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COURSE: NIGERIAN LEGAL SYSTEM

1. CRIMINAL PROCEDURE

Before we go into the procedure from arraignment to imposition of sentence in a criminal trial in the high court, without forgetting the remedies available for the accused after the imposition of a sentence, we will first start with what the concept of criminal procedure. Criminal procedure can be referred to as the process of conducting, commencing and concluding a criminal case. It can also be defined as the process by which a criminal case is prosecuted in court. Most people regard it as the process of administering criminal justice. As other procedures, it has sources which are identified as:

1. Penal code
2. Statutes establishing tribunals
3. Criminal code
4. The constitution of the federal republic of Nigeria 1999 as amended (2011)
5. Criminal procedure code and its equivalent laws in northern states
6. Criminal procedure Act and its equivalent laws in southern states

There are also steps for criminal procedure which have to be done. Any trial based on information in any high court is basically an emphasis of that of the magistrate court so therefore the difference between that trial and a summary trial isn’t very evident except there is an amplification of certain procedures. Some of the primary stages of criminal procedure in the high court is as outlined below:

1. Indictment
2. Proofs of evidence
3. Arraignment and plea
4. Plea of guilty
5. Plea of not guilty
6. Prosecution
7. Submission of ‘’no case to answer’’
8. Defense
9. Closing address
10. Judgment
11. Discharge
12. Finding of guilt and sentence.

In any criminal procedure, the first step is indictment which can be defined as the referred accusation of a crime brought before the court. It is also known as information. The action is brought by the Attorney General or his subordinate legal official on behalf of the state. An Indictment of a crime is always presented by the state and this is seen in the case of State v Timothy and NDLEA v Obasanjo

The next step is proof of evidence. This comes after Indictment. The proof of evidence is composed of the address, names and written statement if all the witnesses that the prosecution wishes to put as evidence at the trial. It is used to put the accused to notice so he can prepare for his defense.

Proof of evidence is followed by Arraignment and Plea. This is the calling of the accused person to court by the registrar or other officers of the court. The information would be read for him while he is standing on the dock and the prosecution will now then explain the information in a much understanding way. There are different ways an accused person can plead and they are:

1. Autrefois Acquit: this plea means that he had already been tried on the same issue and this helps to prevent double jeopardy.
2. Autrefois Convict: this plea means that the person convicted for the same offence in a previous occasion. This also helps to prevent double jeopardy.
3. Mute: the accused may stand mute and the court must therefore enter a plea of not guilty because it is mandatory.
4. Plea guilty of a lesser offense: the accused can plea guilty of a lesser offense that is not in the indictment. The prosecution drops instant charge and the court will sentence the accused for the lesser offense. It breeds room for bargain.
5. He may plead guilty
6. He may not plead guilty.

Next comes plea of guilty. Once an accused person pleads guilty, the counsel for the prosecution will then give a summary of the evidence found against the accused and the counsel for the defense makes his plea in mitigation of sentence then the sentence given follows.

A person can also plead not guilty when accused and once the accused pleads such, the trial then starts to factionalize. The counsel of the accused and prosecution must convince the court that their plea is true with the provision evidence, judicial precedent and statutory provisos as the case may seem to appear.

After this, there is also plead of bargaining and in this one; a person pleads guilty of a lesser crime in exchange of a serious crime laid against him. The accused is then sentenced on basis of his plea of guilty of his lesser offence. This is not new in Nigerian legal system because there is provision for an accused person to plead guilty of a lesser offence than the offence placed or laid against him. This is usually as a result of a negotiation between the counsel of the prosecution and the counsel of the accused. A trial judge may also allow an accused person to change his plea from guilty to not guilty to avoid the passing of the sentence otherwise a refusal to allow a change of press becomes an issue of appeal. Once a plea is changed from guilty to not guilty trial then commences.

