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A s t u t e l a w y e r s w i t h b u s i n e s s a c u m e n

WHICH COURT WILL SERVE YOU BEST?

22 NOVEMBER 2011

Hanli Share

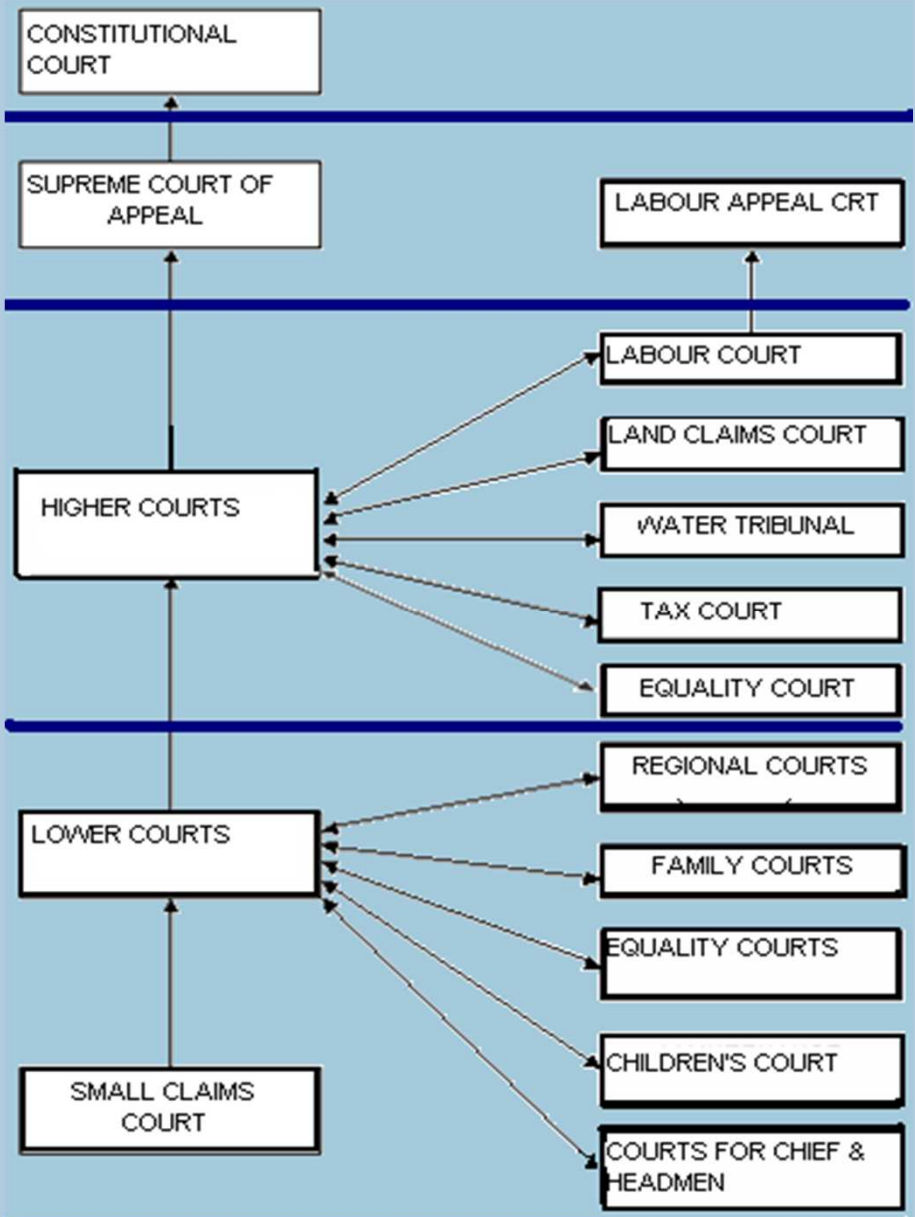
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INTRODUCTION

- Many courts in new SA
- 19 courts!
- Rules amended recently
- Understanding the system





