



Civil Procedure



General Introduction

Definition of civil procedure

- No definition given by the law

Scholars say:

- is the study of lawsuits and the rules that govern them.
- tells you how to sue someone.
- It does not give any litigant a right but it enacts a procedure through which a right can be obtained
- Its focus is not on legal rights themselves, but rather on what you can do about it when someone violates your rights.

Importance and Functions of Civil Procedure

- It helps resolving the arguments presented from the parties
- It helps in making availability of right clear through procedural rules
- It assures you that the rights given by the substantial law are obtainable
- it provides rules and standards that courts follow in judging civil cases submitted to them.



Introduction cont'd

General overview of the law

- **283 Articles** shared out in **eight (8) Titles**
- Title1: **Preliminary provisions**, (Art 1-19)
- Title 2: **Institution of Proceedings: 2chap, Filing a Claim** (Art 20- 33) and **Summons and serving summons on parties** (Art 34-52)
- Title 3: **Hearing a case and its incidents: 3chap, I: Case Hearings**(Art53-82), **II: Incidents during the hearing** (Art83-129) & **III: Judgment** (Art130-141).
- Title4: **Procedures for appeal: 2chap, Ordinary Procedures of Appeal** (Art 142-160) & **Extraordinary procedures of appeal** (Art 161-176).
- **For methodological reasons this module has been divided into four parts**
- Title5: **Special proceedings: 3chap; I Procedures in administrative matters** (Art177-184), **II Proceedings related to summary procedure** (Ar 185-195), & **III Small Claim Procedure** (art196-211).
- Title6: **Surety, Seize and execution of judgments: 2chap, Surety and Seizure** (Art 212-234 & **Execution of Judgments** (Art 235-268).
- Title7. **Court fees: 2chapt, Court fees** (Art269-270) & **Scale of court fees** (Art 271-273)
- Title8: **Miscellaneous, transitional and final provisions: 2chap; Miscellaneous provisions** (article 274- 278) & **Transitional and final provisions** (art279-283).



Part 1. Introduction and conduct of proceedings



1.1. Institution of Proceedings

1.1.1. Conditions for admissibility of a claim

1) Standing or Locus standi (for definition see article 2 point 7)

- **Requirement**

- Injury

- Causation

- Redressability

- **Standing of physical person:** own interest (personal to him) or act on behalf on another person;

- **Moral Person:** See article article 3 &36

- **Class Action:** device by which a single plaintiff may pursue an action on behalf of all persons with a common interest in the subject matter of the suit. Compare the provisions of article 33 CCLAP.

- **Piercing corporate veil:** separation of a corporation from its owners). Compare with article 95 of company law.

- **Amicus curiae:** friend of the court. Not defined in Rwandan law but accepted. See **Case No. RPA 0061/11/CS (S.C. Apr. 4, 2012**

- **Public interest litigation:** Not yet developed in Rwandan legal system

- **Standing for review due to injustice:** see Article 54 of Law N°30/2018 of 02/06/2018 jurisdiction of courts



Conditions for admissibility cont'd

2) **Capacity:** legal ability to hold a right & to be able to exercise it.

3) **Interest**

- Sufficient interest
- Direct interest
- legitimate protected interest
- not be merely emotional

4) **The question of ripeness doctrine:** focuses on when that action may be brought. To demonstrate that the an injury has occurred or is likely to occur, rather than being contingent or remot, i.e. imminent, direct, and immediate, and not merely remote, conjectural, or hypothetical.

5) **The issue of Mootness Doctrine:** Under the mootness doctrine, the court will refuse to hear a case if the issues have already been resolved.



1.1.2. Claimant's prerogatives and obligations

- Prerogatives with regard to his/her claim are provided for by article 4 of CCLAP. 1° to initiate legal proceedings; 2° to terminate legal proceedings at any time before the pronouncement of judgement or before the prescription period of the legal proceedings; 3° to reach an amicable settlement with the respondent
- Article 7 set out the obligations: deposit court fees, full identities of litigants, etc.

