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

Answer

1. Introduction

Criminal procedure is the method or procedure of commencing, conducting, and concluding criminal proceedings or matters in the court. It is the process by which a criminal case is prosecuted in court. One of the sources of criminal procedure is High Court Laws. High court has a comprehensive criminal procedure. Although the **Criminal Procedure Act** applies to the Court of Appeal and Supreme Court, yet the criminal procedure of these court are not the same with the High Courts, as these two courts are courts with original jurisdiction in criminal matters. They only hear appeals, during which time the trial procedure is not repeated all over. They hear the argument of counsel in line with the briefs of argument they have filed and at the conclusion of which the court delivers its judgements.

Criminal Procedure at a High Court

Before dwelling on the stages of criminal procedure at a High Court, it is important to explain:

1. Preliminary Inquiry, and
2. Summary trial at the High Court.
3. Preliminary Inquiry:

A preliminary inquiry is a first screening or hearing held by a magistrate to determine whether a person charged with an indictable offence triable by a High Court should be held or committed for trial at the High Court. An indictable offence is any offence which on conviction may be purnished by term of imprisonment exceeding two years or which on conviction may be purnished by imposition of a fine exceeding four hundred naira or which is not declared by the written law creating the offence to be purnishable on summary conviction. A preliminary inquiry is done to determine whether there is a prima facie evidence to warrant committing the accused for trial at a High Court. During a preliminary inquiry the State is required to produce sufficient evidence to establish that there is a probable cause or reason to believe that a crime has been committed; and that the accused person committed it. Otherwise, the accused will be set free and he will not be committed for trial at the High Court if the State fails to show prima facie evidence to warrant a committal for trial at the High Court. The basic function of a preliminary inquiry is to determine whether there is sufficient evidence to hold a trial at the High Court. It does not require the same degree of proof, nor quality of evidence that is necessary during the proper trial or for conviction at the High Court.

1. Summary trial at the High Court:

Where an offence is triable summarily by a magistrate court, but an accused person elects to be tried instead by a High Court, the accused is usually charged before a High Court to be summarily tried by a judge. The pattern or procedure of trial in this instance, is essentially a summary trail as obtained in a magistrate court.

A trial on indictment or information in a High Court is really an elaboration of a summary trial, at the magistrate court.

Stages of Criminal Procedure at a High Court

1. Indictment or Information
2. Proofs of Evidence
3. Arraignment and Plea
4. Plea of Guilty
5. Plea of Not Guilty
6. Prosecution
7. Submission of a “No Case to Answer”
8. Defence
9. Closing Address
10. Judgement
11. Discharge
12. Sentence.

This work will clearly explain criminal procedure from arraignment to imposition of sentence.

1. Arraignment and Plea:

Arraignment means, the registrar or other officers 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 making 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 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 is a fundamental right under the fair hearing provisions of the Nigerian Constitution. **Section 36(10) of the CFRN**.

1. Autrefois convict:

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

1. He may stand mute:

Where an accused 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.

1. Plea of guilty to a lesser offence:

However, 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. Where this plea is accepted by the prosecution, the court may pass its sentence accordingly. Here the prosecution usually drops the instant charge. Thus, paving the way for the court to sentence the accused for the lesser offence admitted and there is room for plea bargain.

1. He may plead guilty to the offence charged.
2. He may plead not guilty.
3. Plea of Guilty:

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. After this, the counsel for the defence usually makes his allocutus or plea in mitigation of sentence and the court then passes its sentence.

1. Plea of Not Guilty:

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

* Plea Bargaining:

Plea bargaining or negotiation is negotiating and agreeing for an accused to plead guilty to a lesser crime, in exchange for the dismissal of the serious criminal charge brought against him for the dismissal of the serious criminal charge and for a quick disposal of the entire criminal proceedings. The criminal procedural laws have provision for plea bargaining. Accordingly in recent years, there have been plea bargaining in a number of cases, especially in criminal charges brought by the Economic and Financial Crimes Commission (EFCC) in order to promptly dispose of the potentially lengthy criminal proceedings. Thus, an accused person who does not intend to plead guilty to the serious offence charged may plead guilty to a lesser offence, which is not on the indictment or information. This plea or change of plea is usually as a result of a bargain reached between the defence counsel and the counsel for the prosecution, often with the judge’s approval. The plea to the lesser offence is regarded as withdrawn, if it is not accepted by the prosecution. The trial judge may also allow an accused person to change his plea from guilty to not guilty, and thus avoid the passing of the sentence thereon, otherwise a refusal to allow a change of plea at that point in time usually becomes an issue of appeal. Where an accused person changes his plea from guilty to not guilty, the trial then proceeds.

