NAME: OLUFUNKE OLAWUNMI GEORGE

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QUESTION

1. STATE CLEARLY THE PROCEDURE FROM ARRAINGNMENT TO IMPOSITION OF SENTENCE IN A CRIMINAL TRIAL IN THE HIGH COURT
2. COMMENT ON THE VARIOUS METHODS BY WHICH CIVIL PROCEEDINGS MAY BE COMMENCED IN THE HIGH COURT

Criminal procedure is the method or procedure for commencing conducting and concluding criminal proceedings or matters in court. A trial on indictment or information in a high court is mainly an elaboration of a summary trial at the magistrate court. The stages of criminal procedure in a high court are as follows:

* Arraignment and plea
* Plea of guilty
* Plea of not guilty
* Prosecution
* Submission of ‘no case to answer ‘
* Defense
* Closing address
* Judgment / imposition of sentence

We shall consider these stages of criminal procedure at the high court

ARRAIGNMEMT 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 the defendant. In response to arraignment, the accused is expected to enter a plea. An accused may plead as follows:

* AUTREFOIS ACQUIT: Autrefois acquit is a plea made by a defendant who is charged of a crime or misdemeanor. It is a peremptory plea or a plea made before the commencement of a trial. A defendant can plead that s/he was tried earlier for the same crime under same facts of the case. This plea from a defendant can stop the government from carrying on with a trial against the defendant on the grounds of double jeopardy rule. This is a fundamental right under the fair hearing provision of the Nigerian constitution. However, the defendant should have been tried and acquitted in the previous case, since s/he was found not guilty.
* AUTREFOIS CONVICT: Autrefois convict is a plea made by a defendant in a case when s/he is indicted for a crime or misdemeanor. By this plea, a defendant can claim that s/he was charged of the same crime under substantially same facts. The defendant should also prove that s/he was convicted for the offense. Autrefois convict is a technical plea of defense made before the commencement of a trial in a criminal proceeding. A defendant should provide substantial evidence that s/he was convicted for the same cause. Pursuant to the double jeopardy rule no one can be put in jeopardy twice for the same cause. Therefore, a person is once tried and convicted of an offence cannot be placed in jeopardy for the same cause. If a person has suffered the penalty due for the offence, that conviction should bar a second indictment for the same cause. Otherwise it would result in punishing a person twice for the same crime.
* HE MAY STAND MUTE: Where an accused person stands mute, that is without saying anything, a plea of not guilty is usually entered for the accused. This is also because the law provides that where an accused stand mute a plea of not guilty has to be mandatorily recorded for him by court.
* PLEA OF GUILTY TO A LESSER OFFENCE: However, while intending to pled not guilty to the offence charged, an accused person may plead guilty to a lesser offence 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.

PLEA OF GUILTY

Where an accused person pleads guilty, the council for the prosecution will give the court a summary of the evidence together with the details of the accused persons background. After this the council of the defense usually makes his plea in mitigation of sentence and the court then passes its sentence.

PLEA OF NOT GUILTY

Where an accused person pleads not guilty the trial will proceed

PROSECUTION

The council for prosecution always opens a criminal proceeding by calling evidence for the prosecution. He calls his witnesses and examines each, he tenders any exhibit they may have. The witnesses are in turn cross examined by the defense counsel. The burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt. When the burden of proof is not discharged the charge is usually dropped and the accused is legally entitled to be set free and is accordingly usually discharged and acquitted. The principle that the guilt of an accused be proved beyond reasonable doubt is rooted in deep Roman law. The Romans had a maxim the it is better for a guilty person to go unpunished than for an innocent person to be condemned.

SUBMISSION OF ‘NO CASE TO ANSWER’

At the close of the case for the prosecution the defense council 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 and therefore the case should not proceed any further. The judge makes a ruling on this submission.

The judge may accept the submission and make a ruling that the accused has no case to answer. At this the court may thereupon discharge and acquit the accused on merit or discharge but not acquit the accused if the submission succeeded on technicality not merit.

However, where the judge rejects the no case submission in his ruling, the trial proceeds and the accused have to state his case by giving evidence in his defense. Where the accused refuses to give evidence in his defense and choses to stand by his ‘no case submission’ which had earlier failed, the court would often usually convict the accused. The reason being that the accused failed to defend himself against prima facie made out against him.

