NAME: ORIOLOWO-NIYI ADEBOLA

MATRIC NUMBER: 18/LAW01/192

COURSE TITLE: NIGERIAN LEGAL SYSTEM II

**1. State clearly the procedure from arraignment to imposition of sentence in a criminal trial in High Court.**

The following are the stages from arraignment to imposition of sentence in a criminal trial at the High Court of Lagos State.

1)**Arraignment and plea**

2**)Plea of guilty**

3)**Plea of not guilty**

4)**Prosecution**

5)**Submission of “No case to answer”**

6)**Defense**

7)**Closing Address**

8)**Judgment**

9)**Discharge**

10)**Finding of guilty and sentence**

This will be discussed in details below:

1)**Arraignment and Plea**: Arraignment is the formal charging of an accused person with an offence. The accused person is called before the court by name at the beginning of a criminal proceeding, to read to him the indictment brought against him and to ask whether he pleads guilty or not. An indictment is an official formal accusation of a criminal offence. The Registrar or another officer of a court reads and explains the charge brought against the accused while the accused stands in the dock. The Registrar also askes the accused to make his plea before the court.

An accused person’s plea may be any of the following:

a) Autrefois acquit: This is a plea by a person indicted for a crime for which he had been previously trued and acquitted. This plea is an application for the rule against double jeopardy. Double jeopardy is the defense that prevents an accused person from being tried again for an offence he committed previously after being acquitted or convicted. It is a fundamental right of fair hearing which is enshrined in the 1999 Constitution of the Federal Republic of Nigeria (hereinafter referred to as “The 1999 CFRN”)[[1]](#footnote-1)

b) Autrefois convict: Both the “Autrefois acquit” and “Autrefois convict” pleas aim at achieving one thing: preventing the accused person from being tried again for the same offence, that is double jeopardy.

c) Stand mute: Where an accused person stands mute, it means that he refuses to plead anything. The law provides that where an accused person stands mute, a plea of not guilty is entered for the accused. This is mandatorily recorded by the court.

d) Plea of Guilty to a Lesser Offence: While intending to plead not guilty to the offence charged against the accused, he may plead guilty to a lesser offence which does not form part of the information. Where the prosecution accepts this plea, the court may pass sentence accordingly. When this happens, the prosecution usually drops the instant charge, thus, making way for the court to sentence the accused for the lesser offence committed. Thus, there is room for plea again.

e) Plead Guilty to the offence charged

f) Plead not guilty

2) **Plea of Guilty:** Where an accused person pleads guilty, the prosecution counsel will then give the court a summary of evidence together with details of the accused person’s background which comprises of his character and criminal record, if any. After this, usually, the defense counsel usually makes his plea in mitigation of sentence and the court then passes its sentence. A plea of guilty usually results in a more lenient punishment for the accused.

3) **Plea of not guilty:** Where an accused person pleads not guilty, the trial then commences.

\***Plea Bargaining:** This is a negotiation in which the accused pleads guilty to a lesser crime, in exchange for the dismissal of the serious crime. This plea is originated in the western countries and is used widely in the United States of America. The plea is usually as a result of a bargain reached between the prosecution counsel and the defense counsel, usually with the Judge’s approval. The accused is then sentenced in respect of this lesser offence. However, when the prosecution and defense counsels fail to reach an agreement, the trial proceeds and the accused cannot be sentenced in respect of the lesser offence.

\***Mentally Ill Persons:** Some accused persons may be too mentally ill to plead to a criminal charge. This is referred to as “unfitness to plead”. Such a person is then referred for psychiatric examination and treatment. In a clear case of murder, the accused is unfit to make a plea by reason of insanity, the accused will then be committed to a mental hospital for necessary care.

The defense may also put up the defense of insanity. The leading case on insanity is **R v M’Naghten[[2]](#footnote-2)** where the accused person was charged with murder. A plea of insanity was successfully made for the accused and the House of Lords held that the accused was not guilty and was acquitted on grounds of insanity. In the case of **Donatus Ndu v State[[3]](#footnote-3), Akpata JSC** posited that the burden of proving insanity rests on the accused person. This goes to say that it is the defense which has the duty to prove the insanity of the accused. Proof in this form may include: recent medical mental health report and history of the accused preferably before the act was carried out , a psychiatrist’s examination of the accused, etc.

It is important to note that every accused person is presumed to be sane until contrary is proved.

