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**QUESTION ONE**

1. The Procedure from arraignment to imposition of sentence in a criminal trial in the High Court, particularly The High Court of Lagos State, includes;
2. **Arraignment and plea**; Arraignment is a formal reading of a criminal charging document in the presence of the defendant to inform the defendant of the charges against him/her (the defendant). In response to arraignment, the accused is expected to enter a plea and as such an accused may plead guilty or not guilty. However, he may also plead autrefois acquit which means that he has been tried for the same offence before and has been acquitted or autrefois convict which means that he has been tried and convicted for the same offence on a previous occasion. Both pleas are applications of the rule against double jeopardy. In addition to that an accused may stand mute and the plea of not guilty is usually entered or he may plead a plea of guilty to a lesser offence.
3. **Plea of guilty;** where the accused pleads guilty, the counsel for prosecution gives the court a summary of the evidence together with details of the accused person’s background after which, the counsel for the defence usually makes his plea in mitigation of sentence and the court then passes its sentence.
4. **Plea of not guilty;** where an accused person pleads not guilty, the trial then proceeds.

* Plea bargaining; it 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 and for a quick disposal of the entire criminal proceedings.
* In the case of mentally ill persons, they may be too mentally disordered to make a plea to a criminal charge and it is usually referred to as “unfitness to plead”. Insanity could also be used as defence and if successful, the accused is usually

acquitted on grounds of insanity.

1. **Prosecution;** this is the institution and conducting of legal proceedings against someone in respect of a criminal charge. The burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt, this burden lies on the prosecutor (onus probandi)
2. **Submission of “No Case to Answer”;** this is a term in criminal law whereby a defendant seeks acquittal without having to present a defence.
3. **Defence;** this is the case presented by or on behalf of the party accused of a crime.
4. **Closing addresses;** this is done after the close of the case for the defence, hence, the counsel for both sides then make closing speeches by addressing the court from their filed written addresses
5. **Judgement;** this refers to the decision of a court regarding the rights and liabilities of parties in a legal action or proceeding. It is the verdict of the court in the criminal proceeding. Here the judge may find the accused guilty or not guilty as the case may be.
6. **Discharge;** where an accused has been found not guilty, the will dismiss the charges and discharge and acquit the accused person as provided under the criminal procedure law.
7. **Imposition of Sentence;** where an accused is found guilty, the judge passes sentence on the accused. Sentence refers to punishment ordered by the court in a criminal procedure.
8. Remedy available to the accused after the imposition of sentence;

Appeal; the first and foremost option an accused has is to appeal that is to apply to a higher court for a reversal of the decision of a lower court. Hence, when an accused is not satisfied with the judgement of the court he can appeal to a higher court for reversal of the decision if there is sufficient evidence to prove his case.

Review; the accused can also apply for the court to review its decision on sufficient grounds such as miscarriage of justice, fraudulent possession of evidence and this is possible if the court has such jurisdiction. However, via an order of certiorari, which is a court process to seek judicial review of a decision of a lower court, a high court can review the decision of a lower court and all its proceedings.

Another way out of the sentence imposed on the accused is the case of **SUSPENDED SENTENCE**, which could be used interchangeably with the word “probation”. This could be defined as the act of suspending the sentence of a person convicted of a criminal offence and granting that person provisional freedom on the promise of good behavior. *Section 435(1) of the Criminal Procedure Act CAP C41, LFN 2004 provides thus; where any person is charge before a court with an offence punishable by that court, and the court is of the opinion that the charge is proved but having regard to character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence or to the extenuating circumstances under which the offence was committed, it is expedient to inflict any punishment or to release the offender on probation the court may without proceeding to convict make any other either- (a) dismissing the charge; or (b) discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behavior and to appear at any time during such period not exceeding three years as may be specified in the order. Then section 436 of the same act provides for probation orders and conditions of recognizance.*

From the above it is clear that there are certain factors if established that could help to mitigate sentencing, which means to reduce the sentence a convict receives at the end of a criminal trial, such factors include; the age of the convict, first offenders’ status of the convict, provocation, reasonable, repentant or humane behavior of the offender after commission of the crime, plea of guilty by the accused, length of time spent of custody, if any before conviction and illiteracy or level of education of the accused. (although not limited to these factors)

**QUESTION TWO**

Forms by which civil proceedings may be commenced in the High Court; particularly the Federal High court

There are different modes of instituting an action in the High Court and as such, an action may be commenced by a counsel filing one or a combination of the following papers, modes or origination processes in the court. Hence these methods include pursuant to *Order 2 Rule 1 of the Federal High Court (Civil Procedure) Rules 2000, now Order 3 Rule 1 of the Federal High Court (Civil Procedure) Rules 2009 which has further been amended in 2019.*