In an also related note, unfitness to plead is when the accused person is mentally ill and is unable to carry out such action”. They refer these people for psychiatric examination. In case of a murder, if the accused is mentally disordered or impaired and unable to make plea, a variety of guardianship or hospital orders will be made and they will be taken to a hospital at the pleasure of the president or governor depending on whether it is a federal or state matter. The accused may also put up a defense of insanity and will be acquitted on those grounds if successful. This is seen in R V M’Naghten where a defense of insanity was successful and the accused was not guilty and acquitted on those grounds. One must prove it if they want to rely on insanity because the rule of law is that every accused person is presumed sane until they prove otherwise with evidence including medical evidence. The trial judge can also raise insanity “suo motu”.

The next step is prosecution. The causal prosecution usually starts criminal proceedings. It is duty of the prosecution to prove beyond reasonable doubt the charge or information against the accused. This is because it is better for guilty person to go scot free than a non-guilty person to be persecuted. This has its roots deep from Roman law. It was in the form of a maxim “it is better for guilty person to go unpunished than for an innocent person to be condemned”. This has spread worldwide. In Ukorah V State, JSC Chukwunweike Idigbe said: “The Romans had maxim that is better for ten guilty persons to go unpunished than for one innocent person to suffer”. There are also cases that have submission of ‘’no case to answer’’. When a case is closed by submission of no case to answer by an accused, the counsel of the prosecution has not produced sufficient evidence or made out a prima facie case against the accused and the accused has no case to answer. The prosecution answers to this and the judge makes a ruling on the submission. If successful on merit the case will be discharged but if on technicality it would not be discharged. If the submission is rejected the trial continues and the accused has to state his case with evidence. If he refuses to do so and still stands by his failed submission the court usually convicts the accused.

So after the case is closed for the prosecution and the submission fails if any, the defense opens. The accused is questioned by the counsel of the prosecution and the counsel of the accused as well. Each witness undergoes this same process before the next witness. They are never mixed unless there are good reasons. These reasons include; the need to take evidence of a busy witness, someone who is not readily available to testify, someone who lives far away, a sick person, a person traveling to a far place and so on. After the witnesses have testified the defense closes. After this, the counsel of both sides both make closing speeches, the counsel of the prosecution begins. He states the strength of his case and the weaknesses of the accused’s and urges the court to convict the accused. But because it’s the law that the prosecution can only succeed by his own strengths (they must prove beyond reasonable doubt and not beyond the shadow of doubt), the accused is not bound to put up a defense and may choose to rest his case or put up a guard. The counsel of the accused then follows stating if any, the lies of the case of the prosecution and if they were not able to prove beyond reasonable doubt without sufficient evidence. They will urge the judge to dismiss the case on the accused. By law they are entitled to the last word of the case.

Then, the judge then fixes a date for judgment because it is not a summary case and they rise for adjournment to enable the totality of the evidence of the case. On the judgment day the judge will evaluate the evidence and state the reasons for disbelieving or believing each party as the case maybe and may find the accused guilty or not guilty. After all these processes, If the accused is not found guilty on technicality the judge will acquit the accused but if the prosecution fails on technicality the judge will not acquit the accused but discharge him. Where an accused is found not guilty the court makes one or more of these; (I) Dismissal Order dismissing the information of charges (ii) Order of discharge of the accused (iii) Order of acquittal (IV) Order of compensation if the case is frivolous or false.

Then the next step is sentence. If an accused person is found guilty before plea of mercy, sentence and leniency is usually made by the counsel of defense. After the allocusts the judge passes his judgment. Here are the sentences the court can impose on a person found guilty of a criminal offence; caning, death séance, imprisonment with hard labor, deportation, fine, probation order, Order of costs, binding over order (and suspended sentence and community service in western countries), Oder for disposal of property, Award for damages and Order for detention during the pleasure of the president or governor.

REMEDIES FOR AN ACCUSED PERSON AFTER A SENTENCE.

