ABINYE-BROWN PRECIOUS .A.

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18/LAW01/003

NLS

13/04/2020

**Question**
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.

**ANSWER**

 [[1]](#footnote-1) Criminal procedure is the adjudication process of the criminal law. While criminal procedure differs dramatically by jurisdiction, the process generally begins with a formal criminal charge with the person on trial either being free on bail or incarcerated, and results in the conviction or acquittal of the defendant. Criminal procedure can be either in form of inquisitorial or adversarial criminal procedure.[[2]](#footnote-2) Civil Procedure is the method of commencing, conducting, and concluding criminal proceedings or matters in court.

A trial on indictment in a High Court is really an elaboration or amplification of a summary trial at the magistrate court, In its pure sense, its not much different from a summary trial, except for the elaboration of certain procedures.

The following are stages of Criminal Procedure at a High Court;

1. What is an Indictment or information?
2. Proofs of Evidence
3. Arraignment and plea
4. Plea of guilty
5. Plea of not guilty
6. Prosecution
7. Submission of “No case to answer”
8. Defence
9. Closing Address
10. Judgement
11. Discharge
12. Finding of guilty and sentence.

We’ll start explaining these stages from Arraignment and Plea;

* **ARRAIGNMENT AND PLEA**

Arraignment 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 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.

An Accused person may plead as follows;

1. Autrefeois acquit; A plea that has been tried for the same offence before and has been aquitted. A plea against double jeopardy.
2. Autrefois convict: A plea that has been tried and convicted for the same offense on a previous occasion .The individual cannot be tried again.
3. He may stand mute: an accused stand mute, that is without saying anything, a plea of not guilty is usually entered for the accused.
4. Plea of guilty to a lesser Offense : an accused person may plead guilty to a lesser offense which is not on the information . Where this plea is accepted by the prosecution, the court may pass its sentence accordingly
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 with 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 plea in mitigating of sentence and the court then passes its sentence

* **PLEA OF NOT GUILTY**

When the accused pleads not guilty the trial then proceeds.

* **PLEA BARGAINING**

Plea bargaining 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. The concept of bargaining began in western countries, and its common there, especially in the United State Of America. Where the prosecution fails to reach an agreement with the defence and therefore refuses to accept the plea with the lesser offence, then the trial proceeds and the accused person as a rule of law cannot be sentenced on the basis of plea 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 and thus avoid the passinfg of sentence there on, where an accused changes his plea to not guilty, the trial then proceeds.

Some accused person may not be too mentally ill or disordered to make a plea to a criminal charge. This is usually referred to as “Unfitness to plead”. Such accused person may then then be referred for Psychiatric examination and treatment.

* **PROSECUTION**

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

The burden to proof on the prosecution in criminal proceeding s is proof beyond reasonable doubt. Where the burden of proof is 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. the Burden to proof rests on the prosecution to the prove the guilt of the accused beyond reasonable doubt is never lowered or watered down.
***[[3]](#footnote-3)Chukwunweike Idigbe JSC in Ukorah V. State***

“ The Romans Had a maxim that it is better for ten guilty persons to go unpunished than for one innocent person to suffer”

* **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 accused has no case to answer and therefore the case shall not proceed further. The defence counsel. The defence counsel makes the submission by addressing the court.

The judge may accept the submission and make ruling that the accused has no case to answer. This ruling is a verdict of not guilty and the court may there upon discharge but not acquit the accused.

However where the judges 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.

* **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.[[4]](#footnote-4) 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 bythe prosecuting counsel and re-examined by the counsel of the defence as may be necessary . After the witnesses have testified and tendered any exhibit they may have, the case for the defence closes.

* **CLOSING ADDRESS**

After the close 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 weakness 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. The general rule however is that the case for the prosecution must succeed on its own.

Next, the counsel for the defence addresses the court. In his address he points out the weaknesses of the case for the prosecution. If the case for the prosecution is a pack of lies and a mere fabrication, conjecture, imaginative, malicious, frivolous, vexations and an abuse of cort process, he calls it so. If Prima Facie case has not been made out, or sufficient evidence has not been made out, or sufficient evidence has not been adduced as required by law to discharge the burden of proof that rests on the prosecution in criminal proceedings, which is proof beyond reasonable doubt, he points out to the court and finally, he urges the court to discharge and acquit the accused on the charge or charges as the case may be.

* **JUDGEMENT**

After the closing address by the counsel for both sides , the judges fixes the judgement for a date provided that it is not a summary trial and the court rises in adjournment to enable it deliberate, consider and 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 judgement on the case. However, where a trial is by summary procedures the judge may deliver judgement there and then, or he may retiree to his chamber to consider judgement and resume sitting to deliver it on the same day or on an adjourned date.

In his judgement, the judge weighs , sums up or reviews the evidence for both sides. He states his reasons for believing and accepting the case for either side and also gives his reasons for disbelieving and rejecting the evidence for the other side. In conclusion, the judge may find the accused guilty or not.

* **DISCHARGE**

Where an accused person has not been found guilty, on merits, 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 the technicality, the court will usually discharge but not acquit him.

