**Nigerian Legal System**

Civil and Criminal proceedings

Question

State clearly the procedure for arraignment to imposition of sentence in a criminal trial in the High court. Comment on the remedies available to the accused after the imposition of the sentence.

A. Procedure from arraignment.

1. **Arraignment:**

The accused person enters the dock unfettered. The charge is read to him and he takes his plea which will be recorded by the Court. An accused may plead in the following ways;

 Autrefois acquit: This is a plea that has been tried for the same offence before and has been acquitted. This plea is an application against double jeopardy, which can be understood better in  ***Section 36(9)*** ***of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as altered)*** has shed light on this therefore providing that “No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall be tried again for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court”.

Autrefois convict: this means a plea that he has been tried and convicted for the same offence on a previous occasion.

 To stand mute: when an accused stands mute, a plea of not guilty is usually entered.

 Plea of guilty to a lesser offence: This is when an accused intends to plead “not guilty” but also pleads guilty to a lesser offence which is not on the indictment.

He may plead guilty

 He may plead not guilty

1. **Plea of guilty:**

 Where he pleads guilty, and the Court is satisfied that he understands the charge(s) read to him and that by the plea, the accused intends to admit the truth of the essentials of the offence; the Court may proceed to convict him on the plea. And the case ends here. In a situation when an accused pleads guilty, the counsel in the prosecution team will give the court a summary of the evidence together with details of the accused person’s background. After this, the counsel for the defense usually makes his plea in mitigation of sentence and the court then passes its sentence.

1. **Plea of not guilty**:

 However, where the accused person (Defendant) pleads not guilty to the charge, the Court shall proceed with the trial of the defendant. Therefore the prosecution must prove beyond reasonable doubt that the defendant committed the offense.

1. **Trial:**

It commences when the defendant pleads not guilty to the charges against him in court. Firstly, the prosecution opens their case by calling evidence against the defendant. He calls his witness and examines each in chief, and tenders any exhibits they may have as evidence before the court. The witnesses 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. The burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt this is true to upholding the fundamental principle that everyone is innocent until proven guilty. Where the burden of proof is not discharged, the charge of information is usually dismissed and the accused is legally entitled to be set free and is accordingly discharged and acquitted. Secondly, the defendant counsel may now open his case after the prosecution has opened their case, he has three options available to him after the prosecution is done tendering their defense in court and they are;

“No case submission”: When a “no case submission”is made, it basically means that the defendant is asking the court for an acquittal without it having to present a defense. The defendant is literally saying to the court that there is no case to answer i.e. the prosecution has not sufficiently proven the legal threshold to establish the commission of a crime in the court of law. The defense makes the plea by filing an application before the court, and if the judge agrees, then the matter is dismissed and the defendant is acquitted without having to present any evidence in their defense. If the judge does not accept the submission, the case continues and the defense must either call evidence or rest is case on the case of the prosecution.

“Rest his case on that of the prosecution”: When an accused rests his case on that of the prosecution, it means no more than that the accused does not wish to place any facts before the court other than those which the prosecution has presented in evidence. It also signifies that the accused is satisfied with the evidence given and does not wish to explain any fact or rebut any allegations made against him. This of course does not prevent the accused (or his counsel) from making legal submissions on the evidence before the court. He could for instance, say that even if all the evidence were believed, it would not support the charge before the court, or he could submit that the evidence was so conflicting or has been so discredited that it is not credit worthy. No such submissions have been made on this appeal and I am satisfied that the appellants were rightly convicted on the evidence before the trial court. In the case NM ALI & ANOR .V. THE STATE 1988 in this case, after the close of the prosecution's case, the counsel to the appellants announced that the appellants would not call any evidence but would rest their case on the evidence of the prosecution.

“Call his evidence”: After a case has been closed for the prosecution and the failure of a case of no submission, if the submission was actually made, the case for the defense then opens. The accused and his witnesses, if any, are one after the other, led in evidence-in-chief by the counsel for the defense and are cross-examined by the prosecuting counsel and re-examined by the defense counsels may be necessary. There is always a specific procedure followed then this is done, each witness undergoes the whole process before another witness. At times, this procedure can be broken or gone against and some good reasons to do this include the need to take the evidence of a witness who is obviously very busy to attend the trial and become a witness. After the witness for the defense have testified and tendered any exhibit they may have testified and tendered any exhibit they may have, the case for the defense closes.

