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- ***COURSE CODE: LPI204***
- ***COURSE TITLE: NIGERIAN LEGAL SYSTEM ii***

QUESTION: 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 sentence. 2. Comment on the various methods by which civil proceedings may be commenced in the High Court.

-ANSSWER

First off, a criminal procedure is the adjudication process of the criminal law. While criminal procedure differs dramatically by jurisdiction, the process generally begin with a formal criminal charge with the person on trial either being free, on bail or incarcerate, which results in the conviction or acquittal of the defendant.

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 simple essence, it is not much different from the summary trial, except for the elaboration of certain procedures

- We'll be looking at the various stages of criminal procedure at a High Court:
- *An indictment or information*
- *Proofs of evidence*
- *Arraignment and plea*
- *Plea of guilty*
- *Plea of not guilty*
- *Prosecution*
- *Submission of "No case to answer"*
- *Defence*
- *Closing address*
- *Judgment*
- *Discharge*
- *Finding of guilt and sentence*.
- **An indictment or information*:*** this is an accusation of crime brought against an accused for trial in a high court, it 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

In the high court, information of crime is usually prosecuted in the name of the relevant state or in the name of the country, as the case may be.

1. *PETER v THE STATE [1997] 3 NWLR (PT.496) 625 S.C.*
   The relevant court in this case is the High court of rivers state.
2. *F.R.N v NWOSU [2016] 17 NWLR (PT.1541) SC. 226*
   Federal republic of Nigeria sometimes shortened in the law reports to Republic, proceedings brought on behalf of the federal government is often prosecuted in the Federal high court. Also cases of government controlled bodies are prosecuted in the Federal high court, see the case below.
3. *BOARD OF CUSTOMS & EXCISE v ALHAJI IBRAHIM BARAU [1982] SC 39/1982*

- **Proofs of evidence*:*** the proofs of evidence or evidence in proof means the names, address and written statement of the witness that the prosecution wishes to call and the list of exhibits, if any, that the prosecution wishes to put in evidence at trial. Photocopies of the list of the witnesses, the written statement they made to the police and the list of exhibits, if any, are usually attached to the information filed by the state. The real essence of attaching these proofs of evidence is to put the accused on notice as to the nature of the case against him, to enable him take steps to prepare and state his defence. This is fundamental right under the fair hearing provisions of the Nigerian constitution.

- **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 him the indictment or information brought against him and to ask whether he pleads guilty or not guilty. This is when the registrar or other officer of the court calls the accused by name while the accused stands 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 arraignment of a person before the court.

  An accused person may plead as follows:

  - **Autrefios acquit**: *Autrefios Acquit* means a plea that he has been tried for the same offence 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.

- **Autrefios convict**: *Autrefios 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.
- **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 because the law provides that where an accused stands mute, a plea of not guilty has to be mandatorily recoded for him by the court.
- **Plea of guilty o a lesser offence**: while pleading not guilty to the original offence, an accused might decide to plead guilty to an offence that is nit stated in the information, where the prosecutors accept his plea, the court may pass judgment accordingly. Here the prosecution drops the initial charges, paving way for the court to sentence the accused for the lesser offence admitted, this there is room for bargain.
- **HE may plead guilty to the offence charged:**
- **He may plead not guilty.**

- **Plea Bargain/Plea Negotiation**: this is agreeing for the accused to plead guilty for a lesser crime, in exchange for the dismissal of the criminal charge brought against him for a quick dismissal of the entire criminal proceedings, this began in western countries USA for example and is common in Nigeria. In the recent years they have been more plea bargain deals in criminal cases brought forward by the EFCC, in other to expeditiously dispose the potentially lengthy criminal proceedings. If the prosecution fails to reach an agreement with the defense, refusing to accept the plea to lesser offence, then the trial proceeds and the accused person as a rule of law cannot be sentenced on the basis of his plea of guilty to the lesser offence, a trial judge may also allow an accused person to change his plea, from guilty to not guilty, failure to so because becomes an issue for appeal. Where an accused changes to guilty the judge issues a sentence and if he changes to not guilty, then the trial continues.
- **Mental illness**: The **criminal law** recognizes that a person's **mental illness** should be taken into account when they are tried for a serious **crime** and when they are sentenced. In most **criminal cases** where the accused person has a **mental illness** this is considered when the court decides on a sentence. As a general rule of law, every accused is presumed sane until proven otherwise. It is usually the right of the defense to bring up the issue of insanity, however, in obvious cases, a trial judge may raise it *suo motu,* that is, of

its own motion, the presecution may inform the court of it. The fact that insanity is usually established by the defence leading evidence on the balance of probability. Thus the issue of insanity is a matter of fact that is to be decided by the court, it is also usually established by the evidence of relevant witness, including medical evidence.

