



THE COMMERCIAL COURT USERS GUIDE



Artistic Impression of Commercial Court under construction

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NOT FOR SALE
*Produced with the support of the
CJRP*

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1. WHO THIS GUIDE IS FOR, AND HOW IT CAN HELP YOU

This guide is free and has been provided by the Commercial Court to help you, the users of the Commercial Court, better understand what happens at the Court and why.

It is intended to make using the Court easier and to encourage more people and their businesses to use the Court to obtain the justice they need.

This guide will help to explain who does what at the Court, how a case moves through the Court and how a user of the Court can get the most out of the services the Court provides.

However, please be aware that this guide does not set out in detail everything about the Court and what you should do. Many of the laws and procedures that control how the Court operates have been simplified and summarized in this guide to make them easier to understand. It should therefore be used only as a guide and not relied upon. If you are in any doubt about your rights you should ask the Court directly and/or seek the advice of an advocate.

Court advice is free but court staff can only answer your questions if they are about the court's procedures. Court staff are not able to give you advice about your case. For example they cannot tell you whether you have a good or a bad claim. If you need help that the Court cannot give, you could see an advocate (although the Court does not require you to). If you choose to consult an advocate please be aware that you will probably be charged a fee for any advice given by them.

Details of what lawyers do and how they can help you are set out at the back of this guide.

When this guide uses legal or technical words, the first time they appear in this guide they are marked in a special way – *like this*. These words are explained in a list you can find at the back of the Guide.

2. WHAT IS THE COMMERCIAL COURT?

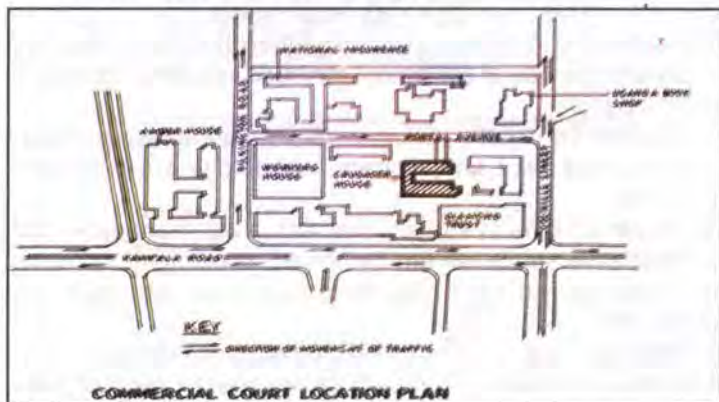
The Commercial Court is the division of the High Court. It is the commercial division of the High Court.

The Court has four full time Judges, a Registrar, an Assistant Registrar (also called a mediation registrar) and around twenty-nine support staff. One of the Judges acts as the Head of the Court.

3. WHERE IS THE COURT LOCATED?

The Court can be found in the annex on the 4th Floor of **Crusader House, Portal Avenue, Kampala**. It is next to Black lines House. If you are traveling by car you can find it next to Multiplex parking stand along Portal Avenue. The nearest taxi stages are:

- Diamond Trust Stage;
- Stanbic Bank Stage;
- Uganda House Stage;
- Slow Boat Restaurant Stage.



4. YOU CAN CONTACT THE COURT IN THE FOLLOWING WAYS:

- By post at : Commercial Division of the High Court,
P. O. Box 7085, Kampala, Uganda.
- By e-mail at : ikeitirima@commercialcourt.go.ug
- By Telephone on : 041-343-346
- By Fax on : 041-254-227

5. WHY DOES UGANDA HAVE A COMMERCIAL COURT?

The Court exists for a number of reasons. Its main function is set out in its mission statement.

6. THE COMMERCIAL COURT'S MISSION STATEMENT:

Its object is to deliver efficient, expeditious and cost – effective justice to the commercial community and ultimately therefore to impact positively on the commercial and economic life of Uganda.

In order to achieve its mission, the Court has a number of objectives.

These are: -

- To make litigation faster, cheaper, fairer and more accessible to the commercial community.
- To help attract foreign investment in Uganda through improving investor confidence in Uganda's legal system.
- To develop and introduce commercial-friendly rules of Court and encourage the use of settlement methods including negotiation and mediation.
- To improve the Court's performance through applying modern case management and modern technology such as court recording.
- To create an effective institution with clear managerial and administrative structures run by honest, competent, motivated and well-trained staff, supported by good facilities and equipment.
- To effectively supervise and monitor *Bailiffs* and all those involved in the obtaining money or property owed under a Court *judgment*.

7. WHERE TO GO WHEN YOU ARRIVE AT THE COURT

When you arrive at the Court, the first person you will meet is the Court receptionist, located just inside the door. The receptionist will direct you where you should go from there.

8. HOW DO I KNOW IF I CAN BRING MY CASE TO THE COMMERCIAL COURT?

In order to bring your case to the Court, you have to ask two questions:

- 1. Is my case a "commercial" one? Here are some of the types of cases that are commercial and could be heard at the Commercial Court:**

- Supply and exchange of goods and services;
- Banking and other related matters such as financial services;
- Insurance
- Transport of goods by water, air or land;
- Foreign judgments and commercial arbitration questions.

The above list is not a complete one. It is only a guide. If you are in any doubt, you should speak to the officer in charge of the Registry. The Registry is the name of the office that will take your papers and will receive your case when you first arrive at the Court. It is located directly in front of you as you enter the Court. If you need help finding the Registry, ask the Court receptionist when you arrive at the Court.

- 2. Is the amount I am claiming over five million Ugandan shillings (5,000,000/=)?**

On rare occasions the Court can hear cases below that figure. Again if you are in any doubt, consult the Registry.

If the answer to both questions is "Yes" then you can bring your case to the Commercial Court. If the answer to one of the questions is "No" you may still be able to bring your case to the

Commercial Court but you should ask the advice of the Court's Registry before going any further.