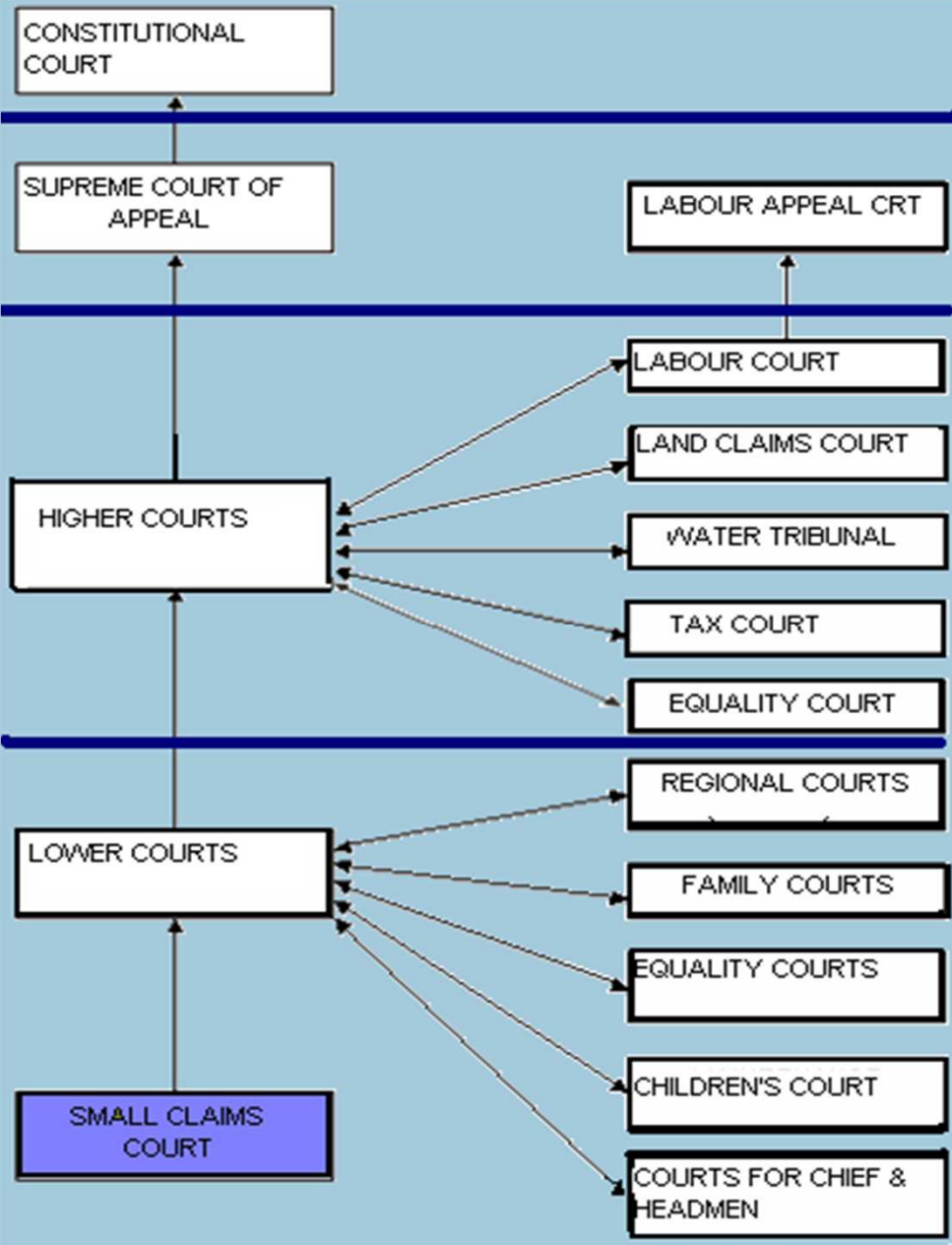
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SO WHICH ONE DO I CHOOSE?

- This is determined by
 - The nature of the claim
 - The amount of the claim
- The Court must have authority
 - Special Courts for certain types of matters





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SMALL CLAIMS COURT:

1. Purpose

For individuals

Quicker: 4 – 5 months

No attorneys

Minimal costs (R100 – R200)

E.g.: small building disputes, fender bender,
poor service, wage disputes; small
debts

2. Jurisdiction

Civil claims up to R12 000.00



SMALL CLAIMS COURT cont.