- **Prosecution;** The counsel for the prosecution always opens first, calls on the witnesses examines them and also tenders any exhibits they have. The defense counsel also examines the witnesses (cross-examine) as may be necessary. The burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt, where this can't be done, the charge is usually dropped, the accused is legally set free. This burden of proof that rest on the prosecution is never watered down. This principle has its roots deep in the Roman law. **CHUKWUNWEIKE IDIGBE** in **Ukorah v State said that: "***the Romans had a maxim that it is better for ten guilty persons to go unpunished than for one innocent person to suffer."*
- **Closing Address**: After the prosecution and the defense have presented all of their evidence, each side may make closing arguments. Closing arguments are similar to opening statements; it provides an opportunity for the counsels to address the judge or the jury a final time. The prosecutor speaks first, usually summarizing the evidence that has been presented and highlighting items most beneficial to the prosecution. The defendant's attorney speaks next. The defense counsel usually summarizes the strongest points of the defendant's case and points out flaws in the prosecutor's case. The prosecutor then has one last opportunity to speak.
- **Instructing the Jury**; After closing arguments in a jury trial, the judge reads instructions to the jurors, explaining the law that applies to the case. Jury members must follow these instructions in reaching a verdict.
- **Jury Deliberations;** The jury goes to a special jury room and elects a foreman to lead the discussion. Jurors must consider all of the evidence presented, review the facts of the case, and reach a verdict. When the jury makes its decision, the court is called back into session.
- **Verdict;** The foreman presents a written verdict to the judge, and either the judge or the court clerk reads the jury's verdict to the court. The court then enters a judgment based on the verdict, and the jury is released from service. If found not guilty, the defendant is released immediately. If the defendant is found guilty, a date is set for sentencing. The defendant may be held in custody or remain on release status until sentencing.

- **Sentencing**; a sentence is a decree of punishment of the court in criminal procedure. Sentence hearing is scheduled to determine the punishment a convicted defendant will receive. The judge hears testimony from the prosecution and the defense regarding the punishment that each side feels the convicted defendant should receive. Sentences for different crimes are imposed following the provisions of criminal-matters related statutes and the judge must impose a sentence within the range outlined by law. The options may include probation(a state of conditional liberty), fines, imprisonment, restitution to victims or a combination of these punishments. In some cases, the death penalty can be imposed. A jury rather than the judge is required to decide whether the defendant will receive the death penalty. However after the court has imposed its sentence on the accused, there are certain rights he can fall on as remedy. These include the application of appeals (to higher courts),post-conviction relief, habeas corpus relief, remission of sentence, right of the accused not to suffer imprisonment for period longer than the maximum, and Right of the accused to be heard in question of sentence in warrant cases; the relevant provision as to the right of the accused to be heard on question of sentence in warrant cases exclusively triable by a court of Session is provided in **Sect.235 (2) of the Criminal Procedure Code**, this provision of hearing on question of sentence is mandatory. Non –compliance with the provision is not an irregularity, but is an illegality which vitiates the sentence.
- **APPEAL:** In criminal cases, an appeal asks a higher court to look at the record of the trial proceedings to determine if a legal error occurred that may have affected the outcome of the trial or sentence imposed by the judge. An individual convicted of a crime may ask that his or her case be reviewed by a higher court. If that court finds an error in the case or the sentence imposed, the court may reverse the conviction or find that the case should be re-tried. A convicted defendant may appeal. If the death penalty has been imposed, an automatic appeal is filed with the Supreme Court. The Court of Appeal hears appeals in all other criminal cases.
- **HABEAS CORPUS RELIEF**: A defendant who has filed all possible appeals may thereafter petition the courts for habeas corpus relief. Habeas corpus relief can consist of a new trial, a new sentence, or outright release from incarceration. Habeas corpus relief is available only to defendants who are incarcerated. A habeas corpus petition is a civil suit filed against the prisoner's jailer. In the suit, the prisoner must allege that she was deprived of a constitutional right in the case, and that continued incarceration is unlawful.Typical bases for habeas corpus petitions include complaints about the trial,

including ineffective assistance of counsel, discrimination in the jury selection, juror misconduct, prosecutorial misconduct, violation of the right to be free from self-incrimination, and similar issues pertaining to constitutional rights.

- **REMISSION OF SENTENCE RELIEF:** Remission of sentence means, waiver of the entire period of the balance of imprisonment. It is granted under special circumstances including the circumstances under which the offence had taken place and the manner of the disposal of the case through trial and appeals. Once remission is granted, it is not revocable. Apart from granting, remission of sentences, in individual cases the government may grant remission generally to serve certain classes of persons as an act of policy of the State. Remissions may be by restricting the sentence to a period of imprisonment already undergone.
- **POST-CONVICTION RELIEF**: Post-conviction relief is a procedure that allows the defendant in a criminal case to bring more evidence or raise additional issues in a case after a judgment has been made (post-trial). With valid grounds, post-conviction relief can help one obtain a fair resolution in his case. This process can take several years. The appeals can take a year-and-a-half to two years and likewise, post conviction motions can take that long. Normally, though, they do not take as long because they're in the trial court and the judge directs the response to be made usually within 60 days. The rights of the accused after trial are many and varied. ... They then have the right to appeal the guilty verdict and the sentence. Should all available appeals fail, they have the right to attack the conviction again through a civil proceeding against the prison warden called a writ of habeas corpus.