9. WHO WILL I MEET AT THE COMMERCIAL COURT?

You will find people with the following titles at the Court: -

A Judge, a Registrar, an Assistant Registrar, a Registry Supervisor, a Court Clerk, a Cashier, a Process Server, and a Receptionist;

10. WHAT DO THE PEOPLE I WILL MEET AT THE COMMERCIAL COURT DO?

The Judge:



During Court hearings, a judge listens to arguments put by both sides in a case (also known as "*parties*" in a case) and by people who will speak in support of the parties in the case (also called their "*witnesses*"). After the Judge has heard all the arguments in a case he will make a decision known as a *judgment*. He will then write down his judgment and make it available to all the people involved in the case.

The Registrar:



The Registrar will assign cases to the various Judges who are at the Court. The Registrar, in consultation with the Judges of the Court, will set certain dates for court hearings.

The Registrar is responsible for signing and sending out Court documents known as *Hearing Notices* to the people involved in the case. The Registrar then sends the case file to each Judge for them to read.

When the case is over the Registrar will be in charge of the process by which the winning side received the money or property they have been awarded by the Court. This process is known as *enforcement*. The guide provides more details on enforcement below.

The Registrar also hears and makes decisions on various disputes and disagreements that arise as a case goes through the Court.

Finally the Registrar is responsible for the management and administration of all the Court's support staff. This includes investigating allegations of indiscipline or corruption.

The Registry Supervisor:



The Registry supervisor is in charge of the Registry on a day-to-day basis. The Registry Supervisor oversees the updating and movement of files in the Registry to make sure that there are no unnecessary administrative delays at the Court.

In particular the Registry Supervisor supervises the registering of new cases and receives documents over the Registry counter that he/she then passes to the clerks handling the cases.

The Registry Supervisor studies case documents and calculates the fees that should be paid based on a fee schedule set by the High Court.

The Supervisor then advises the person submitting the documents of the fee amount to be paid. Once the fee has been paid the Supervisor gives the file a case number. Once the case has started the Supervisor continues to receive and stamp documents and pass them to the clerk handling the case to which they relate.

Finally the Supervisor generally responds to queries raised by those attending court and their advocates.

The Court Clerk:

The Court Clerk gives administrative support to his/her Judge both in the Judges room, which is known as a chamber, and outside of the Judge's chambers. A Court Clerk will usually be found sitting with the Judge in his chambers or at his/her desk in the Registry.

The Court Clerk looks after and updates the Judge's diary. The Clerk works with the Registrar and the Judge to set dates and times for Hearings.

The Clerk attends Court when the Judge is hearing cases and helps to record what takes place in Court by operating the court audio recording system.

A clerk is responsible for keeping the file in the Court and keeps each case file up-to-date. This includes receiving and filing new documents related to the case that are delivered to the Court by those involved in the case.

The clerk, working with the Registry Supervisor, will inform the parties how a case is progressing and generally responds to questions about a case for which they are responsible.

The Process Server:

The process server sits in the registry and prepares notices to be sent out by the Court.

The process server then delivers (also known as "serving") documents and Court correspondence to the addresses given by the parties involved in Court cases at the Court or to their lawyers.

The process server then prepares and signs a special document called an "affidavit of service". This document records how and when the process server delivered the Court documents.

The Accounts Cashier:

The Cashier is responsible for receiving all payments made to the Court.

The cashier, whenever he/she receives any money will issues an official receipt acknowledging a payment has been made and saying how much has been paid.

The Cashier also makes cash payments, when authorized to do so by the Registrar and banks and accounts for all money received at the Court.

The Court Receptionist:

The Court's receptionist receives all telephone calls received on the Court's general telephone line and directs the calls to the right office or deals with them herself/himself if he/she is able. The receptionist does the same for all post arriving at the Court and directs all the users of the Court. The police carries out a check at the reception.

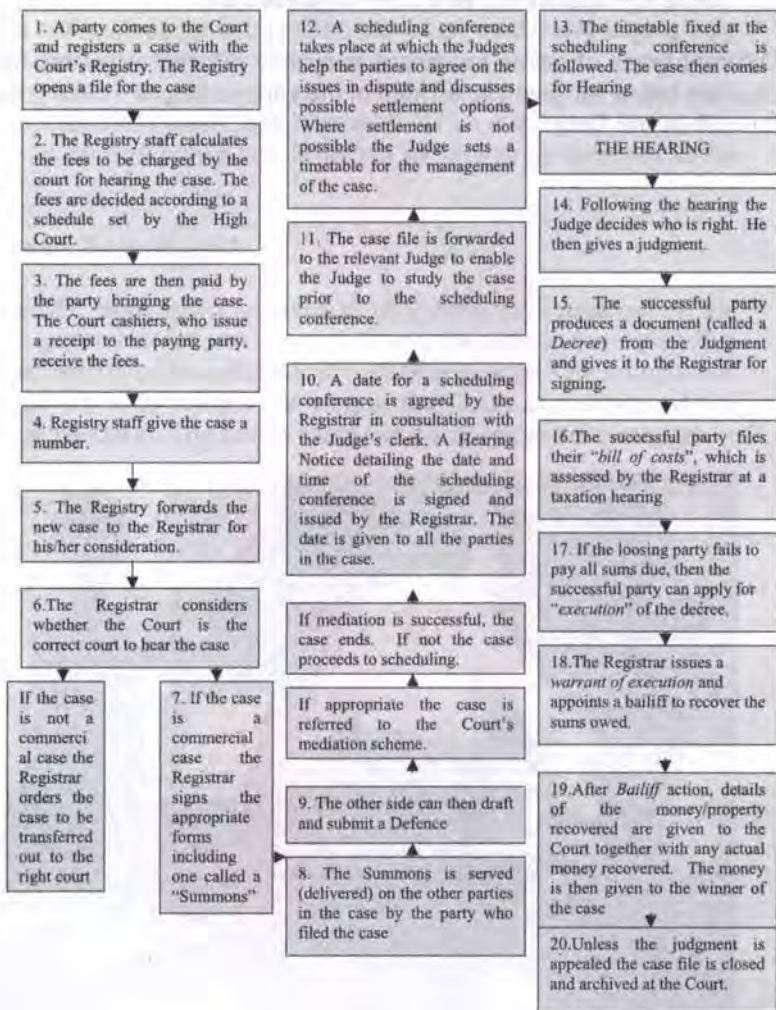


11. HOW ARE CASES DEALT WITH AT THE COMMERCIAL COURT?

All cases follow a similar procedure at the Court. That procedure is governed by rules known as the Civil Procedure Rules. They ensure that cases are heard fairly and in an organized way.