4. Matter heard by Commissioner

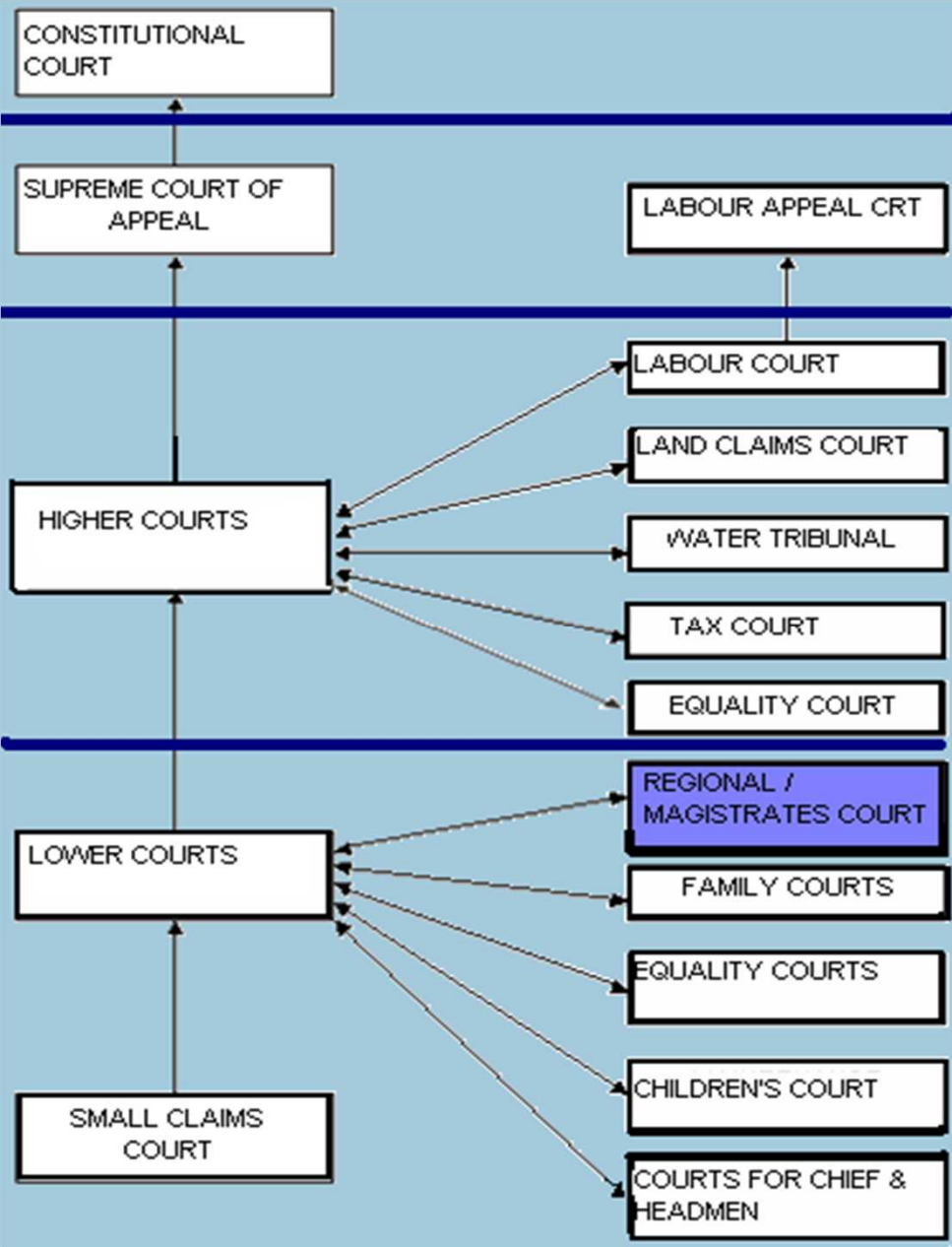
Volunteers: Senior Attorneys, Advocates, Academics

Active involvement

Court will assist claimant to present your case

5. No appeal procedures





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LOWER COURTS: MAGISTRATES' COURTS

1. Purpose

All claims

Up to R100 000.00

Attorney / Advocate required

Costs generally lower (R15 000 – R35 000)

Time frame: 12 – 18 months

2. Cannot hear

- Divorce
- Validity or interpretation of a will
- A person's status e.g. curator
- Delivery / transfer of property exceeding R100 000



LOWER COURTS: REGIONAL COURTS

1. Purpose

All types of claims (Presiding officers more experienced)

