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1) INTRODUCTION

Criminal Procedure is the process by which a criminal case is prosecuted in the court of Law. It is also the process of administration of criminal justice in Nigeria where the body of laws and rules are used. There are many sources of criminal procedure and a few of them are: Criminal Code, Criminal Procedure Act CAP C41 2004, Penal Code, Criminal Procedure Code CAP 89 Laws of Northern Nigeria 1963 and so on.

There are various procedures in a criminal trial in a High Court and they vary from place to place. The first procedure is **Arrest** however, the question tells us to start from arraignment to imposition of sentence. Therefore the procedures in criminal trial in a High Court beginning from arraignment are listed below:

I. ARRAIGNMENT

At the arraignment, the defendant enters a plea of guilty, not guilty, or no contest (**nolo contendere**). If the defendant enters a not guilty plea, the judge will set the date. If the defendant enters a guilty plea or declares no contest to the charges, the judge will set a date to sentence the defendant for the crime. Here, the judge will also review the defendants bail and set dates for future proceedings. In some cases, particularly where the alleged criminal activity is minor, the defendant may be released on his or her own recognizance. With more serious crimes, the court sets the amount of bail required to release the defendant.

II. PRE-TRIAL PROCEEDINGS

Before any actual criminal trial, the criminal process provides for a period of time which the prosecutor and defendant -through the defendants attorney- exchange information about the charges and alleged facts of the case. A defendant is generally entitled to know what evidence the prosecution has prior to the actual trial. During this pretrial proceedings phase, the prosecution and the defendant, through counsel, file various motions, discovery requests and witnesses summons. It should be remembered that many cases never actually go to a formal trial since during the pretrial proceedings phase, the defense and prosecution may enter into a plea agreement. If such plea agreement is not reached however, the court will set a trial date.

III. TRIAL

The criminal trial is the stage at which the actual criminal guilt is determined. If the

defendant has requested a jury trial, prospective judges are questioned to determine if they can reach a fair and impartial verdict. After the judges are selected, each side offers an opening statement. Generally, the prosecution goes first. The prosecutor gives a relatively brief overview of the crime – a general view of the evidence that should convince the court that the defendant is guilty of the offense.

The prosecution presents the state's case against the defendant, offering evidence in the form of witness testimony and, in some instances, actual physical evidence itself. At the close of the prosecution's evidence, if the court finds that it is legally sufficient to convict, the defendant offers evidence of innocence or other information that might cast doubt on guilt. After the closing arguments, the presiding judge reads instruction to the judges explaining the law that applies to the case. The presiding judge then retires for deliberation and when a decision is reached, the court is called back into session.

IV. VERDICT

In a criminal trial, the jury must deliberate and reach a unanimous verdict. It must determine whether the defendant is guilty or not. If not found guilty, the defendant is released immediately. If the defendant is found guilty, the defendant will be sentenced.

V. SENTENCING

During the sentencing phase in 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. If the judge finds the defendant guilty, the judge must impose some sort of appropriate punishment. While it varies from jurisdiction to jurisdiction, the judge is typically given guidelines to follow in assessing how long the sentence of imprisonment should be and what additional conditions should be placed on that sentence. Depending upon the severity of the crime, the judge may impose jail or prison time, fines, court ordered counselling, or rehabilitation, community service, restitution or probation.

REMEDIES OF AN ACCUSED PERSON AFTER SENTENCING

a) Mitigation is a remedy and it means to make something less serious, less unpleasant or less harmful. There are various factors the court considers in reducing the sentence a convict will receive at the end of the trial. There are certain factors the court considers in the mitigation of a sentence and they are:

- The age of the convict
- First offender status of the convict

- Provocation
 - Illiteracy or level of education of the accused
 - Length of time spent in custody (if any before conviction)
 - Rarity of the offence or accidental nature of the offence
 - Plea of guilty by the accused
 - Membership of the same family by the parties concerned
 - Minor role played by the accused
 - Good work record of the convict or good antecedents of the convict generally and so on
- b) The accused can appeal to the Court of Appeal
 - c) The accused can serve his jail term or sentence
 - d) The accused can be granted Presidential Pardon based on the Prerogative of Mercy by the President

2) INTRODUCTION

Civil procedure is a method of commencing a civil matter in the court. It is the body of law that sets out the rules and standards that courts follow when adjudicating civil matters to court. The sources of law of civil legislation consists of statutes and subsidiary legislation. The subsidiary legislation forms a larger body of that law than the statutes. It may be divided into two classes

- a) Rules of practice and procedure (rules of court) made under Nigerian statutes
- b) Received English rules of practice and procedure

There are many sources of the rules of civil procedure and a few of them includes: The Constitution of the Federal Republic of Nigeria, Relevant Statutes like Ekiti State High Court Procedure Rules, Subsidiary Legislation like Supreme Court Rules 1977 and so on.

