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**COURSE TITLE: NIGERIAN LEGAL SYSTEM II**

**ASSIGNMENT TITLE: CIVIL AND CRIMINAL PROCEEDINGS**

**QUESTIONS**

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 sentence**
2. **Comment on the various methods by which civil proceedings may be commenced in the High Court.**
3. 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.

**ANSWER**

**CRIMINAL PROCEDURE IN THE HIGH COURT**

1. Information or Indictment: An information of crime is an accusation brought against an accused for trial in a High Court. It can also be described as a criminal charge brought against an individual 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. It is usually prosecuted in the name of the relevant state or in the name of the country as the case may be.
2. Proofs of Evidence: This simply means the names, addresses and written statements of the witnesses, that the prosecution wishes to call and the list of exhibits, if any, that the prosecution wishes to put in evidence at trial. The main reason for attaching proof of evidence to the information filed by the state 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 defense.
3. Arraignment and plea: An 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. An accused person may plead as follows:
4. **Autrefois acquit**: A plea that he has been tried for the same offence before and has been acquitted.
5. **Autrefois convict**: A plea that he has been tried and convicted for the same offence on a previous occasion.
6. **He may stand mute**: If this happens, a plea of not guilty is usually entered for the accused.
7. **Plea of Guilty to a Lesser Offence**: An accused may plead guilty to a lesser offence which is not on the information while pleading “not guilty” to the offence charged with at the moment. In a situation where this plea is accepted by the prosecution, the court may pass its sentence accordingly and the prosecution usually drops the instant charge; thereby, allowing the court to sentence the accused for the lesser offence admitted.
8. He may plead guilty to the offence charged
9. He may plead not guilty
10. Plea of guilty: Where an accused person pleads guilty, the counsel for the prosecution will give the court a summary of the evidence together with details of the accused person’s background, that is, character and his criminal record, if any. After this has been done, the counsel for the defense usually makes his plea in mitigation of sentence and the court passes the sentence.
11. Plea of not guilty: When an accused pleads not guilty, the trial continues.
12. Prosecution: The prosecution counsel begins a criminal proceeding by calling evidence for the prosecution. He calls his witnesses and examines them each and tenders any exhibit they may have. These witness are then cross-examined by the defense counsel and re-examined by the prosecuting counsel as may be necessary and the case for the prosecution closes. Note that the burden of proof in a criminal proceeding lies within the prosecution and they must prove the case and prove the guilt of the accused beyond reasonable doubt.
13. Submission of “No case to answer”: After the case for the prosecution closes, the defense council may submit that the prosecution has not produced sufficient evidence against the accused so therefore, the accused has no case to answer and the case should not proceed further. This submission is made by the defense counsel through an address to the court. The judge may accept the submission therefore making the ruling a verdict of not guilty and if the judge does not accept the submission, the trial continues and if the accused still stands by his “no case submission” which had earlier failed, the curt would often usually convict the accused with the reason being that the accused had failed to defend himself against a prima facie case made out against him
14. Defense: This is done after the case of the prosecution has been closed and the no case submission has failed. The case for the defense opens and the accused alongside witnesses are led in one after the other by the evidence-in-chief by the counsel of defense and are cross-examined by the prosecuting counsel and re-examined by the counsel for the defense as may be necessary. This case is closed after all the witness for the defense have testified and provided any exhibit that they may have.
15. Closing address: Here, the prosecution and the defense council make closing speeches by addressing the court from their filed written addresses. The prosecution counsel begins first and the defense counsel makes his own address after.
16. Judgment: After the closing addresses, 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 case is called after which the judge begins to deliver his judgment on the case.
17. Discharge: When the accused person is not 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.
18. Finding the guilt and sentence: Where an accused is found guilty, before passing sentence an alloctus (a formal statement made to the court by the defendant who has been found guilty prior to being sentenced), plea of mercy or leniency is usually made by the counsel for the defense. After the alloctus, the judge passes sentence on the accused.

