if he has sufficient reason for doing so.<sup>51</sup>

It would also be necessary to consider the pecuniary jurisdiction that would govern the operation of the small claims courts. It seems that the Kenyan Judicial system has set this figure at 100,000 shillings.<sup>52</sup> South Africa has set this figure at 15,000 Rand<sup>53</sup>. This figure translates to 96,000 shillings (with the exchange rate 1 Rand = 6.4 Shillings)<sup>54</sup> It can be seen that these figures are close to each other, so it would be worthwhile to find out in the study what goes into determining the pecuniary jurisdiction of the Small Claims courts.

---

<sup>50</sup> Section 9 (4), Chapter 2, Small Claims Courts Act (South Africa)

<sup>51</sup> Section 9 (5), Chapter 2, Small Claims Courts Act (South Africa)

<sup>52</sup> 'KiarieNjorge: Small Courts at Constituency for Cases Below Sh100,000' Business Daily, 23 August 2015 <http://www.businessdailyafrica.com/Small-courts-at-constituency-for-cases-below-Sh100-000/-/539546/2843768/-/x0fib2/-/index.html> on 4 December 2015.

<sup>53</sup> <https://www.westerncape.gov.za/service/small-claims-courts> on 4 December 2015.

<sup>54</sup> <https://www.centralbank.go.ke/index.php/rate-and-statistics/exchange-rates-2> on 9 January 2015.

#### 4.1 INTRODUCTION

This chapter presents and analyses the findings of a study that were carried out on 40 respondents. The respondents were required to have been admitted to the bar as advocates of the High Court of Kenya. The response rate was good with all of the 40 respondents completing their respective questionnaires.

#### 4.2 DEMOGRAPHIC DATA

This section of the questionnaire required to fill in their age, area of specialization and their number of years that they have been in this field. The results of this are summarized in Table 1.

		Number of respondents	Percent
Age in years	20-30	23	57.5
	30-40	5	12.5
	40+	12	30.0
Gender	Male	13	32.5
	Female	27	67.5
Area of Specialization	Insurance Law	15	38.9
	Intellectual Property	2	5.0
	Commercial law	2	5.0
	General litigation	17	43.6
	Human Rights law	1	2.5
	Sports and entertainment law	1	2.5
	Personal injury	1	2.5

**Table 1: Demographic data of the respondents**

The average age of the respondents captured in the questionnaire was 30.4 with a standard deviation of 7.356.

#### 4.3 UNDERSTANDING OF THE SMALL CLAIMS COURTS

This section of the questionnaire required the respondents to choose their understanding of the proposed small claims courts based on a scale of 1-5. A score of 4-5 meant that the respondents understood the topic very well. A score of 2-3 showed a fair understanding while a score of 0-1 represented no understanding of the proposed Small Claims Court system. The results of this section are illustrated in the Table 2.

Score	Number of respondents	Percent
0-1	9	25
2-3	17	47.2
4-5	10	27.7

**Table 2: The understanding of the proposed Small Claims Courts**

Of the 40 respondents who answered the questionnaire, their average understanding of the Small Claims Courts which was being rated was 2.61 with a standard deviation of 1.337. This score means that the understanding of the proposed Small Claims Courts was little.

