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**COURSE TITLE: NIGERIAN LEGAL SYSTEM**

**COURSE CODE: LPI 204**

**QUESTION**

1. **STATE CLEARLY THE PROCEEDURE FROM THE ARRAIGNMENT TO IMPOSITON OF SENTENCE IN A CRIMINAL TRIAL IN THE HIGH COURT. COMMENT ON THE REMEDY AVAILABLE TO THE ACCUSED AFTER THE IMPOSITION OF SENTENCE.**

 A trial on indictment or information in a High Court is really an amplification of a summary trial at the magistrate court. It isn’t much different from the summary trial, except for the elaboration of certain procedures.

**ARRAIGNMENT AND PLEA**

Arraignment is the calling of an accused person formally before the court by name at the beginning of a criminal proceedings to read to him the indictment or information brought against him and to ask him whether he plead 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 is a satisfactory way and asking the accused to make his plea thereso instantly. This is called arraignment of a person before the court. An accused person may plead as follows;

1.Autrefois acquit: This 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, a fundamental fact under the fair hearing provisions in the Nigerian constitution.

2. Autrefois convict: This means a plea that he has been tried and convicted for the same offence on a previous occasion. He cannot be tried again. This is also an application of the rule against double jeopardy.

3. He may stand mute: Where an accused person stands mute, that is without saying anything, a 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 to be mandatorily recorded for him by the court.

4. Plea of Guilty to a Lesser Offfence: However, while intending to plead not guilty to the offence charged, an accused person may plead guilty to a lesser offence charged which is not on the information. Where this plea is accepted by the prosecution, the court may pass its sentence accordingly, Here the prosecution usually drops its instant charge. Thus, paving way for the court to sentence the accused for the lesser offence admitted. Thus, there is room for plea bargain.

5. He may plead guilty to the offence charged

6. He may plead not guilty

**PLEA OF GUILTY**

Where an accused person pleads guilty, the counsel for the prosecution will give the court a summary of evidence together with details of the accused person’s background, that is character and his criminal record, if any. After this the counsel for the defence usually makes his allocutus or plea in mitigation of sentence and the court then passes its sentence

**PLEA OF NOT GUILTY**

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

**PLEA BARGAINING**

Plea bargaining or plea negotiation is negotiating and agreeing for an accused person to plead guilty to a lesser crime, in exchange for the dismissal of the serious criminal charge brought against him and for a quick disposal of the entire criminal proceedings. The concept of bargaining began in western countries, and it is common there, especially in the United State of America and this idea of plea bargain is not new to the Nigerian Legal system as the criminal procedure laws have provision for them. However, where the prosecution fails to reach an agreement with the defence and therefore refuses to accept the plea to the lesser offence, then the trial proceeds and the accused person as a rule of law cannot be sentenced on the basis of his plea of guilty to a lesser offence.

**PROSECUTION**

The counsel for the prosecution always opens a Criminal proceeding 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 defence council and re-examined by the prosecuting counsel as may be necessary and the case for the prosecution closes.

The burden of proof on the prosecution in criminal proceedings is proof beyond reasonable doubt. Where the burden of proof is not discharged, the charge is usually dismissed and the accused is legally entitled to be set free and is accordingly usually discharged and acquitted. The burden of proof resting on the prosecution to prove the accused beyond reasonable doubt is not watered down. This is because it is better for a guilty person to go scot-free and escape justice than for an innocent person to be unjustly punished, due to a lowered standard of proof.

**SUBMISSION OF “NO CASE TO ANSWER”**

At the close 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 against the accused and consequently, the accused has no case to answer to and therefore the case should not proceed further. The defence counsel makes the submission by addressing the court. The prosecuting counsel usually replies. The judge then makes a ruling on this submission, the judge may make a ruling on this submission that the accused has no case to answer. This ruling is a verdict of not guilty and the court 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 defence. Where the accused refuses to give evidence in his defence 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 defence then opens. The accused and his witnesses, if any, are one after the other, led in evidence-in-chief by the counsel of 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. After the witnesses for the defence have testified and tendered any exhibit they may have, the case for the defence closes.