The remedy available after the imposition of sentence is an appeal. An appeal means that one of the parties is requesting that the decision made in a party’s case should be looked at again by a higher court. This comes after a trial court has already made a decision. An appeal is a review of the original decision entered by the lower level court. The appellate courts have the power and authority to review decisions of the trial court and any judgment won in the trial court. An example of an appellate court in Nigeria is the Supreme Court(The highest court in the hierarchy of courts in Nigeria) which hears and determines appeals from the Court of Appeal. The Court of Appeal is also an appellate court and it hears and determines appeals from any other lower court in Nigeria

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

**ANSWER**

There are four various modes of commencing a civil action in a High Court in Nigeria and they include:

1. **Writ of Summons**: This is a formal document addressed to the defendant requiring him/her to appear before the court if he/she wishes to defend himself against the plaintiff’s claim.

The writ system can be traced back to the Anglo-Saxon periods; particularly in Norman’s England after the conquest in 1066 and it was a means by which the King used to communicate his pleasure to the courts and persons. The writ system is applicable I Nigeria by virtue of the Received English Laws in Ordinance No 3 of 1863 in the then Colony of Lagos and as applied in Nigeria because of its common law origin I form and nature.

In the case of **Ansa vs. Cross Lines Ltd (2006) ALL FWLR (Part 321), Chukwuma-Eneh JCA** held that “A writ of summons is a means of notifying the defendant of the suit against him and ordering him to appear in court”

A writ of summon can also be defined as a command issued by the government through the judiciary(the courts) to a defendant to appear before a court or tribunal of competent jurisdiction within specified days to answer allegations and claims made against him and failure to comply and do so, judgment might be entered against him.

1. **Originating Summons**: According to the Longman Business Dictionary, this is a document which formally begins a legal case where people agree on the facts but need a judge to decide on the meaning of a law, contract or other document. An action is commenced by an originating summon when it is required by a statute or when there is a dispute which is concerned with matters of the law and is also unlikely to be any substantial dispute of fact.
2. **Originating Motion**: This is used only when provided for by a statute or a rule of the court.
3. **Petition**: This is a written application made to the court setting out a party’s case and it is only used when provided for by a statute or rule of the court. It can only be described as a formal letter to a law court asking for a particular legal action.

**WRIT OF SUMMONS AND ORIGINATING SUMMONS**

According to the **Federal High Court (Civil Procedure) Rules2000-Order 1-19, Order 2** which is titled “**Formation and commencement of action**” and subsection 1 vividly shows that a civil action can be commenced by a writ, originating summons, originating motion or petition or any other method required by other rules of court governing any special subject matter as provided in those rules. The most common modes however are the writ of summons and the originating summons.

According to **Order 2(2(1)),** a writ of summon is used in proceedings in which a claim is made by a plaintiff:-

1. For any relief or remedy for a civil wrong
2. For any allegation of fraud
3. For damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a law or independently of any contract or such provision) or where the damages claimed consist of or includes damages in respect of death of any person or in respect of injuries to any person or in respect of damage to any property.
4. In respect of the infringement of a patent, trade mark, copyright, intellectual or any other proprietary interest of whatever kind
5. For a declaration is made by an interested person.

According to the **Federal High Court (Civil Procedure) Rules2000 in Order 2(2(2)),** Originating summons can be used in proceedings where the sole or principal question 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 there is unlikely to be any substantial dispute of fact. In other words, actions that can be commenced using this method are

1. Actions for interpretation of a written law or document
2. Company proceedings
3. Interpretation of any instrument or deed
4. A will, contract agreement or some other question of law.

**HOW A WRIT OF SUMMON IS ISSUED**

A writ of summon is issued by the plaintiff to the defendant and it requires the defendants to enter an appearance in court if the defendant wishes to defend the claim. When filed, a writ of summon is sealed or stamped with the court’s name on it for service by a bailiff on a 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.

According to the **Federal High Court (Civil Procedure) Rules 2009** prescribes a life expectancy for two years; however all other High Court rules have validity period of 12 months for the lifespan of a writ of summons. Although, the life of a writ in Lagos State is 6 months, within which time it has to be served, even though its life may be renewed before it expires to enable it to be served. The plaintiff and his address

1. The defendant and his address
2. The name of the plaintiff’s solicitor and his business address for service of court processes.

It should also contain information of the claim against the defendant.