#### 4.4 QUALIFICATIONS OF ADJUDICATORS

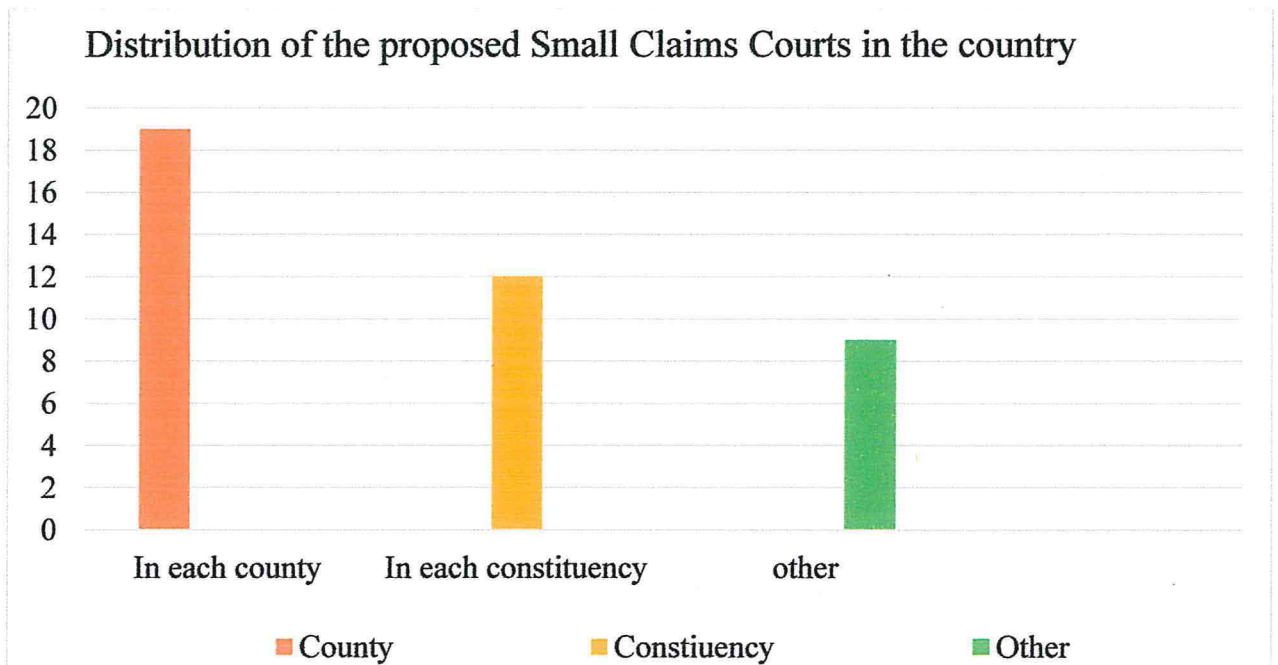
With regards to the qualifications that the adjudicators should possess in order to serve in the courts, 55% of the respondents felt that the qualifications listed in the Small Claims Court bill were not substantive and, therefore, offered their own recommendations. 22.5% of the respondents felt that the adjudicators should have been practicing magistrates for at least 5 years. 10% of the respondents were of the view that the adjudicators should be practicing advocates for at least 5 years and they should as well as being involved in the teaching of the law for at least 5 years. 2.5% of the respondents did not answer this question. The choices in this questions also captured the qualifications cited in the South African Small Claims Courts Act. Table 3 illustrates this finding.

Qualifications	Number of Respondents	Percent
Practicing Advocate for 5 years	4	10
Practicing magistrate for 5 years	9	22.5
Involved in the teaching of law	4	10
Other views	23	57.5

**Figure 4: Respondents' response with regards to the qualifications of the adjudicators**

#### 4.5 DISTRIBUTION OF SMALL CLAIMS COURTS

The respondents were asked to choose how they thought that Small Claims Courts should be distributed. They had to choose between two choices or if they did not agree with their choices, then they were free to write down what they felt was a better distribution method. The responses from the respondents are summarised in Figure 2.



**Figure 2: Respondents' response with regards to the distribution of the proposed Small Claims Courts**

As it can be seen, most of the respondents felt that the small claims courts would be effectively utilized if they were established in each county.

#### 4.6 CASES BEFORE THE SMALL CLAIMS COURTS

The respondents were required to choose the kinds of cases that they thought should be brought before the small claims courts. They were free to pick more than one choice and also express other views by writing them down. The results of this section are summarized in the Table 4.

