Raymond Chinda Nyekazi

18/law01/063

Criminal law is the law which defines, prohibits and punishes crime. Criminal law defines crime, prohibits crime, states the rules of liability and penalties for breach. Criminal law is essentially designed for the purpose of preventing crime and harm to; person, property, and society or state

Here are the different steps which the court would take in hearing in this criminal case from the arraignment.

The different procedure include

1 Arraignment and plea

2 plea of guilty

3 plea of not guilty

4 prosecution

5 submission of “No case to answer”

6 defence

7 closing address

8 judgment

9 discharge

10 finding of guity and sentence

**Arraignment and plea**

When talking about Arraignment and plea we have to know what arraignment is. It can be said to be the calling of an accused person formally before the court by name at the beginning of a criminal proceeding, to read to him the indictment brought against him to ask him whether he pleads guilty or not guilty.it can further be said to mean the registrar of court calling the accused by name while the accused is standing in the desk and reading over and explaining the charge to the accused in a very satisfactory way and asking the accused to make a plea thereto instantly. this is hereby called arraignment of person before the court.

The accused person has his different ways in which he can plead and they are as follow;

1: Autrefois acquit: “Autrefois acquit” means a plea that has been tried for the same offence before and has been acquitted. This plea has an application of rules against double jeopardy, which states that a person cannot be tried twice for the same offence. It is very fundamental under the fair hearing provisions of the constitution of Nigeria.

2: Autrefois convict: this means that a plea that has been tried and convicted for the same offence on a previous occasion. He cannot be tried again. this is also applicable to double jeopardy.

3: He may stand mute: a situation where an accused stands mute, that is , without saying anything. A plea of not guilty is usually entered by the accused stands mute, a plea of guilty has to be mandatorily recorded for him by court.

4: Plea of guilty to a lesser office; most times while intending to plead “not guilty” to the offence charged, an accused person may plead guilty to a lesser offence which is not mostly on the information. Where this plea is accepted by the pro section, the court may pass its sentence accordingly. This leads to the dropping of the instant charge. Thus, paving the way for the court to sentence the accused to a lesser offence admitted. Thus there is room for plea bargain.

5: He may plead guilty to the offence charged

6: He may also plead not guilty.

Plea of guilty

A situation whereby the person pleads guilty, the counsel for the prosecution will give the court a summary of the evidence together with details of the accused persons background that is, character and his criminal record if any. there after the counsel for the defence usually makes his plea in mitigation of sentence and the court then passes its sentence.

Plea of not guilty

Where the accused person pleads not guilty, the trial proceeds.

Prosecution

The counsel for the prosecution always open a criminal proceedings by calling evidence for the prosecution. He calls his witnesses and examines each in chief, and tenders any exhibit they may have . The witnesses are interrogated by the defence council and re-examined by the prosecuting councel as may be necessary and the case for the prosecution comes to an end.

The main issue of proof on the prosecution in criminal proceedings is proof beyond reasonable dubt. Where the burden of proof is nit discharged, the charge is usually dismissed and the accused is legally entitled to be set free is accordingly unusually discharged and acquitted. This burden of proof which rests on the prosecution to prove guilty of the accused beyond reasonable doubt is never lowered or watered down. This means its better for a guilty person to go scot-free and escape justice, than for an innocent person to be unjustly punished, due to lack of standard proof. The principle or requirement that the guilty of an accused be proved beyond reasonable doubt has its roots deep down roman law.

The roman law had its maxim that it is better for aguilty person to go unpunished than for an innocent person to be condemned. This requirement of proof has spread throughout the world. The point of stressing the need for the prosecution to discharge the burden of proof required by law in criminal proceedings. This is very efficient in UKORAH VS STATE which said” that **“the romans had a maximum that its better for ten guilty person to go unpunished than for one innocent person to suffer.**

Submission of “NO CASE TO ANSWER”

At the final procedure of the case for the prosecution, the defence counsel may submit that the prosecution has not produced sufficient evidence or made out a PRIMA FACIE case 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 normally replies. The judge usually makes a ruling on this submission.

The judge may most likely accept the submission and the make a ruling that the accused has no case to answer. This ruling is a verdict of a guilty and the court may thereupon discharge and acquit the accused on merit, or discharge but not acquit the accused, if the submission succeeded just on a technicality not merit.

Lastly, where the judge reject the no case submission in his ruling, the trial proceeds and the accused has to state his case by giving evidence in his defence. Where the accused refuses to give evidence in his defence and choses to stand by his “no case submission” which had earlier failed, the court would often usually convict the accused. The reason being that the accused that accused failed to defend himself against a PRIMA FACIE case made out against him.