1.1.3. Respondent's prerogatives and obligations

- prerogatives with regard to allegations against him/her: see article 5: 1° to admit the claim at any time before the pronouncement of judgement; 2° to seek amicable settlement.
- For the obligations see article 8.

1.1.4. Determination of the subject- matter and unchangeable nature of the claim

- Subject-matter of the claim is determined by parties' respective arguments.
- No party may modify the subject-matter in the course of the proceedings unless such modification is agreed upon by all parties to the case.



1.1.5. Judges' obligation to adjudicate cases

- Judges are obliged to adjudicate cases even in the absence of the law (see article 9)
- judge may encourage parties to use conciliation.
- He/she may him/herself mediate between the parties or help them find a mediator of their choice
- He/she may him/herself mediate between the parties or help them find a mediator of their choice
- Not decide more than he/she has been asked to
- Must be decided within six (6) months

1.1.6. Rights and obligations of litigants (Burden of proof)

- Claimant must prove a claim, failing which the respondent wins the case.
- Respondent must justify the cause as a result of which the obligation has extinguished.
- No party can be tried except after having been heard or summoned.
- A case having been definitively decided cannot again be litigated for the same facts
- No party can avail him/herself of two remedies or apply for review with respect to the same case (*Electa Una Via Non Datur Recursus Ad Alteram*)



1.1.7. Time limit for deciding a case and Punishment (art 16-19)

- Court must be decided within six (6) months, exception of urgent claims
- Adjournment has to be considered by the court
- Party who intentionally delays is liable to a civil fine of 20,000frs to 200,000frs
- Delaying of the hearing caused by a counsel or any other representative of the party, is liable to a civil fine of 200,000frs to 500,000frs
- The civil fine also applies to any person who obstructs an investigation ordered by the court.
- Decision ordering to pay a civil fine is immediately taken and is administrative decision appealable before the president within 24 hours and the decision thereon is taken within twenty-four (24) hours from the receipt of appeal. If such a decision is taken by the president of the court, it is open to appeal before the president of the next upper court



1.2. Filing a claim

1.2.1. Persons qualified to file a claim

Claimant or his/her counsel or representative (see article 20)

1.2.2. Inadmissibility of a claim

The grounds for refusal are provided for in article 21. A party who is not satisfied can appeal to the president within five (5) days. The president of the court makes a decision within five (5) days from receipt of the appeal.

The decision of the president of the court is not open to appeal. However, he/she may revisit his/her decision at any time it is proven that he/she has erred in such a decision.

1.2.3. Content of a submission and Pre-trial conference

- The content of a submission is provided for by article 23
- Except summary cases all cases must be subject to the pretrial conference.
- A court registrar prepares a draft pretrial conference report.
- Draft pretrial conference report indicates all details.
- The draft report is sent to parties and invite to attend a pretrial conference within fifteen (15) days of receipt of the draft report.
- Punishment against the party who fails to attend the pretrial conference
- The court registrar, is empowered to propose the conciliation.
- If parties fail to reach a compromise, the court registrar notifies them of the date and time of the hearing on the merits of the case
- If parties agree to reach a compromise, a written statement is made to that effect and signed by all parties as well as the registrar.



Pre-trial conference cont'd

- The registrar and the President of the Court or their representatives sign the decision. Such a decision is not subject to appeal and an enforcement order is immediately affixed to the decision for immediate enforcement thereof.

Other powers of court registrar during the pretrial phases:

- *1° apply for legal representation of a party free of charge;*
- *2° decide to combine connected cases into one trial;*
- *3° decide to summon parties using other appropriate means such as radio, television or other electronic means;*
- *4° decide with respect to forced intervention of a party in pretrial conference at a party's request.*



1.3. Summons and service

- Summons is procedural document issued by a court bailiff or any other authorized person to order any person whose presence is required at the hearing to appear in court.
- **Service:** it is to inform parties to appear. See article 35 for some requirements, article 36 summoning some specific persons.
- **Modes of service:** see article 39
- **Period and moment of summon:** see article 49&50
- Rights of a party summoned illegally : article 51 &52

1.4. Hearing a case

1.4.1. The appearance of parties: Parties shall appear in person or through their counsels. See Article 53

1.4.2. Default of appearance

1) Failure of the plaintiff

2) Default of the defendant:

default of one defendant

several defendants: divisible and indivisible Claims

3) Default of all parties

1.4.3. Personal appearance



1. 5. Conduct of hearing

I.5.1. Principles:

- hearing of case is conducted in public
- no audio-visual is allowed to cover the court proceedings save persons granted special authorization
- No person is allowed to enter the courtroom with a telephone and other audio and video recording devices
- The language of the court is Kinyarwanda
- The hearing takes place on the date and place determined by the court.