Different types of cases are heard in slightly different ways but the diagram below will give you an idea of the various stages a case goes through at the Court.

12. HOW A CASE MOVES THROUGH THE COMMERCIAL COURT



13. HOW DO I BEGIN A CASE AT THE COMMERCIAL COURT?

A case begins at the Court by the person who wishes to start an action (called a *Plaintiff*) bringing a document to the Court setting out their case. This document is called a "*Plaint*" and has to include certain information. This information must include:

Information that should be in a *Plaint*:

- The name of the Court.
- The name and description of the Plaintiff together with an address at which he/she can be served with court documents.
- If the Plaintiff or the person he is claiming from (known as the "*Defendant*") are under the age of 18 (called a "minor"), or a person is mentally ill the *Plaint* should contain a statement saying this.
- The facts of your case.
- A statement explaining why the Commercial Court can hear the case.
- What the plaintiff is claiming (and details of any part of the claim that the Plaintiff is not claiming for whatever reason).

If you are in any doubt about what you should include in your *Plaint*, you should consult an advocate.

Sometimes, if a case is very simple and there is no defence to it, a simpler document called a "*Summary Plaint*" can be submitted. If such a document is filed, the Court, if it agrees, can give judgment for the Plaintiff through a much simpler and quicker procedure. However such a procedure can only be used if the Court is sure that there are no facts or law in dispute. The Court will decide whether this is the case.

14. WHAT SHOULD I PAY FOR AND HOW MUCH SHOULD I PAY?

The fees charged by the Court depend on two things:

1. The amount you are claiming;
2. The type of claim you are bringing.

Before a Plaintiff is accepted as properly filed in the Court you are required to pay a fee to the Court known as a "filing fee". The fee should be paid to the cashier who will provide you with an official receipt. The receipt will show the amount paid, and will be dated, stamped and signed by the cashier who issues it to you

At the back of this guide is a table that tells you how much you will need to pay.

15. WHAT HAPPENS AFTER I SUBMIT MY CASE TO THE COURT?

The Registrar issues a document called "*a Summons*", which tells the Defendant that a case has been filed against him/her. The document requires the Defendant to deliver a Defence to the Court before a date set out in the court's procedures. It is the duty of the Plaintiff, or someone authorized by them, to deliver the Summons together with the Plaintiff to the Defendant.

16. WHAT HAPPENS IF I CANNOT FIND THE DEFENDANT?

There are other ways in which you can deliver the summons to the Defendant. But before you try these, you must show that you have used every effort to try and find the Defendant. These include:

- Delivering the Summons to an adult member of the family of the Defendant who lives with him/her.
- Fixing of a copy of the Summons on the outer door or any other obvious part of the house where the Defendant lives or has a business

What is substituted service?

If you cannot find the Defendant through the usual methods, the Court can allow a different type of delivery called "substituted service". However the Court will only allow this if you can show that you have done everything possible to try and find the Defendant.

If the Court believes that you have tried everything you can, it can order that the summons be served through advertising in a Ugandan newspaper that would be seen in the area where the Defendant is believed to be living or has a business.

Whichever method you use to deliver the plaint to the Defendant you will need to prepare a document called an "*affidavit of service*". As explained above, this document simply sets how, when and who delivered the plaint to the Defendant.

17. WHAT DO I DO IF SOMEONE DELIVERS A PLAINT TO ME?

You will need to write and deliver to the court a "Defence". This is a document that explains your side of the case. You will usually need to file your Defence within 15 days of receiving the Plaint although sometimes you may need to file your Defence sooner (sometimes within 10 days).

Again if you are in any doubt you should consult an advocate or check with the Registry at the Court.

18. WHAT YOU SHOULD INCLUDE IN YOUR DEFENCE?

In your Defence you should put your side of the case. If you disagree with any claim or comment in the Plaint you have to state this in your Defence.

It may well be that you also believe that you have a claim against the Plaintiff. If this is the case you should also include details in your Defence. This is called a "Counterclaim" and should be set out in the same document but below your Defence.

If you do have a Counterclaim you should set out why you have that claim and also provide a list of the people who will support your case plus a list of any documents that you will use to try and prove your claim. If you have any lists of past court cases that help you in your arguments you should list these in your defence.

Once you have prepared your Defence and/or Counterclaim you should take a copy of it to the Registry of the Court who will stamp it and put it on the court file with the Plaint.

You should then also deliver a copy to the Plaintiff. The procedure for delivery of a Defence and Counterclaim is the same as the delivery of a Plaintiff. You can therefore follow the guidance set out above.

19. WHAT IF I DO NOT FILE A DEFENCE?

If you don't file a Defence then the Plaintiff can apply to the Court to get a judgment against you. This is explained in more detail below.

The Court can award the Plaintiff everything he has requested in the claim plus interest (like the interest a bank can charge on a loan) on the amount the Court has awarded plus the Plaintiff's legal costs of bringing his claim to Court.

20. IF I FILE A DEFENCE, WHAT HAPPENS NEXT?

The Court then follows a set procedure. If you look at the diagram above you will see some of the things that can take place after a Defence has been delivered.

If you are unhappy with anything as the case goes ahead you can always apply to the Court to request that the Court decides on certain issues. Usually you will be required to make a written application to the Court in which you should set out the problem. This application is usually written in a certain way and you should consult an advocate or the Court to be sure what to do.

Sometimes you and the other person or company you are in dispute with may wish to settle your dispute. The Court welcomes this. The Judge can sometimes assist you in settling your case or else you can settle it outside Court. Either way, if you settle your case you must inform the Court and agree to end the case.

Ending the case this way, which is called "*by consent*", has to be done in a special way. Again you should consult your lawyer or the Court for advice.

If the parties cannot agree then the case will carry on and you and the other side in the case will be called to appear before the Judge at a meeting called a "*scheduling conference*".

The Judge will then go through with you all the arrangements that will need to be made before he/she can hear the case.