R100 000 – R300 000

Attorney / Advocate required

Costs generally lower – (R40 000 – R80 000)

Time frame: 12 – 18 months

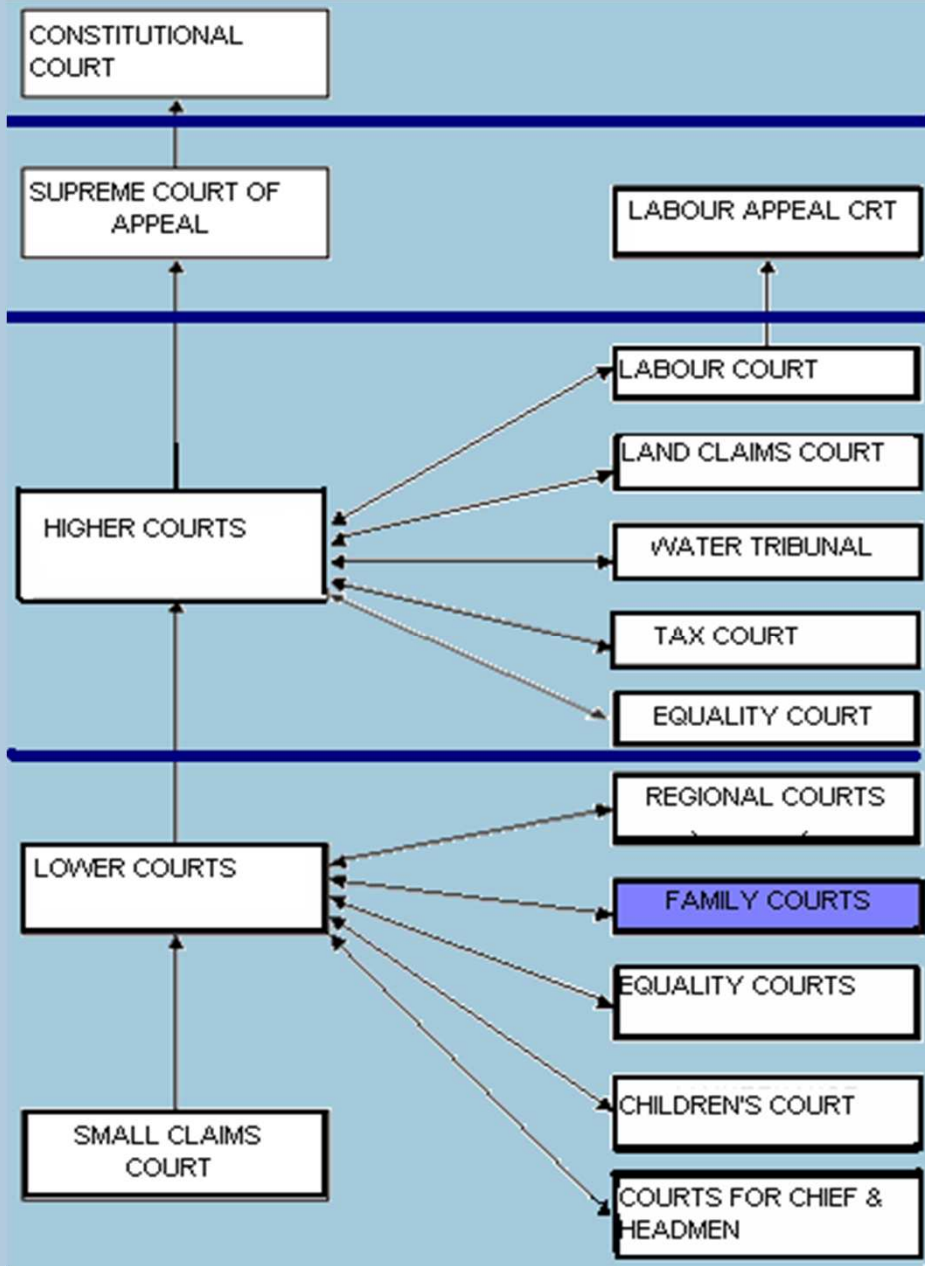
2. Can hear

Divorces

3. Cannot hear

As per Magistrates' Court e.g: will, status, delivery/transfer of property





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LOWER COURTS: FAMILY COURTS

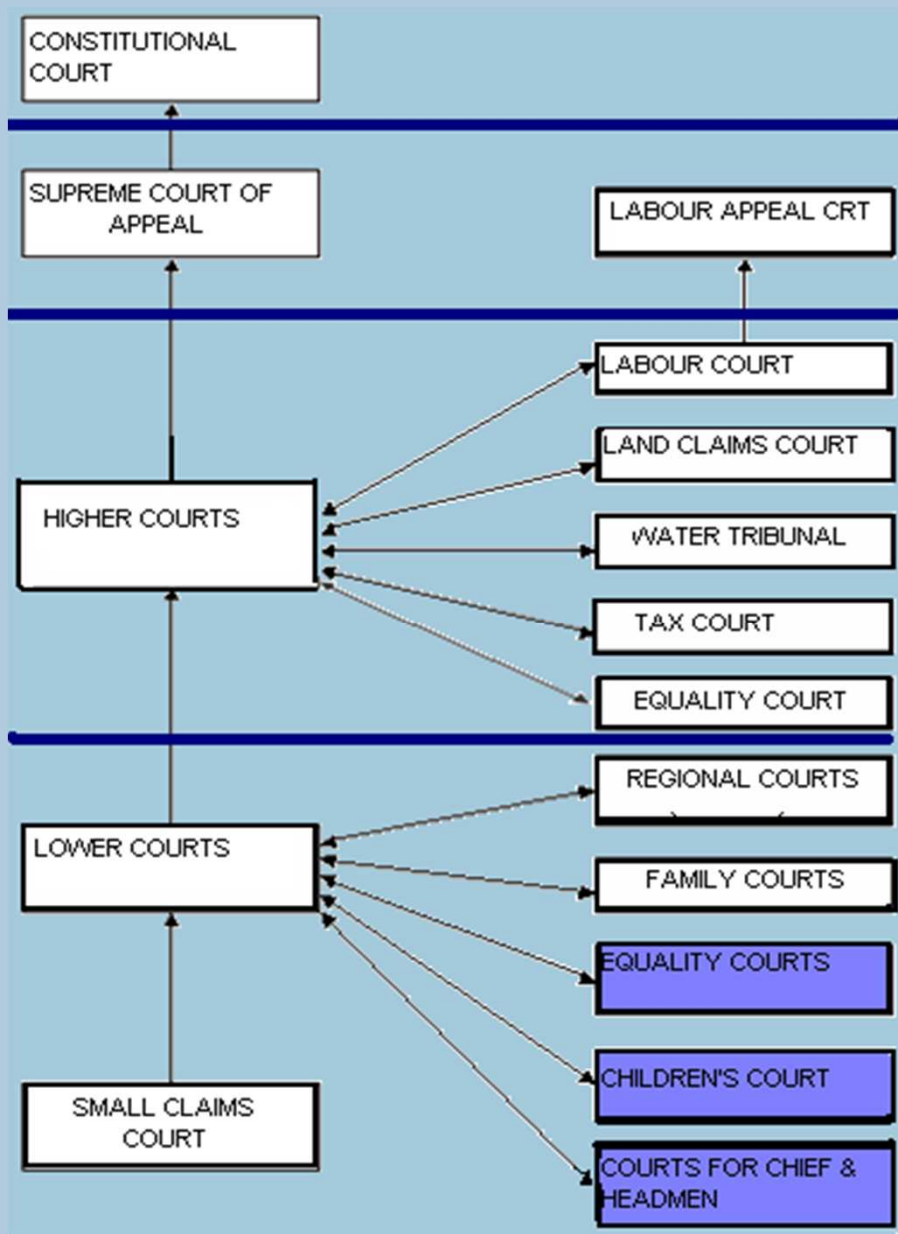
1. Maintenance Courts

- To determine amount of child support (maintenance)
- Both parents have a duty to support
- No Attorney / Advocates required unless you appoint one
- Maintenance officers assists parties
- Failure to pay maintenance = criminal offence

2. Domestic Violence Courts

- To deal with abuse in relationships
- No Attorney / Advocate required unless you appoint one
- Court's officers assist parties
- "Physical abuse" (includes economic, emotional etc)
- "Relationship" (not just family members)





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LOWER COURTS cont...