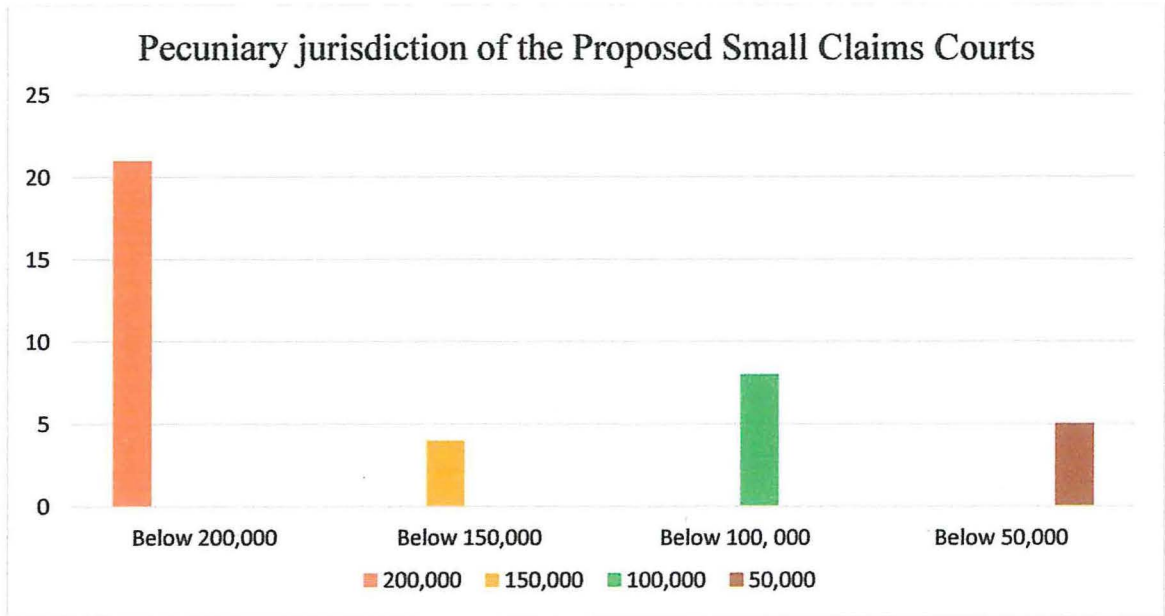
Matters	Number of respondents	Percent
Tortious liability cases	31	77.5
Criminal cases	5	12.5
Commercial disputes	16	40
Traffic offences	28	70
Property disputes	11	27.5

**Table 4: Respondents' response with regards to the cases that would be brought before the proposed Small Claims Courts**

A substantial proportion of the respondents were in general agreement that the cases before the small claims courts should be of a civil nature with only 12.5% who were of the opinion that criminal cases should be brought before the courts.

#### 4.7 PECUNIARY JURISDICTION

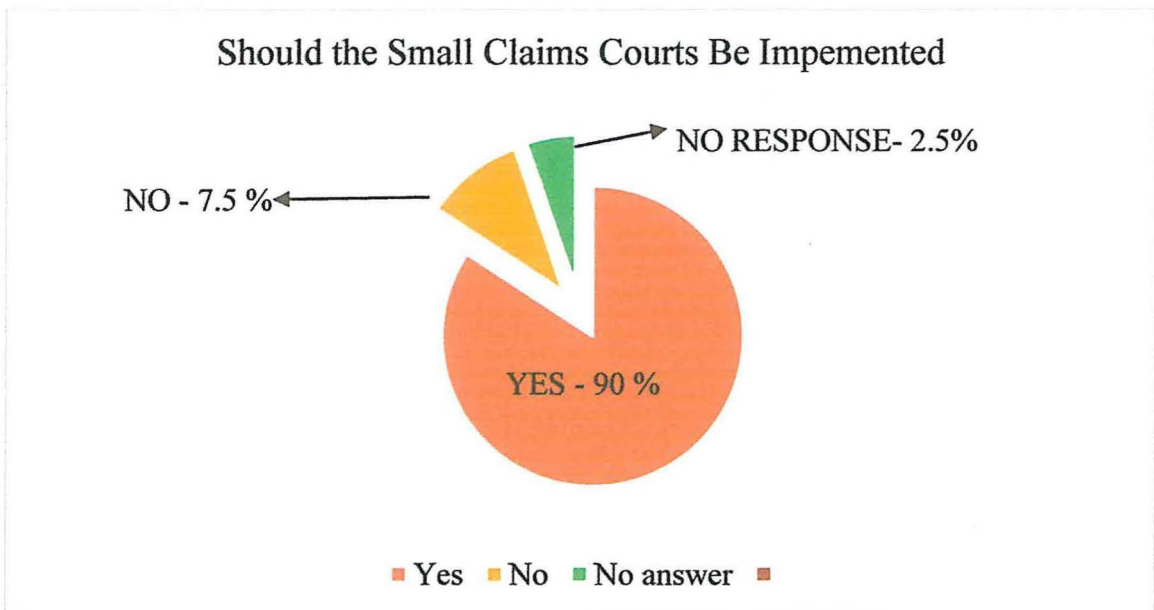
This section required the questionnaire required the respondents to pick one of the four values that represented what they felt the pecuniary jurisdiction of the small claims courts should be. They were to choose between; 50,000 KSH, 100,000 KSH, 150,000 KSH and 200,000KSH. Of the 40 respondents, only 2.5% were of the view that the pecuniary jurisdiction would not fall within the multiple choices. The results of the other respondents are summarized in Figure 3.



