18/Law01/166

**Number 1**

Arraignment and Plea

An arraignment is a formal reading of a criminal charging document in the presence of the defendant to inform the defendant of the charges against the defendant. In response to arraignment, the accused is expected to enter a plea. Such pleas include:

* *Autrefois acquit* means a plea that he has been tried for the same offence before and has been acquitted again. This plea is an application of the rule against double jeopardy, which states that someone cannot be tried twice for the same offence.
* *Autrefois convict* means a plea that he has been tried and convicted for the same offence on a previous occasion. This is an application of the rule against double jeopardy.
* Where an accused stands mute, that is, without saying anything, a plea of not guilty is usually entered for the accused.
* Plea of guilty to a lesser offence
* Plead guilty
* Plead not guilty

Under Part 24 of the Criminal Procedures Act 1990 states:

215. The person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the court finds that he has not be been duly served therewith.

216. (1) Where an accused person is charged with having previously been convicted he shall not when called upon to previous lead to the other charges or counts be required to plead to such charges unless he pleads guilty to the rest of the charges or counts on which he is to be tried or is found guilty on one or more of such charges or counts.

(2) Where the trial is with assessors, a charge or count of a previous conviction shall not be read out or charged until a verdict has been returned or a decision given in respect of the charge relating to the subsequent offence and if such verdict or decision is one of not guilty, he shall not be called upon to plead in respect of the previous conviction.

(3) Where a person may properly be called upon to plead to a charge or count of a previous conviction, he shall be asked if he has been previously convicted as charged or not and if he admits that he has been so previously convicted the court may find him guilty and proceed to sentence him but if he denies that he has been previously so convicted or stands mute of malice or does not answer directly to such question the court shall inquire concerning such previous conviction.

(4) A previous conviction may be proved in the manner set out in Part II of the Evidence Act or otherwise to the satisfaction of the court.

217. Every person by pleading generally the plea of not guilty shall without further form be deemed to have put himself upon his trial.

218. If the accused pleads guilty to any offence with which he is charged the court shall record his plea as nearly as possible in the words used by him and if satisfied that he intended to admit the trust of all the essentials of the offence of which he has pleaded guilty, the court shall convict him of that offence and pass sentence upon or make an order against him unless there shall appear sufficient cause to the contrary.

219. If the accused when called upon to plead to a charge or information for any offence can lawfully be convicted on such charge or information of some other offence not stated in such charge or information he may plead not guilty of the offence stated in the charge or information but guilty of such other offence and the court, if satisfied as in the last preceding section provided, shall record his admission as nearly as possible in the words used by him, and may in its discretion, convict the accused of the offence of which he has pleaded guilty and proceed as in the last preceding section provided, unless the prosecution states its desire to proceed with the trial of the accused for any offence stated in the charge or information.

220. If the accused person when called upon to plead shall stand mute of will not or cannot answer directly malice or when called upon to plead to the charge the court shall enter or cause to be entered a plea of not guilty on behalf of such person and the plea so entered shall have the same force and effect as if such person had actually pleaded the same, or else the court shall thereupon proceed to try whether the accused person be of sound or unsound mind in accordance with the provisions of Part 25 of this Act and if he shall be found to be of sound mind shall proceed with his trial.

221. (1) any accused person against whom a charge or information is filed may plead-

(a) That by virtue of section 181 of this Act he is not liable to be tried for the offence with which he is charged; or

(b) That he has obtained a pardon for his offence.

(2) If either of such pleas is pleaded in any case and denied to be true in fact, the court shall try whether such plea is true in fact or not.

(3) If the court holds that the facts alleged by the accused do not prove the plea, or if it finds that it is false in fact, the accused shall be required to plead to the charge or information.

(4) Nothing in this section shall prevent a person from pleading that by virtue of some other provision of law he is not liable to be prosecuted or tried for any offence with which he is charged.

