

# **Know Your Rights: Civil Litigation in South Africa**

**Prepared by RW KRUGER AND ASSOCIATES INC**

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*(Public Legal Education Guide)*

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## **ZA 1. What Is Civil Litigation?**

Civil litigation refers to **legal proceedings between private individuals, companies, or institutions** to resolve disputes that are **not criminal in nature**.

Examples of civil disputes include:

- Breach of contract
- Debt recovery
- Property disputes
- Personal injury claims
- Family law disputes (divorce, maintenance)
- Consumer or commercial disputes

Civil litigation seeks **compensation, performance, or specific remedies** rather than criminal punishment.

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## **2. Legal Foundations**

Civil litigation is governed by:

- **Civil Procedure Rules** (Uniform Rules of Court for High Courts, Magistrates' Courts Rules),
  - **Relevant statutes** (e.g., Consumer Protection Act, Companies Act, Prescription Act),
  - **Common law principles** (contracts, delict, property law),
  - **Constitution of the Republic of South Africa, 1996**, particularly Section 34 (right of access to courts).
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## **3. Who Are the Key Role Players?**

<b>Role</b>	<b>Function</b>
<b>Plaintiff / Applicant</b>	Person or entity initiating legal action
<b>Defendant / Respondent</b>	Person or entity defending against claim
<b>Attorney / Advocate</b>	Legal practitioner representing a party
<b>Judge / Magistrate</b>	Decides disputes, hears evidence, and issues orders
<b>Clerk / Registrar</b>	Manages court records, schedules hearings, authenticates documents
<b>Witnesses / Experts</b>	Provide testimony or expert reports to support claims

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## 4. The Civil Litigation Process — Step by Step

### Step 1: Consultation

- Meet with an attorney.
  - Provide all relevant documents: contracts, agreements, correspondence, invoices, photos, or medical records.
  - Attorney assesses the strength of your case, potential remedies, and litigation risks.
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### Step 2: Pre-Litigation Procedures

- **Demand letter / Letter of Notice:** Formal request to settle dispute before court.
- **Negotiation or Mediation:** Attempt to resolve dispute without litigation.
- **Alternative Dispute Resolution (ADR):** Arbitration, conciliation, or mediation may be used if contractually or statutorily required.

Courts generally encourage **pre-litigation settlement** to reduce backlog and costs.

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### Step 3: Issuing the Summons

- If settlement fails, your attorney drafts a **summons and particulars of claim**.
- The **summons** notifies the defendant of the legal action.

- **Particulars of claim** outline the legal basis, facts, and remedies sought.
  - The summons is filed with the **Registrar of the Court** and served on the defendant (usually via sheriff).
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#### Step 4: Defendant's Response

- Defendant may file:
  - **Notice of Intention to Defend**,
  - **Plea / Answer**,
  - **Counterclaim** (if applicable).

Failure to respond may allow **default judgment** in favor of the plaintiff.

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#### Step 5: Pre-Trial Procedures

- **Discovery:** Both parties exchange relevant documents.
  - **Interrogatories:** Written questions to clarify claims or defences.
  - **Experts and Witness Reports:** For technical matters (valuation, medical, accounting).
  - **Pre-Trial Conference:** Court may set a date for trial or encourage settlement.
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#### Step 6: Trial

- Parties present evidence, including:
    - Oral testimony,
    - Witness statements,
    - Expert reports,
    - Documentary evidence.
  - Attorneys conduct **examination-in-chief** and **cross-examination**.
  - Judge or magistrate evaluates evidence and **renders a judgment**.
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#### Step 7: Judgment and Orders

- Judgment may include:

- Payment of money (damages, debt recovery),
  - Specific performance (contract obligations),
  - Interdicts (stop or compel certain actions),
  - Declaratory orders (clarifying rights).
- Court may also **award costs** in favor of the winning party.
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### Step 8: Enforcement of Judgment

- If the defendant does not comply voluntarily, legal remedies include:
    - **Writ of execution** (attach property),
    - **Garnishee orders** (deduct from bank or employer),
    - **Eviction orders** (for property disputes),
    - **Sequestration / liquidation proceedings** (for companies or insolvent individuals).
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### Step 9: Appeal

- Either party may **appeal or apply for review** of a judgment.
  - Appeals must follow strict **timelines** (usually 20 business days in High Court, or as specified).
  - Appeals may be **on facts, law, or both**, depending on the court and matter type.
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### 5. Documentation Checklist

- Summons and particulars of claim
- Plea / Answer / Counterclaim
- Written agreements, contracts, invoices
- Correspondence between parties (letters, emails)
- Witness statements
- Expert reports
- Court notices, judgments, and orders

- Proof of service and payments
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## 6. Your Rights in Civil Litigation

- **Access to court** (Section 34, Constitution)
  - **Right to legal representation**
  - **Right to a fair trial**
  - **Right to be heard** and present evidence
  - **Right to cross-examine witnesses**
  - **Right to appeal or review judgment**
  - **Right to seek costs against unsuccessful party**
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## 7. Why You Should Use an Attorney

Civil litigation can be **complex, time-consuming, and costly**. Attorneys ensure:

- Claims are **properly drafted and served**,
- Procedures and timelines are **strictly followed**,
- Evidence is **organised, admissible, and persuasive**,
- Negotiations and pre-trial settlements are **strategically managed**,
- Enforcement of judgments is **efficient and lawful**,
- Appeals are **timely and effectively argued**.

**Rob Green & Associates** assists with:

- Debt recovery, contractual disputes, and property litigation
  - Personal injury and damages claims
  - Family law litigation (divorce, maintenance, custody)
  - Commercial disputes, corporate and shareholder conflicts
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## 8. Typical Timeline

<b>Stage</b>	<b>Duration (Approx.)</b>
Pre-litigation / Demand	2–6 weeks
Summons & service	1–2 weeks
Defendant’s plea	2–4 weeks
Pre-trial / Discovery	2–6 months
Trial	1 day – several weeks, depending on complexity
Judgment	Immediate or within 2–4 weeks
Enforcement	Depends on compliance by defendant
Appeal	2–6 months (High Court / Supreme Court of Appeal)

Timelines vary based on case complexity, court availability, and cooperation of parties.

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## **Contact**

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