1. Equality Court

To enforce equality in the new SA

E.g: Agriform v Malema, Racial jokes Hairdresser case,

2. Children's Court

To regulate the protection of children

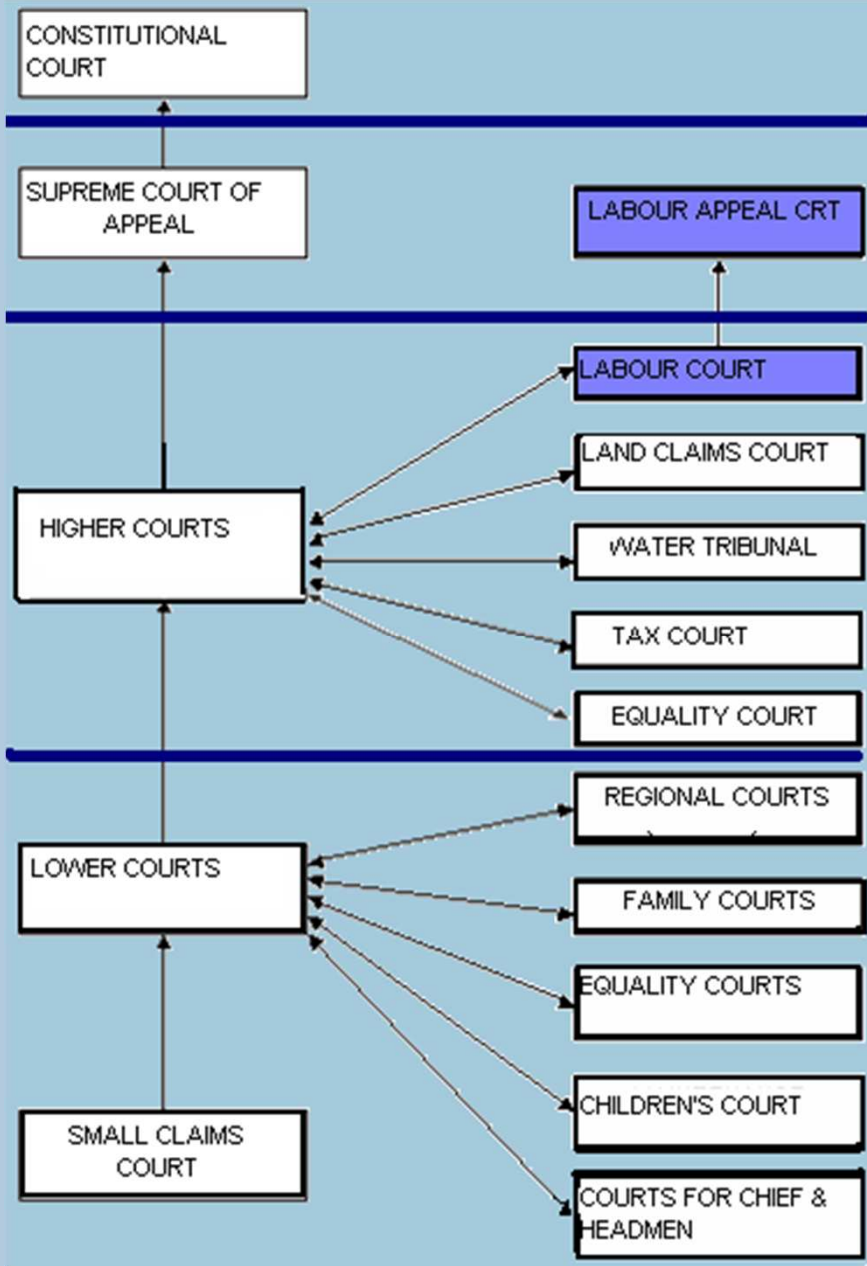
E.g: Adoptions, foster care, sexual abuse

