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**Criminal Procedure in the High Court**

* **Arraignment and Plea**

Arraignment is the calling of an accused person formally before the court by name at the beginning of a criminal proceeding, to read to him the indictment or information brought against him and to ask him whether he pleads guilty or not guilty. In other words, arraignment means, the registrar or other officer of court calling the accused by name while the accused is standing in the dock and reading over and explaining the charge or information to the accused in a satisfactory way and asking the accused to make his plea thereto instantly. This is called the arraignment of a person before court.

An accused person may plead as follows:

1. **Autrefois acquit**: *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 against double jeopardy, which states that a person cannot be tried twice for the same offence. It is a fundamental right under the fair hearing provisions of the Nigerian Constitution.

**2. Autrefois convict**: *Autrefois convict* means a plea that he has been tried and convicted for the same offence on a previous occasion. He cannot be tried again. This is also a rule against double jeopardy.

3. **He may stand mute**: Where an accused stands mute, that is, without saying anything, a plea of not guilty is usually entered for the accused. This is so because the law provides that where an accused stands mute, a plea of not guilty has to be mandatorily recorded for him by the court.

4. **Plea of Guilty to a Lesser Offence**: However, while intending to plead “not guilty” to the offence charged, an accused person may plead guilty to a lesser offence which is not on the information. Where this plea is accepted by the prosecution, the court may pass its sentence accordingly. Here the prosecution usually drops the instant charge.

5. He may plead guilty to the offence charged.

6. He may plead not guilty.

* **Plea of Guilty**

Where an accused person pleads guilty, the counsel for the prosecution will give the court a summary of the evidence together will details of the accused person’s background that is, character and his criminal record, if any. After this the counsel for the defence usually makes his allocutus or plea in mitigation of sentence and the court then passes its sentence.

* **Plea of not Guilty**

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

* **Plea Bargaining**

Plea bargaining or plea negotiation is negotiating and agreeing for an accused to plead guilty to a lesser crime, in exchange for the dismissal of the serious criminal charge brought against him for a quick disposal of the entire criminal proceedings. The concept of bargaining began in western countries, and it is common there, especially in the United States of America. The idea of plea bargain is not new to the Nigerian legal system as the criminal procedure laws have provision for an accused to plead guilty to a lesser offence instead of more serious offence brought against him. Where an accused person changes his plea from guilty to not guilty, the trial then proceeds.

* **Prosecution**

The counsel for the prosecution always opens a criminal proceeding by calling evidence for the prosecution. He calls his witness and examines each in chief, and tenders any exhibit they may have. The witnesses are in turn cross-examined by the defence counsel and re-examined by the prosecuting counsel as may be necessary and the case for the prosecution closes.

The burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt. Where the burden of proof is not discharged, the charge or information is usually dismissed and the accused is legally entitled to be set free and is accordingly usually discharged and acquitted.

* **Submission of “No case to Answer”**

At the close of the case for the prosecution, the defence counsel may submit that the prosecution has not produced sufficient evidence or made out a prima facie case against the accused and consequently, the accusedhas no case to answer and therefore the case should not proceed further. The defence counsel makes the submission by addressing the court. 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. This ruling is a verdict of not guilty and the court may thereupon discharge and acquit the accused on merit, or discharge but not acquit the accused, if the submission succeeded just on a technicality and not on merit.

However, where the judge rejects the no case submission, in his ruling, the trial proceeds and the accused has to state his case by giving evidence in his defence. Where the accused refuses to give evidence in his defence and choses to stand by his “No case submission”, which had earlier failed, the court would often usually convict the accused. The reason being that the accused failed to defend himself against a prima facie case made out against him.

* **Defence**

After the close of the case for the prosecution and the failure of a case submission, if such submission was made, the case for the defence then opens. The accused and his witnesses, if any, are one after the other, led in evidence-in-chief by the counsel for the defence and are cross-examined by the prosecuting counsel and re-examined by the counsel for the defence as may be necessary. Each witness undergoes the whole process, before another witness is called. It is never mixed up. This is always the procedure.