For example the Judge will ask all sides to agree on the people and the documents that they will use at the trial to support their case. Sometimes you may want an expert in a certain subject to speak on your behalf. If you do, you need to agree this with the Judge at the Scheduling Conference.

The Judge will also ask you, and the other parties, if it is possible to settle your dispute before he hears it at trial. You should think carefully about whether you can reach agreement with the other people or companies in the case. If you loose at the trial it may cost you a lot of money.

Once all preparations have been made for the trial as directed by the Judge the case is ready for a trial.

21. WHO WILL HEAR MY CASE?

The Registrar allocates cases in the Court to Judges. Parties are not allowed to demand their case to be placed before a particular Judge.

22. DO I HAVE TO PAY TO GET A TRIAL DATE?

No: It is the responsibility of the person who brought the claim to agree with the clerk to the Judge or with the Registrar when the hearing date should be. Once the date has been agreed, all the other people in the case should be told that date.

However the Court can also fix a hearing date for the case on its own. If this happens the Court's process server will deliver a notification of the date to all those involved in the case.

23. WHAT WILL HAPPEN AT A COURT HEARING?



The Judge, the advocates for the various parties, a Court Clerk who will operate the court recording equipment and may also act as an interpreter, the parties in the case, those speaking in support of the parties (the witnesses), members of the public and the media.

The general public and the media are always allowed to attend a hearing unless there are special reasons why they should not. If there are special reasons the Judge will tell everyone what these are before asking these people to leave the Court.

How will I know when I will have to say something?

If you have brought a case, if you are defending a case, or if you are a witness you will usually be asked to speak at some point. This is called "*giving evidence*". Sometimes, before the hearing you will have been asked by the Court to write down what you intend to say and to give it to all those in the case. This is called a "*witness statement*". Before the hearing the Court will advise you when and how you should do this. What you should call the people you meet at the hearing

What you should call the people you meet at the hearing

Certain people at the hearing have certain titles that you should use as a sign of respect. These titles are: -

For a Judge:	"My Lord"
For a Registrar:	"Your Worship"
For Advocates:	"Learned Counsel"
For the person bringing a claim:	"The Plaintiff"
For the person disputing a claim:	"The Defendant"

How the hearing proceeds

One party (usually the person or company bringing the case) begins and calls their witnesses who give evidence. The other side then questions them. This is called "*cross-examination*". Once this has ended the first party can then ask the witness some further questions especially if something they said earlier is still not clear.

As witnesses give their evidence, the judge makes notes (if a full audio recording is being made) or writes down everything that is being said (if an audio record is not being made). If the case has not finished during the time allowed for each hearing, a new date is set when the hearing will be continued. This is what is meant when it is said that the hearing "*has been adjourned*". At the Commercial Court before the end of each hearing, and if the case has not finished, the Judge will usually fix a specific date when the case will carry on. If a new date is fixed at a later stage then the Court process server will notify all the parties of the new date.

24. WHAT HAPPENS IF YOU DO NOT ATTEND THE HEARING

If you are the Plaintiff or the Defendant and you have obtained the services of an advocate, you may not be required to attend the hearing. However if you are required to give evidence you will have to attend.

If you do not have an advocate and you do not attend personally or if you are not represented at the hearing in any other way the Court can still go ahead with the hearing. If this happens it is very likely that you would

lose the case as you or your representatives would not be there to put your side of the case.

If the Court does decide a case when one of the parties is not there it is called an "*ex parte judgment*".

If this happens you can ask the Court to consider again its decision. But this can only be done if the Court is satisfied that you didn't know about the hearing or that there was a very good reason why you did not attend.

A good reason which might be acceptable to the Court is if you fail to attend because you were not properly issued with a hearing notice. A bad reason which the Court simply would not accept, is if you felt unwell and did not want to come to Court.

25. IF I WIN - HOW DO I GET MY MONEY OR PROPERTY?

Judgment

After looking at all the documents and listening to all the witnesses, the Judge will decide the outcome of the case. The Judge may award the entire amount that is being claimed, some of it, or none at all. In the same way if there is a counterclaim the Judge may award all, part, or none of it.

What About Interest And Costs?

The Court may give an order that the losing party must pay interest on the amount that the judge has awarded to the winning party. The Judge will decide on the level of interest that will be paid.

The Judge can also award the winning party their costs of bringing their claim. Such costs can include:

- The winning party's advocate's fees;
- The fees that the Court charged;
- The travel expenses for the winning party's advocates and their witnesses;
- Any other reasonable costs spent by the winning party in bringing their claim.

The losing party will usually have to pay all the above costs plus their own costs that will include any fees for any advocate they used during the case.

The party who is awarded their costs by the Judge has to prepare a statement of what those costs are. This statement is known as a "*Bill of Costs*". This statement is then presented to the Registrar who then considers it. This consideration is known as "*taxation*".

The Registrar can change what is claimed for a number of reasons including if what is asked for is not a reasonable amount.

26. WHAT HAPPENS WHEN THE FINAL AMOUNT TO BE PAID IS AGREED BY THE COURT BUT THE PARTY WHO OWES THE MONEY DOES NOT PAY?

If the losing party pays what is owed immediately, the case is ended and there is no further action taken by the Court.

However if payment is not made then the person to whom the money is owed (called a "*Judgment Creditor*") can take a number of actions to force the party who owes the money (called a "*Judgment Debtor*") to pay it.

These actions are known as "*enforcement*" and they usually begin by the Judgment Creditor asking the Court to help them recover their money. This is usually done by writing to the Court. The Court will not take action unless requested to do so. It is up to the Judgment Creditor to make that request.

- Before Judgment Creditor goes ahead with this procedure they should consider the following issues: Whether they are likely to get their money or property and court fees from the Judgment Debtor? - Does the Judgment Debtor have anything of value?
- Does the Judgment Debtor owe other people money as well or have other court judgments against them?
- Does the Judgment Debtor own any goods or assets which can be taken and sold at auction;
- Is the Judgment Debtor working?
- Does the Judgment Debtor have any other earnings, for example rent on houses?
- Does the Judgment Debtor have a bank, building society or other accounts?
- Does the Judgment Debtor own his/her home; or does anyone else owe the party some money?