Defence

When the close of the case for prosecution and the failure of a no case submission, if such submission was made, the case for the defence opens. The accused and his witnesses, if any, are, one after the other led in evidence in chief by the counsel for the defence and are cross examined by the prosecuting counsel and re-examined by the counsel for the defence as may be necessary. Each witness undergoes the whole process, before another witness is called. It is never mixed up. This is always the procedure. Generally, unless a witness has finished his testimony and undergone necessary cross examination and re- examination, if any, another witness may not be called ,except there are good reasons to do so. Some good reasons to call a witness out of turn, include the need to take the evidence of a witness who is obviously very busy or who may not be readily available to testify, or who lives in a distant town or place , or who is suffering from ill health , travelling to a far place , and so forth . After the witnesses for the defence have testified and tendered any exhibit they may have, the case for the defence closes.

CLOSING ADDRESSES

After the close of the case for the defence, the counsel for both sides 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 or reviews the case on both sides.

He points out the strength of the case for the prosecution and identifies the weaknesses if any of the defence and then urges the court to convict the accused as charged. However, the general rule of the law is that the case for the prosecution must succeed on its own. This is so, for in criminal proceedings the burden of proof on the prosecution is proof beyond reasonable doubt. Its must be proved beyond reasonable doubt, but not beyond the shadow of doubt. The case for the prosecution must succeed on its own strength. Thus, the case for the prosecution cannot rely on the weakness of the defence to succeed. For this reason an accused person is not bound to put up a defence and may in appropriate circumstances rest his case or defence on the case for the prosecution.

Next, the counsel for the defence addresses the court. In this address he points out the weaknesses of the case for the prosecution. If the case for the prosecution is a pack of lies and a mere fabrication, conjecture , imaginative , malicious ,frivolous , vexatious and an abuse of court process , he calls it so . If a prima facie case has not been made out,or sufficient evidence has not been adduced as required by law to discharge the burden of proof that rests on the prosecution in criminal proceedings , which is proof beyond reasonable doubt he points it out to the court and finally , he urges the court to discharge and acquit the accused on the charge or charges , as the case may be . The general rule of closing speeches is that the accused or his counsel is entitled to the last word that is, it is his right to round off the addresses .

JUDGEMENT

when the closing addresses by counsel for both sides are done, 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 . On the adjourned date the court resumes sitting, the case is called and the judge begins to deliver his judgement on the case. However, where a trial is by summary procedure the judge may deliver judgement there and then, or he may retire to his chamber to consider judgement and resume sitting to deliver it on that same day, as the case may be, or on an adjourned date .

In the judgement, the judge sums up, weighs or reviews the evidence for both sides. He states his reasons for believing and accepting the case for either side and also gives his reason for disbelieving and rejecting the evidence for the other side. In conclusion, the judge may find the accused not guilty or guilty as the case may be. This must be done according to law.

DISCHARGE

Where an accused person has not been found guilty, on merit, the judge will dismiss the information or charges and accordingly discharge and acquit the accused person as provided under the criminal procedure law. On the other hand, if the prosecution failed on a technicality, then the court will usually discharge the accused, but not acquire him.

Where a person has not been found guilty, a court usually makes one or more of the following orders; 1 Dismissal order; dismissing the information or charge [s]

2 Order of discharge of the accused on the charge[s]

3 Order of acquittal and

4 Order of compensation, as the case may be for the false, frivolous, vexations or malicious prosecution or false imprisonment of the accused, and so forth as may be relevant according to the circumstances of the case .

SENTENCE

Where an accused is found guilty, before passing sentence an allocutus, plea for mercy or leniency is usually made by the counsel for the defence. After the allocutus, the judge passes sentence on the accused.

TYPEES OF SENTENCES COURT MAY IMPOSE

When an accused has been formed guilty of a crime , a court may under the criminal procedure act or law pass sentence and make one or more appropriate orders as follows ;

1 imprisonment usually with hard labour.

2 fine, in lieu of, that is, instead of imprisonment or both fine and jail

3 death sentence

4 caning

5 deportation

Other orders a court may make include;

6 binding over order (and suspended sentence and community service in western countries ).

7 order for detention during the pleasure of the president or governor as the case may be;

8 order for disposal of property

9 order for costs

10 award of damages; and

11 probation order.