* Mentally Ill Person:

Some accused persons may be too mentally ill or disorderd to make a plea to a criminal charge. This is usually referred to as “unfitness to plead”. Such accused person may then be referred for psychiatric examination and treatment. In a proven case of murder, if the accused is unfit to make a plea by reason of insanity, a variety of hospital and guardianship orders may 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 defence may put up the defence of insanity and if successful, the accused is usually 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 defence 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 ground of insanity.

As a general rule of law, every accused person is presumed to be sane until the contrary is proved. It is usually the duty or right of the defence to raise the issue of insanity, however, in obvious cases, a trial judge may raise it **suo motu**, that is, of its own motion; the prosecution may inform court of it. The fact of insanity is usually proved, that is, established by the defence leading on the balance of probability. Thus, the issue of insanity is a matter of fact to be decided by court and is usually established by evidence of relevant witnesses, including medical evidence.

1. Prosecution

The counsel for the prosecution always opens a 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 defence 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 reasonable doubt. Where the burden of proof is not discharged, the charge or information is usually dismissed and the accused is legally entitled to be set free and is accordingly usually discharged and acquitted. This burden of proof which rests on the prosecution to prove the guilt of the accused beyond reasonable doubt is never lowered 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. This principle or requirement that the guilt of an accused be proved beyond reasonable doubt has its root deep in **Roman Laws.**

The Romans had it as a maxim that is better for a guilty person to go unpunished than for an innocent person to be condemned. 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 is better for ten guilty persons to go unpunished than for one innocent person to suffer”.

1. 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 case against the accused and consequently, the accused has no case to answer 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 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, when 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 defence.

While 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 against him.

1. 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 for the counsel for the defence as maybe necessary, Each witnesses undergoes the whole process before another witness is called, 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 they are good reasons to do so. Some good reason to call a witness out of turn include, the need to take the evidence of a witness who is obviously busy or who may not be readily available to testify or who lives in a distant town or place or who is suffering from ill- health, and so forth. After the witnesses for the defence have testified and tendered any exhibit they may have, the case for the defence closes.

1. 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 sums up or reviews the case on both sides.

He points out the strength of the case for the prosecution and identifies the weaknesses, 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 for the prosecution must succeed on its own strength. Thus, the case for the prosecution cannot rely on the weaknesses of the defence to succeed. For this reason an accused person is not bound to put up a defence and may in appropriate circumstances rest his case or defence on the case of the prosecution.

Next, the counsel for the defence 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 a mere fabrication, frivolous, vexations and an abuse of court processes, 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 beyond reasonable doubt, he points it out to the court and finally, he urges the court to discharge and acquit the accuse on the charge(s). 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.

1. Judgement:

After the closing addresses by counsel for both sides, the judge fixes the judgement for a date provided, that is, it is not a summary trial , and the court rises in adjournment to enable it deliberate, consider, or evaluates 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 retire to his chamber to consider judgement and resume sitting on the same day, as the case may be, or an adjourned date.

In the 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 his reason for disbelieving and rejecting the evidence for either side. In conclusion, the judge may find the accused not guilty or guilty as the case may be. This must be done according to law.

1. Discharge:

When an accused person has not been found guilty on merit, the judge will dismiss the information or charge(s) 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 makes one or more of the following orders:

* Dismissal order.
* Order of acquittal.
* Order of discharged of the accused on the charge(s).
* Order of compensation,

1. Sentence :

Where an accused is found guilty, before passing sentence on 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 Sentence

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

* Imprisonment, usually with hard labour
* Fine, instead of imprisonment or both fine and jail
* Death sentences
* Canning
* Deportation
* Order for cost
* Binding over order (community service)
* Order for disposal of property
* Award of damages
* Probation order
* Order for detention during the pleasure of the President or Governor as the case may be.

Under the **Child Rights Act** and **Laws** or **Children and Young Persons Law**, various orders may be made in respect of a child offender by a family court.

Remedies Available

The judicial remedy available after the imposition of sentence is an order of certiorari. Certiorari is a Latin word which means “to be informed of”. According to **Black’s Law Dictionary**, “Certiorari is an appellate proceeding for re-examination of action of inferior tribunal or an auxiliary process to enable appellate court to obtain further information in pending cause”. It is an order by which a superior court or tribunal calls upon an inferior court, tribunal, public or administrative authority to produce the record of the proceeding upon which such a body based its decision, touching the right of an applicant so that the superior court will examine the record and adjudge the legality of the decision reached on it. An order of certiorari cannot be issued unless something has been done which a superior court can quash, for instance on the ground of: ultra vires, breach of the rules of natural justice and fair hearing, errors of law and fact on the face of record, uncertainty and vagueness, unreasonableness, etc. A person in which sentence is imposed on may file an application for an order of certiorari.

