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**QUESTION 1**

The paper is geared towards enlightening readers on the outline of criminal procedure in Nigeria specifically in the High Courts of Nigeria as well as the remedies available to a convicted person after his sentence has been imposed. A brief disposition will be given as to what a criminal procedure entails. The matter of sources of criminal procedure will be lightly touched as well before this paper takes the turn to go down the road of the actual criminal procedure itself and the eventual remedies as to conviction and the imposition of sentences.

**INTRODUCTION**

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

**SOURCES OF CRIMINAL PROCEDURES**

There are several sources of criminal procedure in the Nigeria. The primary sources of criminal procedure in Nigerian legal system include:

* Criminal Procedure Act CAP C41 2004
* Criminal Procedure Code CAP 89 Laws of Northern Nigeria 1963
* Constitution of the Federal Republic of Nigeria 1999
* Criminal code
* Penal code
* Magistrate Court law
* High Court law
* Police Act 1990

**CRIMINAL PROCEDURE IN THE HIGH COURT**

The criminal procedure that will be discussed in this paper is that of the Lagos State High Court. Most criminal cases that come before the court are determined by police investigations. These investigations are precedent to the actual trial at the court. They are basically known as the pre-trial investigation.

Usually the victim of a crime lodges a complaint with a police officer at a police station in his locality. Based on the information or complaint, the officer will ascertain whether it is a matter that can be entertained within the area of jurisdiction. He would satisfy himself that the information disclosed is a criminal offence deserving further investigation and possible prosecution. Where he is satisfied at this point, the police officer then enters the complaint in the record known as *The First Information Report.*

The officer in charge of the station then gives instructions as to the investigation of the alleged offence. Here the crime scene will be visited and evidence will be gathered. The material suspects and witnesses will be interviewed. In cases involving death, medical professionals will be called upon to carry out forensic investigation (autopsy). After all the findings of the investigation, the police officer makes a detailed record of the report or findings.

A person may be arrested at any of the following stages:

* While attempting to commit a crime
* While committing a crime
* After committing the crime

An arrest may be made by a police, private individual, members of the law enforcement agencies (SARS, NDLEA), judicial officers (magistrates, justice of peace, judges). An arrest can be in three forms:

* Arrest by summons: a summons is an official document directed by the court to an alleged offender to appear at a specified time and place in order to answer to the complaints made against him. A magistrate uses it after having been informed by means of a complaint that an offence has been committed. A summons may be issued on any day including the weekend and public holidays. The particulars contained in a summons include: date, particulars of the crime, name of the alleged offender, signature of the magistrate, time and place.
* Arrest with warrant
* Arrest without warrant

An indictment or information is an accusation of crime brought against an accused for trial in a High Court. It is a criminal charge brought against a person by the attorney general or any of his subordinate legal officers on behalf of the state or country and which is for trial in the high court. In the high court information of crime is usually prosecuted in the name of the relevant state or in the name of the country, as the case may be. Photocopies of the list of the witnesses, the written statements they made to the police and the list of exhibits, if any, are usually attached to the information filed to the state. The real essence of attaching these proofs of evidence is to put the accused on notice as to the nature of the case against him, to enable him take steps to prepare and state his defense.

The accused is them arraigned before the court. That is the registrar of the court calls the accused by name while the accused is standing in the dock and reads over and explains the charge to the accused in a satisfactory way and asks the accused to make his plea thereto instantly. The accused may plead as follows:

1. **Autrefois acquit:** means a plea that he has been tried for the same offence before and has been acquitted. He cannot be tried again. This plea is an application of the rule against double jeopardy which is a fundamental right provide for by the Nigerian constitution.
2. **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. This is also an application of the rule against double jeopardy.
3. **Plea of guilty to a lesser offence:** this known also as plea bargaining. While intending to plead “not guilty” to the offence charged, an accused person may plead guilty to a lesser offence which is not on the information in exchange for the dismissal of the serious criminal charge brought against him and for a quick disposal of the entire criminal proceedings. Where this plea is accepted by the prosecution, the court may pass it sentence accordingly. Here the prosecution usually drops the instant charge. Thus, paving a way for the court to sentence the accused for the lesser offence admitted. However where the prosecution refuses to accept the plea to a 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 the lesser offence.
4. **Plea of guilty:** where an accused 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. After this the counsel for the defense usually makes his plea in mitigation of sentence and the court then passes its sentence.
5. **Plea of not guilty:** where an accused pleads not guilty, the trial then proceeds.

