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18/LAW01/201

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QUESTION ONE: CRIMINAL PROCEEDINGS IN HIGH COURT

The Nigerian constitution establishes both high courts of state and high court of the federation pursuant to *section 255 and section 270 of the 1999 constitution of the federal republic of Nigeria.* Under this same constitution, the high courts have been given both civil and criminal jurisdiction as stated in *section 272 and section 257.*

Although each high court has its own rules, the general statutes that govern criminal proceedings are; The Criminal Procedure Act, The Criminal Procedure Code, the Penal code, the Criminal Code, The Police Act, The Evidence Act, The children and Young Persons Act and the constitution.

For the purpose of better understanding, the criminal procedure of high court will be split into various stages.

1. Pre-trial investigation
2. Arrest and Indictment
3. Arraignment
4. Trial
5. Judgment
6. Discharge or sentence

PRE-TRIAL STAGE

This is usually the first stage in every criminal proceeding. Usually, the victim of the crime or a witness to the crime lodges a complaint in the police station. As soon as the police are able to determine that the information pertains to a criminal offence, they will then enter it into a file known as the First Information Report.

This report will contain the details of the complaint and with the available information the police will then conduct an investigation. The aim of the investigation is to collect more information by visiting the crime scene and gathering witnesses. In case there is a dead body, a coroner could be invited to determine the cause of death. It is the duty of the police to record all data collected from the investigation.

ARREST AND INDICTMENT

After proper investigation has been carried out, the police or law enforcement agency will now proceed with the arrest. A person can be arrested while attempting to commit a crime, while committing the crime or after he has already committed it. An arrest can be made with or with warrant depending on the circumstances. An arrest could also be made by summons where the court issues an official document inviting the person to appear in court at a specific date to answer an allegation made against him or her.

After the arrest comes indictment. This is when the charge is now brought before the high court by the attorney-general of the state or any of his legal officers on behalf of the state. The prosecution will then gather all evidence in proof including the written statement of witnesses, photocopies of names and addresses of witnesses and all exhibits. All these will be sent to the accused person to put him on notice and enable him prepare his defense.

As a rule, when a person is arrested for committing a criminal offence, he is presumed to be innocent until proven guilty and is entitled to fair hearing *per section 36 of 1999 constitution*. Hence, he is allowed to defend himself in person or with the aid of a legal practitioner of his own choice. In cases where accused is an indigent and cannot afford the services of a lawyer, then the state is required to provide him with a lawyer through legal aid.

The accused could also seek bail as long as it is guaranteed that his release will not constitute a menace to society and he will appear in court at the expected time.

ARRAIGNMENT

To arraign an accused is to bring the person before a court of law formally in order to read him the charges brought against him and give the accused an opportunity to make his plea. Before this time the counsel for defense has been given enough time to prepare.

In reading the charges, the court must ensure that the charges are read in a language that the accused can understand because it is necessary that the accused has full knowledge of the details and nature of the offence *section 36(6).* The accused might plead any of the following;

1. Guilty
2. Not guilty
3. *autrefois acquit*: this means that the accused has been tried and acquitted for that same offence. This is an application in accordance with the rule that prevents double jeopardy. *Section 36 (9)(10) of 1999 constitution*
4. *autrefois convict*: this means that the accused has been tried and convicted for that same offence and it is also an application in accordance with the rule that prevents double jeopardy.
5. Plea bargain: in this case the accused pleads guilty to a lesser crime in exchange for the dismissal of the original charge brought against him.
6. Unfitness to plead or defense of insanity

As a rule, every accused person is assumed to be of sound mind until proven otherwise. So if an accused person pleads unfitness to plead, claiming that he is too mentally ill or disordered to stand in trial, then the accused is transported to a psychiatric hospital for mental examination and treatment. If the accused is proven to be mentally ill, he will be committed in a psychiatric ward until he recovers. The case will not proceed until he is released and declared to be of sound mind or acquitted on grounds of insanity.

If the plea bargain succeeds, the initial charges will be dropped and the trial will continue for the lesser charges. The plea bargain is usually a negotiation between the prosecution and the defense counsels with the approval of the judge and it occurs when the accused does not intend to plead guilty to the serious offence charges brought against him but instead pleads guilty to a lesser offence that he committed which is not part of the charges brought against him. If this bargain fails and the accused still fails to plead guilty, then the trial proceeds but the accused cannot be punished for the lesser offence because it is not part of the prosecutions charges.

If the accused pleaded guilty, then the matter becomes simpler. Instead of proceeding with the lengthy trial, the prosecution counsel will present a summary of the evidence and information on the accused person's background. The defense counsel will then plead the court to mitigate the sentence of the accused persons after which the court will pass the sentence.

TRIAL

The trial takes place after the arraignment. The burden of proof is on the prosecution counsel to prove beyond reasonable that the accused person is guilty of committing the crime. The prosecuting side opens the floor by presenting their exhibits and witnesses for examination, cross examination and re-examination. The cross examination is always performed by the defense counsel.

A no-case submission might be made by the defense if they believe that the prosecution has not produced sufficient evidence or strong argument against the accused. This submission will mean that the accused has no case to answer and that the matter should be dismissed. But in a situation where the judge rejects the no-case submission, then the trial goes on. Subsequent failure by the defense to prove his innocence will lead to conviction.