A person may also appeal, after imposition of sentence, to a superior court. An appeal is an application of a lower court for the reversal of the decision of a lower court. An appeal is concerned about the enforcement and protection of right of the appellant. Parties are entitled to appeal as a matter of right.

1. Introduction

Civil cases are cases between private individuals. Civil procedure is the method or procedure of commencing, conducting and concluding civil matters, trials or claim in court. It is the process by which a person whose legal right and interest are adversely affected may have recourse to the court of law for the resolution and determination of the controversy or dispute.

High courts have comprehensive civil procedure. The civil procedure of other superior courts such as the Court of Appeal and the Supreme Court are not quite the same, with that of the High Courts, because these two courts do not usually undertake trial the way a High Court does. This is so because ordinarily, they are not courts of first instance, except where they have original jurisdiction in which case a normal hearing may be appropriate otherwise, the normal practice of these courts is that brief of arguments are filed by counsel to the parties, stating:

1. Every fact and argument of a party
2. The laws; and
3. The case law or judicial precedent on which a party is relying.

These briefs of argument are often adopted by the counsel with or without further oral argument or addition when they come to court. The Court of Appeal or Supreme Court, then considers the brief of argument filed by the counsel and based on them, the court gives its rulings.

The civil procedure rules of the state High Courts are fairly uniform with little or no differences, except for the High Court of Lagos which operates a multi-door system, that is, a multi-service court, and a modified civil procedure adapted for that purpose, and the Federal High Court, because its largely different jurisdiction. The civil procedure of a High Court is usually made up of so many orders which are divided into rules, sub-rules.

Modes of Instituting a Claim in High Court

A civil action can be commenced in the High Court through any of the following process depending on the subject or the nature of the proceedings contemplated.

1. Petition
2. Originating Summons
3. Originating Motion or Application
4. Writ of Summons
5. Petition :

One can institute action in a High Court under petition where the case is relating to divorce, closing down of a company, or election petition.

1. Originating Summons:

This is used to institute non-contentious action like: contract, deed, will, etc.

1. Writ of Summons:

This is used to institute actions for contentious matters, that is, actions that relates to disputes. This is the most common mode of instituting a claim.

1. Originating Motion or Application

This is used to institute actions like mandamus, habeas corpus, etc., and fundamental human rights.

Civil Procedure in a High Court in Nigeria

A **High Court Civil Procedure Rules** usually include the following orders which are contained in the **High Court of Lagos State (Civil Procedure) Rules, 2004**:

1. Pre-Court Stage or Consultation of a Lawyer
2. Form and Commencement of an Action
3. Appearance
4. Stay of Proceedings
5. Discontinuance
6. Pleadings
7. Trial
8. Judgement
9. Enforcement of Judgement, etc.
10. Pre-Court Stage or Consultation of a Lawyer:

A party who has been wronged or is aggrieved and wishes to seek relief in a High Court usually consults a lawyer for legal advise, 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 the debt be paid, a wrong be put right and 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 of which action is thereafter filed with or without giving further notice to the would be defendant.

1. Form and Commencement of Action:

An action can be commenced in a High Court by a counsel filing one or a combination of the following paper or originating process in court:

1. Writ of summons, or originating summons, together with a statement of claims; 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.

A writ of summons when filed is sealed or stamped with the court name on it for service by a bailiff on the defendant to give his notice of the claim made against him and requiring him to acknowledge service and to defend it, if he does not admit to 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 of claim, list of witnesses, document to be relied on at the written address in support of the action, etc., otherwise, it will not be accepted for filing at the registry.

A writ or other originating process contains the following information:

1. Name 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 is required to be legally served 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 maybe 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 petition, it must also contain the above mentioned particulars or information.

1. Appearance :

A defendant may acknowledge the service of a writ, and then enter appearance in the case by instructing his solicitor or counsel to file a memorandum of appearance, and then show up to defend it or he may settle the case as he may wish to do. However, where a defendant fails to enter appearance, within the time limited, the plaintiff, may by a motion on notice obtain interlocutory or final judgement against the defendant in default of appearance and or failure to defend the action.

1. Stay of proceedings:

After a lawsuit is filed, whether or not a defendant as entered appearance; stay of proceedings, non-suit, discontinuance, settlement, summary judgement etc. may follow.