The counsel for the prosecution always opens a criminal proceeding by calling the evidence for the prosecution. He calls his witness and examines each in chief and tenders any exhibit they may have. The witness are in turn cross-examined by the defense counsel 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 unreasonable doubt. Where the burden of proof is not discharged, the charge is usually dismissed and the accused is acquitted. Stressing the need for the prosecution to discharge the burden of proof required by law in criminal proceedings, **Chukwunweike Idigbe JSC** in the case of ***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”[[1]](#footnote-2)*

At the close of the case for the prosecution, the defense counsel may submit that the prosecution has not produced sufficient evidence and consequently the accused has no case to answer and therefore the case should not proceed further. The defense counsel makes this submission by addressing the court. The prosecuting counsel usually replies. The judge may accept the submission and make a ruling that the accused has not 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 reject the no case submission, in his ruling, the trial proceeds and the accused has to state his case by giving evidence in his defense.

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. The accused and his witnesses, if any, one after the other, led in evidence-in-chief by the counsel for the defense and are cross-examined by the prosecuting counsel and re-examined by the counsel for the defense as may be necessary. After the witnesses for the defense have testified and tendered any exhibit they may have, the case for the defense closes.

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 or reviews the case on both sides. He points out the strengths of the case for the prosecution and identifies the weaknesses if 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 of the prosecution must succeed on its own strength. Thus the case of the prosecution cannot rely on the weakness of the defense to succeed; this is because of the burden of proof beyond reasonable doubt that is on the shoulders of the prosecution. Next the defense addresses the court. In his address he points out the weaknesses of the case of the prosecution. He urges the court to discharge and acquit the accused on the charges. The general rule of closing addresses is that the accused or his counsel is entitled to the last word.

After the closing addresses by the counsel for both sides, the judge fixes the judgment 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 begins to deliver his judgment on the case. He may find the accused guilty or not guilty. However where a trial is by summary procedure the judge may deliver the judgment there and then or he may retire to his chamber to consider judgment and resume sitting to deliver it on that same day.

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

1. Imprisonment
2. Fine
3. Death sentence
4. Caning deportation

Sentencing of an accused person after conviction is a very important part of the criminal justice system or administration of justice process. As a general rule, penalty, sanction or sentence should be so designed to fit the crime and the surrounding circumstances of the crime. A sentence should be properly considered before it is imposed. An unreasonable sentence may destroy an entire life beyond reformation. Therefore punishment should not be the driving motive in sentencing. In cases other than capital offences, the sentence imposed should be one that will help the reformation of the convict and offer him another opportunity to live a normal and law-abiding life after serving the term.

Nevertheless, there are remedies available to an accused after the imposition of a sentence. Theses remedies come in handy when trying to mitigate the harshness of the sentence

These remedies include:

1. **Appeal:** the accused has the right to and may choose to appeal to a higher court if he is dissatisfied by the rulings of the high court. He/she can appeal for the decision of the lower court to be reviewed by a higher court. In the case of **Cyril B. Rogers-Wright v Legal Practitioners Disciplinary Committee**:[[2]](#footnote-3) an order by the Legal practitioners Disciplinary Committee directing that the name of the appellant barrister be struck out from the register of the legal profession for the offence of champerty was likened by the West African Court of Appeal to a death sentences and whilst concurring that the appellant ought to be punished, reserved and set aside the orders as null and void for being extreme.
2. **Prerogative of mercy:** this is made by the head executive (president/governor). The chief executive may at his discretion choose to grant full pardon to a convicted criminal and thus absolving him of his crimes and its consequences.
3. **Clemency:** it is a general concept of amelioration of penalties, especially by action of executive officials; the forms it may take include the following:
4. *Amnesty:* a pardon applied to a group of people rather than an individual. Weapon amnesties are often granted so that people can hand in weapons to the police without any legal questions being asked as to where they obtained them, why they had them, etc. after a civil war a mass amnesty may be granted to absolve all participants of guilt and “move on”. Amnesties are typically applied in advance of any prosecution for the crime.
5. *Commutation:* substituting the imposed penalty for a crime with a lesser penalty, whilst still remaining guilty of the original crime. For instance, someone who is guilty of murder may have their sentence commuted to life imprisonment rather than death, or the term of imprisonment may be reduced.
6. *Remission:* complete or partial cancellation of the penalty, whilst still being considered guilty of said crime. It is also known as remand, the proceedings by which a case is sent back to a lower court from which it was appealed, with instructions as to what further proceedings should be had.
7. *Reprieve:* temporary postponement of a punishment, usually so that the accused can mount an appeal (especially if he or she has been sentenced to death)
8. *Respite:* the delay of an ordered sentence, or the act of temporarily imposing a lesser sentence upon the convicted, whilst further investigation, action, or, appeals can be conducted.
9. *Expungement:* the process by which the record of a criminal conviction is destroyed or sealed from the official repository, thus removing any traces of guilt or conviction.

