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LECTURERS: MISS ISEOLUWA AINA, BARR. FABAMISE SESAN & MISS VERA MONEHIN

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ASSIGNMENT:

* State clearly the procedure from arraignment to imposition of sentence in a criminal trial in the high court. Commenting on the remedy available to the accused after the imposition of the sentence.
* Comment on the various methods by which civil proceedings may be commenced in the high court.
1. Firstly, Criminal trial is the adjudication process of criminal law, designed to resolve accusations brought{usually by a government} against a person accused of crime. It’s purpose being to shed light on the circumstances surrounding a crime.

Section 257 of the 1999 constitution grants power to the high court of the Federal capital territory to have jurisdiction over criminal matters also, such power to entertain criminal matters in a state is provided for in section 272{2}.

 **CRIMINAL PROCEDURES AT A HIGH COURT{HIGH COURT OF LAGOS}**

 A trial in a high court is really an elaboration or amplification of a summary trial at a magistrate court. In it’s pure essence, it’s not much different from a summary trial, except for the elaboration process, which are:

* What is an indictment or information?
* Proofs of evidence
* Arraignment and plea
* Plea of guilty
* Plea of not guilty
* Prosecution
* Submission of “no case to answer”
* Defense
* Closing address
* Judgment
* discharge
* finding of guilt and sentence

**ARRAIGNMENT AND PLEA**

Arraignment is 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 or information brought against him and to ask him whether he pleads guilty or not guilty. In other words, arraignment means, the registrar or other officer of court calling the accused by name while the accused is standing in the dock and reading over and explaining the charge or information to the accused in a satisfactory way and asking the accused to make his plea thereto instantly.

An accused person may plead as follows:

1. **Autrefois acquit:** Autrefois acquit means a plea that he has been tried for the same offence before and has been acquitted. This plea is an application of the rule against double jeopardy, which states that a person cannot be tried twice for the same offence, it’s a fundamental right under the fair hearing provision of the Nigerian constitution.
2. **Autrefois convict:** Autrefois convict means a plea that he has been tried and convicted for the same offence on a previous occasion. He cannot be tried again, also a rule against double jeopardy.
3. **He may stand mute:** Where an accused stands mute, that is, without saying anything, plea of not guilty is usually entered for the accused. This is so because the law provides that where an accused stands mute, a plea of not guilty has been mandatorily recorded for him by the court.

 In **Sugh v the state {1988}:** The appellant was charged in the trial court with the offence of striking a Mr. Robert William Carr with a machete on the left lateral side of his neck with the knowledge that his death would be probable consequence of your act and thereby committed an offence punishable under **Section 221 of the penal code**, when asked to plead guilty or not guilty, stood mute, thereby pleading “Not guilty”

1. **Plea of guilty to a lesser offence:** However, while intending to plead not guilty to the offence charged, an accused person may guilty to a lesser offence which is not on the information. Where this plea is accepted by the prosecution, the court may pass it’s sentence according. Here, the prosecution usually drops the instant charge. Thus, paving the way for the court to sentence the accused for the lesser offence admitted. Thus, there is room for plea bargain.

 As was in the case of **Nwachukwu v the state** {1986}: In this case, Appellant with two others were charged before the Ikeja high court with the offence of robbery punishable under **section 1{2a} of the robbery and firearms {special provisions} ACT No. 47 of 1970.** At the conclusions of the trial, the trial judge found only the appellant guilty of the offence as charged on the information. The other two were found not guilty and were accordingly acquitted and discharged. Appellant was sentenced to death by hanging or by firing squad as the governor of Lagos state may decide.

Appellant appealed against his conviction to the court of appeal. The court of appeal allowed the appeal and set aside the conviction for robbery under **section 1{2}a of the robbery and firearms{special provisions} ACT 1970,** In it’s place, a conviction for the offence of robbery under **section1{1} of the same ACT,** with imprisonment of 21 years was substituted.

1. He may plead guilty to the offence charged
2. He may plead not guilty.

**PLEA OF GUILTY**

 When 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 records, if any. After this, the counsel for the defense usually makes his allocutus or plea in mitigation of sentence and the court then passes it’s sentence.

**PLEA OF NOT GUILTY**

When an accused person pleads not guilty, then the trial begins.

