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**QUESTION**

1. State clearly the procedure from arraignment to imposition of sentence in a criminal trial in the High court. Comment on the Remedy available to the accused after the imposition of the sentence.
2. Comment on the various methods by which civil proceedings may be commenced in the High Court.

1.

Criminal proceedings refer to the method by which a court of jurisdiction, commences, conducts and concludes its activities of prosecuting an accused under the court. This likewise refers to the rules and regulations used in the administration of criminal Justice in Nigeria.

There are certain steps a court takes in reaching its judgment, each differing depending on the court in question. Thus, this essay aims to itemise and express clearly these steps taken with regards to criminal trial by the High court of Nigeria beginning with arraignment and concluding with the imposition of a sentence. Lastly commenting, on the remedy available for the accused thereafter.

Beginning with Arraignment, it is seen that criminal proceedings in a High Court follows thusly. Plea, Prosecution, Submission of "No Case Answer", Defence, Closing address, Judgement, Discharge, Finding a guilt and sentence. All of which would be explored below.

Arraignment refers to an act of calling or bringing (someone) before a court to answer a criminal charge. This process commences after the proof of evidence has been given. At this stage of arraignment, the accused person is called to stand in the dock and his charge is read and explained to him by the court registrar or any other officer of the court satisfactorily. Thereafter the accused is asked whether they plead guilty or not guilty. In other cases during this arraignment, the accused may plead Autrefois convict/ acquit - if it is a case whereby he has been previously tried and convicted or acquitted for the same case which is against the **Section 36(9) Constitution of the Federal Republic of Nigeria 1999 as amended hereinafter referred to as CFRN**. The accused may also choose to stand mute and not give a plea however, regardless a plea of not guilty is entered into by the court. Accused may also choose to plead guilty for a lesser offence.

A Plea is a formal statement by or on behalf of a defendant or prisoner, stating guilt or innocence in response to a charge, offering an allegation of fact, or claiming that a point of law should apply. In a situation whereby the accused pleads guilty, a summary of evidence, coupled with the accused background or criminal record is submitted to the court by the prosecution. After this the defence counsel may make his allocutus or plea in mitigation to reduce sentence.

Accused may also choose to bargain his plea, meaning he chooses to plead guilty of a lesser crime in exchange for a dismissal of the more serious allegations. This is with the approval of the sitting judge of course. This is relatively common in charges brought by the Economic and Financial Crimes Commission (EFCC) in order to avoid the lengthy process of usual proceedings. If bargain is denied then normal proceedings continue and due to the Rule of Law, the accused is not expected to be sentenced based on his admission of guilt in the lesser offence. A trial judge may allow an accused to change his plea from guilty to Not Guilty thus trial proceeds.

Note however that in a case whereby the accused is "unfit to plead" such as in the case of the mentally ill, given proper medical evidence as in the case of **R V. M'NAGHTEN 1843** the accused would be found not guilty and acquitted on the ground of insanity. On the other hand, the accused may be placed in a mental institution until fit to be released.

Prosecution is the next stage of this proceeding and this refers to the instituting or conducting of legal proceedings against the accused. In this stage, the burden of proof rests on the prosecution who must prove their case beyond all reasonable doubt and if not done the accused is to be discharged. So, witnesses are brought to

testify and evidence is tendered before the court. Witnesses are first examined by the prosecution then cross examined by the defence counsel before being reexamined by the prosecution again.

Following the prosecution, the defence counsel may submit that there is “No case to Answer” that is if the prosecution has failed to produce sufficient evidence against the accused. The prosecution is allowed to reply to this and thereafter the court makes a ruling on this submission and if not guilty, the accused is discharged and/or acquitted. However, if the submission of No Case To Answer is denied, the trial continues and the accused is expected to give a defence and if not is convicted of said crime.

Defence is entered into by the accused who may produce evidence or witnesses which he first examines then is cross examined by the prosecuting counsel and re-examined by the defence counsel if necessary.

After the close of the defence, the counsel on both sides then make closing speeches by addressing the court from their filed written addresses starting with the prosecution who must conclude and prove his case beyond reasonable doubt relying on its own strength not the weakness of the Defence. By this reason, an accused must not give any closing remarks and may rest his case on the prosecution.

The defence, in his final address if choosing to, may point out the weakness of the prosecution's argument and finally urges the court to discharge or acquit the accused. The general rule is that it is the right of the accused or his counsel to give the last word to round off the final address.

Lastly, the judge fixes a date where the court would reassemble and judgement would be delivered. However in a case where a trial is by summary procedure, the judgement may be given the same day. During judgement, the court sums up and weighs provided evidence, giving his reasons for his position, concluding whether or not the accused has been found guilty or not.

Thereafter, the accused may be discharged or acquitted as the case may be. Where an accused is not found guilty on merit, he would be discharged and acquitted. However if prosecution failed in technicality, the court would discharge accused but not acquit him. If found not guilty, then the courts may enter into an Order of Dismissal, discharge, Acquittal, Compensation e.t.c as the case may be

With regards to the imposition of sentence, if a person is found guilty, a plea of mercy or leniency may be entered into by the defence counsel, after which the judge may pass a sentence which would impose reward varying from imprisonment, fines, deportation, caning, or even a death sentence. Other orders may be binding over order, order for costs, disposal of property, award of damages or even a probation order. some of which would be commented upon below. A criminal remedy or sanction is pursued by the state, with or without the involvement of the victim. Criminal remedies or sanctions against an individual person or legal entity (i.e. a business) can take a range of forms depending on the jurisdiction, which can include imprisonment, house arrest, community supervision, fines, restitution, and community service.