**Figure 3: Respondents' response with regards to the pecuniary jurisdiction of the proposed Small Claims Courts**

#### 4.8 IMPLEMENTATION OF THE COURTS

The respondents were asked whether they felt if the small claims courts should be implemented. The respondents were limited to picking either yes or no. Their views are illustrated in figure 4.



**Figure 4: Respondents' response with regards to the implementation of the proposed Small Claims Courts**

## 5.1 DISCUSSION

As Kiwinda and Osongo point out, the judiciary was reoriented to accommodate the socio-political changes that the country was experiencing after independence.<sup>55</sup> These changes were implemented through the establishment of a court of appeal and the enactment of several legislations such as the Magistrates' Courts Act.<sup>56</sup> Even though this is commendable, they note that judicial transformation in Kenya is still offing and that Kenya will hopefully have a vibrant judiciary. The introduction of the Small Claims Courts would make the judiciary more vibrant and as such, it is important to discuss how this can be effectively done.

One of the main research questions that this study set to find out was the different legislative and institutional frameworks that would govern the operation of the small claims courts. Even before the bill is amended, it is important that the public should be sensitized on the courts. After the interactions with the respondents, it was clear that this would be done best by civic education to the public as was done when the current constitution of Kenya 2010 was being passed.<sup>57</sup> Even from the study, the average understanding of the proposed small claims courts was 2.6 out of 5 which shows a low understanding of the proposed courts. There was a linear correlation between the number of years of experience that the respondents had and their understanding of the small claims courts. The bill, after being amended, should be published in the newspapers and the public should be sensitized particularly because a lot of their claims would fit into the jurisdiction of the courts. The sensitization of the public could also be done by having road shows throughout the country that normally attracts a large number of people.

As regards the institutional framework, it is very important that the courts should not create an overlapping jurisdiction. One of the respondents aptly recommended that there should be a "clear definition of jurisdiction." Even though they will have different cases being brought before them, it is very important, especially for the initial stages if the cases that would fit within the jurisdiction of the Small Claims courts would be transferred with ease from the current courts to the small claims courts. As opposed to setting up a Small Claims Court in