1.5.2. Conducting the hearing of the case on the merits

Article 72 sets the order to follow during the hearing

I.5.3. Content of the hearing minutes: the minutes of the hearing contain what is said and done in the hearing in relation to the hearing, except in case of audio and video recording of the hearing. For more details see article 76

I.5.4. Order in Court and contempt of court : no one is allowed to disturb the court hearing otherwise he will be punished. See article 80 to 82 for procedure to be followed.



1.6. Incidents arising during the hearing

1.6.1. Principles

- Incident means any issues which arise in the hearing that lead to the suspension of the proceedings or to changes in the nature of the claim
- objection is a means by which a party, without challenging the merits of the case, applies for the adjournment of the hearing of the case on the merits.
- Incidents are so many.

1.6.2. Objection regarding mandate for legal representation

1.6.3. Objections regarding security deposits furnished by foreigners (*cautio judicatum solvi*)

1.6.4. Exceptions of lack of jurisdiction, *lis pendens* and *connexity* of a cases (see article 91 & 92)

1 Objection of lack of jurisdiction (93-94)

2. Objection of *lis pendens* and *connexity* of a cases: (art 95, read in conjunction of art 94, 99 & 100 on law relating to jurisdiction of court)

1.6.5. Objections of nullity

1. Nullity due to defects in form
2. Nullity arising from irregularities in substance



Incidents cont'd

I.6.6. Objection based on the disqualification of judges

- for Reason to disqualify a judge See article 103
- Self-disqualification of a judge see article 104
- Procedure of disqualification See article 106-109

I.6.7. Incidents relating to extension of case

1. Counter claims

2. Claim for representation fees (very new)

3. Additional claims

4. Intervention a case

- Voluntary intervention
- Forced interventions

5. Summoning a Warrantor in the case



Incidents cont'd

I.6.8. Objections relating to case transfer

1. Removal of a case from a court and transfer it to another court
2. Objection relating to change of civil status, termination of employment or death of one party

I.6.9. Incidents relating to extinction of proceedings

1. Withdrawal of a claim (Désistement d'action)
2. Withdrawal of a case (Désistement d'instance)
3. Effects of withdrawal of a claim and case
4. Admission of a claim
5. Prescription of an instituted case (Péremption d'instance)
6. Application for removal of a case from the list of cases

I.6.10. Objection of inadmissibility of a claim



1.7. Judgments

- **Judgment** is a decision of a court regarding the rights and liabilities of parties in a legal action or proceeding
- **Deliberation**
- **Types of deliberation**
- **Procedure of deliberation**
- **Minutes of Pronouncement of judgment**
- **The content of the copy and summary of a judgment (see article 136)**
- **Interpretation or correction of a Judgments. Art. 138-141**



PART II. PROCEDURES FOR APPEAL



II.2. Ordinary procedure of appeal

II.2.1. Opposition:

1. **Notion.** opposition seeks to have a default judgement reviewed. Is done in less than fifteen (15) days from the day on which the respondent has knowledge of the decision.
2. **Admissibility:** presentation of an exceptional and serious reason for his/her absence
3. **Effect of the judgment upon opposition**
 - Extinctive effect
 - Suspensive Effect