If You Are Charged With A Felony: If you are charged with a felony you will not be arraigned at your first court date. When you are charged with a felony you are entitled to a preliminary examination of the case before you will ever be arraigned on felony charges. At that preliminary examination, the State must prove that probable causes exists that a crime was committed and that you committed that crime. This all must be proven before the judge will arraign you on felony charges. If the judge finds that the State has meet their probable cause burden, then the judge will “bind over” the defendant. This is just way of saying that the State can go forward prosecuting you for the crime charged. Usually immediately after you are, “bound over” the judge will perform the arraignment.

If You Are charged With a Misdemeanor in District Court: If you are in district court with a misdemeanor case the judge will arraign you on your first court date. You are not entitled to a preliminary examination like you are with a felony case. If you have a lawyer before your first court date, then your lawyer will do nearly all of the talking in front of the judge. Your lawyer will address bond conditions; they will accept the complaint on your behalf and waive the formal reading, then enter a not guilty plea on your behalf and get a new court date. In some instances, your lawyer may request that further court appearances by you be waived and your lawyer be allowed to appear on your behalf.

Mentally Ill Persons

Some accused persons may be too mentally ill or disorder to make a plea to a criminal charge. This is usually referred to as “unfitness to plead”. Under the Criminal Code Act:

223. (1) When a Judge holding a trial or a magistrate holding a trial or an inquiry has reason to suspect that the accused is of unsound mind and consequently incapable of making his defense the Judge, jury or magistrate, as the case may be, shall in the first instance investigate the fact of such unsoundness of mind.

(2) Such investigation may be held in the absence of the accused person if the court is satisfied that owing to the state of the accused's mind it would be in the interests of the safety of the accused or of other persons or in the interests of public decency that he should be absent, and the court may receive as evidence a certificate in writing signed by a medical officer to the effect that such accused person is in his opinion of unsound mind and incapable of making his defense or is a proper person to be detained for observation in an asylum, or the court may, if it sees fit, take oral evidence from a medical officer on the state of mind of such accused person.

Under section 224 subsection (2): If such medical officer shall certify that such person is of unsound mind and incapable of making his defense, the judge or magistrate shall, if satisfied of the fact, find accordingly, and thereupon the inquiry or trial, as the case may be, shall be postponed; and if the judge or magistrate is satisfied that the accused person is of sound mind and capable of making his defense the court shall proceed with the trial or inquiry as the case may be.

Prosecution

The counsel for prosecution always opens a criminal proceeding by calling evidence for prosecution. He calls in witness to examine them and they are cross-examined by the defense counsel and re-examined by the prosecution counsel. The burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt. For it is better for a guilty person to go scout free than for an innocent person to suffer (Ukorah v State)

Submission of “No Case to Answer”

At the close of the case for the prosecution, the defense counsel may submit that the prosecution has not produced 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 prosecution usually replies. The judge then makes a ruling on this submission. The judge may accept the submission and make a ruling that the accused has no case to answer.

Defense

After the close of the case for the prosecution and the failure of a no case submission, if such submission was made, the case for the defense then opens. The accused and the witness, if any, are examined by the defense, cross-examined by the prosecution and re-examined by the defense.

Closing Address

After the close of the defense, the counsel from both sides makes a closing address or speech. The prosecution counsel goes first followed by the defense. The two counsels are meant to strengthen their case and identify the weakness of the other counsel

Judgment

After the closing address by the counsel from both sides, the judge fixes the judgment 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 and the judge delivers his judgment. If it is a trial by summary the judgment is given there and then.

Discharge

Where an accused person is found not guilty, on merit, the judge will dismiss the information and charges and accordingly discharge the accused under the criminal procedure law

Sentence

Where the accused person s found guilty, before passing sentence an allocutus, plea for mercy or leniency is usually made by the counsel for the defense. After the judge passes the judgment on the accused. Some judgment passed include: imprisonment, fine, death, caning, amongst others.