**PLEA BARGAINING**

Plea bargaining is negotiating and agreeing for an accused to plead guilty for a lesser crime, in exchange for the dismissal of the serious charge brought against him, and for a quick disposal of the entire criminal proceedings. The concept of bargaining began in the Western Countries, it is common there, especially in the united states of America. The idea of plea is not new to the Nigerian legal system as the criminal procedure laws have a provision for an accused to plead guilty to a lesser offence instead of a more serious offence brought against him. He or she is then charged in respect of the lesser prosecution.

However, where the prosecution fails to reach an agreement with the defense and therefore refuses to accept the plea to a lesser offence, then the trial proceeds and the accused person cannot be sentenced on the basis of his plea of guilty to a lesser offence, meaning that a plea to the lesser offence is then withdrawn, if not accepted by the prosecution.

A trial judge may also allow an accused person to change his plea from guilty to not guilty, and thus avoid the passing of sentence thereon, otherwise a refusal to allow a change of plea at that point in time usually becomes an issue for appeal. When an accused changes his plea from guilty to not guilty, the trial proceeds.

**MENTALLY ILL PERSONS**

Some accused persons may be to mentally ill or disordered to make plea to a criminal charge. As in the case of **Clifford orji v dahiru aliyu’s case 1999,** where the appellant who ate on human flesh with his accomplice who aided in the human hunt, the defendant, was charged to court but the appellant discharged on terms of technicality because many believed he was “mad”, which he too testified of, and was transferred to a Psychiatric Hospital.

 This is usually referred to as “unfitness to plead”. Such accused persons may then be referred for psychiatric examination and treatment. In a proven or clear case of murder, if the accused is unfit to make a plea by reason of insanity, a variety of hospitals and guardianship orders any be made and the accused may be committed to a mental or psychiatric hospital for necessary care at the pleasure of the president or governor in respect of federal or state offence, as the case may be until the person is mentally fit to be released.

Alternatively, the defense may put up the defense of insanity and if successful, the accused is acquitted on the grounds of insanity. The leading case on insanity is **R V M’Naghten:** In this case, the accused person was charged with murder. A plea or defense of insanity was successfully made for the accused and the House of Lords held; that the accused was not guilty and was acquitted on the grounds of insanity.

As a general rule, every accused person is presumed to be sane until proven otherwise

**PROSECUTION**

The counsel for the prosecution always opens the 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 in turn cross examined by the defense counsel and re-examined by the prosecuting counsel if any be necessary and the case for the prosecution closes.

The burden of proof on the prosecution in criminal proceedings is proof beyond any reasonable doubt. Where the burden of proof is not discharged, the charge or information is usually dismissed ad he accused is legally entitled to be set free and is accordingly usually discharged and acquitted. Thus burden of proof which rests on the prosecution to prove the guilt of the accused beyond reasonable doubt is never lowered or watered down. This is because, it is better for a guilty person to go scot free and escape justice, than an innocent person to be unjustly punished, due to a lowered standard of proof. Stressing this, **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 one innocent person to suffer”* .

Also, **Fawehinmi v A.G Lagos State{no.1} 1989 NWLR Pt 112 pg707** is another case on prosecution.

**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 and consequently, the accused has no case to answer and therefore should not proceed further. The defense counsel makes the submission by addressing the court. The prosecuting counsel usually replies. The judge then makes a ruling on thus submission.

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 technicality and not on merit.

However, where the judge rejects the no case submission, the trial proceeds and the accused has to state his case by giving evidence I his defense. When 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, In **Ali v the state {1988}.**The reason being that the accused failed to defend himself against a *prima facie* case made 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 then opens{**Ukwunneyi v state {1989}}.**The accused and his witnesses, if any, are, one after the other, led in evidence-in –chief by the counsel for the defense and are cross examine by the prosecuting counsel and re-examined by the counselor the defense 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 is suffering from ill-health, travelling a far place, and so forth. After the witnesses for the defense have testified and tendered any exhibit they may have, the case for the defense closes.

**CLOSING ADDRESSES**

After the close of the case for the defense, the counsel for both sides then makes closing speeches by addressing the court from their field 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 of any of the defense and then urges the court to convict the accused as charged. However, the general rule of law is that the case for the prosecution must succeed on it’s own. This is so because in criminal proceedings the burden of proof on the prosecution is beyond reasonable doubt. The case for the prosecution must succeed on it’s own strength. Thus the case for the prosecution cannot rely on the weaknesses of the defense to succeed. For this reason, an accused person is not bound to put up a defense and any in appropriate circumstances rest his case or defense on the case for the prosecution.