Thereafter, the defendant and its counsel may then appeal to a superior court to review its case. This is one of the major remedies available to an accused person after the imposition of sentence.

An appeal as defined by **J.A Agaba** ‘an appeal is an invitation by a party to a proceeding to a superior court to review its decision of an inferior court to find out whether on a proper consideration of the facts placed before it

and the applicable law the lower courts arrived at a correct decision. In simple terms an appeal is basically the process of applying to a higher court for a reversal of the decision of a lower court.

In the hierarchy of courts the Supreme courts remains the apex court in Nigeria, however followed by the Court of Appeal, this means that matters entertained in the court of appeal have appellate jurisdiction from the High courts.

Appeal from the High court to the Court of Appeal must be matters pertaining to appeals from the Federal and State High courts as well as the Sharia and customary courts along with certain tribunals. As seen in **Section 246 of CFRN 1999 as amended**. The court of appeal must consist of 3 justices at least when sitting on matters pertaining to the High court. Appeals may be as of right or with Leave as seen in **Sections 241 and 242 of the CFRN**. the time for appeal must be filed within 14 days of the date of the decision. The following items must accompany an appeal by leave of High courts. Firstly a notice of motion for leave, a certified true copy of the high court judgement and a copy of the proposed grounds for appeal. Though an appellant may apply for an extension of time.

Due to the leniency in the administration of justice, even after appeal is denied or granted but the courts still rule in favour of the respondent, the accused may still seek relief through the presidential pardon. Presidential pardon is the right of the leader of a country to forgive someone for a crime, or to excuse someone from a punishment. In the **U.S. Article II of the United States Constitution** gives the President the power to pardon people for federal crimes. In Nigeria The grant of pardon or prerogative of mercy is a right recognised under the 1999 constitution of Nigeria, as amended in 2011.

This right provided for under **sections 212(1) and 175(1) & (2)** of the Constitution for the Governor and the President, respectively, is legally accessible and available to all classes of convicts in Nigeria and is obtainable by a convict applying either personally or through a solicitor, or even through the prison authority where he or she is incarcerated, to a Governor or the President as the case may be, for grant of the prerogative of mercy or pardon, in his favour. Under the forgoing provisions of the constitution, a State Governor or the President of Nigeria has constitutional powers to grant conditional or unconditional pardon to a convict, or to substitute, reduce, commute or remit the length of sentence and/or the severity or quantum of punishment and penalty or forfeiture, imposed on that person by a court of law.

Overall, The heart of the criminal justice process is the criminal procedure. Like arrests and searches and seizures, criminal procedure is regulated in part by the Nigerian constitutions and statutes such as the Criminal Procedure Act. Within the constitutional guidelines coupled with these statutes, the courts have developed a set of rules. These rules guide the participants-the judge, prosecutor, and defense attorney-through the process in such a way as to guarantee that the accused is treated fairly and at the end given the proper reward.

2.

A civil act or case is one which usually involves private disputes between persons or organizations. Therefore, civil proceedings refer to cases brought before the court for the purpose of enforcing or declaring a right, or for recovery of money or property or in relation to status, in contradistinction to the criminal proceedings. Civil procedure is the body of law that sets out the rules and standards that courts follow when adjudicating civil lawsuits. In Nigeria, the court's ability to adjudicate on civil cases is not restrictive although the unique differences of the amounts or issues of the case may be the deciding factor. This essay however aims to outline and explore these civil proceedings and how it takes place in the High Court of Nigeria.

Civil proceedings are commenced by way of originating processes issued and served by the courts. There are various types of originating process. These include writs of summons, originating summonses, originating motions and petitions. In Nigeria, actions in which the facts are disputed must be commenced by writ of summons. **The Lagos State High Court (Civil Procedure) Rules 2019** provides for a system under which originating process must be accompanied by a statement of the claim, a list of witnesses, list of documents to be relied on and the sworn statements of the witnesses. There are four means of Commencement actions in a civil proceeding in the High court. Beginning with a writ of summons, originating motions, originating summons and petitions.

Writ of summons a writ by which an action is started in the High Court. It is used to commence all actions unless a particular rule or law prescribes otherwise it is usually used for contentious actions where there is uncertainty as to which process to employ, you use writs. Writs are a form of written command in the name of a court or other legal authority to act, or abstain from acting, in a particular way. 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. 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.

Originating motions are used where the rules of any written law prescribes for it, usually used for orders such as prohibition, certiorari and mandamus and Habeas corpus it is also used for the enforcement of fundamental human rights. When the statutes recommend the use of application without providing for the procedure, originating motions should be used.

Originating summons are used to commence action when provided for by any rules or written law. It is usually used for construction of a written law or any instrument, deed, contract or other documents or where there is no likelihood of dispute as to fact. Compared to a Writ of Summons, the Originating Summons is a simpler and swifter procedure for the resolution of disputes as it is determined generally on affidavits filed and does not involve pleadings or many interlocutory proceedings. However, many of the requirements concerning issuance,

duration, renewal and service with regard to a writ may apply, with the necessary modifications, to an Originating Summons.

Petitions are a formal written request, typically one signed by many people, appealing to authority in respect of a particular cause. It is also used when a written law prescribes for it, usually used for winding up of companies and for electoral matters, matrimonial proceedings.