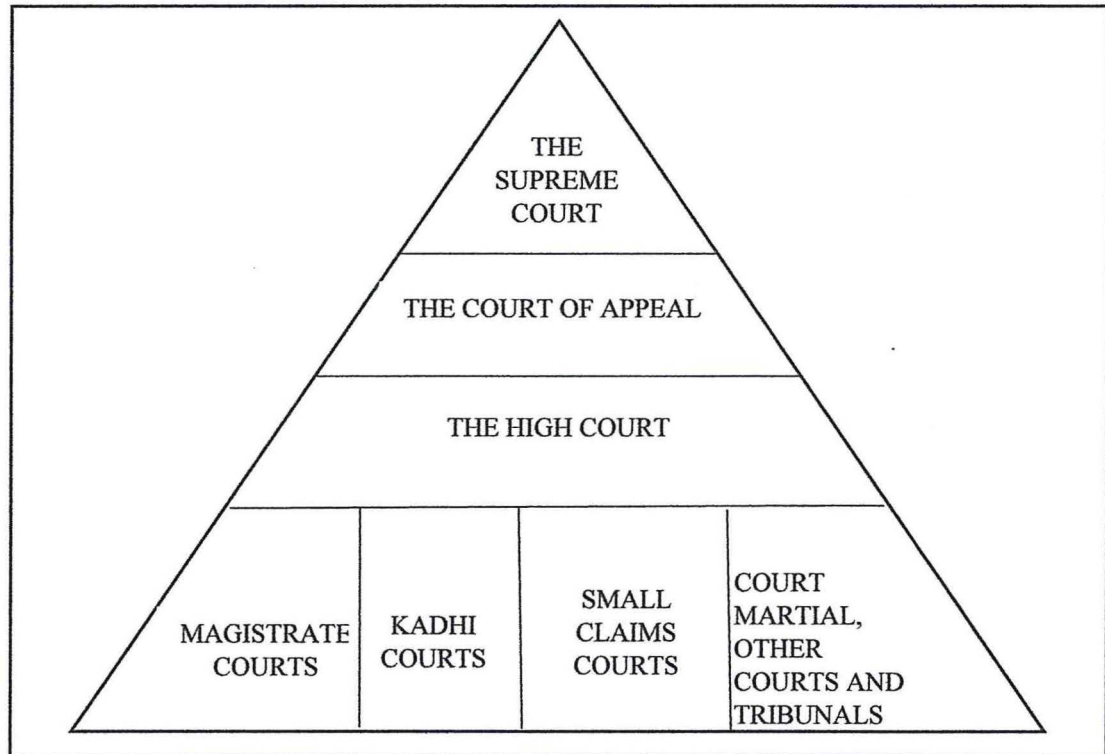
---

<sup>55</sup>Mbondenyi M and Ambani J, *The New Constitutional Law of Kenya: Principles, Government and Human Rights*, Claripress LTD Nairobi 2012, 136.

<sup>56</sup> Magistrates Courts Act (Cap 10, 1967)

<sup>57</sup><http://www.capitalfm.co.ke/news/2009/11/kenya-draft-constitution-due-next-week/> on 6 January 2016.

have been already established or in close proximity to the courts. This can also be done by establishing mobile courts so as to ensure that justice can be delivered even at the grassroots levels. The Small Claims Courts would therefore fit into the judiciary as illustrated by Figure 5.



**Figure 5: The structure of the Kenyan Judiciary after the proposed Small Claims Courts are implemented.**

The proposed Adjudicators of the Small Claims Courts were a vital topic to discuss in the study because they would be in charge of the operation of the courts. What was important to establish from the study was their qualifications to sit and preside over the courts. The Small Claims Court Bill (2007) proposed that the adjudicators should either be an advocate or lawyer for a period of five years.<sup>58</sup> From the interactions with the respondents, it was clear that this particular provision was ambiguous. One of the respondents was of the opinion that even newly sworn in advocates can handle the claims. Aside from not mentioning the jurisdiction that the advocates should be operating in, the bill created confusion because advocates are experienced in going to court but the lawyers are not. But yet they were seemed to be equally placed in this

<sup>58</sup> Section 5 (1) Small Claims Court Bill Kenya (2007)

seemed to be equally placed in this particular provision. Furthermore, in the Kenyan judicial system as it stands, lawyers are not allowed to practice in a court of law unless they have been admitted to the bar by the Chief Justice. The 2015 bill seems to have taken care of this ambiguity by proposing that the adjudicators should be advocates of the High Court of Kenya with 5 years of experience in the legal field.<sup>59</sup>

Some of the respondents also felt that the time frame given by the bill was non-essential as they felt that any advocate, regardless of the numbers of years of experience would be qualified to sit as adjudicators before the proposed Small Claims Courts. One of the respondents happened to be from Canada, a country whose judicial structure allows for the operation of the small claims courts. The system in that country allows for lawyers, who have not yet taken the bar exams to represent clients in the small claims courts. These lawyers are however supervised by a principal who is in charge of the law students who are yet to be admitted to the bar. If such a system was incorporated into the Kenyan judicial system, then the pupils in law firms would be able to practice in the law firms but they would have to be supervised by their pupil masters. This would also help in building the work experience that the pupillage system strives to ensure that the pupils attain