3. Courts for chiefs and headmen

To hear customary law disputes

E.g: Lobolo, grazing of cattle





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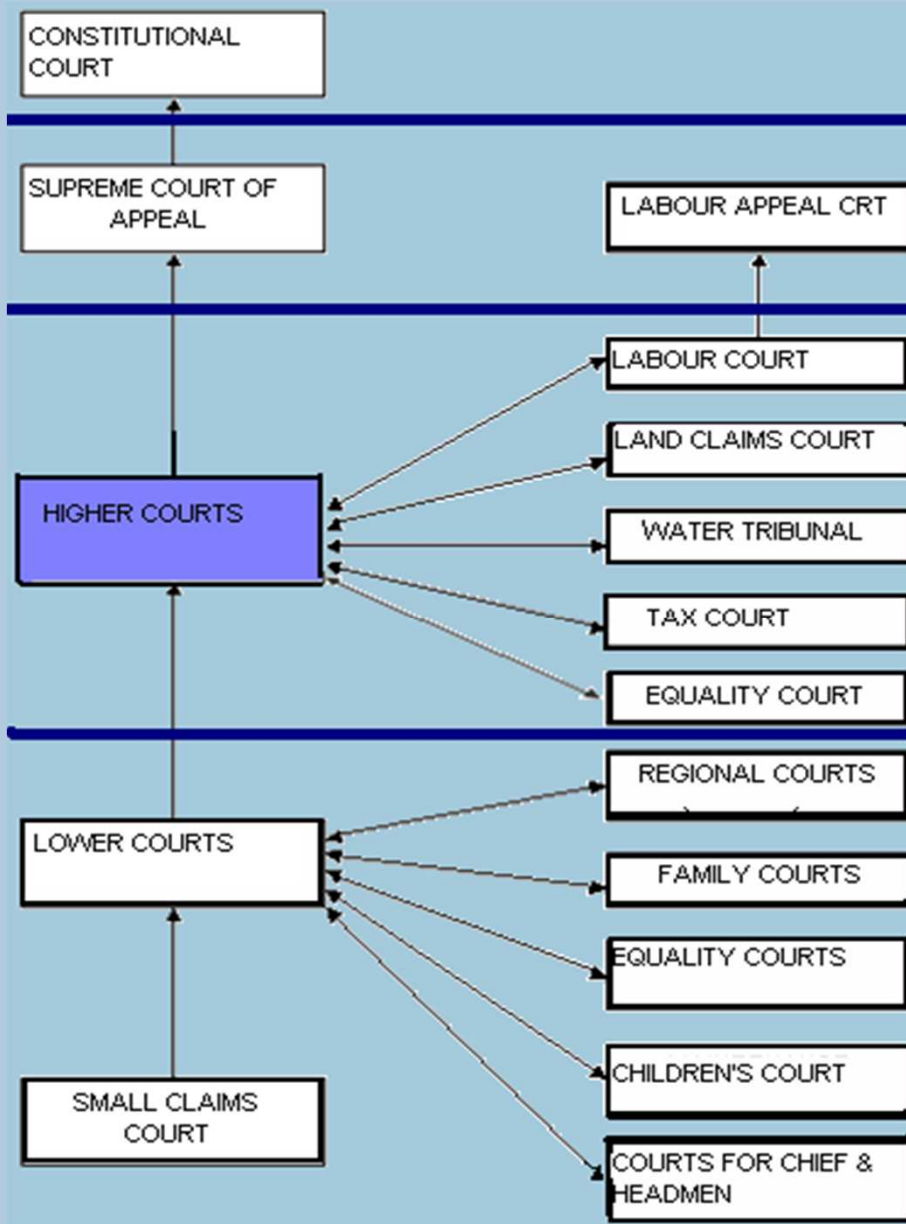
LABOUR FORUMS

- 1. CCMA** (Commission for Conciliation, Mediation, Arbitration)
 - For labour disputes only e.g unfair dismissal, single retrenchments
 - Faster, cheaper, success rate (70%)
 - CCMA assists parties
 - Conciliation – no attorneys
 - Arbitration – attorneys allowed on application
 - Time frame: 2 – 3 months

- 2. LABOUR COURT**
 - Generally hears reviews from CCMA and complicated matters e.g: (dismissal based on discrimination, mass retrenchments)
 - Attorneys / Advocates required

- 3. LABOUR APPEAL COURT**
 - For appeals from the Labour Court





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HIGH COURT

1. Purpose

All types of claims

Unlimited amounts

Attorney / Advocate required

Costs generally higher (R 100 000 – R300 000 plus)