1. **Final or Closing Address**:

After the case has been closed on the part of the defense, the counsel of 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 is saddled with the duty of summing up or reviewing case on both sides. He points out the strength of the case for the prosecution and identifies the weakness if any of the defense and then urges the court to convict the accused as charged. However, regardless of all of this, it is a general rule that states that the case of the prosecution on its own. This is so, for in criminal proceedings the burden of proof on the prosecution is proof beyond reasonable doubt. It is worthy of note that, a case must be proven beyond reasonable doubt, but not beyond shallow doubt.

1. **Judgement:**

 After the commencement of the closing address by both counsels, the judge then fixes a date for the judgement 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 siting and the case will be called upon and the judge will begin to deliver its judgement there and then, or the judge may go back to his chambers to reconsider the judgement and gives a verdict that same day or at a later date. If the defendant is found guilty of one or more charges, a sentencing date will be set. Depending on the severity of the crime they were convicted of and the potential sentence, the defendant may be held in custody until sentencing or be released until the sentencing date. In summary, the judge may find the accused guilty or not guilty as the case may be.

1. **Discharge:**

 An order of discharge is an order releasing an accused or defendant from prison custody. It in essence restores an accused’s hitherto restricted freedom of movement and personal liberty. If an accused person has not yet been 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. In a case where one has been found not guilty, the court will make one or more of the following orders; Order of acquittal, Order of discharge of the accused on the charge, Dismissal order which will dismiss the order or charges; and Order of compensation as the case may be for the false, malicious prosecutions or even false imprisonment of the accused and so forth as may be relevant according to the circumstances of the case.

1. **Plea of Allocutus:**

 An allocution, or 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. the defendant pleads guilty to a lesser offense or (in the case of multiple offenses) to one or more of the offenses charged in exchange for more lenient sentencing, recommendations, a specific sentence, or a dismissal of other charges.

1. **Sentence:**

 In all criminal trials, where a conviction is secured, the next logical step would be sentencing. Sentencing is a very broad field accommodating different approaches and ideas. It is an exercise of a discretionary power. This is the final stage of criminal proceedings. After the plea of allocutus, the judge passes the sentence on the accused. During the sentencing phase of a criminal case, the court determines the appropriate punishment for the convicted defendant. In determining a suitable sentence, the court will consider a number of factors, including the nature and severity of the crime, the defendant's criminal history, the defendant's personal circumstances and the degree of remorse felt by the defendant.

**B. There are three remedies to the accused after the imposition of sentence and they are;**

1. **Serve his jail term or sentence:**

After the imposition of a sentence which is a jail term the accused is allowed to serve his or her jail term in prison depending on the time frame of the term then the accused can walk as a free man after serving the term. For example if an accused is sentenced to 10 years imprisonments, he or she has to serve their time in prison for 10 years before he or she can be discharged.

1. **The accused can appeal to the court of appeal:**

Take for example a case is heard in the Federal High court and the accused is sentenced to 40 years imprisonments and he or she s not satisfied with the judgement of the chief judge of the Federal High court. The accused can file for an appeal at the Court of Appeal either to get a lighter sentence or a totally different sentence from that of the Federal High court. This is another remedy that is available to the accused at the imposition of a sentence.

1. **Presidential pardon**

The remedy of the presidential pardon which is one of the powers of the president of a country to pardon some prisoners who are serving their jail term. By virtue of Section 175(1) of the 1999 constitution which states that “the President May grant any person concerned with or convicted of any offense created by an Act of the National Assembly pardon, either free or subject to lawful conditions.”

These are the remedies available to an accuser after the imposition of a sentence.

2. Comment on the various methods by which civil proceedings maybe be commenced in the High court.

The modes of commencement of civil proceedings in the High courts are;

1. Writ of Summon.
2. Originating Summon.
3. Originating Motion.
4. Petition.

**Writ of Summon:**

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. Civil actions involving substantial disputes of fact are commenced by way of a writ. These include, but are not limited to:

* Contract actions, eg, claim for damages resulting from breach of contractual terms and obligations, etc.;
* Tort actions, eg, 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, eg, claim for damages in respect of personal injury and / or death resulting from road and industrial accidents or negligence, etc.;
* Intellectual property actions, eg, claim for damages resulting from the infringement of copyright, trademark or patent, etc.; and
* Admiralty and Shipping actions.

**Originating Summon:**

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.

**Originating motion:**

It deals with proceedings in respect to prerogative orders of habeas corpus, mandamus, prohibition, certiorari etc. Matters concerning the fundamental right matters are commenced by the originating motion in the court of law. A type of document that starts a civil proceeding. This is often required when: there is no defendant. You are making an application to the court under a particular Act.

**Petition:**

Generally, actions like elections are commenced by petitions, matrimonial matters or courses, winding proceedings (winding up of a company) are formally commenced by petitions in the courts of law. Petitions are commenced when the law or statutes provides that it should be used.

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