11.2.2. Appeals

1. **Notion:** An appeal refers to proceeding taken to rectify an erroneous decision of a court by bringing it before a higher court., i.e a formal request in which a party asks a higher court to review the decision of a lower court and change it in some way.
2. **Party with the capacity to appeal:** person who was a party to the proceedings in the first instance
3. **Contents of an application for appeal and Inadmissibility of an appeal:** appeal is done by means of submissions filing the claim
4. **Reply and filing a cross appeal:** submissions in the same way as the appellant
5. **Appeal of some of the parties: other parties are summoned (verry new)**
6. **The effects of the appeal**
 - Suspensive effect
 - Devolutive Effect or Adjudication of appeal in the limit of the appeal subject-matter (“**tantum devolutum quantum appellatum**) (“**tantum devolutum quantum judicatum**”)
 - **Decision on the appealed judgment:** overrule the appealed judgement, uphold the rendered judgement or set aside the judgement



1.3. Extraordinary procedures of appeal

I.3.1. Opposition by a third party

1 Notion: A third party opposition seeks to quash or change a judgment to the benefit of the third party appealing against it. A third party opposition concerns the court judgement on its merits and no longer subject to appeal.

2. Persons allowed to exercise a third party opposition: Any person who was not a party to a case but who has an interest. The law does not allow the spouse of the party or their children to lodge a third party opposition when the subject-matter is the family.

3. Procedure and Time limit for filing a third party opposition: same procedures of appeal applicable to other judgements. Two (2) months from the date that the person filing the case was notified

4. Effects of third party opposition: An opposition by a third party shall not automatically suspend execution of the contested judgement, unless the execution is suspended by the court upon request of a party.

II.3.2. Case review

- 1. Notion:** it seeks to have a final judgment vacated and redecided on the facts and the law. it can only be made by persons who were parties to or represented to the judgment subject to review. It is brought before the same court that rendered it but with a judge or judges that did not preside over the hearing. The reasons for review are provided for by article 170
- 2. Time limit to apply:** two (2) months starting from the day of the discovery of the fact giving rise to the review except in the case of death of a party, heirs are given 12 months.
- 3. Admissibility and effects of review:** no review on review, no suspensive effect on execution unless suspension is ordered by the court seized, no appeal.



11.3.3. Review due to Injustice

- 1. Reasons for review due to injustice:** see article e 55 of Law determining the jurisdiction of courts
- 2. Time limit for application :** within thirty (30) days of notification of the judgement. The response is also given within three (3) months of the filing of the application.
- 3. Competent authority to examine injustice:**
 - a) **President of the court immediately higher** than the one having tried the case at last instance
 - b) **The president of the supreme court**
- 4. Consideration of cases of injustice: See art. 59 of law on courts**



PART III SPECIAL PROCEEDINGS



III.1 Procedures in administrative matters

1. Action for annulment of administrative decisions:

- The action is admissible only if it relates to an explicit or implicit decision.
- The party is required to first lodge an **informal appeal**. see article 177&178
- The authority is required to respond in a period of one (1) month otherwise, the request is considered as founded.
- An applicant who is not satisfied with the decision has a period of six (6) months to file a claim
- In case the applicant does not get response and not recover his/her rights, he/she can request an administrative court to order the applicant to be reinstated in his/her rights.

2. Action relating to proceedings in an administrative case on merits

- This action is related to damages, i.e. claim for compensation of the loss incurred . It can all be filed together with a petition for the annulment

3. Sanction forcing an administrative authority to execute a court decision

- The court decision in administrative matter are threefold, an order to do or an injunction restraining the administrative authority from doing an act or the penalty forcing execution at a determined amount or at a sum per unit of time. See article 181 &crst



III.2. Procedure related summary procedure

1. Summary Procedure:

- **need to have an interim ruling** on a matter which requires urgent resolution.
- **Summons:** 4 working days or 15 for unknown domicile. Decision: 48 hours. Decision: Provisional execution
- Opposition and appeal: 5 & 3 working days respectively
- No review and 3rd party opposition

2. Exparte applications and exparte application by both parties

- *Exparte* application shall be a special way to seize the court by requesting it to take urgent measures to safeguard certain interests.
- The content of the application must be issues which seem not to be controversial and not necessarily requiring the intervention of the other party.
- applies in all matters relating to provisional measures and seizure and in other matters requiring a very urgent decision without necessarily filing a principal claim.
- The judge must hear them within two (2) days from the day of filing the application.
- Appeal: 5days, third party opposition: 1 month



III. 3. Joint application by parties

- It is not one party who accuses another but both parties wish the court resolve their litigation.

