**NAME: ARICHOKE FEKE DIVINE**

**MATRIC NO: 18/LAW01/045**

**COURSE TITLE: NIGERIAN LEGAL SYSTEM II**

**COURSE CODE:LPI 204**

**1)State clearly the procedure from arraignment to imposition of sentence in a criminal trial in the High Court. Comment on the remedy available to the accused after the imposition of sentences.**

The criminal procedure outline is divided into two major processes; the Pre-trial stage and the Court process. The Pre-trial stage means the process leading up to an arrest, it involves; complaints, investigation and arrest.

The focus of our study is in the court process which encompasses everything done in the court after an arrest and leading up to the imposition of a sentence.

1. **ARRAIGNMENT:** An arraignment is the first formal court proceeding which must occur within a reasonable time after an arrest because a delay violates the defendants right to personal liberty[[1]](#footnote-1). Simply put, an arraignment is the stage where;
2. The court will advise you of your constitutional rights: the court will advise the defendant of certain constitutional rights, such as the right to trial, the right to counsel and the right against self-incrimination. The defendant can choose to have an attorney present.
3. You will find out the specific charges that have been filed against you: the judge must read out the criminal complaint, indictment, information or other charging document to the defendant unless the defendant waives the reading. The defendant is also entitled to receive a copy of the charging document.
4. You will have your first opportunity to enter a plea: once the court has advised the defendant of the charges against him, the judge will then ask how he pleads to those charges. The defendant can plead guilty, not guilty or no contest.
* **Not guilty**: If the defendant chooses not to plead guilty, this will require the prosecutor to gather the evidence against the defendant and gives the defendant an opportunity to review the evidence, investigate the case, and determine whether the defendant committed the crime. A not guilty plea means simply that the defendant is going to make the state prove the case against him.
* **Guilty**: If the defendant pleads guilty to a minor offence at the arraignment, such as disorderly conduct, the judge may sentence the defendant at arraignment which mean the prosecutor and the defense attorney may negotiate the guilty plea and agree on a sentence during the arraignment. If the case is more serious such as a felony the judge will set a sentencing hearing.
* **No contest (“nolo contendere”)**: If a defendant pleads no contest, he acknowledges that the prosecutor has enough evidence to prove he committed a crime, but he does not admit guilt – in order words, that he did it. When a defendant enters this plea at an arraignment, the court proceeds in the same way it would proceed if the defendant pleaded guilty.
1. The court will set, modify, reinstate, or exonerate your bail: After the arraignment, if bond is approved by the judge, the court will set the bail amount. “Posting bond” means that the defendant, in exchange for being released back into the community, pledges to the court that he will appear in court when required and comply with any additional orders from the judge. “Bail” refers to the sum of money a defendant may be asked to pay the court to ensure his return, if he can afford it. He will forfeit this money if he fails to appear before the court and a warrant will be issued for his arrest.

Most offences are “bailable” meaning that if the defendant can produce collateral, or have someone provide it on his behalf, he will be able to obtain release while awaiting trial. Only people charged with very serious offences are denied bail such as murder and treason.

1. **TRIAL:** A criminal trial is a legal proceeding in which a prosecutor, arguing on the behalf of the people accuses the defendant of a crime and presents evidence to establish the defendant’s guilt beyond a reasonable doubt[[2]](#footnote-2). Although both the prosecution and defense are entitled to a jury trial, they may opt to allow the judge to assume the jury’s role as a “trier of fact” and decide the case[[3]](#footnote-3)

A trial can be divided into the following stages;

1. Opening Proceedings

At the opening of the trial, the court will ask that the defendant introduce his or herself. Next, the charge will be read by the prosecuting counsel and the defendant will be given the opportunity to make statements.

1. Examination of Evidence

This begins with the prosecutors opening statement, which outlines the facts he or she intends to prove at trial. Then the prosecutor’s evidence will be introduced. Real evidence will be displayed, testimony of witnesses will be heard, and documentary evidence will be read in full or summarized.

Regarding the testimony of witnesses, the party calling the witness will first question the witness and the other party will cross-examine. The burden rests on the prosecutor to prove the case beyond reasonable doubt[[4]](#footnote-4) and it is his job to make sure material witnesses are called to the stand[[5]](#footnote-5) The party calling the witness is entitled to ask follow-up questions and at the end the court may ask supplementary questions if necessary.

1. Questioning of Defendants

The defendant will be placed under questioning: first by the defense counsel, then by the prosecutor, and finally by the court.

1. Closing Arguments

When all the evidence has been heard, the prosecution and then the defense counsel will make their closing arguments. The argument will cover issues of fact, law, and sentencing. Prosecutors make sentencing recommendations at the end of their closing arguments.