**CLOSING ADDRESS**

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 reviews the case on both sides. He points out the strength of the case for the prosecution and identifies the weakness, if any, of the defence and then urges the court to convict the accused as charged. However, the general rule of law is that the case of the prosecution must succeed at his own strength, It must be proved beyond reasonable doubt not beyond the shadow of doubt. Thus the case for the prosecution cannot rely on the weakness of the defence to succeed.

Next, the counsel for the defence addresses the court. In his address, he points out the weakness of the case for the prosecution. 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, 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**

After the closing address by the counsel for both sides, the judge fixes judgement on 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 his 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 an adjourned date.

In 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 reasons for disbelieving and rejecting the belief of the other side. In conclusion, the Judge may find the accused not 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 acquit him.

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

* Dismissal order; diminishing the information, or the charge(s)
* Order of discharge of the accused on the charge(s)
* Order of acquittal
* Order of compensation

**SENTENCE**

Where an accused has been 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.

**TYPES OF SENTENCES COURT MAY IMPOSE**

When an accused has been found guilty of a crime, a court may under the Criminal Proceedure Act or Law pass sentence and make one or more appropriate orders as follows:

* Imprisonment, usually with hard labour
* Fine, in lieu of, that is instead of imprisonment or both fine and jail
* Death sentence
* Caning
* Deportation

Other orders a court may make include;

* Binding over order (and suspended sentence and community service in western countries)
* Order for detention during the pleasure of the president or Governor as the case may be;
* Order for disposal of property
* Order for costs
* Award of damages
* Probation order

**REMEDY AVAILABLE TO THE ACCUSED AFTER THE IMPOSITION OF SENTENCE**

Appeals: All jurisdictions provide the right to appeal a criminal conviction, and so all must make sure the right is available to all defendants. Where the appeal is available as a matter of right (in most cases this is only the first appeal), the court must appoint a lawyer, free of charge, for persons who are unable to afford their own attorney. Where the appeal is discretionary (i.e a second appeal, usually to the state’s highest court), no such right to free attorney exists. A person who is on probation or parole and is accused of violating the terms of his probation may be faced with revocation of that status. In such cases, if the probationer cannot afford an attorney, he may be entitled to free legal counsel. This depends on a number of factors, but generally, if the defendant denies committing the act and faces imprisonment, the court will appoint an attorney. Capital defendants in state court are entitled to a review of the death sentence in a court with state jurisdiction.

Habeas Corpus: A defendant who filed all possible appeals may thereafter petition the courts for habeas corpus relief. Habeas corpus relief can consists of a new trial, a new sentence or outright release from incarceration. It is only available to defendants who have been jailed. A habeas corpus petition is a civil suit filed against filed against the prisoner’s jailer. In the suit, the prisoner must allege that he was deprived of a constitutional right in the case and the continued incarceration is unlawful. Typical bases for habeas corpus petitions include complaints against the trial including; ineffective assistance for counsel, discrimination in the jury selection, juror misconduct, violation of the right to be free from self-incrimination, and similar issues pertaining to constitutional rights. Furthermore, a claim of actual innocence based on newly discovered evidence is not a basis of habeas corpus relief.

1. **Comment on the various methods by which civil proceedings is commenced in the High court**
2. **WRIT OF SUMMONS:** The writ of summons is one of the modes used in commencing 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.Civil actions involving substantial disputes of fact are commenced by way of writ. These include, but are not limited to;
* Contract actions, e.g, claim for damages resulting from breach of contractual terms and obligations, e.t.c
* Tort actions, e.g, claim for damages in respect of property damage resulting from road accidents and negligence, claim for damages resulting from fraud and defamation, e.t.c.
* Personal injury actions, e.g, claim for damages in respect of personal injury and /or death resulting from road and industrial accidents or negligence, e.t.c.
* Intellectual property actions, e.g, claim for damages from the infringement of copyright, trademark or patent, e.t.c; and
* Admiralty and Shipping actions.
1. **ORIGINATING SUMMONS:** This is one of the modes of commencing civil actions in court. An action is commenced by an Originating summons when (1) It is required by a statute or (2) a dispute, which is concerned with matters of law. Is unlikely to be any substantial dispute of fact. An Originating summon may be in *Inter partes* or *Ex-partes* of the rules of court.

