

Short notes on:

CIVIL LITIGATION: AN OVERVIEW

Introduction

Litigation is the process of taking a legal dispute to court. Civil litigation is ordinarily between two or more parties and is conducted in a public forum. This process is formal and highly regulated. The entire matter is of public record for anyone, including the press, having access to the documents that are filed as part of each party's case. However, the courts have the discretion to order that proceedings be confidential.

Overview

The court where the action or application is instituted must have jurisdiction over the matter to hear it. Jurisdiction is established when the cause of action arose in the area where the Defendant resides or is domiciled within the area of that court.

There is a hierarchy of courts in South Africa:

1. The Constitutional Court,
2. The Supreme Court of Appeal,
3. The High Court,
4. The Magistrates' Courts.

Proceedings usually begin with a letter of demand setting out the claimant's claim and providing a date by which the other party is to adhere to such claim.

If the other party does not comply with this demand, the claimant can start civil proceedings either by:

Bringing An Action

This procedure is used in matters involving a factual dispute. It involves both the Plaintiff and the Defendant making submissions to court, producing evidence (by exchanging relevant documents

and involving witnesses giving oral evidence) and culminates in a trial. The action is begun when a summons with particulars of claim has been issued out of the court and served on the Defendant.

Launching An Application

This procedure is generally quicker, but can only be used where there is no factual dispute. All the documentary evidence on which a party wants to rely must be attached to the affidavits submitted to court. This process is started once the following documents have been issued out of the court and served on the Respondent:

- a notice of motion setting out the relief that the applicant seeks; and
- an accompanying witness statement in the form of an affidavit.

In conclusion, there are various factors to consider when taking the first step in the litigious process.

Contact an attorney at SchoemanLaw for any of your legal needs today.