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COURSE: NIGERIAN LEGAL SYSTEM

ASSIGNMENT.

* 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.

**ARRAIGNMENT**: Once investigation is completed, a charge would be prepared and the suspect arraigned before a court of law which could be either a Magistrate’s Court or the High Court depending on the gravity of the alleged offence. Arraignment[[1]](#footnote-1) is the calling of an accused person formally before the court by name at the beginning of a criminal proceedings to read to him the indictment or information brought against him and to ask him whether he pleads guilty or not guilty.

An accused person may plead as follows:

* Autrefois acquit: this means a plea that has been tried for the same offence before and has been acquitted. Autrefois acquit is a plea made by a defendant who is charged of a crime or. It is a plea made before the commencement of a trial. This means that a person can use the defense of autrefois acquit when s/he was tried and acquitted for a crime under the same facts. It states that a person cannot be tried twice for the same offence.
* Autrefois convict: this means a plea that has been tried and convicted for the same offence on a previous occasion. He cannot be tried again. This is also an application of the rule against double jeopardy.
* He may stand mute: where an accused stands mute, 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.
* Plea of guilty to a lesser offence: where the plea is accepted by the prosecution, the court may pass its sentence accordingly. Here the prosecution usually drops the instant charge. Thus, paving the way for the court to sentence the accused for the lesser offence admitted. Thus, there is room for plea bargain.
* He may plead 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. After this the counsel for the defence usually makes his plea in mitigation of sentence and the court then passes its sentence.
* Plead of not guilty: where an accused person pleads not guilty, the trial then proceeds.

**PROSECUTION**[[2]](#footnote-2): The counsel for the prosecution always opens a criminal proceeding by calling evidence for the prosecution. He calls his witnesses and examine 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.

**SUBMISSION OF “NO CASE TO ANSWER**”: The defence counsel makes the submission by addressing the court. The judge then makes a ruling on his submission. The judge may accept the submission and make a ruling that the accused person has no case to answer. However, where the judge rejects the no case submission, 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 chose to stand by his “no case submission”, which had earlier failed, the court would often usually convict the accused.[[3]](#footnote-3)

**DEFENCE**: 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 defence then opens. The accused and his witnesses led in evidence-in-chief by the counsel for the defence as may be necessary. A witness has finished his testimony and undergone necessary cross examination and re-examination, another witness may not be called, except there are good reasons to do so. Some good reason to call a witness out of turn, include the need to take the evidence of a witness who is obviously very busy or who may not be readily available to testify. After the witnesses for the defendants have testified and tendered any exhibit they may have, the case for the defence closes.

**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 written address. The prosecution counsel is always the first to address the court. 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. It must be proved beyond reasonable doubt, but not beyond the shadow of doubt. The counsel for defence addresses the court. In his address he points out the weaknesses of the case for the prosecution. If a prima facie case has not been made out, or sufficient evidence has not been adduced as required by law to discharge the burden of proof that’s rests on the prosecution in criminal proceedings, he points it out to the court and finally he urges the court to discharge and acquit the accused on the charges. The general rule of closing speeches is that the accused person is entitled to the last word, that is, it is his right to round the addresses.

**JUDGEMENT**: After the closing address, the judge fixes the judgement. In the judgement, the judge sums up the evidence of both sides. He states his reason for believing and accepting the case for either side and gives his reason for also disbelieving and rejecting the other side. In conclusion, the judge may find the accused guilty or not as the case by be.[[4]](#footnote-4)

**DISCHARGE**: Where an accused has not been found guilty , the judge will dismiss the information or charges and he will discharge the accused and acquit him as provided under the criminal procedure law.[[5]](#footnote-5) On the other hand, if the prosecution failed on technicality, then the court will discharge but not acquit him. Where a person has not been found guilty, a court makes one or more of the following orders:

* Dismissal order; dismissing the information
* Order of discharge of the accused on the charges
* Order of acquittal[[6]](#footnote-6), and
* Order of compensation.

**SENTENCE**: Where an accused is found guilty, before passing sentence, plea for mercy is usually made by the counsel for the defence. After the ALLOCUTUS, the judge passes the sentence on the accused. Allocutus, is a formal statement made to the court by the defendant who has been found guilty prior to being sentenced. It is part of the criminal procedure in some jurisdictions using common law