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

1. Dismissal order
2. Order of discharge of the accused of the charge(s)
3. Order of acquittal and
4. Order of compensation
* **SENTENCE**

When 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

A court under the Criminal Procedure Act or Law pass sentence such sentences are as follows;

1. Imprisonment
2. Fine
3. Death sentence
4. Caning
5. Deportation
6. Binding over order
7. Order of detention
8. Order for disposal of property
9. Order for costs
10. Award for damages
11. Probation order

 **REMEDY AVAILABLE TO THE ACCUSED AFTER THE IMPOSITION OF SENTENCE**

* **BINDIING OVER**

Under the criminal Procedure Act, where a person has been found guilty of a crime but is released for any reason, or where a complaint was dismissed, a defendant or both complaint and the defendant with or without having sureties, may be bound over to keep the peace and be of good behavior for a specified 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 3 months.

* **DETENTION DURING THE PLEASURE OF THE PRESIDENT OR GOVERNOR**

Under the Criminal Procedure Laws and Act two categories of people may be detained during the pleasure of the President in respect of a Federal offence or state law, these are;

1. People who are found to be of unsound mind and incapable of making a defence
2. A person who is found guilty by reason of insanity
* **ORDER FOR THE DISPOSAL OF PROPERTY**

Under the Criminal Procedure Act or its equivalent laws in the southern states, a court may

1. During trial or
2. At the conclusion of trial , make an order as it deems fit for the disposal of property or exhibits in a matter, whether by way of;
3. Forfeiture to the state or federation
4. Confiscation or seizure by Government or its agency
5. Otherwise, such as by sale or release to an appropriate party or persons
* **AWARD OF COSTS**

Under the Criminal Procedure Act and its equivalent laws in the southern states, after a person has been found guilty, a court may order him to pay to the prosecutor such reasonable costs as the court thinks fit in addition to any penalty that may be imposed.

* **AWARD FOR DAMAGES**

According to the act, in a charge of stealing or receiving stolen property, where there’s insufficient evidence to support the charge, but a case of wrongful conversion or detention of property is established, 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 conversion. Whereas the amount of damages award must not when added together exceed 20naira in value.

* PROBATION ORDER

Probabtion is a period of time during which an offender must behave well, that is, keep the peace and or do community service as well .

A court by or before which a person is 16years of age or over is convicted of a crime may make a probation order, requiring a convict to be under the suspervision of a probation officer usually for not less than 6 months or not more than 3 years.

A probabtion may be combined with;

1. A suspended sentence, usually suspended jail term or binding over
2. Fine
3. A community service

**METHODS BY WHICH CIVIL PROCEEDINGS MAY BE COMMENCED IN THE HIGH COURT.**

**Civil procedure** is the body of law that sets out the rules and standards that courts follow when adjudicating civil lawsuits (as opposed to procedures in criminal law matters). These rules govern how a lawsuit or case may be commenced; what kind of service of process (if any) is required; the types of pleadings or statements of case, motions or applications, and orders allowed in civil cases; the timing and manner of depositions and discovery or disclosure; the conduct of trials; the process for judgment; the process for post-trial procedures; various available remedies; and how the courts and clerks must function.’

According to the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, Order 1 Rule 1 and 2 it states the methods by which civil proceedings may be commenced in the high court;

1. Subject to the provisions of any enactment, civil proceedings may be begun by writ, originating summons civil proceedings originating motion or petition, or any other method required by other rules of court governingany special subject matter as provided in these Rules.

2. (1) Subject to the provisions of any enactment or of these Rules by virtue of which any proceedings are expressly required to be begun otherwise than by writ, proceedings in which a claim-

(a) is made by a plaintiff for any relief or remedy for any tort or other civil wrong;

(b) made by the plaintiff is based on an allegation of fraud;

(c) is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a law or independently of any contract or any such provision) or where the damages claimed consist of or include damages in respect of death of any person or in respect of personal injuries to any person or in respect of damage to any property;

(d) is made by the plaintiff in respect of the infringement of a patent, trade mark, copyright, intellectual or any other proprietary interest of whatever kind;

(e) for a declaration is made by an interested person,

(2) Proceedings may be begun by originating summons where –

(a) the sole or principal question at issue is, or is likely to summon, 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 otherquestion of law; or

(b) there is unlikely to be any substantial dispute of fact.

(3) Proceedings may be begun by originating motion or maybe begun by 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.

**REFERENCE**

* **THE NIGERIAN LEGAL SYSTEM TEXTS AND CASES, ESE MALEMI**
* **CRIMINAL PROCEDURE ACTS AND LAW**
* **HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA (CIVIL PROCEDURE) RULES**

1. <https://en.wikipedia.org/wiki/Criminal_procedure> [↑](#footnote-ref-1)
2. The Nigerian Legal System, Ese Malemi P.g 432 [↑](#footnote-ref-2)
3. (1977) 4 SC at 171, 11 NSCC 218 at 233. Hales Pleas of the Crown Vol 11 p. 289. [↑](#footnote-ref-3)
4. CPA, ss, 241-243 Ukwunnenyi V. State (1989)4 NWLR pt. 114, p. 131 SC. Stephen v. state (1986)5 NWLR pt 46 [↑](#footnote-ref-4)