

A CASE-STUDY ON THE SMALL CLAIMS COURT IN MALAYSIA

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CHAPTER 1

INTRODUCTION

There has been a need for a long time for a court designated exclusively for civil claims involving relatively small sums of money. In some countries where small claims court or tribunals have been set up, they have generally served the public well and are useful to the other courts in dispensing off justice. January 2, 1987 was a starting point for Malaysia's first small claims court to commence in full session.

Hence, this will be a good sign in disposing off the abundance of cases. Not only will it give justice to the public, by making the procedure less complicated, cheaper filing fees and speedy judicial remedy for the poor, as the saying goes, "Justice delayed is justice denied", but it needs no additional staff, less expenditure and eventually even lawyer's representation would be unnecessary. Other steps too, have been taken or envisaged to make things easy for the public, e.g. set forms for filing claims and informality of the court aura.

The benefits of such a means of arbitration or settlement go beyond the purely monetary. It will help ease the burden of the magistrates' courts, which until now have had to handle the smaller claims as well. It will also enable more small claims cases to be taken up. Also it will instil in the public a sense of justice and of justice being done.

With the establishment of the first claims court on January 2, 1987 and the setting up of such courts throughout the country on August 1, 1987¹ it is hoped that the public will be encouraged to participate in search of justice; and be made them aware of the nation's legal processes.

¹ Date of the enforcement of the Subordinate Courts (Amendment) Act, 1987.

CHAPTER 2

2.1 THE NEED TO ESTABLISH SMALL CLAIMS COURT

The most pressing problem facing the administration of justice in Malaysia today is the congestion of cases in the courts and the practical difficulty of getting them disposed as soon as possible. The root of this problem dates back to the post-independence era as litigation both criminal and civil has increased tremendously not merely in volume but in variety and complexity. The expansion of commerce and industry, the stirring of national consciousness as to the importance of fundamental rights and freedom have all reflected in the quantity and quality of judicial business. Side by side with this development has been the numerical growth of the Bar. Not unnaturally the conduct of cases has been increasingly marked by numerous legal arguments of great refinement and subtlety tending to protract litigations not to mention the number of appeals filed especially in the Superior Courts.

Due to this need to lessen the bulk of cases, we need to build more courts which specialize in small claims. However, just by increasing the number of court rooms will not ease the problem. As such we need to study, the other factors which bring the delay in disposing of cases i.e. such as delay in litigation both civil and criminal matters and shortage of court personnel.