By asking the above questions the Judgment Creditor can decide whether it is worth trying to get the money (if the Judgment Debtor doesn't actually have any) and if it is, the best way to go about getting it.

What you should do if You Have No Information About The Defendants Finances

If the Judgment Debtor has admitted that they owe the money and made an offer to pay before the judgment was made, you will already know something about their finances. But if you only know a little about their financial situation, you may be able to find out more by asking the Court for an "*oral examination*".

An oral examination is not a method of enforcing your judgment. It is a way of finding out about the Judgment Debtor's income, assets and spending. This information can help you decide: whether the Judgment Debtor can pay you; and which method is most likely to get you your money or property.

The methods you can use to recover the money or property the Court has awarded.

Each way of enforcing your judgment is aimed at targeting a different aspect of the Judgment Debtor's finances.

If the Judgment Debtor has goods and property you may wish to apply for a "*attachment and sale of property order*"; If they earn wages or a salary you could apply to the Court for an "*attachment of earnings order*"; if they have savings you could request the Court to grant a "*garnishee order*"; If they have other valuable things you could ask Court for a "*prohibition order*".

In the end, if the Court has ordered that you should be paid, you should choose the option that is most likely to get you your money.

This guide has summarized some of the main ways of recovering what the Court has ordered below.

A Warrant Of Execution:

This is a Court document that enables a company or person to whom money is owed, and using a group of people engaged by the Court called "*bailiffs*", to recover the money owned.

You can apply to the Court for a warrant of execution. You must write to the Court in a special way (the Court's registry will advise you) and you will have to fix a hearing at which the Registrar will consider your request.

However before you do this you must first be sure that the Judgment Debtor has either the goods or money to pay the amount ordered by the Court. You can only apply to the Court if the Judgment Debtor has fallen behind in a re-payment plan if one was agreed.

Often you will want to take and sell the property of the Judgment Debtor. If the required money is not paid then some of the Judgment Debtor's goods can be taken from his/her home or business, auctioned and the money obtained from their sale used to pay the sum ordered by the Court.

An Attachment Or Earnings Order:

This is made if the Judgment Debtor is employed. It enables the Judgment Creditor, once the Judgment Debtor has failed to pay the money owed, to obtain the money directly from the person or company who employs the judgment debtor.

A Garnishee Order:

It is an order made when judgment is given and is used as a way of obtaining what the judgment debtor owes you by giving you the right to be paid directly by someone who owes money to the judgment debtor.

A Third Party Debt Order:

It is an order of the Court that freezes money held by a person, organization or institution, such as a bank or building society, which might otherwise be paid to the Judgment Debtor against whom you have your judgment.

The organization or person that is holding the money is referred to as the *"third party"*. A third party debt order will prevent the Judgment Debtor from having access to their money until the Court makes a decision about whether or not the money should be paid to the Judgment Creditor.

Again you can apply to the Court for such help, but only if the Judgment Debtor has failed to pay the money owed to you or has failed to pay one or more of the installments due under the terms of the judgment.

Arrest and Detention in Execution:

You can ask the Court to order the arrest of the Judgment Debtor and for them to be brought before the Court for the Court to order his/her detention in prison. However the Judgment Debtor must have failed to have paid any re-payments agreed and the Judgment Creditor must pay to Court enough money to cover the subsistence costs of the debtor in prison. The Judgment Debtor cannot be imprisoned for more than six months.

Distress for rent:

If you are the Judgment Debtor's landlord then in some cases you can apply to Court to seize the Judgment Debtor's possessions that are in the property for which they owe rent and hold that property until the judgment debtor, your tenant, pays what is owed.

The Court can Appoint a Receiver:

A "*Receiver*" is the name of an official appointed by the Court to take over and manage the judgment debtor's property and manage it with the aim of raising the money needed to pay the Judgment Creditor. Once the debt has been paid and the Receiver's costs paid, the property would be returned to the Judgment Debtor.

Remember!

The procedures for recovering money or property owed to you are very complicated. You cannot just go and take the property and money of someone who owes you money.

There are special rules that have to be followed for each procedure and that procedure is controlled by the Court who will guide you as to what to do. For example if the Government owes you money then there are special procedures you will have to follow.

27. WHAT ARE MY RIGHTS IF I OBJECT TO THE WAY THE WINING PARTY IS TRYING TO GET MONEY OR PROPERTY FROM ME?

If you owe money ordered by Court then you should pay as soon as possible or you will risk losing your property or other actions being taken against you.

However once you have paid what is owed and all the costs that go with it, the judgment creditor is not entitled to take your property or to take any of the actions set out above. You should go to Court taking the evidence that you have paid and make sure that the Court cancels any orders that may result in you loosing more money or property than you should pay under the Court judgment.

Even if you still owe money, you can object to the way the Judgment Creditor is going about getting the money from you if he is not following the correct procedures.

Here are some of the mistakes that are often made which you can complain about:

- Taking property which the Judgment Creditor is not allowed to take;
- Taking property that is not the Judgment Debtor's but belongs to someone else;
- If the Judgment creditor is acting unreasonably or maliciously.

Sometimes you may not have known about the court proceedings that led to someone trying to take your property or taking some of the other actions listed above. If this is the case, you can stop your property being taken.

In any of the above cases you will need to come to the Court and request the Court to stop what is happening. The Court, if it sees that you have good arguments and can meet certain conditions it may set, may stop proceedings until the problems are resolved.

28. WHO DOES THE COURT USE TO HELP RECOVER PROPERTY OR MONEY OWED UNDER A COURT ORDER?

The Court appoints people called "*Bailiffs*".

The Court does not employ bailiffs. They are private businessmen. In order to act for the Court they need to obtain a license from the High Court. There are certain things that a Bailiff has to show before they can become Bailiffs. For example Bailiffs need to show that they don't have a criminal record, before they can be appointed a Bailiff.

The Court can also appoint someone called an "*Auctioneer*" to sell property of someone who has not paid a Court order. The Court does not employ the Auctioneer. They also have to have a license, which is obtained from the city or town council where they work.