In the absence or failure of a no-case submission, the defense is expected to produce witnesses for examination, cross examination and re-examination. The cross examination is to be performed by the prosecuting counsel and after the witnesses have testified and all exhibits have been tendered the case for the defense closes. The prosecution is then called upon to make a closing address where he will summarize the case on both sides and urge the court to convict the accused. After this, the defense will also give their own closing remark, pointing out the weaknesses of the prosecutions argument and urging the court not to convict the accused.

JUDGMENT

After the closing address, the judge will fix date for the hearing of the judgment except in the case of a summary trial, where the judgment will be heard that same day. The reason of adjourning the court to another day is to allow the court enough time to deliberate, consider and evaluate the argument and evidence of both sides.

On the day of the judgment hearing, the judge sums up, weighs and reviews the evidence of both sides ad state his reason for accepting or rejecting an evidence. Thereafter he will declare the accused guilty or not guilty.

DISCHARGE OR SENTENCE

If the accused is found guilty beyond reasonable doubt, the defense might plead the court to be lenient before the sentence is passed. The sentence could range from imprisonment with hard labor, payment of fine, to deportation and even canning. In serious cases of capital offenses like treason, murder and armed robbery, capital punishment could be given.

However if the accused is found to be innocent of the crime, the court will discharge and acquit the accused. In some cases the court will give an order of compensation. According to the circumstances of the case.

REMEDIES AVAILABLE FOR A SENTENCED PERSON

1. Appeal: at the conclusion of the proceedings in a High court, the accused has the right to appeal if he is not satisfied with the decision of the court. The aim of the appeal is to allow a higher court *id est* the court of appeal, to review the case again. The appeal is not a chance for the prosecution or defense to produce new evidence but an opportunity for the court of appeal to go through the same arguments, evidence and witnesses that were presented in the High court in order to either confirm or reject the judgment of the High Court. *Section 240 of 1999 constitution of federal republic of Nigeria* states the decisions where an appeal shall lie as of right from a federal or state High court to the Court of appeal. Such decisions includes decisions where provisions of chapter 4 of the constitution is being or is likely to be contravened.
2. Remission: this simply means the reduction of one's sentence. This could be as a result of good behavior and the accused is released before his due date. *Section 212(1)(d)*
3. Respite: this is a delay in imposition of sentence. Historically, American presidents have granted 30 to 90 days respite and even extended it to longer periods for various reason. One of the most important reason is to await the outcome of an appeal. In Nigeria, the executive has the power to grant respite *section 212(1)(b)*
4. Pardon: *section 212(1)(a*) of the constitution gives the governor of a state the power to grant any person concerned with or convicted of any offense created by any law of a state a pardon, either free or subject to lawful conditions. A pardon strikes the conviction from

the books as if it had never occurred, and the convicted person is to be treated as if he had never committed the crime.

5. The governor can also substitute a serious punishment for a lesser one.

The power of the governor to grant respite, pardon or to substitute a serious sentence with less severe one is known as PEROGATIVE OF MERCY but it can only be exercised after consultation with the advisory council of the state on prerogative of mercy as may be established by the Law of the state. *Section 212(2) of 1999 constitution of federal republic of Nigeria*.

QUESTION TWO: MODES OF INSTITUTING CIVIL PROCEEDINGS IN HIGH COURT

It is not possible to barge into a court and demand that your case be heard. There are factors to consider before instituting a civil action, some factors are;

1. Jurisdiction
2. Limitation of action
3. Parties involved
4. Rules of the court
5. Alternative dispute resolution

There are also various methods of instituting an action is instituted in the High court and such methods are as follows;

Petition: a petition is a formal written request made to a court of law for some legal action to be taken. It is usually signed by the aggrieved parties and is used in matters of divorce, elections and winning up of a company.

Writ of summons: This is a formal document addressed to the defendant requiring him to appear before court to defend himself. Writ of summons is usually used in commencing proceedings where the claimant claims any relief for a civil wrong including damages for breach of duty, damages for personal injury or wrongful death. It is used for actions arising from disputes or contentious matters where the claim is based on or includes allegation of fraud. To deliver a writ of summons to a High court, it has to be accompanied by a statement of claim, list of witnesses and their various written statements and copies to every document to be relied on. If the writ is accepted by the court, it will be sealed and stamped and delivered to the defendant by the bailiff. This is to ensure that the defendant is given notice of the claim. *Order 5, High Court of Lagos state (civil procedure) Rules 2019.*

Originating Summons: this is used for non-contentious actions that do not involve disputes. Such actions include claiming a legal or equitable right under a deed, will, enactment or other written instrument. It is usually prepared by the claimant or his lawyer and accompanied by an affidavit setting out the facts relied upon and all the exhibits. *Order 5(4) High court of Lagos State (civil procedure) Rules 2019*. An action will be commenced by originating summons when that action

is required by statute or disputes concerned with matters of the law in respect of which here is unlikely to be any substantial dispute. It is simpler and faster than writ of summons due to absence of many pleadings or interlocutory proceedings.

Originating motion: this is often required when there is no defendant and you are making an application to the government under a particular Act. Examples include;

a. Application for habeas corpus, order of mandamus, prohibition
b. Application for judicial review
c. Action for the enforcement of fundamental rights

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