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ASSIGNMENT ON CIVIL AND CRIMINAL PROCEDURE RULES

**The procedure from arraignment to imposition of sentence in a criminal trial in the high court.**

A trial on indictment or information in a high court is really an elaboration or amplification of a summary trial at the magistrate court. In its pure essence, it is not much different from a summary trial, except for the elaboration of certain procedures.

These are the criminal procedure in the high court from the arraignment to the imposition of sentence in a criminal trial.

1. An indictment or information
2. Proof of evidence
3. Arraignment and plea
4. Plea of guilty
5. Plea of not guilty
6. Prosecution
7. Submission of no case to answer
8. Defense
9. Closing address
10. Judgement
11. Discharge
12. Finding of guilt and sentence

**An indictment or information**

An indictment is an accusation of crime brought against an accused for trial in a high court. An indictment or information is a criminal charge brought against a person by the Attorney general or any of his subordinate legal officers on behalf of the state or country and which is for trial at the high court.

**Proof of evidence**

This means the names, addresses and written statements of the witnesses, that the prosecution wishes to call and the list of exhibits, if any that the prosecution wishes to put in evidence at the trial. The photocopies of the list of the witnesses and the statement made to the police and list of exhibits, if any, are usually attached to the information filed by the state. The real essence of attaching these proof of evidence is to put the accuse on notice as the nature of the case against him to enable him take the necessary steps and state his defense. This is a fundamental right under the fair hearing provision of the Nigerian constitution [section 36 of CFRN as amended].

**Arraignment and plea**

An arraignment is the calling of an accuse person formally before the court by name at the beginning of a criminal proceedings to read to him the information brought against him and to ask him whether he pleads guilty or not guilty.

An accused person may plead as follows;

1. Autrefois acquit; means a plea that he has been tried for the same offence before and has been acquitted. This plea is an application of the rule pf jeopardy. Which state that a person shall not be tried again for the same offence committed.
2. Autrefois convicted; means that a plea that he has been tried and convicted for the same offence on a previous occasion.
3. He may stand mute; that means he might not say anything. A plead of not guilty is usually recorded for the person, this is so because, the law provides that where an accused person stand mute, a plea of not guilty has to be mandatory recorded for him by the court.
4. Plea of guilty to a lesser offence
5. He plead guilty to the offence charged
6. He may plead not guilty

**Plea of guilty**

Where an accused per plea of guilty, the prosecution counsel will give the court a summary of the evidence together with the details accused person background, that character and his criminal record, after this the counsel for the defense usually makes his plea in mitigation of sentence and the court then passes it judgement.

**Plea of not guilty**

Where an accused person plead not guilty, the trial then proceeds.

**Prosecution**

The counsel for prosecution always opens a criminal proceeding by calling evidence for the prosecution. He calls his witnesses and examined them one by one and tender any exhibit they may have, the witnesses are in turn cross examined by defense counsel and re-examine by the prosecuting counsel as may be necessary and the case for the prosecution closes. The burden of proof of the prosecution in criminal proceeding is proof beyond any reasonable doubt.

**Submission of no case to answer**

At the close of case for the prosecution, the defense counsel may submit that the prosecution has not produced a sufficient evidence or made out a prima facie case against the accused and consequently, the accused has no case to answer and therefore the case should not proceed further. The defense counsel makes the submission by addressing the court. The prosecuting counsel usually replies. The judge then makes a ruling on this submission.

**Defense**

After the close of the case for the prosecution and the failure of a no case submission, if such submission was made, then the case for the defense then open. The accused and the witnesses if any, are one after the other led in evidence in chief by the counsel for the defense and are cross examined by the prosecuting counsel and are re-examined by the counsel for defense as may be necessary.

**Closing addresses**

After the close of the case for the defense, the counsel for both side then make closing speeches by addressing the court from their filed written addresses. The prosecution counsel is usually the first to address the court, he sums up or review the case from the both side. He points out the strength for the prosecution and identify the weaknesses if any of the defense and then urges the court to convict the accused as charged.

Next, the counsel for the defense addresses the court and points out the weaknesses of the case for the prosecution. If the case for the prosecution is a packs of lies and a mere fabrication etc. the general rule behind the closing speeches is that the accused or his counsel is entitled to the last word, that is, it is his right to round off the addresses.

**Judgement**

After closing addresses by the counsel for the both sides, the judge fixes the judgement for a date provided that it is not a summary trial and the court rises in adjournment to enable it deliberate, consider or evaluate the totality of evidence in the case. On the adjourned date the court resumes sitting, the case is called and the judge begins to deliver his judgement on the case, however, where a trial is by summary procedure the judge may deliver the judgement there and then or he may retire to his own chamber to consider judgement and resume sitting to deliver it on the same day, as the case may be.

In the judgement the judge sums up, weighs or reviews the evidence for both sides. He states his reasons for believing and accepting the case for either side and also gives his reason for disbelieving and rejecting the evidence of the other side. In summary the judge may find the accused not guilty or guilty as the case may be. This must be done according to law.

**Discharge**

Where an accused person has not been found guilty, on merit, the judge will dismiss the information or changes and accordingly discharge and acquit the accused person as provided under the criminal procedure law. On the other hand, if the prosecution failed on a technicality, then the court will usually discharge the accused but not acquit him.

**sentence**

where an accused is found guilty, before passing sentence an allocutus, plea for mercy or leniency is usually made by the counsel for the defense. After the allocutus , the judge passes sentence on the accused.

Types of sentence

1. Imprisonment, usually with hard labour
2. Fine
3. Death sentence
4. Canning
5. Deportation
6. Binding over order
7. Order for detention during the pleasure of the president or governor as the case may be
8. Order for disposal of property
9. Order for costs
10. Award of damages
11. Probation.

**Comment on the remedy available to the accused after the , imposition of sentence.**

after the imposition of sentence by the high court to the accused person, the accused may appeal to the court of appeal for a review of the judgement delivered by the high court. Or during the prosecution, the attorney General may enter at that time and set him free without further hearing. Or if God wish, he might be one those that will be pardon by the president or governor of a state.

**Comments on the various methods by which civil proceedings . may be commenced in the high court.**

**They are;**

1. Petition
2. Summon
3. Originating summon
4. Originating application/ motion
5. Writ of summon

**Petition**

**A** petition is a written document against someone in a court to seek redress. Petition is a formal written request for judicial action. A petition may be written for divorce, for election [ election petition] or a company can write petition against another to seek redress in the high court. All these are civil matters which can be settled by the high court in question.

**Summon**

This is an official order issued by the court, to a person to appear in court for a stated purpose, for instance to answer a case, give evidence or tender a document and so forth. The plaintiff or his counsel commences the action by filing in the court a request for a summon, which may be ordinary or default summons which is issued for debts or liquidated money demands setting out details of claim, which summons is then served by the court bailiff on the defendant, that is, the person who has been sued.

**Originating application or motion**

An originating application is the first provisional or primary application in the high court on civil cases such as matters relating to fundamental human rights.

**Originating summon**

An originating summon is the first provision by the plaintiff to sue a defendant in the high court which contains all the necessary document needed for the action to begin in high court. Examples are will, contract, law, unwritten law.

**Writ of summon**

**A** writ of summon is a written order by the high court to someone to appear in the court of law in other to answer the action brought against him in the high court within a specific period of time.

**The offense committed must be stated**, usually an action which have to do with dispute.