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**COURSE TITLE: NIGERIAN LEGAL SYSTEM II**

**ASSIGNMENT TITLE: CIVIL AND CRIMINAL PROCEEDINGS**

**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 sentence.

**Answer**

Criminal procedure is the process (commencing, conducting and concluding) by which a criminal case is persecuted in court. It also refers to the process of administration of criminal justice in Nigeria where the body of laws and rules are used.

This write-up aims at stating very clearly the various stages of criminal procedure at the high court paying more attention to the arraignment stage leading up to the imposition of a sentence. In order to create a wholesome idea of the procedures and stages of a criminal trial in the high court, this work will briefly highlight all the procedures in a criminal trial in an ascending order.

1. Indictment or information
2. Proofs of evidence
3. Arraignment
4. Plea of guilty
5. Plea of not guilty
6. Prosecution
7. Submission of “no case to answer”
8. Defense
9. Closing address
10. Judgement
11. Discharge
12. Finding guilt and sentence

**INDICTMENT OR INFORMATION**

An indictment of information is an accusation of crime brought against an accused for trial in a high court.

**PROOFS OF EVIDENCE**

This means the names, addresses and written statements of the witnesses, that the prosecution wishes to call and the list of exhibits, if any that the prosecution wishes to put in evidence at the trial.

**ARRAIGNMENT AND PLEA**

Arraignment is the calling of an accused person formally before the court by name at the beginning of criminal proceedings, to read to him the indictment or information brought against him and to ask him whether he pleads guilty or not guilty. An accused person may plead as follows: Austrefois acquit, Austrefois convict, he may stand mute, plead guilty to a lesser offence, he may plead guilty to the offence charged and finally, he may plead not guilty.

**PLEA OF GUILTY**

This is the next stage after the arraignment and plea. In the instance where an accused person pleads guilty, the counsel for the prosecution will give the court a summary of the evidence together with details of the accused person’s background, that is, character and his criminal record, if any.

**PLEA OF NOT GUILTY**

Where an accused person pleads not guilty, the trial will then proceed.

**PROSECUTION**

The counsel for the prosecution always opens 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 burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt. Stressing the need for the prosecution to discharge the burden of proof required by law in criminal proceedings, Chukwunweike Idigbe JSC in Ukorah V State said that: “the Romans had a maxim that it is better for ten guilty persons to go unpunished than for one innocent person to suffer”.

**SUBMISSION OF “NO CASE TO ANSWER”**

At the close of the case for the prosecution, the defense 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 judge may accept the submission and make a ruling that the accused has no case to answer. This ruling is a verdict of not 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 and not on merit. However, where the judge rejects the no case submission, in his ruling, 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 and chooses 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 failed to defend himself against a prima facie case made out against him.

**DEFENCE**

After the close of the case for the prosecution and the failure of a no case submission, if such submission was made, the case for the defense opens. The accused and his witnesses, if any, are, one after the other, led in evidence-in-chief by the counsel for the defense are cross-examined by the prosecution counsel and re-examined by the counsel for the defense as may be necessary.

**CLOSING ADDRESS**

After the close of the case for the defense, 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.

**JUDGEMENT**

After the closing address 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. On the adjourned date the court resumes sitting, the case is called and the judge beings to deliver his judgement on the case. In the judgement, the judge sum 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.

**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 persecution failed on a technicality, then the court will usually discharge the accused but not acquit him.

**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 defense. After the allocutus, the judge passes sentence on the accused.

A **legal remedy** also referred to as **judicial relief** or a **judicial remedy** is the means with which a court of law, usually in the exercise of civil law jurisdiction, enforces a right, imposes a penalty, or makes another court order to impose its will in order to compensate for the harm of a wrongful act inflicted upon an individual. This work means to use the word ‘remedy’ as in the sense of reliefs or solutions that criminally accused people have after the imposition of a sentence.

An appeal is a remedy that is available to an accused person after the imposition of a sentence. An appeal is a request from a party in a lower court proceeding to a higher (appellate) court asking for a review and modification or reversal of the lower court’s decision. If a defendant in a criminal case is found guilty of a charge or charges, the defendant has the right to appeal that sentencing. It is common for convicted defendants to appeal their convictions.

Usually, only the defendant in a criminal trial may appeal the final judgement of the court after a trial as the prosecution is not allowed to appeal a defendant’s acquittal (a finding of “not guilty”). In addition, after an acquittal, the prosecutor may not put the same defendant on trial for the same charge with the same evidence. This kind of retrial is known as “double jeopardy”. Double jeopardy is expressly prohibited under section 36(9) of 1999 Constitution of the Federal Republic of Nigeria as amended.