* **Closing Addresses**

After the close of the case for the defence, the counsel for both sides then make closing speeches by addressing the court from their filed written addresses. The prosecution counsel is always the first to address the court. He sums up or reviews the case on both sides. He points out the strength of the case for the prosecution and identifies the weaknesses if any of the defence and then urges the court to convict the accused as charged. However, the general rule of law is that the case for the prosecution must succeed on its own.

* **Judgment**

After the closing addresses by counsel for both sides, the judge fixes the judgment for a date provided that it is not a summary trial, and the court raises 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 judgment on the case. However, where a trial is by summary procedure the judge may deliver judgment there and then, or he may retire to his chamber to consider judgment and resume sitting to deliver it in that same day, as the case may be, or on an adjourned date.

In the judgment, the judge sums up, weighs, or review the evidence for both sides. In conclusion, 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 charges 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.

When a person has not been found guilty, a court usually makes one or more of the following orders:

1. Dismissal order; dismissing the information, or charges

2. Order of discharge of the accused on the charges

3. Order of acquittal; and

4. Order of compensation, as the case may be for the false, frivolous, vexatious or malicious prosecution or false imprisonment of the accused, and so forth as may be relevant according to the circumstances of the case.

* **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 defence. After the allocutus, the judge passes sentence on the accused. Examples of sentences are Imprisonment, fine, death sentence, canning, deportation, etc.

1b. After a sentence has been imposed on a guilty party, as a remedy, the aggrieved part can appeal to a higher court to review the judgment given in the trial court. An appeal is the process in which cases are reviewed, where parties request a formal change to an official decision. When considering cases on appeal, appellate courts generally affirm, reverse or vacate the decision of a lower court.

2. **Commencement of Civil Procedure 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 4 modes of commencing a civil action in court in Nigeria namely:

1. Writ of Summons

2. Originating Summons

3. Originating Motion

4. Petition.

**Writ of Summons**

The Writ of Summons is one of the two modes used in commencing a civil action against a person. It is a formal document addressed to the defendant requiring him to appear before the court if he/she wishes to defend himself against the plaintiff’s claim. A writ is usually accompanied by and Endorsement of the Claim or a Statement of Claim so that the defendant is made aware of the claim against him/her. Civil actions involving substantial disputes of fact are commenced by way of a writ. These include, but are not limited to:

1. Contract action, e.g. claim for damages resulting from breach of contractual terms and obligation, etc.
2. Tort action, 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.
3. 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.
4. Intellectual property actions, e.g. Claim for damages resulting from the infringement of copyright, trademark or patent, etc., and
5. Admiralty and Shipping actions.

**Originating Summons**

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

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

Compared to a 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. We have 3 types of originating summons:

1. A plenary summons: is used to commence proceedings where there is a real dispute between the parties and/or the amount of the plaintiff’s claim is not specific or easy to calculate.
2. A summary summons: is used when the amount of the plaintiff’s claim is easily quantifiable and the defendant does not have any valid defence.
3. A special summons is used for cases that involve pure issues of law or very specific issues of fact. Like summary proceedings. This is a fast-rack procedure where the judge decides the case by reading affidavits submitted by both sides.

**Originating Motion**

This is used only when provided for by a statute or a rule of court. Examples of actions to be commenced by this way are:

* Application for habeas corpus,
* Order for mandamus,
* Prohibition of certiorari,
* Application for judicial review
* Action for the enforcement of fundamental rights under the Fundamental Rights Enforcement Procedure rules 2009.

Where a statute provides that action be commenced by application but does not specifically provide the procedure, originating motion should be used.

**Petition**

A petition is a legal document formally requesting a court order. Petitions, along with complaints, are considered pleadings at the onset of a lawsuit. A petition is a formal request seeking a specific court order, made by a person, group or organization to the court, typically at the start of a lawsuit.

A petition is made to the court by a petitioner against a respondent, versus a complaint, which is filled by a plaintiff against a defendant. A plaintiff files petition or complaint with the court in stage one of a civil lawsuit, specifying what the lawsuit is about.