Are activities of Auctioneers and Bailiffs controlled?

Yes! Bailiffs need to follow certain rules when appointed by the Court. For example, before, a piece of property is sold below the value set originally by a Bailiff, that Bailiff must first obtain the approval of the Court.

Bailiffs are not allowed to sell to themselves (or any member of their family or firm or a company in which they have interest in) any of the property attached for execution.

Bailiffs must give to the Court all the money obtained from the sale of the property. This must be done within seven days of the sale. They are also allowed to obtain their costs from the Court but they cannot just deduct these from the money obtained from the sale. They have to agree the amount of the costs with the Court first.

Auctioneers are also required to follow rules and regulations. For example, they cannot bid for property themselves without first making clear to everyone that they are doing so.

If you believe that a Bailiff or an Auctioneer is doing something wrong then you should go to the Court and complain. The Registrars at the Court are the people in charge of this area and you will need to apply to them. The Registry will explain how this is done.

29. IF I DISAGREE WITH WHAT THE JUDGE HAS SAID, WHAT CAN I DO?

If you lose and disagree with the decision of a Judge then sometimes you can apply to the Court or to another Court to try and have the decision of the Judge changed.

There are a few possible procedures you can try. Here are the main ones that can be considered if you are not happy about a decision at the Court.

Review:

Anyone can apply to "review" a decision of the Court. However you have to have good reason for doing this. The reason must be that the person who is applying must have discovered new and important facts that the Court did not know about when it made its decision and that these things could not have been brought to the Court's attention at the time it made its decision.

You can also ask for review when you can show that there has been some mistake or error that is very clear.

Amendment of judgments:

The Court has power to correct clerical or mathematical mistakes in its judgments. The Court itself can make the correction or if any of the parties apply and request it.

Appeals:

A party in a case who is unhappy with a decision of the Commercial Court can appeal to the Court of Appeal of Uganda. The reason for the appeal may be that you think that the Court has made a mistake in its understanding of the law or in some of the facts of the case.

There are certain rules and time limits that apply if you want to appeal and you should seek the advice of an advocate and the Court if this is what you want to do.

If you want to appeal you will need to prepare a "Notice of Appeal". This is a document that sets out the reasons why you are appealing.

30. THE COURT'S MEDIATION SCHEME

The Commercial Court operates a mediation scheme. Under this scheme most cases that are received by the Commercial Court are sent for mediation. Mediation is explained below.

The Assistant Registrar at the Court will send your case to a special organization that employ people who are experts in mediation. This organization is called CADER and it is also located at Crusader House, on the floor below the Commercial Court.

If you or your advocate receives a letter telling you that your case has been sent for mediation then you should co-operate fully and follow the instructions contained in the letter. There are a number of deadlines and other directions you will have to follow.

If you have any questions you should go to see CADER. They will give you all the information you need. You can contact CADER in the following ways:

By post at;
Centre for Dispute Resolution
P. O. Box 25585 Kampala Uganda
Telephone: 041-349-515/254460

What are the advantages of the Mediation Scheme?

The scheme has many advantages for both you and the Court. It can help settle your case quickly and may end up costing you less in the end.

What is mediation?

In mediation, each side to a dispute has a chance to put its case and hear what the other side has to say. A mediator helps both sides reach agreement about how a dispute should be settled. To get the best out of the process it is important that the parties understand it and come prepared.

What does it involve?

CADER will help you select a mediator by giving you a number of people to choose from. The mediator is not a Judge. He or she will not take sides or decide who is right or who is wrong. There is no need to call witnesses.

What happens at mediation?

Mediators have different ways of helping but what usually happens is that everyone involved will first meet in one room. The mediator will make sure that everyone knows who is present and will explain what the process is about.

Each side will then be given the chance to tell the mediator and the other side what their case is about and what they are looking for.

After the opening session each side may go to separate rooms and the mediator will visit each in turn. These are private sessions. The mediator must not tell the other side what he or she has been told unless given permission to do so. During the private sessions the mediator can discuss the case with you.

The mediator will be looking for solutions to problems and will be interested in what each side needs as well as what their rights may be.

By moving between sides, carrying information, suggestions, ideas, explanations or offers, the mediator will seek to help everyone to reach a solution to their dispute. If agreement is reached the mediator will bring everyone together again and an agreement will be drawn up and signed. If the parties want, this can be made into a Court Order.

Before the mediation:

You can go to the mediation by yourself or with a friend or adviser. You do not have to be legally represented but an advocate may be helpful, particularly if the dispute is complicated or if there seems to be a difficult legal problem.

If you are a company or a person who needs approval from somebody else before you can settle the dispute make sure you either bring the other person along or have something in writing from them showing that they have given you their permission to settle the case.

If you have any particular disability or language problems, let CADER know in advance.

Before the day of the mediation you should *try* to be prepared. You want the mediator and the other side to understand your case. Decide what is the best way of explaining your position. It may be helpful for you to make a list of the strengths and weaknesses of your case and, if you can, the strengths and weaknesses of the other sides' case.

Bring along any really important documents, for example receipts to show that you have paid money, which is being disputed.

Remember that the mediator will be looking for a solution that is in the best interest. The mediator will not tell you what your rights are. Mediation is also not a substitute for a legal advice. If you need advice, try to take it before the day fixed for the mediation.

The mediator might ask for a short statement of your case before the day fixed for the mediation, otherwise he/she will have read the key documents on the Court file so will know what the case is all about.

At the Mediation:

What you say is confidential; you may know something that will help the mediator in talking to the other side.

Remember the mediator is not a Judge. When you are asked to present your case in the open session, try to get across to the other side what you think the dispute is about. Do not worry about details, the mediator can find out about the case when in the private sessions. Be brief. If you feel difficulty in talking about the case when the other side is present, tell the mediator who may decide to start private sessions straightaway.

In the private sessions try to work with the mediator to find a solution. Be frank. When the mediator is with the other side, use your time. Think about what has been discussed. Consider what you might be able to offer. Decide exactly what your needs are.

If you reach agreement, remember that you will be held to it and the court proceedings will be ended. Make sure you can live with it.