4)**Prosecution:** The prosecution counsel always opens a criminal proceeding by calling evidence for the prosecution. He calls his witnesses, examines them, and tenders any exhibit they may have. The witnesses are in turn cross-examined by the defense counsel and reexamined by the prosecution counsel as may be necessary and the case for the prosecution closes.

The burden of proof in criminal cases is proof beyond reasonable doubt. Where the burden of prof is not discharged, the charge or information is usually dismissed and the accused is legally entitled to be free and is acquitted accordingly. The prosecution must make sure that guilt of the accused is proven beyond reasonable doubt, that is, without any doubt whatsoever. This is to ensure that justice is not miscarried.

5)**Submission of “No case to answer”:** When the prosecution closes its case, the defense counsel may then submit that the prosecution has not produced ay evidence or made out a *prima facie* case against the accused and as such, the accused has no case to answer, therefore, the case should not proceed any further. The defense counsel does this by addressing the court while the prosecution counsel usually replies.

The Judge may accept the defense counsel’s submission and make a ruling that the accused has no case to answer. The ruling shall then be a verdict of “not guilty” and the court may then discharge and acquit the accused, or discharge but not acquit the accused if the submission is based on a technicality and not merit.

However, where the Judge rejects the no case submission, the trial proceeds and the accused has to state his case by giving evidence in his defense. Where the accused refuses to give evidence in his defense, the court will usually convict the accused, the reason being that the accused failed to defend himself against the prima facie case made out before him.

6)**Defense:** After the close of the case for the prosecution and failure of a no case submission if such a submission was made, the defense counsel opens his case. The defense calls his witnesses, examines them, and tenders any exhibit they may have. The witnesses are in turn cross-examined by the prosecution counsel and reexamined by the defense counsel as may be necessary. Each witness undergoes the whole process before another is called. After the witnesses have testified and tendered evidence, if any, the case for the defense closes.

7)**Closing Address:** After the defense’s case closes, counsels for both sides will 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 sums up the case on both sides. He points out the strengths and weaknesses of the defense, if any and then urges the court to c0onvict the accused. However, the prosecution must succeed on his own strength: he cannot rely on the weaknesses of the defense to succeed. He must proof the guilt of the accused beyond reasonable doubt.

Afterwards, the defense counsel addresses the court. He also points out the weaknesses and strengths of the prosecution’s case. If a *prima facie* case has not been made or if the case of the prosecution is frivolous, or if sufficient evidence has not been adduced, he points this out and urges the court to discharge and acquit the accused. The general rule of closing speeches is that the accused or his counsel are entitled to the last word: it is his right to round off the addresses.

8)**Judgment:** After both sides have presented their closing addresses, the Judge fixes the judgment for a date provided that it is not a summary trial. The court then rises in adjournment to enable it consider, or evaluate the totality of evidence in the case. On the adjourned date, the court resumes sitting, the case is called and the judge begins to deliver his judgment on the case.

However, where a trial is by summary procedure, then the judge may deliver judgment there and then, or hey may retire to his chamber to consider judgment and then resume sitting to deliver it the same day or on an adjourned date, as the case may be.

In the judgment, the Judge sums up, weighs and reviews the evidence on both sides. The Judge also states his reasons for believing and accepting the case for one side and also his reasons for disbelieving the evidence of the other side. In conclusion, the Judge the finds the accused guilty or not guilty as the case may be.

9)**Discharge:** Were an accused person is found not guilty, on merit, the Judge will dismiss the charges and accordingly discharge and acquit the accused person as provided under the Criminal Procedure Law (CPA S. 301). On the other hand, if the prosecution failed on a technicality, then the court will usually discharge the accused, but not acquit him.

Where a person has not been found guilty, the court usually makes one of the following: a) dismissal order, b) order of discharge of the accused on the charges, c) order of acquittal, d) order of compensation, as the case may be, for false prosecution or false imprisonment.

10)**Finding of guilty and sentence:** Where an accused person has been found guilty, before passing sentence, an alloctus or plea for mercy or leniency is usually made by the counsel for the defense. After the alloctus or plea, the judge passes sentence on the accused.