DEFENSE

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 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 counsel for defense as may be necessary. Each witness undergoes the whole process, before another witness is called. After the witness for the defense have testified and tendered any exhibit they may have, the case for the defense closes.

CLOSING ADDRESSES

After the close of the case for the defense the counsel for both sides then make closing speeches by addressing the court from their filled written address. The prosecution counsel is always the first to address then court. He sums up the reviews of the case on both sides. The case of the prosecution must succeed on its own strength. Thus, the case for the prosecution cannot rely on the weakness of the defense to succeed. For this reason, an accused person is not bound to put up a defense and may in appropriate circumstances rest his case or defense on the case for the prosecution.

JUDGMENT / IMPOSITION OF SENTENCE

After the closing addresses by the counsel for both sides, the judge fixes the judgment for a date provided that that it is not a summary trial and the court rise in adjournment to enable it deliberate, consider or evaluate the totality of evidence in the case. On the adjournment date the court resumes sitting, the case is called and the judge delivers his judgment. In the judgment the judge sums up weighs or reviews the evidence for both sides. He states his reasons for believing and accepting the case for either side and also gives his reason for disbelieving and rejecting the evidence on the other side. The judge may find the accused not guilty as the case may.

Where an accused is found guilty before passing sentence a plea for mercy or leniency is usually made by the counsel for the defense. After the allocutus the judge passes the sentence on the accused. The type of sentence that may be passed are as follows;

* Imprisonment (usually with hard labor)
* Fine in lieu of imprisonment or both
* Death sentence
* Canning
* Deportation

1. Civil procedure can be defined as the method or procedure of commencing, conducting and concluding civil matters, trials or claims in court. The high court civil procedure rules of the various state high courts make provision for procedure for the conduct of civil matters in the High court of each state. The civil procedure rules for the High Courts are fairly uniform with little or no difference, except for the High Court of Lagos which operates a multi door court system and the Federal High Court because of its largely different jurisdiction.

An action may be commenced in a High Court by a counsel filling one or a combination of the following papers or originating processes in court: writ of summons or originating summons, ex parte motion and petition.

A “writ of summons” is a type of writ and is issued to begin civil proceedings. The writ is issued by the plaintiff, or the party suing, to the defendant(s). It requires the defendant(s) to enter an appearance in court if the defendant wishes to defend the claim. If the defendant does not enter an appearance in Court or file a defense in time as set out in the writ, judgment in default may be entered against the defendant. In Lagos State 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 trial, written address in support of the action and so forth otherwise it will not be accepted for filling at the registry

Originating Summons is a mode of commencing civil action. An action is commenced by an origination summons when (1) it is required by a statute or (2) a dispute, which is concerned with matters of law, is unlikely to be any substantial dispute of fact. An Originating Summons may be in Inter partes or Ex-parte of the Rules of Court. Originating summons is heard based on affidavits filed in support. Originating summons cases are heard by registrars or judges in chambers or in open Court. A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support of or in opposition to the Originating summon. Witnesses may be called to give testimony and pre-trial conferences may or may not be conducted.

An application can be made to convert an Originating summons into a Writ at any stage of proceedings. Alternatively, the Registrar or Judge can decide to convert an Originating

summons into a Writ without any application from the parties. Once the decision to convert has been made, the steps relating to a Writ applies. The Registry will assign a new Suit Number to the proceedings and a pre-trial conference will be called for the service of the Statement of Claim.

Ex parte refers to a motion or petition by or for one party. An ex parte judicial proceeding is on where the opposing party has not received notice nor is present. This is an exception to the usual rule of court procedure and due process rights that both parties must be present at any argument before a judge. It is in contrast to the rule that an attorney may not notify a judge without previously notifying the opposition. Ex parte hearings, petitions, or motions are usually temporary orders, such as a restraining order or temporary custody, pending a formal hearing or an emergency request for a continuance. Most jurisdictions require at least a good faith effort to notify the opposing lawyer of the time and place of any ex parte hearing.

"Ex parte communication" is a direct or indirect communication on the substance of a pending case without the knowledge, presence, or consent of all parties involved in the matter. Generally, ex parte communication is prohibited in legal proceedings.

REFRENCES

<http://www.nigeria-law.org/LagosStateJudiciaryHighCourtRules2004.htm>

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