Remedies Available to an Accused Person after Imposition of Sentence

If you are found guilty after a trial, you have the right to an appeal process. There are many reasons for an appeal of a criminal case, but appeals are also very difficult, so talk to a lawyer to make sure you know what is best for you.

There are also important deadlines that apply to appeals. If you miss the deadline, your appeal will most likely be dismissed.

For misdemeanor cases, you must file a Notice of Appeal (Misdemeanor) within 30 days of the date of the judgment or order.

For felony cases, you must file a Notice of Appeal — Felony (Defendant) within 60 days of the date of the judgment or order.

Keep in mind that the appeal is not a new trial. The appellate court can review the evidence (testimony and exhibits) presented at your trial to see if the trial court made a legal error in how the testimony or exhibits were received. The appellate court does not decide the facts of the case as the judge or jury in the trial court does.

You can only appeal if:

1. You say there was not enough evidence in your trial to justify the verdict or judgment; and/or

2. You say there were mistakes of law during or before the trial that hurt your case.

If you say there was not enough evidence in your trial to justify the judgment, the appellate court will review the record and decide if there was substantial evidence to support the judgment. If you say mistakes of law were made, the appellate court will hold a hearing to listen to both parties. Then they will decide if there was any irregularity or mistake that prejudiced (hurt) your case.

In addition to appealing after a trial, there are other situations when you can file an appeal, like appealing the validity of a plea or probation violations. Talk to your lawyer to learn more about your options to appeal.

• If you are appealing a misdemeanor conviction, you can appeal to the appellate division of the superior court.

• If you are appealing a felony conviction, you can appeal to the Court of Appeal in your appellate district

**Number 2**

* Commencement of Action

Under the High Court of Lagos State (Civil Procedure) Rules 2004 Order 3 which states the form and commencement as follows:

1. Subject to the provisions of these rules or any applicable law requiring any proceedings to be begun otherwise than by writ, a writ of summons shall be the form of commencing all proceedings

(a) Where a claimant claims:

(i) Any relief or remedy for any civil wrong or

(ii) Damages for breach of duty, whether contractual, statutory or otherwise. Or

(iii) Damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or property.

(b) Where the claim is based on or includes an allegation of fraud, or

(c) Where an interested person claims a declaration.

2. (1) All civil proceedings commenced by writ of summons shall be accompanied by:

(a) Statement of claim.

(b) List of witnesses to be called at the trial,

(c) Written statements on oath of the witnesses and

(d) Copies of every document to be relied on at the trial.

(2) Where a claimant fails to comply with Rules 2 (1) above, his originating process shall not be accepted for filling by the Registry

3. Except in the cases in which any different forms are provided in these Rules, the writ of summons shall be in Form 1 with such modifications or variations as circumstances may require.

4. A writ of summons to be served out of Nigeria shall be form 2 with such modification or variations as circumstances may require.

5. Any person claiming to be interested under a deed, Will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.

6. Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of Construction and for a declaration as to the right claimed.

7. A Judge shall not be bound to determine any such question of construction if in his opinion it ought not to be determined on originating summons but may make any such Orders as he deems fit.

8. (1) an originating summons shall be in the Forms 3, 4 or 5 to these rules, with such variations as circumstances may require. It shall be prepared by the applicant or his Legal Practitioner, and shall be sealed and filed in the Registry, and when so sealed and filed shall be deemed to be issued.

(2) An originating summons shall be accompanied by:

(a) An affidavit setting out the facts relied upon:

(b) All the exhibits to be relied upon:

(c) A written address in support of the application.

(3) The person filing the originating summons shall leave at the Registry sufficient number of copies thereof together with the documents in sub-rule 2 above for service on the respondent or respondents.

9. Subject to the provision of the Sheriffs and Civil Process Act, a writ of summons or other originating process issued by the court for service in Nigeria outside Lagos State shall be endorsed by the Registrar of the Court with the following notice

"This summons (or as the case may be) is to be Served out of Lagos State of Nigeria and in the ……………. State"

10. (1) The Registrar shall indicate the date and time of presentation for filing on every originating process presented to him and shall arrange for service thereof to be effected.