**Comment on the remedy available to the accused after the imposition of sentence**

**1)Appeal:** An appeal may be defined as a legal proceeding by which a case is brought before a higher or a superior court for review of the decision of a lower court. The right of appeal in some instances is recognized by the 1999 Constitution of the Federal Republic of Nigeria as of right. An appeal against the final judgement of a High Court must be lodged within ninety (90) days in respect of criminal cases and three months for civil cases. If a convict believes that there was an error in law or misdirection on the part of the trial court then he may appeal to a higher court to seek redress. The higher court may then uphold the appeal and overturn the lower court’s decision or dismiss the appeal if it deems it so. An appeal serves as a remedy to an accused person in that the appeal is an avenue for the accused to be heard again, and may even serve as a key to freedom if the higher court overturns the sentence imposed by the lower court.

**2)Post-Conviction bail:** In the case of **Ogundimu Munir v Federal Republic of Nigeria[[4]](#footnote-4),** the Court of Appeal stated, in accordance with **Section 28 of the Court of Appeal Act 2004** that “The Court of Appeal may, if it thinks fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.”. Furthermore, in the case of **Jamal v State,** the court stated that “Generally the grant of bail to a convict sentenced to a term of imprisonment is not made as a matter of course. The principle of presumption of the applicant’s innocence no longer exists, because of his conviction, he must shoe special circumstances to be entitled to bail pending determination on his appeal.”

In essence, while waiting for the determination of an appeal, a convict who has been sentenced may be granted post-conviction bail. However, this will be granted at the Judge’s discretion.

(ii)**Modes of Commencing Action in High Court:**

(a) **Writ of summons** (b)**Originating Summons** (c)**Originating Motion/Application** (d) **Petition**

These modes shall be discussed in relation to the **Lagos State High Court (Civil Procedure) Rules 2019.**

(a) **Writ of Summons**: is a formal document addressed to the defendant requiring him to appear before the court if he wishes to defend himself against the plaintiff’s claim. Writ of summons is used for contentious matters that deal with disputes. According to **Order 5(Rule 1),** proceedings may be commenced by a Writ of Summons where:

(a) a claimant claims:

 (i)any relief or remedy for any civil wrong

 (ii)damages for breach of duty, whether contractual, statutory or otherwise

 (iii)damages for personal injury or to wrongful death of any person, or in respect of damage or injury to property

(b)the claim is based on or includes an allegation of fraud

(c)an interested person claims a declaration.

 In addition, all civil proceedings commenced by a writ of summons is to be accompanied with copies of the following documents: (a)A statement of claim (b)A list of witnesses to be called at the trial (c)Written statements on oath of the witnesses except witnesses on subpoena (d)Copies of every document to be relied on at the trial (e) Pre-Action Protocol Form based 01 with necessary documents.

(b)**Originating Summons:** is used to commence non-contentious actions relating contracts, wills, deeds, etc.

In details, proceedings are to be commenced by Originating Summons, according to **Order5(4),** where:

(1) Any person claiming to be interested or claiming any legal or equitable rights under a deed, will, enactment or other written instrument may apply by Originating Summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the person interested.

(2) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment may apply by Originating Summons for the determination of such question of construction and for a declaration as to the right claimed.

(3) A Judge shall not be bound to determine any such question of construction if in his opinion it ought not to be determined on Originating Summons but may make such orders as he deems fit.

**(c)Originating Motion/Application:** This is mainly used to instill action of the court and for matters that deal with fundamental human rights, mandamus, habeas corpus, and the like.

**(d)Petition:** This is used to commence actions that involve swinding up of a company, election disputes, divorce, etc.

In summary therefore, a Writ of summons is used for contentious matters that deal with disputes, originating summons is used to commence non-contentious actions relating contracts, wills, deeds, etc., Originating motion/Application is used to commence matters relating to fundamental human rights, mandamus, habeas corpus, etc., and Petition is used to commence matters related to divorce, elections, etc.

**References**

1. The Nigerian Legal System by Ese Malemi (4th Edition)

2. The Lagos State High Court (Civil Procedure) Rules 2019.

3. <https://nigerialii.org/content/order-4-crminal-appeals>

4. <https://mondaq.com/Nigeria/Litigation-Mediation-Arbitration/309008/Effect-Of-Appeals-On-Course-Of-Trials>

5. <https://nigerialii.org/ng/judgment/court-appeal/2008/18>

6. www.coursehero.com

1. Section 36 [↑](#footnote-ref-1)
2. (1843) 10 C & F 200 [↑](#footnote-ref-2)
3. SC 120 1989 [↑](#footnote-ref-3)
4. (CA/L/456M/08) (2008) 18 (2008) [↑](#footnote-ref-4)