REMEDIES AVAILABLE AFTER THE IMPOSITION OF SENTENCE:

3. Sentence modification:

Sentence modification is a procedure in which a sentence which has already been passed by a judge is modified in light of new information. This is a seperate and quite different process from an appeal. Although similar, in things like the court involved, the available grounds that can affect a criminal sentence, and the procedures are quite different. In an appeal, someone attempts to overturn a conviction altogether. Appeals may result in exoneration, in which someone is deemed innocent of the crime, or a new trial, if there were factors in the original trial which lead an appeals judge to question the verdict. In sentence modification, the goal is not to prove a convicted person innocent or to arrange a new trial, but simply to change the terms of the sentence. Criminal appeals must be filled by strict deadlines, a sentence modification petition can be filled anytime while an offender is serving a sentence.

2. Appeal:

An appeal is a request put forward to a higher court to reverse or modify a decision made by a lower court. These appeals act as both a process of clarifying and interrupting law. When an accused person makes a plea of guilty on his consent, he is not entitled to an Appeal. Although, instances where an appeal could be granted to an accused person includes;

• In criminal cases, a person can’t appeal unless the defendant was found guilty. If they were found not guilty, the verdict is final. If they were found guilty, you can appeal if you think your sentence was too harsh or the court made a mistake that resulted in your conviction.

• Situations where the accused person could not have committed the crimes he is being charged with.

• Or, where the accused pleads guilty ignorantly and does not even know what is being charged against him.

3. Clemency:

Clemency is considered to be an act of grace. It is based on the policy of fairness, justice, and forgiveness. It is not a right but rather a privilege, and one who is granted clemency does not have the crime forgotten, as in Amnesty, but is forgiven and treated more leniently for the criminal acts. Clemency is similar to pardon in as much as it is an act of grace exempting someone from punishment. Commutation of an offender's sentence, however, is the lessening of the punishment based on the offender's own good conduct subsequent to his conviction.

2. Civil law is the whole of private law and public law, except criminal. Generally, all laws, excluding criminal law, military law, and martial or emergency law are civil laws.

In Nigeria, the judicial system embraces certain methods that may be used when commencing civil actions in high court. The suitability of these modes higly depends on the nature, and subject matter of the case. The high court role provides that the following are modes of commencing civil action

1: writ of summons: The Writ of Summons (WOS) is one of the two modes used in commencing a civil action against a person. 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. Also Writ of Summons ([Order 6 of the Rules of Court](https://sso.agc.gov.sg/SL/322-R5#PO6-)) A Writ of Summons is a formal document addressed to the defendant requiring him to enter an appearance if he wishes to dispute the plaintiff’s claim. Civil actions involving substantial disputes of fact are commenced by way of a writ. These include, but are not limited to:

* Contract actions, eg, claim for damages resulting from breach of contractual terms and obligations, etc;
* Tort actions, eg, claim for damages in respect of property damage resulting from road accidents and negligence, Claim for damages resulting from fraud and defamation, etc;
* Personal Injury actions, eg, claim for damages in respect of personal injury and / or death resulting from road and industrial accidents or negligence, etc;
* Intellectual property actions, eg, claim for damages resulting from the infringement of copyright, trademark or patent, etc; and
* Admiralty and Shipping actions.

2 Originating Summons ([Order 7 of the Rules of Court](https://sso.agc.gov.sg/SL/322-R5#PO7-)). This is an action commenced by way of an Originating Summons where by:

It is required by statute; or

* The dispute is concerned with matters of law in respect of which there is unlikely to be any substantial dispute of facts.

3 Originating motion:

This is a type of document that starts a civil proceeding. This is often required when there is no defendant, or you are making an application to the court under a particular Act, or the *Supreme Court (General Civil Procedure) Rules 2015* or the *Supreme Court (Miscellaneous Civil Proceedings) Rules 2018* tell you to use an originating motion. Tells us so.

4 Petition: *Petition* can also be the title of a legal [pleading](https://en.wikipedia.org/wiki/Pleading) that initiates a legal case. The initial pleading in a civil lawsuit that seeks only money (damages) might be called (in most U.S. courts) a *complaint*. An initial pleading in a lawsuit that seeks non-monetary or "equitable" relief, such as a request for a [writ](https://en.wikipedia.org/wiki/Writ) of [*mandamus*](https://en.wikipedia.org/wiki/Mandamus) or [*habeas corpus*](https://en.wikipedia.org/wiki/Habeas_corpus), custody of a child, or [probate](https://en.wikipedia.org/wiki/Probate) of a will, is instead called a *petition*.

REFERENCES

Lawteacher.net

Wikipedia. com

Law pavilion

Lexesneses