The court may decide to reduce the sentence of the convict due to some factors we refer to as mitigating factors. They are factors that make the court to ease the sentence placed on the accused. These factors may include; plea of guilty by the accused, minor role played by the accused, provocation, the age of the accused, minor role placed by the accused, effect on family and dependents, length of time spent in custody (if any before conviction), first offender status of the convict, illiteracy or level of education of the accused, accidental nature offence and so on.

2. CIVIL PROCEDURE

Civil procedure can be referred to as the process of conducting, commencing and concluding a civil case or it can be defined as the process by which a civil case is prosecuted in court. Just like criminal procedure, civil procedure also has its sources and they are:

\*The Nigerian Constitution and this establishes the judiciary and provides for procedure of rules of courts.

\*Statutes establishing courts.

\*Civil procedure rules of relevant courts

\*Rules of practice and procedure of English courts.

These are some of the sources of civil procedure and also like the criminal procedure, there are stages and some of the stages of civil procedure in the high court are as outlined as below:

⦁ The Pre-Court Stage and consultation of a lawyer

⦁ Form and commencement

⦁ Appearance

⦁ Stay of proceedings

⦁ Discontinuance

⦁ Settlement

⦁ Summary judgment

⦁ Pleadings

⦁ Pre-trial conferences and scheduling

⦁ Discovery and Inspection

⦁ Issues, Inquires, Accounts and References to Referees

⦁ Special case

⦁ proceeding at trial: trail

⦁ filling of written address: closing address

⦁ Judgment

⦁ Enforcement of judgment

Now, we move into methods by which civil proceedings are commenced in the high court. After the pre-court stage and consolation of a lawyer the proceeding commences. For an action to be commenced in the high court a counsel must file one or combination of the following originating processes or papers:

\*Writ of summons along with a statement of claim

\*Ex-parte motion with or without a writ of summons along with a statement of claim which can be filed in later.

\*Petition

\*WRIT OF SUMMONS: When filled it is tamped and sealed with the courts name by a bailiff to give a defendant notice of the claim made against him. It urges him to acknowledge and defend himself before the court. It shall reoccupied by a statement of claim , written statements , lists of witnesses , written address in support of action , copies of every document to be relied on in trial , written statements and so on in Lagos. It usually contains the following endorsements:

1. NAMES OF THE PARTIES TO THE SUIT

\*name of defendant and his address

\*name of plaintiff and his address

\*name of plaintiff’s solicitor or counsel and his business address.

2. Endorsement of claim against the defendant and this serves the defendant personally.

It lasts for 12 months but in places like Lagos, it lasts for only 6 months and has to be served between the time frame however it can also be renewed at any time.

\*EX-PARTE MOTION: Ex parte is a Latin term which means, “From/out of the party/faction of" (name of party/faction, often omitted), thus signifying "on behalf of (name)". It refers to improper unilateral contacts with a court, arbitrator, or represented party without notice to the other party or counsel for that party. It was common in the titles of habeas corpus and judicial review cases until the end of the twentieth century, due to the fact that those cases were originally brought by the Crown on behalf of the claimant. This decision is one decided by a judge both parties are not required to be present for this. In English law however, ex parte refers to a legal proceeding brought by one party without notification of the other party. Proceedings of executive agencies to establish a right, for example, patent prosecution, can also be ex parte. In common law, the title typically appeared as Sawyer v (Defendant), ex parte (Claimant); however in the US it was shortened to Ex parte (Claimant).

\*PETITION: This is a legal document formally requesting a court order. It is a request seeking a specific court order, made by a person, group or organization to the court, typically at the start of a lawsuit. A petition is made to the court by a petitioner against a respondent, versus a claimant, which is filed by a plaintiff against a defendant. Here, a plaintiff files a petition or complaint with the court in stage one of a civil procedure, specifying what the lawsuit is about. Petitions, along with complaints, are regarded as pleadings at the onset of a lawsuit. Where an action is commenced by a petition or an expert motion it must also include the endorsements which are explicitly stated above. These are the ways a civil procedure can be commenced in the high court.

REFERENCE: WIKIPEDIA, NIGERIAN LEGAL SYSTEM BY ESE MALEMI