
Process and Timelines for Civil Litigation in Kenya

Civil suits are **court cases between two or more individuals, private entities or public entities that are privately prosecuted.** In civil cases the individual suing prosecutes the case and caters for the cost of prosecution unlike in criminal cases where the state is the prosecuting party. The **Plaintiff** is the person/entity suing while the **Defendant** is the person/entity being sued. Examples of civil claims include defamation claims, breach of contract, negligence, assault, battery and fraud.

Before filing a civil suit:

1. Write a Demand Letter

A Demand Letter is written by the prospective Plaintiff to the prospective Defendant, warning him of the impending litigation. It should give a notice period, within which the Plaintiff will file the case if his demands are not met. It gives a fair chance to the Defendant, to settle the claim out of court and avoid litigation.



2. Know where to file the case

This is determined by the nature of the case and the amount being claimed. Employment claims are filed at the Employment and Labour Relations Court while claims relating to land are filed at the Environment and Land Court. General civil suits can be filed either at the High Court if they have a monetary value of more than twenty million shillings or at the Chief Magistrates Court if their monetary value is twenty million and below. Other issues to consider include the location of the subject matter of the case and the residency of the parties. Filing a case in the wrong court can lead to dismissal of the case.

The procedure and timelines for a civil suit are as shown in the table below.

Procedure and Timelines

	<i>Action</i>	<i>Timeline</i>
1.	<p>If the prospective Defendant fails to settle the claim or denies it, then the Plaintiff can proceed to file a case in court.</p> <p>Filing is done by presenting a statement of claim together with a payment for its filing at the court registry. The statement of claim is sometimes referred to as a <i>Plaint</i>. It describes the parties to the suit, their addresses, chronological events leading to the suit, the cause of action and the Plaintiff's prayers.</p> <p>A <i>Plaint</i> is presented at the registry together with a <i>Verifying Affidavit</i>, a list of witnesses, a list of documents to be produced as evidence and witness statements. The payment to be made to enable filing of a <i>Plaint</i> is arrived at after an assessment. Upon payment the <i>Plaint</i> is stamped 'Received' and the court issues summons to the Defendant.</p>	<p>The time limitation between when the wrongful act occurs and when a suit is filed is set by law and depends on the nature of the wrongful act. For instance a case of breach of contract has to be filed within six (6) years while defamation suits have to be filed within twelve (12) months.</p>
2.	<p>After filing, the Plaintiff is required to serve a copy of the <i>Plaint</i> and the <i>Summons</i> to all the Defendants. Service has to be done by a qualified <i>Process Server</i>.</p>	<p><i>Summons</i> are valid for twelve (12) months in the first instance but are renewable from time to time.</p>
3.	<p>After being served with the <i>Summons</i> and the <i>Plaint</i>, the Defendant is required to enter appearance, i.e. show their intention to defend the suit.</p>	<p>This has to be done within the time prescribed in the <i>Summons</i>.</p>
4.	<p>After the Defendant has entered appearance, he is required to file a <i>Defence</i> and/ or <i>Counterclaim</i>. (A counterclaim is a fresh and separate claim by the Defendant).</p>	<p>Within fourteen (14) days of entering appearance.</p>
5.	<p>The Defendant should then serve the filed <i>Defence</i> and/ or counterclaim upon the Plaintiff.</p>	<p>Within fourteen (14) days of filing.</p>
6.	<p>The Plaintiff can then respond to the counterclaim, and serve the response on all parties to the suit.</p>	<p>Within fifteen (15) days after being served with the counterclaim</p>
7.	<p>After the Plaintiff files and serves the reply to the counterclaim, pleadings will be closed. If no reply is served, then the <i>Defence</i> will be considered as the last document to be filed.</p>	<p>Fourteen (14) days after filing and serving the reply to Counterclaim if any.</p>

8.	After the close of the pleadings parties are required to complete, file and serve a pre-trial questionnaire. This is the first in a series of pre-trial procedures.	Within ten (10) days after the close of pleadings.
9.	The court then convenes a Case Conference. A Case Conference is meant to enable the court identify the disputed issues as well as set up the manner in which it will conduct the proceedings. The Court could also help the parties to settle the whole or part of the case. The Court issues a Case Conference Order at the end of the Case Conference.	Within thirty (30) days after the close of pleadings.
10.	The Court should then conduct a Trial Conference. The purpose of a Trial Conference is to plan the trial time, as well as decide on the fastest way to conduct the trial. The Court then issues a Trial Conference Order.	At least thirty (30) days before the hearing date of the suit
11.	Once the Trial Conference is concluded, the court then issues a hearing date. During the hearing, the Plaintiff presents their case first. The Plaintiff is required to state their case and present both oral and written evidence.	Dependent on the court's schedule.
12.	Once the Plaintiff has finished presenting their case, the Defendant also presents their case, calls witness and produces both oral and written evidence. Both parties are then allowed to file their final submissions, after which the court sets a day for judgment.	Dependent on the court's schedule.
13.	After the trial has been concluded, the court will proceed to give a judgment.	Within Sixty (60) days of concluding the trial.
14.	After the judgment has been read out, the Registrar draws, seals and issues an order or decree of the court. The order or decree should reflect the decision of the Court and should specify clearly in paragraphs the award sought and granted. (Any of the parties can prepare a draft decree and submit it for the approval of the other parties. If the draft is approved by the parties, it is then submitted to the Registrar who, if satisfied that it is drawn up in accordance with the judgment, signs and seals the decree).	Any time from the pronouncement of judgment.

Conclusion

The process above applies to a straightforward litigation process that starts with the Plaintiff instituting a suit and ends with the court issuing a decree. However, there are other procedures that are bound to take place in the course of civil litigation such as amendment of pleadings, applications relating to various matters

arising from the case and inclusion and exclusion of new parties. Parties are allowed to settle the case by consent, at any time before the court delivers its judgment. The consent of the parties has to be recorded in court, and has the same effect as the judgment. Also, Parties aggrieved by the court's judgment are allowed to apply for either a review in the same court, or appeal to the next court in the hierarchy of courts.