QUESTION 2

Subject to the provisions of any enactment, civil proceedings may be begun by writ of summons, originating summons, originating motion or petition or by any other method required by other rules of Court governing a particular subject matter. Originating process in law refers to the mode of instituting or commencing an action in civil proceedings. Originating process shall be prepared by a claimant or his Legal Practitioner, and shall be printed on a paper of good quality.

There are four different ways or methods of commencing actions in the High Court. These are:

- By writ of summons (a writ for short);
- By petition;
- By originating summons; and
- By originating motion (also known as application).

Each of the above is referred to as originating process. Almost, as a general rule, it is by the writ of summons that most actions are commenced, each of the remaining originating processes being resorted to where the Rules or a statute or a rule of practice prescribes the particular process as a mode of starting specified type of actions.

WRIT OF SUMMONS

A writ of summons is a formal document issued by a court stating concisely the nature of the claim of a plaintiff against a defendant, the relief or remedy claimed and commanding the defendant to "cause an appearance to be entered" for him in an action at the suit of the plaintiff within a specific period of time, usually eight days, after the service of the writ on him, with a warning that, in default of his causing an appearance to be entered as commanded, the plaintiff may proceed therein and judgment may be given in defendant's absence.

Generally, all actions are to be commenced by the writ of summons except where there is any express legislation prescribing another mode – **Order 3 Rule 1 & 2 Lagos High Court (Civil Procedure) Rules 2004; Order 1 Rule 2, Uniform Civil Procedure Rules (UCPR); and Order 4 Rule 2, Abuja.** From the cases, writ of summons is the appropriate mode for commencing an action which by its nature is contentious. Usually, action commenced by a writ of summons requires the filing of pleadings and possibly a long trial – ***Doherty v. Doherty (1968) NMLR 241; NBN Ltd v. Alakija [1978] ANLR 231.***

Under the Lagos High Court (Civil Procedure) Rules. 2004. All civil actions commenced by writ of summons shall be accompanied by:

1. Statement of claim;
2. List of witnesses to be called at the trial;
3. Written statement on oath of the witnesses; and
4. Copies of every document to be relied upon at every trial – **Order 2 Rule 1, Lagos.**

Where a claimant fails to comply with the above, his originating process shall not be accepted for filing by the Registry – **Order 2 R. 2, Lagos.** Under **Order 4 R. 17 Abuja**, a certificate of pre-action counseling signed by counsel and litigant shall be filled along with the writ where proceedings are initiated by counsel, showing that the parties have been appropriately advised as to the relative strength or weakness of their respective cases, and the counsel shall be personally liable to pay the costs of the proceedings where it turns out to be frivolous.

BY PETITION

A petition is a written application in the nature of a pleading setting out a party's case in detail and made in open court.

It is, however, only used where a statute or Rules of court prescribe it as such a process – **Order 1 R. 2(3) UCPR.** For example, ***section 410(1) of Companies and allied Matters Act (CAMA) 2004*** provides that *an application to the court for the winding-up of a company shall be by a petition.* Also, ***section 54(1) of Matrimonial Causes Act, 1970*** provides that proceedings for dissolution of marriage are commenced by petition. **The Electoral Act** also states that petitions are the only modes of procedure in election litigations. An election petition has been said to be similar to pleadings in civil matter as it is in that the

practitioner sets out all the material facts he relies on for his petition – ***Egolum v. Obasanjo (1999) 5 SCNJ 92 at 125.***

A petition as the Uniform Procedure Rules provides, shall include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby and at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served a statement to that effect - **Order 7 R. 2(1) UCPR.**

Originating Summon: 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.An originating summons shall be 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.

An originating summons is 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.

The person filing the originating summons shall leave at the registry sufficient number of copies for service on the respondent or respondents. Usually originating summons as a way of commencing civil proceeding is used for non-contentious actions, that is, questions of law rather than disputed issue of facts and it sometimes involves the granting of ex-parte orders whereby the other party does not necessarily need to appear before the court.

ORIGINATING MOTION OR APPLICATION

This is the last of the originating processes. Unlike a petition, this may be used where a statute has not provided for it. Originating application is used when facts are not in dispute and it is used when the action relates to the interpretation of a document. In an application for prerogative orders of certiorari, prohibition, mandamus, *Habeas Corpus* or enforcement of Fundamental Human Rights, originating motion may be used. Significantly, where a state has not provided for a method for enforcing a right conferred by that statute, originating motion should be used – **Order 40 Rule 5(1) Lagos; Order 43 Rule 5(1) Kano; and Order 42 Rule 5(1) Abuja**. It is rarely used in the Magistrate Court.

Its use was highlighted in the case of ***Chike Arah Akunna v. A-G of Anambra State& Ors (1977) 5 SC 161,*** it was held that the appropriate method of making an application to the court, where a statute provides that such an application may be made but does not provide for any special procedure, is an originating motion; ***Fajinmi v. Speaker, Western house of Assembly (1962) 1 All NLR (Pt. 1) 206.***

This rule was also re-stated in ***Kasoap v. Kofa Trading Co. (1996) 2 SCNJ 325 at 335,*** that where it is sought to enforce a right conferred by a statute, but in respect of which no rules of practice and procedure exist, the proper procedure is an originating notice of motion