Another key aspect of this topic that was brought up in the study carried was the types of cases that should be brought before the small claims courts. As mentioned in Chapter 4, most of the respondents were of the view that the cases that would be brought before the courts should be more of a civil nature. The Small Claims Court Bill (2007) provided in section 7 that the kinds of cases that can be brought before the courts are cases; relating to disputes arising from a sale of goods contract, tort law cases with specific reference to the damage caused to any property and any other case as parliament may direct by the passing of an Act.<sup>60</sup> The 2015 bill widened the scope by including cases relating to; contracts relating to money held and received, tort law cases relating to the recovery of immovable property and a set off and counter claim under any contract.<sup>61</sup>

When determining the kinds of cases that would be brought before the Small Claims Courts, the issue of preventing an overlapping jurisdiction also arose. This overlapping jurisdiction

---

<sup>59</sup> Section 5 (2) Small Claims Court Bill Kenya (2015)

<sup>60</sup> Section 7(1) Small Claims Court Bill Kenya (2007)

<sup>61</sup> Section 12 (1) Small Claims Court Bill Kenya (2015)

would be caused if the cases that would be brought before the courts had already been allocated special courts within the Kenyan judicial system. For instance, if the Small Claims Courts were to handle traffic offences, this would create an overlapping jurisdiction as cases relating to traffic offences have been specifically allocated to the Traffic Courts. If they were being handled by two courts at the same time, then it would cause confusion within the judiciary which would in the long run make the judiciary inefficient. The Small Claims Courts should also encourage out of court dispute resolution mechanisms so as to promote the steadfast resolution of disputes. One of the theories which this study was grounded on was the theory of human rights. An inefficient judiciary limits people from accessing justice which goes contrary to the theory of human rights as the citizens human rights would be undermined by them not getting justice.

When looking at the jurisdiction that the Small Claims Courts would operate in, it is inevitable to have also analysed the pecuniary jurisdiction as it would have an important role in determining the cases that would be brought before the courts. The Small Claims Court Bill as it reads sets this figure at 100, 000 shillings<sup>62</sup>. From the study conducted, most of the respondents were of the view that this figure should be set at 200,000 Shillings. One of the research questions that guided the operation of this study was finding out what is taken into account while determining the pecuniary jurisdiction of the Small Claims Court. Through the interactions with the respondents while carrying out the study, it was clear that there should not be such a huge gap between the Resident Magistrates Courts and the proposed Small Claims Court with regard to the pecuniary jurisdiction of the courts.

As it stands right now, The Resident Magistrates' Courts handle cases with a pecuniary jurisdiction of 2,000,000 shillings.<sup>63</sup> Therefore, the current figure of 100,000 that has been proposed by the Small Claims Court Bill puts a difference of 1, 900, 000 shillings which is a wide gap. This figure should, therefore, be raised to at least 1,000,000 shillings so as to accommodate more cases which would help reduce the cases before the other courts. As it was mentioned in the theoretical framework of this study, one of the principles of natural justice is that justice must not only be done but must also be seen to be done. Therefore, if

---

<sup>62</sup> Section 12 (3) Small Claims Court Bill Kenya (2015)

<sup>63</sup> Section 5 (e) Magistrate Court Act Kenya (2012)

the cases before the already established courts were reduced, then they would be closer to fulfilling this fundamental principle

The study also sampled the views of the public by enquiring about the challenges that the Small Claims Courts might face. Some of the anticipated challenges were that these courts, just like the already established courts would have too many cases being brought before them which might end up causing a backlog of cases. It would, therefore, necessary to ensure that the Small Claims Courts should be efficient in receiving and deciding cases from the very start.

Some of the respondents also felt that the Small Claims Courts might also be understaffed due to a lack of adjudicators. It was, therefore, recommended that fresh advocates should be qualified so as to sit before the courts as adjudicators and preside over the matters that would be brought before them. To prevent the adjudicators from gaining laxity or falling under the whims of corruption while handling the cases before them, they should also be subject to vetting by the judicial service commission so as to ensure that they are carrying out their tasks effectively.

The funding of the Small Claims Courts was also an area that was identified that had the potential of causing future challenges. The funding was not only with respect to the payment of the adjudicators but also in, maintaining the institutions that would be set up so as to facilitate the operation of the Small Claims Courts. For instance, section 29 of the Small Claims Courts Bill (2015) requires that the proceedings of the court would be conducted by electronic means. Funding would, therefore, be needed to realise and maintain this goal. To combat this challenge, it was recommended that the funding of the judiciary should be increased from the consolidated fund so as to ensure the efficiency of the Small claims Courts.