Time frame: 18 – 24

2. Can hear all matters

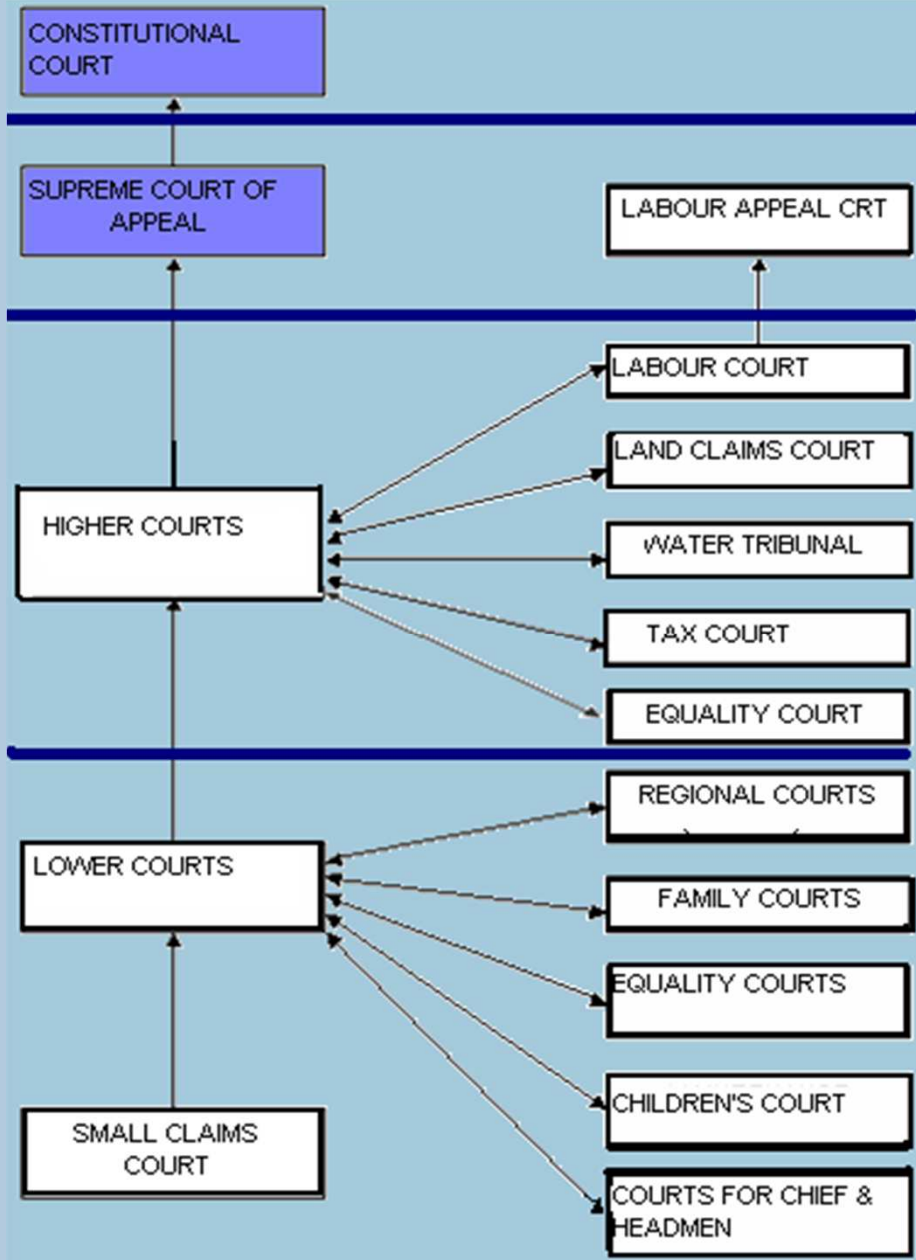
Divorce

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SUPREME COURT OF APPEAL

- All types of claims
- For appeals from High Courts only
- Bloemfontein
- Highest Court in SA except Constitutional Court
- Binding on all the lower Courts
- 3 to 5 Judges - majority decision is binding
- Costs (R 100 000 – R 200 000)
- Time frame: 3 – 6 months after HC judgment



CONSTITUTIONAL COURT

- Only hears matters pertaining to interpretation / application of the constitution
- Court is there to protect your Constitutional rights
- E.g:
 - Right to life – no death penalty
 - Right to association – gay / lesbian marriages legalized
- 11 Judges – majority judgment is binding
- Costs: R500 000 – R900 000 plus
- Time frame: 12 months after original decision





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CONCLUSION

DISCUSSION / QUESTIONS

THANK YOU

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