Next, the counsel of defense addresses the court. In his address he points out the weaknesses of the case for the prosecution. If the case for the prosecution is a pack of lies and mere fabrication, conjectures, imaginative, malicious, frivolous, vexations 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 rets on the prosecution in criminal proceedings, he points it out to the court and finally, he urges the court to discharge and acquit the accused on the charge {es} 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 his right to round off the address. **Ogugu v the state{1994}**

**JUDGEMENT**

After the closing addresses by the counsel of the both sides, the judge fixes the judgement for a date, provided that it’s 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 resumes to deliver it’s judgement on the case. However, where a case 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 n that same day, as the cases may be or to an adjourned date.

In the judgement, the judge sums, weighs, or reviews the evidence for both sides. He states the 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 guilty or not guilty as the case may be. This must be done according to the 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 by 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 acquit him.

Where a person has not been found guilty, a court usually makes one or more of the following orders:

* Dismissal order, dismissing the information or charges
* Order of discharge of the accused on the charges
* Order of acquittal, and
* Order of compensation, as the case may before the false, vexatious or malicious prosecution or false imprisonment,{in **dele giwa v IGP}**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 of mercy or leniency is usually made by the counsel for the defense. After the allocutus, the judge passes sentences on the accused.

**REMEDIES AVAILABLE TO AN ACCUSED AFTER IMPOSITION OF A SENTENCE**

(a) Correcting Clear Error. Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

(b) Reducing a Sentence for Substantial Assistance.

(1) In General. Upon the government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.

(2) Later Motion. Upon the government's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved:

(A) information not known to the defendant until one year or more after sentencing;

(B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing; or

(C) Information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing and which was promptly provided to the government after its usefulness was reasonably apparent to the defendant.

(3) Evaluating Substantial Assistance. In evaluating whether the defendant has provided substantial assistance, the court may consider the defendant's presentence assistance.

(4) Below Statutory Minimum. When acting under **Rule 35(b),** the court may reduce the sentence to a level below the minimum sentence established by statute.

(c) “Sentencing” Defined. As used in this rule, “sentencing” means the oral announcement of the sentence.

**2. Comment on the various methods by which civil proceedings may be commenced in the high court.**

Commencement of a civil action is the process taken to institute an action before a competent court to determine the issues between parties.

Essentially, there are 4 modes of commencing a civil action in court in Nigeria namely;

* By Writ of Summons,
* By Originating Summons,
* By Originating Motion and
* By Petition.

Each of these modes is dependent on the specific nature of cases.

* **Writ of summons**: an official order for someone to appear in a court of law when they have been accused of committing an offence against someone. Applicable in tort actions, contract actions, personal injury action, intellectual property actions etc. **Order 3 of the high court civil procedure rules 2012** gives a perfect example. **Rule 1** states that a writ of summons shall be the form of commencing all procedures:
1. Where a claimant claims any relief or remedy for any civil wrong, or
2. Damages for breach of duty, whether contractual, statutory or otherwise etc

**Rule2** states: All civil proceedings commenced by writ of summons shall be accompanied by:

1. Statement of claim
2. List of witnesses to be called at trial
3. Written statements to be relied
4. Copies of every document to be relied on at the trial
5. Pre-action protocol form 01.

**Rule 2{sub 2}** states that where a claimant fails to comply with **Rules 2{1}** above, his originating process shall not be accepted for filing by the registry.

* **Originating summons**: A summons that sets out the questions the court is being asked to settle. When the facts in a case are not disputed, but the interpretation of the law or of the documents needs to be resolved, an originating summons is prepared. An action is commenced by way of an originating summons where:
* 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.

 Stated in, **Order 3 Rules 5{2012},** which clearly states that: Any person claiming to be interested under a deal, will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.

**Rule 8{1} states**: An originating summon shall be in the forms 3,4 or 5 to these rules, with such variations as circumstances may require, it shall be prepared by the applicant, or his legal practitioner , and shall be sealed and filed in the Registry, and when so sealed and filed, shall be deemed to be issued.

**Rule 8{2} states**: A n originating summon shall be accompanied by:

1. An affidavit setting the facts relied upon
2. All the exhibits to be relied upon
3. A witness address in support of the application
4. Pre-action protocol form 01.
* **Originating motion**: This is used only when provided for by a statute or a rule of court. Applicable in application for *habeas corpus*, Order of mandamus, application for judicial review, action for the enforcement of fundamental rights under the fundamental rights enforcement procedure rules 2009.
* **By petition**: A written application made out to the court, setting out a party case.

**REFERENCES:**

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* www.judy.legal>case
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