Proceedings in the High Court may be commenced by:

- i) Writ of summons
- ii) Originating summons
- iii) Petition
- iv) Originating motion/ application

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 for 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 in the 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 – **ORDER 3 RULE 1 and 2 LAGOS HIGH COURT (CIVIL PROCEDURE) RULES 2004; ORDER 1 and 2, UNIFORM CIVIL PROCEDURE RULES (UCPR); and ORDER 4 RULE 2, Abuja**. From the cases 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 – **Doherty v. Doherty (1968) NMLR 241; NBN Ltd. v. Alkija (1978) ANLR 231**. Under the Lagos High Court (Civil Procedure) Rules 2004, all civil actions commenced by writ of summons shall be accompanied by:

- Statement of claim
- List of witnesses to be called to the trial
- Written statement on oath of the witnesses
- Copies of every document to be relied upon at every trial – **ORDER 2 RULE 1, LAGOS CIVIL PROCEDURE RULES**

Where a claimant fails to comply with the above, his originating process shall not be accepted for filing by the registry – **ORDER 2 RULE 2, Lagos**. Under **ORDER 4 RULE 17, Abuja**, a certificate of pre-action counselling signed with the writ where proceedings are initiated by counsel, showing that the parties have been appropriately advised as to the counsel shall be personally liable to pay the costs of the proceedings where it turns out to be frivolous.

A writ also contains certain endorsements – endorsement of claim and formal endorsement. The endorsement may be special endorsement (of claim) or a general endorsement (of claim). A special endorsement is a statement of claim appearing on the writ, which statement serves as the statement of claim in the action. While a general endorsement states in a summary form the nature of the claim made, or the nature of the remedy requested. One advantage of endorsements is that it saves time under **ORDER 10 of the HIGH COURT (CIVIL PROCEDURE) RULES of Lagos State**.

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 case 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 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 –**Director, SSS v. Agbakoba (1993) NWLR pt. 595 pg. 425; NBN Ltd v. Alakija (supra); Doherty v. Doherty (supra); In Unilag v. Aigoro (1991) 3 NWLR pt. 179 pg. 376**, it was held that originating summons is used where it is sought to correct errors in a judgment. In **Orianwavo v. Orianwavo (2001) 5 NWLR pt. 752 pg. 548**, it was held that an action for the declaration of title to land ought not to be commenced by originating summons

In **Fagbola v. Titalayo Plastic Industries (2005) 2 NWLR pt. 909 pg. 1 at 19**, it was held that where proceedings are commenced by originating summons, pleadings are not used, that is, no statement of claims or defense are filed. Rather, affidavit evidence in support of originating summons and counter affidavit will take place of pleadings –**ORDER 3 RULE 5 and 6 of Lagos, ORDER 1 RULE 2 (2) Abuja; and ORDER 1 RULE 2 (2) Kano**.

PETITION

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 –**ORDER 1 RULE 2 (3) UCPR**. For example, **section 410 (1) of COMPANIES and ALLIED MATTERS ACT (CAMA) 2004** provides that an application to the court for the winding-up of a company shall be a petition. Also **section 54 (1) MATRIMONIAL CAUSES ACT 1970**, provides that proceedings for dissolution of marriage are commenced by petition. The **Electoral Act** also states that petitions are the only modes of procedure in election litigations. An election petition has been said to be similar in pleadings in civil matters as it is in that the practitioner sets out pleadings in civil matters as it is in that the practitioner sets out all the material facts he relies on for his petition –**Egolum v. Obasanjo (1999) 5 SCNJ 92 at 125**.

A petition as the **UNIFORM PROCEDURE RULES** provides, shall include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby and at the end thereof a statement of the names of the persons, if any, required to be served a statement to that effect –**ORDER 7 RULE 2 (1) UCPR**.

ORIGINATING MOTION OR APPLICATION

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 the facts are not in dispute and it is used when the action relates to the interpretation of a document. In an application for a prerogative orders of certiorari, prohibition, mandamus, habeas corpus or enforcement of Fundamental 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.

Its use was highlighted in the case of **Chike Arah Akunna v. AG of Anambra State and Others (1977) 5 SC 161**, it was held that the appropriate method of making an application to the court, where a statute provides that such an application may be made but does not provide for any special procedure, is an originating motion; **Fajinmi v. Speaker, Western House of Assembly (1962) 1 All NLR pt. 1 pg. 206**.

This rule was also re-stated in **Kasoap v. Kofa Trading Co. (1996) 2 SCNJ 325 AR 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.

REFERENCES

- The Nigerian Legal System by Obilade
- The Nigerian Legal System by Ese Malemi
- www.resolutionlawng.com
- wingrass.blogspot.com
- criminallaw.com