However, prior to or during a criminal trial, a prosecutor may be able to appeal certain rulings, such as when a judge has ordered that some evidence be suppressed.

**Question**

2. Comment on the various methods by which civil proceedings may be commenced in the High Court.

**Answer**

Civil procedure is the method, or process of commencing, conducting and concluding civil matters, trials, or claims in court.

In Nigeria, as provided for by virtue of section 6 of the of the 1999 Constitution of the Federal Republic of Nigeria as amended herein referred to as CFRN, there is a Federal High Court, High court of the Federal Capital Territory, Abuja and a High Court of the state. The High court civil procedure rules of the High courts make provision for procedure for the conduct of civil matters in the courts. The civil procedure rules of each state in the country have little to no difference, except for the High Court of Lagos state which operates a multi-door court system and the Federal High Court because of its modified Owing to the aforementioned reason, the bulk of this research work shall be carried out using the Federal High Court and its civil procedure rules.

The High court civil procedure rules usually include a list of orders which are contained in the Federal High Court (Civil Procedure) Rules 2019. Amongst these orders is **form and commencement of action** which will be the centre of this work. The Federal High Court (Civil Procedure) Rules 2019 took effect from May 10, 2019. Before the introduction of this rule, the one that was previously being used was the Federal High Court (Civil Procedure) Rules 2009. In respect to Form and commencement of action, the new rules did not change much there was only a new innovation which will be discussed in this work. Form and commencement of action can be found in Order 3 of the Federal High Court (Civil Procedure) Rules 2019

Form and commencement of action is one of the first stages of the high court civil procedure and also among the very first stages in civil proceedings. This stage basically involves the various methods by which an action can be commenced in the high court. According to Order 3 of the Federal High Court (Civil Procedure) Rules 2019

“Subject to the provision of any enactment, civil proceedings may be begun by writ, originating summons, originating motion or petition or by any other method required by other rules of court governing a particular subject matter.”

That is to say that the modes of commencing civil action in court are namely;

* By writ
* By originating summons
* By originating motion
* By petition

Each of these modes/methods of commencing civil procedure is dependent on the specific nature of cases.

**WRIT**

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. A writ of summons when filed is sealed or stamped with the court’s name on it for service by a bailiff on the defendant to give him notice of the claim made against him and requiring him to acknowledge service and to defend it, if he does not admit the claim. A writ usually contains the following information:

1. Names of the parties to the suit, that is;

* The name of the plaintiff or claimant and his address;
* Name of the defendant and his address; and
* Name of the plaintiff’s solicitor and his business address for service of court processes

1. Information of the claim against the defendant.

A writ of summons must be accompanied with a statement of claim, copies of every document to be relied on at the trial, list of non-documentary exhibits, and list of witnesses to be called at the trial and written statements on oath of witness and also, an affidavit of non-multiplicity of action on the same subject matter.

**ORIGINATING SUMMONS**

An action is commenced by an Originating summons when it is required by a statute and also when a dispute which is concerned with matters of law, is unlikely to be any substantial dispute of fact. An originating summons may be inter-parte or ex-parte of the rules of court. Examples of actions to be commenced by this method are

* Action for interpretation of a written law, documents, company proceedings
* Interpretation of any instrument or deed
* Will, contract agreements or some other question of law

**ORIGINATING MOTION**

This is used only when provided for by a statute or a rule of court. Examples of actions to be commenced by this way are

* Application of 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

Where a statute provides that action can be commenced by application but does not specifically provide the procedure, originating motion should be used.

**PETITION**

This is a written application made to court setting out a party case. It is only used where a statute or the rule of court provides for its use.

In conclusion, each of these various methods of commencing civil procedure is dependent on the specific nature of cases. There are however of some factors to be considered before commencing a civil suit and those factors are cause of action, jurisdiction, limitation of action, rules of the court and alternative dispute resolution (ADR). That is to say that in order to successfully initiate a civil action in court, the lawyer and litigants must ensure that these factors that may be determined and considered by the court are strictly adhered to in order to undertake smooth and successful litigation.

**REFERENCE:**

**TEXTBOOKS CONSULTED:**

* **NIGERIAN LEGAL SYSTEM- ESE MALEMI 4TH EDITION**
* **1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA WITH AMENDEMNET 2011**

**ONLINE SOURCES**

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