**TYPES OF SENTENCES IMPOSED BY COURT**

* IMPRISONMENT: this is a punishment for criminal offences which consists of the detention of the offender in a prison. It includes any restraint of a person’s liberty by another. A sentence of imprisonment is usually imposed with hard labour or without hard labour.
* FINE: this is a sum of money which a court orders an offender to pay to the government treasury as a penalty for the commission of an offence.
* DEATH SENTENCE: it is a judgement of court which stipulates that an offender should offer death for the offence committed. Death penalty as a punishment is imposed for certain offences in Nigeria as compared to Britain where death penalty has been abolished. Offences which carry the death sentence includes: treason, armed robbery and murder.
* Canning: it is part of the punishment that may be imposed. It may be an order for canning only or in addition to other sentences. Canning has been abolished in the United Kingdoms and it is also prohibited for children in Nigeria by the Child Rights Act.
* DEPORTATION: it is the expulsion from a country. Where a person is not a citizen of Nigeria, it means expulsion or deportation from Nigeria, to a place outside Nigeria usually to the country of origin of the person involved in a crime.
* BINDING OVER: under the Criminal Procedure Act, where a person has been found guilty of a crime, but is released for any reason, both complainant and the defendant with or without having sureties, may be bound over to keep the peace and be of good behavior for a specific period of time stipulated in the bond. Failure of which the person in breach of court order to keep peace would go to prison for a term of imprisonment not exceeding three months.
* DETENTION DURING THE PLEASURE OF THE PRESIDENT OR GOVERNOR: under the Criminal Procedure Act and Laws, two categories of persons may be detained during the pleasure of the president. They are:
* Persons who are found to be of unsound mind and incapable of making a defence; and
* A person who is found not guilty by reason of insanity.
* ORDER FOR THE DISPOSAL OF PROPERTY: property includes with respect to which an offence has been committed, property originally in the possession or under the control of any party, property into which of for which a property was converted or exchanged.
* AWARD OF COSTS: where there has been a private prosecution and the accused is discharged and acquitted the court may order the private prosecutor to pay such reasonable costs to the accused as the court may fix, provided that an award for payment of costs would be made where courts is of the opinion that the private prosecutor had reasonable ground for initiating the prosecution.
* AWARD OF DAMAGES: a court may in addition to making an order for restoration of such property to the owner, also make an order for award of damages for such wrongful detention of property.
* PROBATION ORDER: it is a period of time during which an offender must behave well in order to keep the peace and do community service well, in default of which the offender may be sent to prison for a fixed period of time.

**The remedy available to the accused after the imposition of sentence.**

This remedy is known as MITIGATION. Mitigating factors are the various factors a court considers in reducing the sentence a convict receives at the end of a criminal trial. The factors considerable in mitigation are as follows:

1. The age of the convict
2. First offender status of the convict
3. Provocation
4. Reasonable or repentant of the offender after commission of the crime
5. Plea of guilty by the accused
6. Length of time spent in custody
7. Rarity of the offence or accidental nature of the offence
8. Good work record of the convict
9. Illiteracy or level of education of the accused
10. Minor role played by the accused
11. Membership of the same family by the parties concerned
12. Effect of the sentence on the wife, children or dependants of the convict.

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

1. BY WRIT OF SUMMONS[[7]](#footnote-7): A Writ of Summons is a formal document addressed to the defendant requiring him to enter an appearance if he wishes to dispute the plaintiff’s claim. It shall be issued by the Registrar, other officers of the court empowered to issue summons[[8]](#footnote-8). Civil actions involving substantial disputes of fact are commenced by way of a writ. These include, but are not limited to:

* Contract actions, e.g., claim for damages resulting from breach of contractual terms and obligations, etc.;
* Tort actions, 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.;
* 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.;
* Intellectual property actions, e.g., claim for damages resulting from the infringement of copyright, trademark or patent, etc.; and
* Admiralty and Shipping actions.

2. BY ORIGINATING SUMMONS: It is a summon 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. Every originating summons shall be in Forms 53, 54, 55, 56, or 57 in Appendix 6 to these rules[[9]](#footnote-9). 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. However, many of the requirements concerning issuance, duration, renewal and service with regard to a writ may apply, with the necessary modifications, to an Originating Summons.

3. BY 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:
a. Application for habeas corpus,
b. Order for mandamus,
c. Prohibition or certiorari,
d. Application for judicial review
e. 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 use.

4. PETITION[[10]](#footnote-10): This is a written application made to court setting out a party case.
It is only used where a statute or the rule of court provide for its use. It is a legal document formally requesting a court order. Petitions, along with complaints, are considered pleadings at the onset of a lawsuit.  In civil cases, the first stage has the plaintiff file a petition or complaint with the court. The document outlines the legal basis for the lawsuit. The defendant receives a copy of the document and a notice to appear in court.

REFERENCES:

[http://www.nigeria-law.org/FederalHighCourt(CivilProcedure)Rules2000.htm](http://www.nigeria-law.org/FederalHighCourt%28CivilProcedure%29Rules2000.htm)

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1. Kajubo v State (1988) NWLR Pt 73, p.721 SC [↑](#footnote-ref-1)
2. Fawehinmi v AG Lagos State (1989) 3NWLR [↑](#footnote-ref-2)
3. Ali v State (1988) 1 NWLR [↑](#footnote-ref-3)
4. Gufwat v State (1994) 2NWLR [↑](#footnote-ref-4)
5. Kalu v State (1984) 4NWLR [↑](#footnote-ref-5)
6. Ikomi v State (1986) [↑](#footnote-ref-6)
7. Orders 6 of the Federal High Court Rules 2000 [↑](#footnote-ref-7)
8. Order 6(1) of the Federal High Court Rules 2000 [↑](#footnote-ref-8)
9. Order 7(1) of the Federal High court Rules 2000. [↑](#footnote-ref-9)
10. Order 8 of the Federal High Court Rules. [↑](#footnote-ref-10)