Even if the mediation does not end with an agreement you may find it was helpful and that each side understands the other's point of view more clearly. You can always try to settle the case later but remember that once the action continues, costs will build up on both sides.

What does Mediation offer?

You are being given the chance to try to settle your dispute by mediation. The advantages of mediation are that it is quicker, cheaper and less formal than a trial.

Where does the mediation take place?

Mediation takes place at CADER in its own conference rooms.

When will it take place?

The mediation scheme usually begins after a Defence has been sent to the Court.

Is there a charge?

There is no extra filing cost to the parties involved. However, each party bears its own costs and expenses of participation in the mediation.

What happens if only one of us wants mediation?

Mediation will only work if all the parties are willing to take part. You or your advocate may find it useful to contact the other party about this.

Can I bring someone with me?

Mediation involves informal discussions about the problem. It is not like a trial and there is no need to bring a witness. You can come by yourself or with a friend or advocate.

What if we can't agree at the mediation?

Many mediations end in a settlement but if you do not reach agreement, you can continue with the Court action. Anything said during the mediation is kept confidential and cannot be used as evidence in the case as it continues in Court.

31. HOW CAN I COMPLAIN IF I AM NOT HAPPY ABOUT THE SERVICE I HAVE RECEIVED FROM THE COMMERCIAL COURT?

If you are not happy with anything at the Commercial Court you have a right to complain.

The Judges and the Registrars of the court follow rules and regulations set out in a document called the "*Judicial Code of Conduct*". It is the responsibility of every Judge or Registrar to make sure they follow these principles. They include independence; impartiality; propriety; integrity and equality.

A body called the "*Judicial Service Commission*" is responsible for making sure that Judges and Registrars follow these rules. If they do not the Judicial Service Commission is also responsible to taking disciplinary action.

The Court's support staff are employed by a government body called the "*Public Service Commission*". This Commission also has regulations and also has the power to discipline the Court's support staff.

Is the Commercial Court open to hear my complaints and views?

Any person affected by any judgment or order, or decree of the Court can apply for a copy of it on payment of a standard fee, based on the number of pages of the judgment.

The Court is opposed to corrupt practices of any kind and will thoroughly investigate any reported allegation of corrupt practices. It will deal strongly with any cases of corruption or indiscipline if they are proved.

The Court has taken measures to try and help stop corruption in Court. These include the identification of Court staff, identification at the reception desk, and the display of anti-corruption posters.

The Court is open to any suggestions for improvement from its users and wants to hear if you have any complaints. There are a number of ways you can give us your views.

1. You can write your comments and suggestions and put them in the Court's suggestion box, located outside the main door to the Court. If you cannot find the box, ask at the reception desk and they will direct you.
2. The Court has a users committee that meets every 3 months. The committee is made up of the Court's Judges and Registrars and many representatives of the Court's users, such as the Chamber of Commerce, the Uganda Manufacturing Association, UGIETA, the Law Society and the Private Sector Foundation. If you wish to put a question or raise an issue or complaint at the users committee you should contact the organization or trade association that represents you and ask to speak to someone who knows about the committee.
3. You can also contact individual people at the Court.

The Head of the Court:



You should contact the Head of the Court, who is the Judge in charge of the whole Court if you have a complaint relating to one of the Judges or the Registrars of the Court. Usually you should write down what your complaint is and deliver it to the Court.



The Registrar:

If you have a complaint about an administrative matter or any complaint about the Court's support staff including the Court clerks or anyone in the Registry, you should write or speak to the Court's Registrar. If you are not satisfied with the answer you get from the Registrar you should contact the Chief Registrar at the main High Court building or the Secretary to the Judiciary whose office is also at the Main High Court building.

The Principal Judge:

If you are not happy with the feedback you get from the Head of the Court you can take your complaint to the Judge who is in charge of the whole of the High Court. He is called the Principal Judge and his offices are at the main High Court Building near Constitutional Square.

Judicial Service Commission:

Finally, if you remain unhappy about the conduct or behaviour of a Judge or Registrar you can complain directly to the Judicial Service Commission. They have set up a procedure to deal with complaints.

When making a complaint to the Commission the following procedures have to be followed:

- If you wish to make a complaint in writing you should write to the Registrar in the Department of Planning, Research and Inspectorate who is responsible for receiving complaints.
- If you want to make a verbal complaint you can also contact the desk officer at the Commission. He/she will write the complaint down and the person complaining is requested to date and sign it.
- If you reside outside Kampala you can place your complaint in the suggestion/complaints boxes at the offices of the Chief Administrative Officer (CAO), the Resident District Commissioner (RDC), the LC V Chair Person, any Court Premises or other places that the Judicial Service Commission has selected.
- The Complaint can also be submitted to any regional office of the Uganda Human Rights Commission or the Inspector General of Government.

The Commission is located at:

**Farmers House, Ground Floor
Plot 6/8 Parliament Avenue**

Postal Address	:	P. O. Box 7679 Kampala
Telephone	:	+256-41-344154/230058
Fax	:	+256-41-254090 Kampala Uganda

How should I complain?

Generally you should put your complaint in writing and you should sign your complaint providing details of how you can be contacted so that the complaint can be followed up.

However if you wish to complain to either the Head of the Court or the Registrar then they may be willing to hear what you have to say without asking you to write it down first. Complaints to the Judicial Service Commission and to other offices should follow the procedures set out above.

32. ADVOCATES

An Advocate is another name for a lawyer. A lawyer is a professional person who is legally qualified and licensed to give you advice on legal matters including how to take your case through the Commercial Court.

The Court is not responsible for advocates nor does it appoint or get involved in clients and their relationship with their advocates.

The Court does not require that a party in a case has an advocate. If you decide to employ an advocate to represent you then you are responsible for paying them and to make sure that they do a good job for you. The Court generally does not get involved in these matters.

What an Advocate is supposed to do:

An advocate should be qualified and experienced enough to give you good advice. They should always act in good time. An advocate should always keep you informed about what is happening with your case. In almost all cases he or she should also keep secret all the information you tell them about your case.

An advocate is required to carry through to a conclusion all matters he/she undertakes for a client.

An advocate should also avoid delays in carrying out instructions given to him/her.