Originating summons is heard based on affidavits filed in support and compared to writ of summons it is a simpler and swifter procedure for the resolution as it is determined generally on affidavits filed and does not involve pleadings or many interlocutory proceedings. Originating summon cases are heard by registrars or judges in chambers or in open court. A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support or in opposition to the Originating summon. Witnesses may be called to give testimony and pre-trial conferences may or may not be conducted.

An application can be made to convert an originating summon into a writ at any stage of proceedings. Alternatively, the Registrar or Judge can decide to convert an originating summons into a writ without any application from the parties. Once the decision to convert has been made, the steps relating to a Writ applies. The Registry will assign a new Suit number to the proceedings and a pre-trial conference will be called for the service of the Statement of claim.

1. **PETITIONS:** A petition is a legal document formally requesting a court order. Petitions, along with complaints, are considered pleadings at the onset of a lawsuit. A petition is made to the court by a petitioner against a respondent and is filed with the court in stage one of a civil lawsuit, specifying what the lawsuit is about. When a lawsuit is filed, it moves through a series of stages before it is finally resolved. In civil cases, the first stage has the plaintiff file a petition or complaint with the court. The document receives a copy of the document and a notice the legal basis for the lawsuit. The defendant receives a copy of the document and a notice to appear in court.

At this point, the plaintiff and defendant are given the opportunity to settle the case privately or use an alternatively dispute resolution (ADR) mechanism rather than go to trial. The courts may also provide a summary judgement. If the case goes to trial, the judge will ultimately levy a verdict, and either party to the suit may choose to appeal the court’s decision.

Petitions in the Appeals Process

Court orders may include dismissing a case, reducing bail or providing a continuance. One of the more notable uses of petitions is the appeal. An appeal is a form of a court order in which one party in a lawsuit asks the courts to review a verdict once the verdict is made. The rules for appeal may vary between state and federal courts but typically begins with the filing of a petition to appeal. Similar to how a petition outlines the legal reasons for a court order, a petition to appeal outlines the reasons why a verdict should be reviewed by an appellate court. A petition to appeal can be filed by either the respondent or the petitioner, and in some instances, both parties may file for an appeal. An appeal requests that a court review the legal issue surrounding the case, rather than the facts of the case that were presented to a jury.

1. **INTERLOCUTORY APPLICATION OR MOTIONS:** An interlocutory application may be made at any stage of an action. A motion is a request asking a judge to issue a ruling order on a legal matter. This is the last of the originating process. Unlike a petition, this may be used where a statute has not provided for it. Originating motions are used when facts aren’t conflicting and it is used when the action relates to the interpretation of a document. It can be used in the application for prerogative orders of certiorari, prohibition, mandamus, Habeas corpus or enforcement of Fundamental Human rights. Also importantly, where a state has not provided for a method for enforcing a right conferred by that statute, originating motion should be used- **Order 40 Rule 5 (1) Lagos; Order 43 Rule 5 (1) Kano; and Order 42 Rule 5 (1) Abuja.** It is rarely used in the Magistrate Court. Its use was highlighted in the case of **Chike Arah Akunna .v. A-G of Anambra State &Ors (1997) 5 SC 161,** It was held that the appropriate method of making an application to the court, where a statue provides that such an application may be made but does not provide for any special procedure, is an originating motion. **Fajinmi .v. Speaker, Western house of Assembly (1962) 1 All NLR (pt.1) 206.** This rule was also re-stated in **Kasoap .v. Kofa Trading Co. (1996) 2 SCNJ 325 at 335,** that where it is sought to enforce a right conferred by a statute, but in respect of which no rules of practice and procedure exist, the proper procedure is an originating notice of motion.

Reference: [www.investpodia.com](http://www.investpodia.com), [www.supremecourtgov.sg.com](http://www.supremecourtgov.sg.com), Ese Malami Text book.