A court may order a stay, that is, a suspension of proceeding in an action temporarily:

1. Until something requisites is done
2. Until a party has complied with an order. However, a stay of proceedings may be permanent by way of a strike out or dismissal of the claim, such as where:

* To proceed with the action would be improper, or would amount to contempt of another court or superior court; or
* The suit scandalous, frivolous, vexations or an abuse of court process.
* The suit is brought to prejudice, embrass or cause delay.
* Where the claim does not disclose a reasonable cause of action; or
* Where the defendant does not have good defence, etc.

A court has inherent jurisdiction or power to stay proceeding in a claim for any of the above reason.

1. Discontinuance

A notice of discontinuance is a process whereby a plaintiff voluntarily put an end to a legal action. Where a plaintiff does not discontinue an action timeously, he may be ordered to pay the defendant’s cost. However, a plaintiff after discontinuance may initiate another action for the same. Likewise a defendant may withdraw his defence at any time. He may also discontinue a counter claim and may be ordered to pay the cost of the plaintiff. Finally, all the parties to a suit may settle and consent to the withdrawal of an action.

1. Non-suit: Where a wrong person has been sued, a court will strike out his name at his application.
2. Settlement: Parties to an action may also settle the dispute for valuable consideration, or without consideration and withdraw the action without filing terms of settlement in which case the action will be struck out by court or by filing terms of settlement in court and the term of settlement will be pronounced as consent judgement of the court in conclusion of an action. In the Lagos multi-door court system, pre-trial conference and scheduling and reference to arbitration, are further opportunities to settle a matter apart from pre-court settlement or settlement out of court.
3. Summary Judgment: Summary judgment is the procedure or device available for promptly and expeditiously obtaining judgment and disposing of a controversy, case or matter without going to trial. It is usually available where: there is default of appearance, failure to file a defence, when there is no dispute as to either material facts or inferences; where the defendant has no defence; there is lack of diligent prosecution etc.

A motion for summary judgement maybe directed towards all or parties of a claim and it is usually on the basis of facts proved in the pleadings. It must be supported with an affidavit starting the facts upon which summary judgment is claimed together with any exhibit that are relied upon. In Lagos, written address is filed in support of the application

1. Pleadings:

Pleadings are written statements of material facts a party is relying on for his claim, defence, or reply in a suit, and which are filed and exchanged by parties to a suit. A pleading is a comprehensive statement or narration of a party’s claim or case.

The pleading filed in court and exchanged between a plaintiff and a defendant are:

* Statement of claim, by a plaintiff
* Statement of defense, by a defendant; A defence may contain a: set off, counter-claim: that is a cross claim, and reply.

No pleading subsequent to a reply, may be filed without the leave of the court, such as an amendment and so forth. Every pleading must state:

* Facts, that is every material facts that the party is relying on to establish his case and ;
* Statements in a summary form, but without omitting necessary facts.

A pleadings must not state or set out law, but may raise an issue of law without reaching conclusions of law. Ideally, the pleadings should set out the facts in a comprehensive but summary form. However, care must be exercised and not to exclude any fact material to the case. This is so for evidence cannot be led on a matter or fact not pleaded, such evidence goes to no issue and will not be recorded by the judge nor considered in arriving at the judgement. This rule of evidence is essentially to avoid a party springing a surprise against the opposing party at the trial.

Where pleadings in a statement of claim are disputed by a defendant, he must specifically deny the claims in his statement of defence. Each allegation of fact must be specifically admitted or denied. Facts not denied specifically or by necessary implication are deemed to be admitted, except against a person who is disabled under legal disability.

The object of pleadings includes:

* To state the claims of the parties.
* To give notice of a party’s claims to his opponent and time for a considered reply.
* To ascertain the issues in dispute between the parties which requires trial and decision by court.
* To eradicate irrelevant issue.
* To avoid a party springing a surprise during the trial by raising an issue he did not plead.

1. Proceedings at Trial:

The parties and their witnesses come to court with the document or any other thing required to be tendered as exhibit. Where a witness refuses to appear in court, a subpoena may be issued on him to attend court. A subpoena is a summon to appear in court and give evidence on the condition that reasonable expenses will be paid to him, by the party calling him as a witness. Witnesses who ignore a subpoena are in contempt for disobedience and may be punished for such contempt by a fine or imprisonment.

Where the case is called, if neither parties do not appear, the action may be struck out from the cause list or maybe adjourned (if either party asked for it).

Where the defendant fails to attend court and is not represented by a counsel, or reasonable excuse is not offered for the absence of the defendant and his counsel, and the plaintiff appears, the plaintiff appears, the plaintiff may prove his case and obtain judgment. Where the plaintiff fails to appear and the defendant appears, the suit may be struck out, dismissed, or if the defendant has a counter-claim he may prove it and judgment be entered in favour of the defendant.

