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ASSIGNMENT TITLE: CIVIL PROCEEDINGS

COURSE TITLE: LPI204

1. PRODEDURE FROM ARRAIGNMENT TO SENTENCE:

ARRAIGNMENT AND PLEA:

Arraignment is the calling of the accused person formally before the court by name at the beginning of a criminal proceeding, to read to him the indictment or information brought and ask him whether he pleads guilty or not . In other words arraignment means, the registrar of the 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 satisfactory way and asking to and asking the accused to make his plea there to instantly. Arraignment in criminal proceedings is pursuant to SECTION 353 of Criminal Procedures Act(CPA) 1990 .

THE ACCUSED MAY PLEAD AS FOLLOWS

1. AUTREFOIS ACQUIT : It means a plea that has been tried for the same case before and has been acquitted . It is an application against double jeopardy

which states that a person cannot be tried for the same case twice, the plea falls in line with SECTION 221 OF THE CRIMINAL PROCEDURS ACT(CPA).

B .AUTREFOIS CONVICT: It is the plea that the accuse has been tried and been convicted for the same offence on a previous occasion, he cannot be tried again this also is a rule against double jeopardy as provided by Section 221 (CPA).

1. HE MAY STAND MUTE: When the accused stands mute it is usually recorded on his behalf that he pleaded not guilty. However, the court may make inquiry into the soundness of mind of the accused.
2. PLEA OF GUILTY TO A LESSER OFFENCE: However, while intending not to plead guilty to the offence charged, an accused person may plead guilty to a lesser offence which is not on information. Here the prosecution usually drops the instant case.
3. PLEA OF GUILTY
4. PLEA OF NOT GUILTY.
5. PLEA OF GUILTY

Where the accused pleads guilty the court quickly records the plea of the accused in his exact words and asks the accused if he has any other statement or comment to make after which the court shall pass verdict of the case. This is subject to SECTION 218(CPA).

1. PLEA OF NOT GUILTY

Where the accused pleads not guilty he is deemed to have put himself on trial. His defence counsel will therefore bring proof and evidence as to the innocence of the accused as well as the personnel representing the prosecution who would all have to prove beyond a reasonable doubt. This is subject to SECTION 217(CPA).

1. PROSECUTION

The counsel for the prosecution always opens a criminal proceedings by calling evidence for the prosecution. He calls his witness 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 closes. SECTION 240 (CPA) has it that: after the accused has pleaded not guilty to the charge or information the person appearing for the prosecution may open the case against the accused and then adduce evidence in support of the charge.

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 .

The burden on the prosecution to prove beyond a reasonable doubt is never watered down. For it is better for ten guilty persons to go free than for an innocent person to be unjustly punished. This is a roman maxim which as already “it is better for ten guilty persons to go scot free than for an 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 any sufficient evidence or made out a prima facia 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 where the judge rejects the no case submission, the trial proceeds and he 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 on his “NO CASE SUBMISSION” , which had earlier failed, the court would often usually convict the accused .

1. DEFENCE

After the close of the case for the prosecution and failure of a no case submission, if such was made, the case of the defence opens. When the defence has no evidence or witness at the time other than the accused and witnesses solely to the character of the accused, the prosecution wouldn’t be allowed to address the court a second time .This is subject to SECTION 241(CPA). However when the defence counsel is able to provide as evidence and witnesses other than witnesses as to character of the accused or the accused himself the prosecution would then be permitted to after the defence counsel has presented its case and prosecution can as well cross-examine the witnesses who would be re-examined by the defence counsel. This is a provision of SECTION 242(CPA).

Each witness is to undergo same process i.e (examination by the defence counsel, cross-examination by the prosecution and re-examination by the defence counsel once more).

1. CLOSING ADDRESS

After the close for the defence, the counsel for both sides then then makes closing speeches by addressing the court from their filed written address. 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 weakness if any of the defence and urges the court to convict the accused as charged. However the general rule of law is that the case of prosecution must succeed on its own. This is so, for in criminal proceedings the burden of proof on the prosecution is proof beyond reasonable doubt. It must be proved beyond reasonable doubt, and beyond a shadow of a doubt. The case of prosecution must succeed on its own strength and not 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 of the prosecution. If the case for the prosecution is a pack of lies and mere fabrications, conjecture, imaginative, malicious, frivolous and vexatious abuse of court process, he calls it so. If a PRIMA FACIA 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 that rests on the prosecution in criminal proceedings, he points out to the court finally and to discharge and acquit the accused on the charge or charges as the case may be.

The accused and his counsel have the right to round off address.