**CONCLUSION**

By this, it is this writers utmost hope that the darkness as to the criminal procedures in a high court and remedies available to mitigate the harshness of a sentence, has been swallowed up by the light of this exposition.

**QUESTION 2**

In this paper the writer will examine and briefly comment on the procedures or methods of commencing a civil proceeding in the high court.

We cannot comment on the methods involved with commencing a civil action in a high court without giving as exposition as to what the term civil procedure entails in our legal practice. Civil procedure is the method, or procedure of commencing, conducting and concluding civil matters, trials, or claims in court. The main sources of the rules regulating the civil procedure and practice of courts in Nigeria are:

1. The Constitution of the Federal Republic of Nigeria 1999: particularly in *section 6(6), 36, 46,* *241-246* and *294-295*; where it establishes the judiciary and provides for procedure rules to be made for the higher or superior courts.
2. Statutes establishing the relevant courts
3. Civil Procedures Rules of the relevant courts
4. Rules of practice and procedure of English courts: these may apply where there is a lacuna, because there is no statutory provision in Nigerian law. Where there is a gap, rules of English courts apply mutalis mutandis. Statutes establishing the courts allow this as the case may be. This is expounded in *s. 32, Interpretation Act Cap 1. 23, 2004.*

We shall now examine the civil procedure in a High Court with focus placed on the methods for the commencement of civil proceedings in a high court.

The High Court civil procedure rules of the various state high courts make provision for procedure for the conduct of civil matters in the High Court of each state. The civil procedure rules of the state high courts are uniform to a large extent with little or no differences, except for the High Court of Lagos state which operates a multi-door system, that is, a multi-services court and a modified civil procedure adapted for that purpose. The Federal High Court also has a different civil procedure because of its largely different jurisdiction. In view of this position, we shall only examine the civil procedure as it obtains in a State High Court, pursuant to the provision of the ***High Court of Lagos State (Civil Procedure) Rules 2004***.

A party who has been wronged and wishes to seek relief in a high court usually consults a lawyer for legal advice, who takes down the facts of his case and instructions. If the matter is not urgent and does not need immediate action in court to forestall irreparable damage, the lawyer may as a first step write a letter of demand to the would be defendant demanding that a debt be paid, a wrong be put right or monetary compensation be paid to his aggrieved client as the case may be, and giving a period of time for the demand to be met. Failure to meet with the time frame given will lead to an action being filed, with or without giving further notice to the would be defendant.

An action may be commenced [[3]](#footnote-4)in a High court by a counsel filing one or a combination of the following papers or originating processes in court:

1. Writ of summons, or originating summons, [[4]](#footnote-5)together with a statement of claim; or
2. Ex parte motion, with or without a writ of summons and a statement of claim, which may be filed later;
3. Petition, as may be necessary, such as in a matrimonial proceeding for divorce and so forth, or winding up of a company for its inability to pay its debts in a Federal High Court and so forth.

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 [[5]](#footnote-6)to give him notice of the claim, made against him and requiring to acknowledge service and to defend it, if he does not admit the claim. A statement of claim may be filed along with the writ, or later on within 14 days of the service of the writ on the defendant. In Lagos state, the writ of summons or originating process shall be accompanied by the statement if claim, list of witnesses, written statements, copies of every document to be relied on at the trial, written address in support of the action, and so forth, otherwise, it will not be accepted for filing at the registry.

A writ or other originating process by virtue of ***Lagos Order 4***usually contains the following endorsements or information:

1. Names of the parties to the suit, that is;
2. The name of the plaintiff and his address,
3. Name of the defendant and his address; and
4. Name of the plaintiff’s solicitor and his business address for service of court processes.
5. An endorsement of the claim against the defendant is also contained in the writ. A writ is requires to be served on the defendant personally. The life of a writ is usually 12 months. In Lagos, it is 6 months, within which time it has to be served, although its life may be renewed before it expires, to enable it to be served.