Where a cause is struck out, either party may apply that the cause can be replaced on the cause list on such terms as the judge may deem fit. An application to re-list a cause struck out shall be made within 6 days after the order of judgment or such other larger period us the judge may allow. The judge may, if he thinks it is expedient in the interest of justice, adjourn a trial for such times and upon such terms if he deems fit.

Trial or hearing of a case, is usually in public in open court and takes place in this manner:

1. The plaintiff opens his case, and gives evidence in line with his pleading or statement of claims and he tenders any exhibit he has.
2. The plaintiff’s witnesses, if any are examined in chief. The witnesses tender any exhibit they have and are cross-examined and re-examined, where necessary and plaintiff’s case closes.
3. The defendant at the close of the plaintiff’s case, may submit that there is “No case to answer”. This is a submission that the plaintiff has not made out a prima facie case, to warrant calling on the defendant to state or make his defence. If the submission fails, two things may follow:

* The defendant may indicate that he does not wish to give or call any evidence, and choose to “stand on his submission” in which case, counsel for both sides will address court and the court will enter judgement for the plaintiff.
* The hearing may proceed or continue with the defendant making his defence by giving evidence-in-chief and tendering any exhibit he wished to rely upon. He is cross-examined, after evidence-in-chief and re-examined as may be necessary. After giving his own evidence, the defendant may call his witnesses, if any, who will then give evidence in chief and tender any exhibit he/she may have cross-examined and re-examined as may be necessary. The defendant’s case then closes.

A party shall close his case when he has concluded his evidence. Either claimant or defendant may make an oral application to have the case closed, or the judge may **suo-motu** where he considers that either party has failed to conclude his case within a reasonable time, close the case for the party. The Registrar shall take charge of exhibits, mark all exhibits, and the list of all the exhibits shall form part of the record of the action.

1. Judgement:

After closing speeches or addresses of counsel, the judge considers or evaluates the evidence given in the case and gives judgement on the same day. Where a judge requires more time to consider the case he may reserve judgement and adjourn the matter for judgements to such later date.

On the judgement date, the judge then gives verdict, stating the facts and legal issues in the case, explains the appropriate burden and standard of proof and states the basis of the judgement, and enters the judgement in favour of the appropriate party and also makes such orders as are relevant in the case, provided that such orders were sought by such party. Where the plaintiff proof his case, the suit will be dismissed and judgement will not be entered in his favour and the defendant will escape liability. In civil cases, the burden of proof on a plaintiff is proof on a balance of probabilities. **Section 137 of the Evidence Act**.

1. Enforcement of Judgement:

When judgement has been entered in favour of a party, the judgement, declaration of right, order of reinstatement, order of forfeiture, award of damages, offer of apology, and so forth; if not satisfied within the time limited by law, appealed against nor otherwise stayed, the plaintiff may enforce the judgement by one or combination of the following ways:

1. Judgement for Payment of Money may be enforced by:

* Writ of Fifa: directing the Sheriff to seize the debtor’s properties for sale in satisfaction of the debt.
* A Charging Order: may be made over the debtor’s landed property, shares or other property for payment of the debt. When the money is not paid, such property may be sold upon application to court, in order to satisfy the debt.
* A Writ of Sequestration: directing persons to go on to the debtor’s land and take rents and profits and seize the goods of debtor and take effective control of such real and personal property until the debtor has complied with the court’s order.
* Appointment of a Receiver: over the debtor’s property or company to take over incomes and or realize the property or company and apply the proceeds to pay off the judgement’s creditor and so forth.
* Garnishee Order: may be made to attach money which the debtor has with a third party, such as a bank, so that a credit balance on the debtor’s bank account will be diverted from him and paid to the judgement creditor until the debt is satisfied. A plaintiff usually applies to court for a garnishee order nisi which as directed to the bank and the debtor, requiring the bank to send a representative to attend court to show why the money or a part of it should not be used to pay the judgement creditor.
* Attachment of Earnings: Earnings may be attached to pay debt. Where a debtor is employed, a judgement creditor may obtain an order directing the debtor’s employer to deduct a specific sum for the defendant debtor’s wages or salary and pay it into court for the plaintiff. Attachment is not available against the profit of a self-employed person.

1. Judgement For Possession of Land or Other Property may be enforced by:

* A writ of possession
* A vesting order, specific performance, etc.

1. Judgement For delivery of Goods may be enforced by:

* A writ of delivery
* An order of specific performance, etc.
* In other instances: a judgement of declaration of rights may be enforced by: an order of injunction; order of mandamus; a committal to prison for contempt of court; a tracing order; order of forfeiture; etc.

Reference

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