Most of the respondents were in agreement that advocates should not be allowed to practice in the small claims courts as representatives of the respondents. This is in accordance with section 27 (1) of the Small Claims Court Bill that provides that the parties before the court should present their case in person before the court. From the study, it was felt that if this provision was altered to allow advocates to practice in the courts, they would complicate the

system since they would not always be available which would lead to the adjourning of the courts and the delaying of the cases.

Even though this study was only limited to advocates based in Nairobi, the views expressed by the respondents were very relevant to the study as they captured the situation of the judiciary on a wider scale which in the long run improved the quality of the study.

## 6.1 CONCLUSION

The proposed Small Claims Courts would be a vibrant addition to the Kenyan judiciary due to the speedy manner in which they would solve the disputes that would be brought before them. They should be implemented, however, there are a number of things that would need to be done in order to make them more efficient.

The proposed bill would have to be reviewed in order to remove most, if not all of the ambiguities that are present in it. A key problem that was identified as the study was being carried out was that the bill did not give clear qualifications of the adjudicators. The bill proposes that a person who is an advocate or lawyer is qualified to become an adjudicator. This section should be clearer as all of the advocates are essentially lawyers so the bill should have one of the terms as opposed to having both. If it is agreed that the advocates are qualified to sit before the courts, then the section should further read that the advocates should be qualified to practice in Kenya as that is where the courts will be set up in the country. As it stands, that particular provision is hanging.

The pecuniary jurisdiction of the courts should also be raised so as to increase the number of cases that would be brought to the Small Claims Courts instead of having them being brought before the already established courts. The bill sets this figure at 100, 000 shillings. This figure should be raised to a figure of at least 200,000 shillings. This was what the majority of the respondents felt. This would also reduce the gap in the monetary sense between the proposed Small Claims Courts and the Resident Magistrates Courts.

The areas in which the courts would be set up also needs to be reviewed. The bill does not give a definite mechanism of which the Small Claims Courts would be located but it does give the Chief Justice the power to determine where the courts will be located. In determining these locations, it is necessary to ensure that the public is able to gain access to the courts. This would ensure that the public would fully utilize the courts and thereby promoting the access to justice. A possible way of determining these locations would be setting up the courts in areas where the magistrates' courts have already been established as this would not only allow for the easy referral of cases but it would also prevent problems relating to the geographical jurisdiction such as overlapping jurisdiction.

After the bill has been effectively reviewed, it is important that the public should be sensitized and educated about the proposed Small Claims Courts. This is because these courts would handle many of the disputes that would arise between them. One of the respondents was of the view that there should be a “legal awareness campaign to members of the public”. As it was seen in the study, the majority of the respondents had a very low understanding of how the Small Claims Courts would operate. To fulfil this, the bill should be published in the papers and road shows should also be carried out so as to effectively reach out to the public.

After all the above-mentioned factors have been taken into account, then the bill would be ready for its implementation.

## BIBLIOGRAPHY

### Books

Eric H. Steele, 'The Historical Context of Small Claims Courts' American Bar Foundation Research Journal (1981), 293.

Hobbes T, Leviathan, Cambridge University Press, 2007

Hugo Grotius, The Rights of War and Peace, (1901 ed.) [1625]

John Finnis, 'Natural Law and Legal Reasoning' in Kenneth Himma and Brian Bix (eds), Law and Morality (Ashgate, 2005)

MarettLeiboff and Mark Thomas, Legal Theories in Principle (Lawbook, 2004) 54; Cf John Finnis, 'Natural Law: The Classical Tradition' in Jules Coleman and Scott Shapiro (eds), The Oxford Handbook of Jurisprudence and Philosophy of Law (Oxford University Press, 2002)

Mbondenyi M and Ambani J, The New Constitutional Law of Kenya: Principles, Government and Human Rights, Claripress LTD Nairobi 2012

Martin E, A Dictionary of Law 4th edition, Oxford University Press New York, 1997

St. Thomas Aquinas, Summa Theologica, translated by The Fathers of the English Dominican Province [1947]

Thomson J, 'The Ethics of Aristotle' Penguin Classics (1953) book V

### Reports

State of the Judiciary Report, 2012 – 2013

State of the Judiciary Report, 2013 -2014

The Final Report of the Constitution of Kenya Review Commission

## **Thesis**

KibayaImaanaLaibuta, 'Access to Civil Justice in Kenya: An Appraisal of the Policy and Legal Frameworks' published LLD thesis, University of Nairobi, November 2012.