A statement of claim however, may be filed alongside a writ of summon or and an originating summon or later on within 14 days of service of the writ on the defendant. Using Lagos state as an example, the writ of summons or originating process shall be accompanied by the statement of claim, list of witnesses, written statements, copies of every document to be relied on at the trial, written address in support of the action, and so forth otherwise, it will not be accepted for filing at the registry.

It is said that as a matter of practice and procedure application for renewal of writ of summons is by way of exparte-motion. Applications for the renewal of writ of summons after 12 months were struck out and dismissed at the trial court and were upheld by the penultimate Court on appeal before the Supreme Court decision In Michael Kolawole vs. Pezzani Alberto. In the case of Ansa vs. Cross lines ltd, the claimant could not serve the issued writ of summons within time allowed by the rules of court, after which he applied for extension of time for renewal of the expired writ in the High Court of Cross Rivers State of Nigeria and it was bluntly refused by the trial judge and further appeal to the Court of Appeal was also refused by the honorable justices” holding that an expired writ of summons cannot be renewed after the expiration of twelve calendar months as prescribed by the rules of the court.

**ORIGINATING MOTION**

This method is used only when provided for by a statute or a rule of court. This method can be used to commence actions which includes:

1. Application for habeas corpus
2. Order of mandamus
3. Prohibition or certiorari
4. Application for judicial review
5. Action for the enforcement of fundamental rights under the Fundamental Rights Enforcement Procedure Rules 2009.

**PETITIONS**

This method may be necessary, such as, in a matrimonial proceedings for divorce and so forth, or winding up of a company for its inability to pay its debts in a Federal High Court and so forth. A legal petition is the first official document that is filed in a legal action and the document provides a basic outline of the case. Its main purpose is to provide the defendant with notice of the impending lawsuit. What must be included in a petition varies by state but in all jurisdictions, the petition which can also be called a complaint must contain a brief summary of what wrongs the plaintiff is claiming and against whom the civil lawsuit is filed. Information included in a legal petition includes:

1. The identities of all parties to the dispute
2. The claim of the plaintiff and the facts that justify the claim
3. A demand for judgment or prayer for relief.

Although the petition is that actual statement of what the lawsuit is about, the defendant must be notified by a summons. Once the defendant has received the summons and petition, he is required to file an “answer” to the petition with the court and this is where the defendant will tell the court his own side of the story and why he does not agree with certain facts in the legal petition. The answer to the petition must be filed with the court, and a copy must be served on the petitioner either in person or by any other means of communication. Also a defendant, after receiving a petition may decide to file a cross-complaint to the court in addition to their answer to the petition. This cross complaint would therefore initiate another lawsuit against the plaintiff stating that it is that individual who owes some form of damages to the defendant.

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a) The identities of all parties to the dispute

b) The claim of the plaintiff and the facts that justify the claim

c) A demand for judgment or prayer for relief.

This method is however, only used where a statute or Rules of court prescribe it as such a process. The Electoral Act for example, states that petitions are the only modes of procedure in Electoral litigations. Also, Section 54(1) of Matrimonial Causes Act 1970 provides that proceedings for dissolution of marriage are commenced by petition.

A petition shall contain the names and addresses of the petitioner and his Legal practitioner, or where the petitioner brings a petition in person and corresponding to those made in the case of a writ with the endorsements of the name and addresses of the plaintiff and his legal practitioner. Where a person brings a petition in person, it shall be endorsed with:

a) The address of his place of residence, and if his place of residence is not within the jurisdiction, or if he has no place of residence there, the address of a place within the jurisdiction at or to which the documents for him may be delivered or sent

b) His occupation

c) An address for service.

A petition is presented in the Court Registry and a day on which it is fixed by the Registrar and unless the Court otherwise directs, a petition which is required to be served on any person on him not less than seven days before the day fixed for hearing it. The High Court Rules of Lagos stipulates that a petition shall be presented by being left with the Registrar and that the party presenting it shall hand a copy to the Registrar. These Rules further require that the original copy of the petition should be sealed with the seal of the court and filed. Service is effected in the same manner as a writ of summons. A respondent normally files a reply to the petition and at the trial, oral evidence is taken.

**REFERENCES**

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