1. JUDGEMENT

After the closing addresses by the counsels for both sides, the judge fixes the judgement 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 judgement on the case. However, where a trial is by summary procedure the judge may deliver judgement there and then, or he may retire to his chambers to consider judgement and resume sitting to deliver it on the same day, as the case may be, or on an adjourned date.

In the judgement, the judge sums up, weighs, or reviews the evidence for both sides. He states his reason 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 not guilty or guilty as the case may be. This must be done according to law.

1. 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. SECTION 301 (CPA)provides that :

1. Where a complaint is dismissed and such dismissal is stated to be on merits such dismissal shall have the same effect as an acquittal.

However if on the other hand the prosecution failed on a technicality, then the court would usually discharge the accused, but not acquit him.

SECTION 301(2) (CPA):

Where a complaint is dismissed and such dismissal is stated to be not on merits or be without prejudice such dismissal shall not have the same effect as an acquittal.

WHERE A PERSON HAS NOT BEEN FOUND GUILTY THE COURT MAKES ONE OR MORE OF THE FOLLOWING ORDERS:

1 . DISMISSAL ORDER; DISMISSING THE INFORMATION OR CHARGE

2 . ORDER OF DISCHARGE OF THE ACCUSED ON THE CHARGES

3 . ORDER OF ACQUITTAL

4 . ORDER OF COMPENSATION.

1. SENTENCE

Where an accused has been found guilty, before passing sentence an allocutus, plea for mercy or leniency is usually made by the counsel of defence. After the allocutus the judge passes judgement on the accused.

TYPES OF SENTENCES COURT MAY IMPOSE

1. IMPRISONMENT, USUALLY WITH HARD LABOUR
2. FINE, IN LIEU OF, THST IS, INSTEAD OF IMRISONMENT
3. DEATH SENTENCE
4. CANING
5. DEPORTATION

OTHER ORDERS COURT MAY GIVE

1. BINDING OVER ORDER(AND SUSPENDED SENTENCE AND COMMUNITY SERVICE IN WESTERN COUNTRIES)
2. ORDER FOR DETENTION DURING THE PLEASURE OF THE PRESIDENT OR GOVERNOR AS THE CASE MAY BE
3. ORDER OF DISPOSAL OF PROPERTY
4. ORDER OF COSTS
5. AWARD OF DAMAGES
6. PROBATION ORDER

REMEDIES AVAILABLE FOR THE ACCUSED AFTER IMPOSITION OF SENTENCE

THE RIGHT OF APPEAL:

The right of appeal happens to be the only remedy for a sentence which has already been passed by the courts. That is to say that when a court verdict seems unfair or when the decision of the court is irrational to the accused if he feels sentence passed on him is unfair, the person has the right of appeal.

In law, an appeal is the process in which cases are reviewed, where parties request a formal change to an official decision by a lower court

HOW TO FILE FOR AN APPEAL

FILING A CRIMINAL APPEAL:

1. REQUEST A WRIT OF HARBEAS CORPUS IF YOU ARE IMPRISONED
2. COMPLETE YOUR NOTICE OF APPEAL
3. TALK TO YOUR TRIAL ATTORNEY
4. HIRE A CRIMINAL APPELLATE LAWYER
5. GET A COPY OF THE TRIAL TRANSCRIPT
6. IDENTIFY IMPORTANT ERRORS MADE AT TRIAL
7. DRAFT YOUR APPELLATE BRIEF.
8. METHODS OF COMMENCING CIVIL PROCEEDINGS IN HIGH COURT
9. WRIT OF SUMMONS

The writ of summons is one of the two modes used in in commencing a civil action against a person. It is a formal document addressed to the defendant.

A writ of summons is an official legal document, “summoning” a person to appear before court . If you receive a writ of summons, you should consider it a notification that another party intends to file a complaint against you but it does not mean the court have passed judgement on the case. A writ of summons when filed is sealed or stamped with the courts name on it for service by bailiff on the defendant to give him notice of the claim made against him and requiring him to acknowledge and defend it.

1. EX PARTE MOTION:

Ex parte motion refers to a motion or petition by or for one party. An ex parte judicial proceeding is on where the opposing party has not received notice nor is present. This is an exception to the usual use of court procedure and due process rights that both parties must be present at any argument before the judge

Because it is an emergency motion, it will be reviewed more quickly than standard motion.

REFERENCES

. PROCEDURE FROM ARREIGNMENT TO SENTENCE –CRIMINAL PROCEDURE AT HIGH COURT (ESE MALEMI), CRIMINAL PROCEDURE ACT (CPA) S (217,218,353,221,218,217,241,301,)

. REMEDY FOR ACCUSED AFTER IMPOSITION OF SENTENCE-(HR-LAW)

. METHODS OF COMMENCING CIVIL PROCEEDINGS IN COURT-(BEAG LAW)