During this trial lawyers can seek adjournments, although it is principle of law that adjournments are not granted as a matter of right[[6]](#footnote-6).

1. **IMPOSITION OF SENTENCE/ SENTENCING:** At end of the trial, if the accused person is found guilty, he must be given the appropriate punishment for his reprehensible conduct. If the judge is merely approving a mutually agreed-upon sentence determined during plea bargaining, the hearing may only take a few minutes. For more serious offences involving matters of incarceration, however, the judge may hear arguments regarding the sentencing from the prosecutor, defense attorney, victims of the crime or the convict himself.

At the conclusion of hearing, the judge will impose the sentence, which may consist of fines, probation, time in jail or prison, or some combination thereof.

**REMEDIES AVAILABLE TO THE ACCUSED AFTER IMPOSITION OF SENTENCE**

If unsatisfied with the High Court judgement, the parties can file an appeal to the Supreme Court within 14 days after the judgement. The purpose of this appeal is to ensure proper interpretation of the Constitution and law. Therefore, the grounds for this appeal are limited to:

1. A violation of the constitution or an error in interpretation or application of the constitution
2. Contradiction with Supreme Court precedent
3. Contradiction with High Court precedent when no Supreme Court precedent exists.

However, as the court of last resort, Supreme Court is authorized, at its discretion, to reverse lower court decisions on the following grounds:

1. There is a serious error in interpretation or application of law
2. The degree of sentence is extremely unjust
3. There is a grave fact-finding error which is material to the judgement
4. There is any reason which would support reopening of procedures
5. The sentenced punishment has been abolished or changed or for which the general amnesty has been proclaimed.

The Supreme Court only examines record of the case and never examines witnesses or defendants although the Supreme Court may hear the argument of the parties involved. When the Supreme Court concludes that there is no ground for reversal, it dismisses the appeal. If the ground exists, the Court will vacate the judgement below and either remand the case or enter its own judgement.

**2) Comment on the various methods by which civil proceedings may be commenced in the High Court**

Commencement of a civil action is the process taken to institute an action before a competent court to determine the issues between parties.

Essentially there are 2 modes of commencing civil action in Nigerian courts namely[[7]](#footnote-7);

By Writ of Summons

By Originating Summons

Each of these modes is dependent on the specific nature of cases.

**WRIT OF SUMMONS:** this is a formal document addressed to the defendant requiring him to enter an appearance if he wishes to dispute the plaintiff’s claim. Civil actions involving substantial disputes of facts are commenced by way of a writ. These include but are not limited to:

* Contract actions, e.g. claim for damages resulting from breach of contractual terms and obligations etc.
* Tort actions, e.g. claim for damages in respect of property damage resulting from road accidents and negligence, claim for damages resulting from fraud and defamation etc.
* Personal injury actions e.g. claim for damages in respect of personal injury and or death resulting from road and industrial accidents or negligence etc.
* Intellectual property actions, e.g. claim for damages resulting from the infringement of copyright, trademark or patent, etc.
* Admiralty and Shipping actions

**ORIGINATING SUMMONS**: An action is commenced by way of an Originating Summons where:

* It is required by statute
* The dispute is concerned with matters of law in respect of which there is unlikely to be any substantial dispute of facts.

Compared to Writ of Summons, the Originating Summons is a simpler and swifter procedure for the resolution of disputes as it is determined generally on affidavits filed and does not involve pleadings or many interlocutory proceedings. However, many of the requirements concerning issuance, duration, renewal and service regarding a writ may apply, with the necessary modifications, to an Originating Summons.

1. CFRN 1999 Section 35(4,5) [↑](#footnote-ref-1)
2. The defendant represented by himself or his attorney, is not required to prove his innocence or even present any evidence. [↑](#footnote-ref-2)
3. This is called bench trial [↑](#footnote-ref-3)
4. Evidence act section 138 [↑](#footnote-ref-4)
5. STATE v. AHIE (2000) 80 LRCN 2513; OMOGODO v. STATE (1981) 5 S.C. 5 at 21. [↑](#footnote-ref-5)
6. This is entirely within the discretion of the court, and in exercising this power to grant or refuse the application for adjournment, it must be done judicially judiciously after considering all the circumstances of the case. See Echaka Cattle Ranch ltd v. Nigerian Agricultural and Cooperative Bank ltd, (1993) 8 NWLR (pt. 310) 233. [↑](#footnote-ref-6)
7. HCLS (CIVIL PROCEDURE) RULES 2004 order 3 [↑](#footnote-ref-7)