## **Articles and Journals**

Texas Young Lawyers Association and the State Bar of Texas, "How to Sue in Small Claims Court.

## **Online Sources**

AhmednasirAbdullahi, 2011 <http://kenyalaw.org/kl/index.php?id=1930>

Capital FM <http://www.capitalfm.co.ke/news/2009/11/kenya-draft-constitution-due-next-week/>

Central Bank of Kenya <https://www.centralbank.go.ke/index.php/rate-and-statistics/exchange-rates-2>

Gabriel Lubale: Courts System in Kenya, 22 August 2012 <http://gabriellubale.com/courts-system-in-kenya/>

Human Rights: Chimeras In Sheep's Clothing? <http://www.sfu.ca/~aheard/intro.html>.

<https://www.humanrights.gov.au/human-rights-explained-fact-sheet-3-human-rights-philosophies> EA Martin (ed) A Dictionary of Law (4th edn Oxford University Press New York 1997).

Kenya Law <http://kenyalaw.org/kl/index.php?id=5189>

'Miller Jon:Hugo Grotius' The Stanford Encyclopedia of Philosophy (Spring 2014 Edition) <http://plato.stanford.edu/archives/spr2014/entries/grotius/>

New World Encyclopedia - [http://www.newworldencyclopedia.org/entry/Natural\\_law](http://www.newworldencyclopedia.org/entry/Natural_law)

Peter Simpson, "Aristotle on Natural Justice,"

EstudiosPúblicos<http://www.judiciary.go.ke/portal/page/magistrates>

Wars of the roses- <http://www.warsoftheroses.com>

## **Legislation**

Civil Procedure Act 2012 (Kenya)

Kenya Judicial Service Code of Conduct and Ethics (2009)

Magistrates' Court Act 2012 (Kenya)

Small Claims Court Bill 2007 (Kenya)

Small Claims Court Bill 2015 (Kenya)

Small Claims Courts Act (South Africa)

The Constitution of Kenya (2010)

The Public Officer Ethics Act, Chapter 183 (2003)

APPENDIX: Questionnaire used in the study

**1. Bio data**

Age: \_\_\_\_\_

Gender \_\_\_\_\_

Area of specialization \_\_\_\_\_

Number of years in this field \_\_\_\_\_

**2. Legislative and institutional frameworks as governing small claims courts.**

- Do you know about the Small Claims Courts? How would you rate your answer above on a scale of 1-5 with 5 being the highest understanding?

- 1
- 2
- 3
- 4
- 5

- What qualifications should the adjudicators possess in order to serve in the small claims courts? ( feel free to pick more than one)

- Practicing advocate for at least five years.
- Practicing magistrate for at least five years.
- Involved in the teaching of law for at least five years.
- Other (please specify)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- How would the small claims courts be distributed in the country? (check one)
  - In each county.
  - In each constituency

Other (please describe)

\_\_\_\_\_

**3. Cases before the small claims courts**

- What kind of cases should be brought before small claims courts? (feel free to pick more than one)
  - Tortious liability cases.
  - Criminal cases.
  - Commercial disputes.
  - Property disputes.
  - Traffic offences.
- Other(s) (please specify)

---

---

---

- What is the pecuniary jurisdiction that these courts should operate in?
  - Below 50,000 KSH
  - Below 100,000 KSH
  - Below 150,000 KSH
  - Below 200,000 KSH

**4. Recommendations**

- What are the challenges that may arise in the implementation of small claims courts?
- How can the challenges addressed above be dealt with?
- Would you recommend that the small claims courts be implemented?
  - Yes
  - No
- Are there any recommendations that you would propose that are not captured in this questionnaire?

QUESTIONNAIRE NUMBER	
START TIME	
END TIME	
DATE	