(2) An originating process shall not be altered after it is sealed except upon application to a Judge.

In other words an action may be commenced in the High Court by a counsel filing one or a combination of the following papers in court:-

(i) Writ of Summons, or originating summons, together with a statement of claim, or

(ii) Ex-parte motion, with or without a writ of summons and a statement of claim, which may be filed later.

(iii) Petition, as may be necessary, such as in matrimonial proceedings for divorce and so forth, or winding up of a company for its inability to pay its debts and so forth. A writ of summons when filed is sealed by embossing the court’s name on it for service by bailiff on the defendant to give him notice of the claim, made against him and requiring him to acknowledge service and to defend it, if he does not admit the claim. A statement of claim may be filed along with the writ or later on within 14 days of the service of the writ on the defendant.

A writ usually contains the following endorsements:

(i) Names of the parties to the suit, that is:

(a) The name of the Plaintiff and his address;

(b) Name of the defendant and his address, and

(c) Name of the plaintiff’s solicitor and his business address for service of court processes.

(ii) An endorsement of the claim against the defendant: A writ is required to be served on the defendant personally. The life of a writ is 12 months, within which time it has to be served, although its life may be renewed before it expires to enable it to be served.

* Appearance:

A defendant may enter an appearance to a writ after an acknowledgement of the writ by sending by post to the Registrar a memorandum of appearance together with a copy of the memorandum. Where the defendant appears in person, the memorandum must be signed by him and must contain an address for service, which address must be within the jurisdiction of the High Court.

However, where a defendant fails to enter appearance, within the time frame, the plaintiff, may by a motion on notice obtain interlocutory or final judgment against the defendant in default of appearance and or failure to defend the action. As a final judgment, the judgment is final with respect to the liability of the defendant to pay damages as well as with respect to the quantum of damages.

* Settlement:

Parties to an action may also settle the dispute for valuable consideration or without consideration and withdraw the action without filing terms of settlement in which cases the action will be struck out by court or by filing terms of settlement in court, which will pronounce it as consent judgment of the court in conclusion of the action.

* Summary Judgment:

Summary judgment is a procedure or device available for promptly and expeditiously obtaining judgment and disposing off a controversy or matter without a trial. It is usually available where:

(i) There is default of appearance, and or

(ii) Failure to file a defense, or

(iii) When there is no dispute as to either material facts or inferences.

This procedure permits any party to a civil action to move for a summary judgment on a claim, counter claim or cross-claim where he believes that there is no genuine issue of material fact to be tried and that he is entitled to judgment as a matter of law, in any of the situations listed above.

* Pleadings:

Pleadings are written statements served by a party on his opponent and containing the allegations of fact on which the party relies. They enable the parties to determine areas on which they are agreed and areas on which there is a controversy between them.

Certain facts stated by a party may be admitted by his opponent; in that case the fact need not be proved. Thus, pleadings enable each party to know what facts he had to prove at the trial and surprise, which might follow from one party rising at the trial facts that his opponent did not anticipate, is avoided. The principal advantage of pleadings is that they enable the parties to determine the precise issues in controversy between them.

The Object of Pleadings includes:-

(i) To state the claims of the parties.

(ii) To give the parties time for considered reply.

(iii) To ascertain the issues in dispute or controversy between the parties this requires trial and decision by court

(iv) To eradicate irrelevant matter, and

(v) To avoid a party spring a surprise by raising an issue he did not plead during the trial.

Thus, a pleading must not state or set out law but may raise an issue of law but without reaching conclusions of law.

Citation

* <https://www.courts.ca.gov/1069.htm>
* Ese Malemi ‘The Nigerian Legal System: text and cases’
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* The 1999 constitution of the Federal Republic of Nigeria as amended