Where an action is commenced by any other originating process, such as a motion or a petition, it must also contain the above mentioned particulars or information.

The word ***ex-parte*** is derived from a Latin phrase meaning “one side to a dispute”. In legal parlance it connotes one side to a law suit. Breaking this down to technical meaning into a very simpler understanding, it implies that a party to a dispute is urgently asking the court to grant him a relief (without hearing from the other party) so as to preserve the **Res** of the matter.

For example if A & B are in dispute over ownership claims on a portion of land and A wants to sell the disputed land to C-an innocent third party purchases for value without notice of the dispute, if A is not restrained by B from selling the land through an ex-parte order of interim injunction, A will sell the land to C who has bought litigation.

And when this is done, reverting to status quo will take a very complex legal process that may lead to multiplicity of suits and waste of precious time and money. It therefore becomes very apparent on the face of it that application for an interim order of injunction must be one of extreme urgency. Time must be of essence and once an application for interim injunction is filed, the judge must try as much as possible to hear it immediately. He must suspend all other court processes to hear it.

He has no justification to conclude that the application does not disclose any urgency. Doing this will amount to shutting out the application without hearing him and this will be against all cannons of fair hearing (Tobi 1995).

And **Nikki Tobi (1992) JSC** in his widely published work **THE NIGERIAN JUDGE** defined it to mean as follows:

*“Ex-parte in out adjectival law means proceedings brought on behalf of one interested party without notice to, and in the absence of the other party. This means that the application for interim injunction brought ex-party is heard by trial judges in the absence of the adverse party.”*

However the locus classicus on the concept and explanation of the principles surrounding the operation and granting of ex-parte orders of court in Nigeria was enunciated in the celebrated case of **Kotoye v Central Bank of Nigeria (1989)** where Nnaemeka Agu JSC in explaining the principles surrounding the operation and granting of ex-parte orders stated among other things.

* That by their nature injunction granted on ex-parte application can only be interim in nature.
* They can be made without notice to the other side.
* But most importantly it must be stated that the applicant who is seeking for an interim order vi ex-parte application must disclose all material facts pursuant to the application as the court will deal strictly with a party applying for an ex-parte order and misrepresenting facts (Evidence Act 2004).
* Again where affidavit evidence is materially inconsistent in favour of the respondent, it will not be granted as the application has not satisfied the burden of proof requirement (Evidence Act 2004).
* Finally, ruling on ex-parte order must be confined to the application and not touch or deal with merits of the matter and a trial judge has the discretion to grant or refuse the application for interim injunction but once a judge has exercised his discretion judicially and judiciously an appellate court cannot interfere with it.

A **petition** is a request to do something, most commonly addressed to a government official or public entity.

In the legal sense petition is the title of a legal pleading that initiates a legal case. It is a legal document formally requesting a court order. Petitions, along with complaints, are considered pleadings at the onset of a lawsuit. An initial pleading in a lawsuit that seeks only money (damages) may be called a complaint. An initial pleading in a lawsuit that seeks non-monetary or equitable relief, such as a request for a writ of mandamus or habeas corpus, is instead called a petition.A plaintiff files a files a petition to the court in stage one of a civil lawsuit, specifying what the lawsuit is about. A petition is made to the court by a petitioner against a respondent, which is filed by a plaintiff against a defendant.

Act on petition is a summary process used in probate, ecclesiastical and divorce cases, designed to handle matters which are too complex for simple motion. The parties in a case exchange pleadings until a cause for a hearing is settled. When a lawsuit is filed, it moves through a series of stages before it is finally resolved. In civil case, the first stage has the plaintiff file a petition with the court. The document outlines the legal basis for the lawsuit. The defendant receives a copy of the document and a notice to appear in court.

Thus by this exposition, it is this writer’s hope that the reader has been fully and well enlightened as t the various methods involved in commencing a civil action in a High Court.

1. (1977) 4 SC 167 at 171, 11 NSCC 218 at 233. [↑](#footnote-ref-2)
2. (1941) 7 WACA 17 [↑](#footnote-ref-3)
3. *Lagos Oder 3 Rule 1* [↑](#footnote-ref-4)
4. *Lagos Order 3 Rule 5, Oder 6 Rule 1* [↑](#footnote-ref-5)
5. *Lagos Order 7 Rule 2* [↑](#footnote-ref-6)