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NIGERIAN LEGAL SYSTEM

ASSIGNMENT TITLE: CIVIL AND CRIMINAL PROCEEDINGS

 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.

QUESTION1. CRIMINAL PROCEDURE FROM ARRAIGMENT TO IMPOSITION OF SENTENCE

 Criminal procedure can be defined as the steps taken and methods used in bringing and conducting a criminal action. It can also be defined as the course of study in the rules of procedure in criminal actions. There are certain stages or procedures to be followed for an action under criminal procedure to be successful. The stages for criminal procedure in High Court are clearly explained below:

1. ARRAIGNMENT AND PLEA: This is the initial and first stage in court where the court officials call out the name of the accused and the allegation brought against him in order for him to make a plea. At the arraignment, the defendant is formally informed of the charges, given a copy of the indictment or information, and enters a plea responding to the charges. A defendant may enter a plea bargain at the arraignment. Even if a defendant does not enter a plea, the defendant may be released. The accused may plead either of the following:
2. **Autrefois** **acquit**: the provision of **section** **221**(**1**)(**b**) **C** **Criminal** **Procedure** **Act** provides that a person may plead that he has been tried for the same offences before and he has been pardoned. (plea against double jeopardy)
3. **He** **may** **stand** **mute:** the law provides that where an accused stands mute, that is, without saying anything, it is recorded as plea of not guilty by the court.
4. **Plead guilty to a lesser offence:** an accused can plead guilty to a lesser offense other than the accusation made against him. If the plea is accepted, the instant charge will be dropped and the court will pass its sentence accordingly.
5. **He must plead guilty and a sentence will be passed accordingly**
6. **He may plead not guilty and the trial shall continue.**
7. PLEA OF GUILTY: if the accused pleads guilty, the court shall record his plea as nearly as possible in the words used by him and if satisfied that he intended to admit the trust of all the essentials of the offence of which he pleaded guilty, the court shall convict him of that offence and pass sentence upon him or make an order against him unless there shall appear sufficient cause to contrary.
8. PLEA OF NOT GUILTY: **section** **217** **Criminal** **Procedure** **Act** provides that where a person pleads not guilty, the trial shall continue.
9. PROSECUTION: the prosecution shall open his case by calling evidence. He may call evidence by calling a witness and tendering the exhibits they may have. He shall carry out the examination in chief, the defence shall do the cross examination and the prosecution shall take the re-examination. The burden of proof is on the prosecution to proof beyond reasonable doubt. If he fails to do so it will lead to dismissal of the charge and the accused shall be acquitted. The position of law as to the burden of proof originated from Roman law where the Romans believed in the notion that it is better for 10 criminals to go unpunished than for 1 innocent person to go punished.
10. SUBMISSION OF ‘NO CASE TO ANSWER’: this stage enjoins the defence council to make a submission of no case to answer. What this means is that the defence counsel will address the court stating that the prosecution has not provided sufficient evidence that the accused is guilty. Moving on, the prosecution will give a reply to the submission and the judge will give his verdict. If the verdict is in favour of the defence, then the accused shall be discharged. Also, if the verdict is in favour of the prosecution, then the trial will proceed and the accused will have to state his case by giving evidence or else the court will be left with no choice but to convict him.
11. DEFENCE: In line with **section** **241**-**243** **of** **CPA**, the accused and his witnesses, if any, are called for chief examination by the defence counsel, cross examination by the prosecuting counsel and re-examination by the defence counsel. This is an opportunity for the defence to prove innocence.
12. CLOSING ADDRESSES: in this stage, both parties are to make an oral address to the court from the written address they have filed as a way of rounding off the case. This is a chance for them to give their remarks based on the evidence in the case and urge the judge to give judgment in their different favours.
13. JUDGMENT: after the closing address, the judge fixes a date for the judgment to be issued. In the judgment, the judge sums up, weighs or reviews the evidence of both sides. He also gives reasons for his judgment. He is obliged to give reason for his judgment.
14. DISCHARGE: by virtue of section 301 Criminal Procedure Act, where an accused person has not been found guilty, on merit, the judge will dismiss the charges and accordingly discharge and acquit the accused person. Also, if the prosecution failed on a technicality, then the person will be discharged but not acquitted.

