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MATRIC NUMBER: 18/LAW01/014

COURSE: NIGERIAN LEGAL SYSTEM

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.

The federal high court is provided for in sections 249-254 of the 1999 constitution. It is one of the competent courts that make up the judiciary of the federal republic of Nigeria. The procedure to be followed in a criminal trial at the high court is not very different from a summary trial. In essence, it is an amplification of a summary trial because some of the steps are elaborated upon. The procedure from arraignment to imposition of trial is as follows:

1.) ARRAIGNMNET[[1]](#footnote-1) and plea: This is when the accused is formally brought before the court and, the indictment is read before him by the registrar or other personnel of the court while the accused is in the dock. He is then asked whether he is guilty or not then the accused makes his plea. Before this, the proofs of evidence takes place.

2.) After arraignment the accused can either opt for plea of guilty or plea of not guilty. Where the accused opts for plea of guilty then, the trial proceeds.

3.) However where an accused person pleads guilty, the counsel for prosecution gives the court a summary of evidence as well as a summary of the person’s background including criminal record if any. After all this has been done, the counsel for defence makes his plea for mitigation then, judgement is passed.

Something called plea bargaining can also take place. This is an agreement to plead guilty in exchange for a lesser sentence.

4.) PROSECTION. This is the next step in the process. The counsel for the prosecution opens a trial by calling evidence for 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 and re-examined by the prosecuting cousel as may be necessary. The case for prosecution then closes. The burden of proof on the prosecution in criminal trials is proof beyond reasonable doubt. Where burden of proof is not discharged, the accused is legally entitled to be set free. This burden of proof which rest on the prosecution is never lowered because it is better for a guilty person to go free than for an innocent person to be unjustly punished. The concept emanated from Roman law.

5.) 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 against the accused and consequently, the accused has no case to answer and therefore, the case should not proceed further. The defence counsel makes the submission by addressing the court. The prosecuting counsel then usually replies. The judge then makes a ruling on this submission. The judge can either accept the submission and discharge and acquit the accused or reject the no case submission the trial then proceeds and the accused has to state his case by giving evidence in his defence. Where the accused chooses to give evidence in his defence the court usually convicts the accused. [[2]](#footnote-2) Reason being that the accused failed to defend himself against a prima facie case made out against him.

5.) DEFENCE. The case for defence opens again after the close of the case for the prosecution and the failure of a no case submission, if such submission was made, the case the case for defence then opens. [[3]](#footnote-3) The accused and his witnesses if any are one after the other led in evidence in chief by the counsel and re-examined by the counsel for the defence as may be necessary. Each witness undergoes the whole process. It is never mixed up except there are good reasons. Some good reasons are if the witness is suffering from ill health or traveling to a far place and so on.

6.) CLOSING ADDRESS. Both counsels are to make their closing address after the close of the case for defence. The prosecution counsel usually goes first as he summarises the case and states the weaknesses as well as the strengths of the opposing counsel. He then urges the judge to convict the accused. The prosecution counsel have to prove beyond [[4]](#footnote-4)reasonable doubt, the guilt of the accused. The defence council also give a closing address in support of the accused.

7.) JUDGEMENT. In the judgment, the judge summarises and reviews the evidence from both sides. He states his reason for accepting the case of either side and vice versa. In conclusion, the judge may find the accused not guilty or guilty as the case may be. After the closing addresses by counsel for both sides, the judge 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, or evaluate the totality of evidence in the case.

8.) DISCHARGE. If an accused person after facing all the necessary processes has not been found guilty, the judge dismisses the charges and then accordingly discharge and acquit the accused person as provided under the criminal procedure law. However, if the prosecution failed on a technicality, then the court will usually discharge the accused, but not acquit him. The court makes one of the following orders where a person has not been found guilty:

Dismissal order

Order of acquittal

Order of discharge or,

Order of compensation

SENTENCE. If an accused is found guilty, then a sentence is passed by the judge in accordance with the criminal procedure act or law in general. There are several types of sentences that can be passed by the courts. Some of which include:

Imprisonment, usually with hard labour,

Caning,

Deportation,

Death sentence (in very severe cases) and others.

REMEDIES AVAILABLE AFTER IMPOSITION OF SENTENCE INCLUDE:

Presidential pardon. Section 175(1)[[5]](#footnote-5) provides for the power of the president to pardon offenders. It states ‘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.’ This is also known as prerogative of mercy.

The accused person can appeal to the Court of Appeal. That is if he is not satisfied with the decision of the high court. If after this he is still not satisfied, then he can appeal to the Supreme Court which is provided for in the constitution.[[6]](#footnote-6)

The jail term or sentence can be served as a remedy. For example if an accused is sentenced to 10 years imprisonment and, he has to serve that time before being discharged.

METHODS OF COMMENCING CIVIL ACTION IN THE HIGH COURT.

There are different methods for commencing action in the high court which are best suited for different situations on their own. The methods are:

WRIT OF SUMMON. It is a formal document addressed to the defendant requiring him to appear before the court if he/she wishes to defend himself against the plaintiff's claim. A writ is usually accompanied by an Endorsement of the Claim or a Statement of Claim so that the defendant is made aware of the claim against him/her.

ORIGINATING SUMMON. It is a summon that sets out the questions the court is being asked to settle. When the facts in a case are not disputed, but the interpretation of the law or of the documents needs to be resolved, an originating summons is prepared.

ORIGINATING MOTION. This is used only when provided for by a statute or a rule of court. For example Application for habeas corpus, Order for mandamus, Prohibition or certiorari, Application for judicial review, Action for the enforcement of fundamental rights under the Fundamental Rights Enforcement Procedure rules 2009. And others.

PETITION. It is a formal request seeking a specific court order, made by a person, group or organization to the court, typically at the start of a lawsuit. A plaintiff files a petition or complaint with the court in stage one of a lawsuit, specifying what the lawsuit is about.

REFERENCES.

Nigerian Legal System by Ese Malemi.

Nigerian Legal System by Charles Mwalimu

Nigerian Legal system by Akintunde Olusegun Obilade.

1. CPA S 353 Kajubo v state 1988 1 NWLR pt 73 page 721 SC [↑](#footnote-ref-1)
2. Ali v State (1988) 1 NWLR pt 68 p. 1 SC [↑](#footnote-ref-2)
3. CPA, ss 241-243. Ukwunenyi v State (1989)4 NWLR pt 114, p.131 SC. [↑](#footnote-ref-3)
4. Okoro v State (1988)5 NWLR pt 94, p.255SC. [↑](#footnote-ref-4)
5. Constitution of the federal republic of Nigeria. Section 175 (1). [↑](#footnote-ref-5)
6. Constitution of the federal republic of Nigeria sections 230-236 [↑](#footnote-ref-6)