1. By Writ of summons or;
2. By Originating summons,
3. By Originating motion or Ex parte motion and
4. By Petition

**Writ of summons;** This is an official order of the court requiring a person to appear before a court of law to answer a complaint or when they have been accused of committing an offence. This method is used to commence contentious matters, that is, matters that concern dispute. It is used where hostilities among parties are involved, hostilities involve situations where the facts alleged in the matter is unsettled. Where facts are not settled or are in dispute, that matter must be commenced by writ of summons. Matters commenced through writ of summons often take time to be heard and determined. In FESTUS KEYAMO v. HOUSE OF ASSEMBLY, LAGOS STATE & ORS[[1]](#footnote-1) per Iguh JSC. *It was held that when proceedings are hostile, disputes are substantial, material and affecting the live issues in the case, it would not be proper to commence the suit by Originating summons.* Similarly, in SIGMA ENGINEERING & CONSTRUCTION limited v. NIGERIA AIRWAYS LIMITED & ORS[[2]](#footnote-2) the dispute centered on the payment of arrears of rent and mesne profit thus it was held per Mohammed JSC *“that such action is obviously not suitable to be initiated by means of originating summons. Not only that the facts in issue are highly in dispute…the proceedings are not only likely to be contentious but also extremely hostile. To this end, the court below was quite right in holding that the proceedings ought not to have been initiated by originating summons…” and as such the actions in the following cases above ought to have been commenced by writ of summons.*

A writ of summons when filed is sealed with the court’s name on it and it is served by the bailiff to 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 usually comes together with the writ or may be filed later on within 14 days of the service of the writ. Civil actions involving substantial disputes of fact are commenced by way of a writ. These include, contract actions (such as, claim for damages resulting from breach of contractual terms and obligations), Tort actions, Personal Injury actions, Intellectual property actions, Admiralty and shipping actions. The provisions for writ of summons are provided for by virtue of Order 2 Rule 2(1) (a-e) of the *Federal High Court (Civil Procedure) Rules 2000.*

**Originating summons;** This is a summons that sets out the questions the court is being asked to settle. When the facts in a case are not disputed, but the interpretation of the law or of the documents needs to be resolved, an originating summons is prepared. Originating summons is used to commence matters, where the facts of a case are not in dispute. By virtue of *Order 2 Rule 2(2) (a)(b) of the Federal High Court (Civil Procedure)Rules 2000, proceedings may be begun by originating summons where- (a) the sole or principal question at issue is or is likely to be, one of the construction of a written law or of any instrument made under any written law, or of any deed, will, contract or other document or some other question of law; or (b) there is unlikely to be any substantial dispute of fact.*

From the above it is clear that Originating summons us employed when the action is friendly, where parties agree on the facts and only seek for an interpretation or directive from the court. In such scenario the facts are not of crucial importance as they don’t play a central role. It is important to note that in an action commenced by originating summons, no witness will be heard orally, or pleadings made only Affidavits of witness will be required, as opposed to what is obtained while instituting an action by writ of summons. In OBA ADEYELU 11 & ORS V. OBA OYEWUNMI & ORS[[3]](#footnote-3), the court held that Originating Summons should only be applicable in circumstances where there is no dispute on questions of fact or even the likelihood of such dispute and application by Originating Summons should never be a substitute for initiating contentious issues of fact.

Furthermore, Matters relating to election petition, should be commenced by originating summons, where it is premised on whether a provision of Electoral act has been violated. Where it involves allegation of fraud, corruption, election malpractices it ought to be commenced by writing summons.

**Originating Motion;** This is an application or motion that commences a proceeding in a court. Pursuant to *Order 2 Rule 2 (3) of the Federal High Court (Civil Procedure) Rules 2000, proceedings may be begun by originating motion or petition where by these rules or under any written law the proceedings in question are required or authorized to be so begun but not otherwise.*

Originating motion is used only when provided for by a statute or a rule of court. Examples of actions to be commenced by Originating Motion are;

* Application for habeas corpus
* Order of mandamus
* Prohibition or Certiorari
* Application for Judicial Review
* Action for the enforcement of fundamental rights under the Fundamental Rights Enforcement Procedure Rules 2009
* Human rights action
* Wrong cause of action; taking up a case and using the wrong application procedure

Furthermore, 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 in law is a formal application made to a court in writing that requests action on a certain matter. It is a legal document formally requesting a court order. As stated earlier *Order 2 Rule 2 (3) of the Federal High Court (Civil Procedure) Rules 2000, proceedings may be begun by originating motion or petition where by these rules or under any written law the proceedings in question are required or authorized to be so begun but not otherwise.*

It is a written application made to court setting out a party’s case. it is also only used where a statute or rule of court provides for its use. Example of actions commenced by petitions include;

* Matrimonial proceedings for Divorce
* Winding up of companies for its inability to pay its debts in a Federal High Court.
* Elections (election petitions)

In conclusion, where an action is commenced by a Writ or other originating process such as originating summons, motion or a petition it usually contains the following indorsements or information;

1. Names of the parties to the suit, that is;
2. The name of the plaintiff or claimant and his address
3. Name of the defendant and his address; and
4. Name of the plaintiff’s solicitor and his business address for service of court processes.
5. An indorsement of the claim against the defendant. A writ to be served on the defendant personally, the life of the writ is usually twelve (12) months.

# References

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Ese Malemi “The Nigerian Legal System” pgs. 449,451-458

Ese Malemi “The Nigerian Legal System” pgs. 412-413

1. (2002) 12 S.C. (Pt. 1)190 [↑](#footnote-ref-1)
2. (2013) NCLR 1337 (CA) [↑](#footnote-ref-2)
3. (2007) (S.C. 79/2002) [↑](#footnote-ref-3)