10.IMPOSITION OF SENTENCE: after a person is found guilty, before passing the sentence, an alloctus, a plea for mercy or leniency is usually made by the counsel for defence. After that, the judge passes the sentence. The types of sentences the judge may give are imprisonment, fine, death sentence, caning and deportation. Orders may also be given.

 REMEDY AVAILABLE TO ACCUSED AFTER THE IMPOSITION OF A SENTENCE

• Right to appeal: When tried and found guilty if the convict is not satisfied with the decision of the high court he can appeal to the court of appeal. The right of appeal is guaranteed by the 1999 CFRN. The constitution allows for appeals from the High courts and Federal high courts to the court of appeal. Appeals from the supreme court then go to the Supreme court which is the highest court.

QUESTION 2

MODES OF COMMENCING CIVIL ACTION IN HIGH COURT

 WRIT OF SUMMONS

A writ of summons is a formal document issued by a court stating concisely the nature of the claim of a plaintiff against a defendant, the relief or remedy claimed and commanding the defendant to “cause an appearance to be entered” for him in an action at the suit of the plaintiff within a specific period of time, usually eight days, after the service of the writ on him, with a warning that, in default of his causing an appearance to be entered as commanded, the plaintiff may proceed therein and judgment may be given in defendant’s absence.

Generally, all actions are to be commenced by the writ of summons except where there is any express legislation prescribing another mode. A writ of summons is the appropriate mode for commencing an action which by its nature is contentious. Usually, action commenced by a writ of summons requires the filing of pleadings and possibly a long trial.

All civil actions commenced by writ of summons shall be accompanied by:

a) Statement of claim;

b) List of witnesses to be called at the trial;

c) Written statement on oath of the witnesses; and

d) Copies of every document to be relied upon at every trial – order 5 rule 2 (a-e) High Court of Lagos Civil Procedure Rules (2019)

 ORIGINATING SUMMONS

It is a summons that initiates proceedings. However, a summons in a pending matter does not initiate proceedings but it is used for making interlocutory applications in a pending cause or matter.

Generally, originating summons is used for non-contentious actions, that is, those actions where the facts are not likely to be in dispute (a question of law rather than disputed issues of facts). When the principal question in issue is or is likely to be one of construction of a written law or any instrument or of any deed or will or contract, originating summons may be used for the determination of such questions or construction. In the case of SSS v. Agbakoba (1999) 3 NWLR (Pt. 595) 425; it was held that originating summons is used where it is sought to correct errors in a judgment.

Where proceedings are commenced by originating summons, pleadings are not used, that is, no statement of claims or defence are filed. Rather, affidavit evidence in support of originating summons and counter affidavit will take the place of pleadings.

In Lagos, an originating summons shall be accompanied by:

a) An affidavit setting out the facts relied upon;

b) All the exhibits to be relied upon; and

c) A written address in support of the application

 PETITIONS

A petition is a written application in the nature of a pleading setting out a party’s case in detail and made in open court.

It is, however, only used where a statute or Rules of court prescribe it as such a process. Most times petitions are used for marriage proceedings, winding up of companies and election cases. Petitions are filed in the same manner as writ of summons.

When filing petitions, these documents must accompany it:

Statement of claim;

b) List of witnesses to be called at the trial;

c) Written statement on oath of the witnesses; and

d) Copies of every document to be relied upon at trial

 ORIGINATING MOTIONS

 This is the last of the originating processes. Unlike a petition, this may be used where a statute has not provided for it. Originating application is used when facts are not in dispute and it is used when the action relates to the interpretation of a document. In an application for prerogative orders of certiorari, prohibition, mandamus, Habeas Corpus or enforcement of Fundamental Human Rights, originating motion may be used. Significantly, where a state has not provided for a method for enforcing a right conferred by that statute, originating motion should be used – Order 40 Rule 5(1) Lagos; Order 43 Rule 5(1) Kano; and Order 42 Rule 5(1) Abuja. It is rarely used in the Magistrate Court.

This rule was also stated in Kasoap v. Kofa Trading Co. (1996) 2 SCNJ 325 at 335, that where it is sought to enforce a right conferred by a statute, but in respect of which no rules of practice and procedure exist, the proper procedure is an originating notice of motion.