This happens when:

- parties require the court to help them in partition of the will;
- neighbors require the court to assist them to make agreement on where and how to build the wall in condominium;
- parties want the agreement between them if not executed be enforced by the bailiff without any judgement or want the agreement be executed by other persons not only parties

III.4. Small claim procedure (art. 196-211)

1. Defintion: Claim whose main subject-matter's value is of five million Rwandan francs (5.000.000 frw) maximum excluding interests of this value and procedural fees.

- It applies only to a party who opts for it the court may order the restitution of the entirety of the claimed property or order its replacement in kind or its equivalent in money if the winning party agrees.
- In case the property at issue is damaged, the court may order the restitution of the remaining part including the damages equivalent to the value of the damaged part.
- No moral damages are awarded in small claim cases



2. Cases governed by the small claim procedure (art.201-203)

- Civil and commercial matters
- Cases aimed at recovering stolen, extorted, encroached on or damaged assets
- Claims requesting payment of bouncing cheque or other negotiable instruments.

3. Case filing and proceedings under small claim procedure

- The filing and summons follow the ordinary procedure.
- The respondent can propose a plan for payment, if the claimant agrees he request the court to issue order. Order is granted within 24 hours
- Hearing is done within 5 working days

. Right of litigant, Conducting the hearing, judgment and appeal

- Parties are allowed to plead themselves, to be assisted or represented.
- Associations, organizations and institutions with or without legal personality can be represented by anybody provided with the power of attorney.
- A party who prefers to be assisted or represented by an advocate bears the related cost himself. The party is not allowed to request the court to order the other party to pay for him or her that cost



Part IV. SURETY AND EXECUTION OF JUDGEMENTS



IV.1. Surety and seizure

1. **Notion:** The execution of judgments and acts are intended to provide their beneficiary with the privileges of his or her right, either directly or by equivalence. In other words Execution in its widest sense signifies the enforcement of or giving effect to the judgment or orders of courts of law.
2. **Surety of Property:** see **article 212** requests the court seized to put under surety the property of his or her respondent or to provide a guarantee of sum of money. Prevent the transfer of immovable property.
3. **Seizure of property:** The seizure is allowed for any person with a final judgment or enforceable order.
Unseizable property: see article 216
4. **Procedure of seizure:** see **article 217-221**

3. End of Seizure

The seizure ends when:

- The creditor forgives
- The debtor voluntarily pays
- The seized property auctioned for the payment of the creditor; ordered by the court.

4. **Staff in charge of execution and their protection:** see article 224



4. Types of seizure and their execution art. 227-234

1. Seizure of the property of the debtor in the hands of a third party
2. Seizure of the property of the debtor in the hands of the Government or non governmental organizations or public institutions with legal personality
3. Seizure of recovered property
4. Seizure of an itinerant's property
5. Seizure of a tenant's movable property
6. Commercial seizure
7. Seizure of immovable property belonging to several joint owners
8. Distrain (saisie-execution)



IV.2. Execution of judgements

Three types of provisional execution:

- Case of compulsory provisional execution, art.236
- Provisional execution ordered by court, art. 237 and
- Provisional execution upon application by a party, art. 238.

Recourse against the provisional execution: see art. 240

Cases where provisional execution is prohibited see art.235

- Execution of final judgements and enforcement orders: see all documents to be enforced
- Invalidation of an Enforcement formula: Case of illegitimacy. Art.243
- Effects of a definitive judgement or other enforcement order See Art. 244-249
- Exequatur. Art.250
- Auctioning the property of a debtor. Art 251-261



IV.3. Court fees

- Depositing and refunding of court fees. Art. 269.
- Persons exempted from depositing court fees. Art. 270
- Scale of court fees. Art. 271-273,

IV.4. FIXING TIME LIMITS: see art. 275-278



Thanks a lot