An advocate should always act in your best interest and is not allowed to take advantage of the knowledge they have about you or to work for anyone else if it would clash with the work they are doing for you.

Advocates are not allowed to let you give information to the Court that they know is wrong. If they receive any money on your behalf they must keep strict records of it.

Advocates are allowed to charge clients reasonable fees. These are set out in special Rules called "The Advocates Remuneration and Taxation of Costs Rules".

If you are in any doubt about how much you will be charged you should speak to your advocate. It is best if you can speak to your advocate before they start working for you and get an idea of how much it will cost to represent you in Court.

How can I complain about an advocate?

You can write a letter to the organization that controls and disciplines advocates. That organization is called the Law Council. You should address your letter to the Secretary of the Law Council. The Contact details of the Law Council are as follows:

**Ministry of Justice and Constitutional Affairs Building,
Parliamentary Avenue, (opposite the British High Commission).**

Postal Address	:	P. O. Box 7538 Kampala, Uganda
Telephone	:	041 - 255382
Fax	:	041 - 230802

The nearest public taxi stage is M.M Caltex Petrol Station on Kampala Road opposite the Uganda House Building.

The Disciplinary Committee of the Law Council will look at your complaint. If the committee agrees with you then it can take action against the advocate. An advocate can be punished in a number of ways including having to pay a fine or having to pay compensation to you.

EXPLANATIONS OF LEGAL WORDS & PHRASES
USED IN THIS GUIDE

- Adjourned:** When the Court stops a hearing, for example if time has run out on that day. The Court will normally set a new time and date when a hearing will continue.
- Advocate:** A person entitled to appear and argue for another in Court.
- Affidavit of Service:** It is a document, which records how and when someone delivers a Court document.
- Amendment of Judgments:** It is a method by which Court corrects clerical or mathematical mistakes and errors in judgments, decrees and orders.
- Appeal:** Is a complaint to a Higher Court if it is believed that the Court has committed an error or injustice. The complaint seeks to correct or reverse the judgment.
- Attachment of earnings:** Is a process where judgment creditor obtains money directly from the person or company employing the judgment debtor.
- Auctioneer:** Is a qualified individual appointed by the Court to sell property of someone who has not paid a Court Order.
- Attachment and sale of property:** Is a statement from Court that property be seized and sold
- Bailiffs:** These are private business people who are appointed to receive money and property as ordered by Court. In order to act for the Court,

	they need to obtain a license from the High Court.
Bill of costs:	Is a statement of the costs awarded by the Court.
By consent:	Is where all persons to a dispute mutually agree to end a case without the need of further Court involvement.
CADER:	Centre for Arbitration and Dispute Resolution.
Case list/Cause List:	It is a timetable of cases to be heard by the Court.
Civil Procedures Rules:	These are regulations followed by all cases at the Court.
Counterclaim:	Is a situation where the person being accused has a claim against the person accusing him/her.
Cross-examination:	The questioning of the witness of the person bringing the case by the other side.
Chamber:	Is an office or offices used by Registrars or Judges.
Decree:	Is a declaration of the Court announcing the legal consequences of the facts that they have found to be true.
Defence:	Is a document that explains the story of the person being accused.
Defendant:	Is a person against whom the case is brought.
Enforcement:	It is a process by which the winning side receives the money or property they have been awarded by the Court.

Execution:	Is the process of enforcing the judgment, usually by seizing and selling property of the debtor.
Ex parte Judgment:	Is a decision given by the Court when one of the parties is not there.
Garnishee:	Is a person who owes a debt to a judgment debtor and who has property or money to meet the debt that can be used to pay directly to a judgment debtor.
Giving evidence:	Giving the side of your story of the case in the Court.
Hearing Notice:	A document signed by the Registrar sent out to the people involved in the case informing them of a hearing date.
Hearing:	Is a formal suit proceeding in which those involved in a case are heard and evidence presented.
Judgment Creditor:	Is a person that the Court has decided is owed money.
Judgment Debtor:	Is a person that the Court has decided owes money.
Judgment:	A decision made by the judge after he/she has heard all the arguments in a case.
Judicial Code of Conduct:	Is a document setting out rules and regulations which Judges and Registrars of the Court are expected to follow.
Judicial Service Commission:	Is an organization responsible for ensuring that Judges and Registrars follow rules and regulations in the Judicial Code of Conduct.

Law Council:	Is an organization, which is responsible for supervising and controlling the professional conduct of lawyers.
Lawyer:	Is a professional person who represents clients in Court.
Mediation:	It is a method of resolving disputes using an independent and trained person who tries to help the disputing parties reach an agreed solution.
Mediation Scheme:	Under the Scheme, cases filed at the Commercial Court that are suitable for resolution by mediation can be sent to CADER to be mediated.
Oral Examination:	Is a way of the finding out about the Judgment Debtor's income, assets, and spending.
Parties:	People involved in a case.
Prohibition order:	Is an order stopping something
Plaint:	Is a document setting out details of a case.
Plaintiff:	A person who begins a case at the Court.
Receiver:	Is a person appointed to manage the property of the judgment debtor with the aim of raising money to pay the judgment debts.
Review:	Is a process of re-consideration of the case if new facts unknown to Court at the time it made the initial decision come to light or if there has been an obvious mistake or error.
Scheduling Conference:	Is a meeting where the judge goes through with the parties to a case all the arrangements that will need to be made before hearing the case.

Service: Is the delivery of Court documents to people involved in a case at the Court.

Serving: It is a recorded way of delivering Court documents to the people involved in a case.

Suit: Is a proceeding by one person against another in Court.

Summons: Is to order someone to appear in Court of Law

Summary plaint: It is a document, which tells the person being accused that a case has been brought against him/her

Taxation: This is the Court Procedure that decides how much legal costs and other expenses can be charged by a winning party in a case.

Third party: Is someone who is not one of the two main people involved in a case but who is affected by it in some way.

Warrant of Execution: This gives Court Bailiffs the authority to take goods from the defendant's home or business.

Witness Statement: A document written by the person containing what she/he intends to say in Court when the case is heard.

Witnesses: People who speak in support of the parties in the case.