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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 imposition of sentence.

**2**. Comment on various methods by which civil proceedings maybe commenced in high court.

**ASSIGNMENT**

***ABSTRACT***

This paper examines the procedure of a criminal proceeding in a high court, it also looks at post-conviction remedies, which is after the imposition of a sentence or final judgement in a court setting also it highlights the civil proceedings involved in a high court.

**What is a criminal procedure?**

A criminal procedure is a method or procedure of commencing, conducting and concluding criminal proceedings or matters in court.

**Sources of Criminal Procedure**

The sources of rules regulating criminal procedure in Nigeria courts are mainly:

1. The Criminal Procedure Act and its equivalent laws in southern states
2. Criminal Procedure Code and its equivalent laws in the northern states

Other sources include;

1. The Nigerian Constitution
2. Criminal Code and the Penal Code and Statutes establishing tribunals

**SALIENT STAGES OF CRIMINAL PROCEDURE AT HIGH COURT**

* Indictment of information
* Proof of evidence
* Arraignment and plea
* Plea of guilty
* Prosecution
* Submission of “no case to answer”
* Defence
* Closing address
* Judgement
* Discharge
* Finding of guilt and sentence

These stage shall be considered.

**Proof of evidence**

This means the names, address and written statements of the witness, Photocopies of the list of witnesses, the written statement they made to the police and list of exhibits are usually attached to information filed by the state. This is done to put the accused on notice as to the nature of case against him. To enable him take steps to prepare his defence. Thus us a fundamental right under the fair hearing provisions of the constitution.

**Arraignment and Plea**

This is calling an accused person formally before the court at the beginning of criminal proceedings to read him the indictment brought against him whether he pleads guilty or not, the accused may plead:

1. **Autrefois acquit**

Thismeans a plea that has been tried for same offence but has been acquitted.

1. **Autrefois convict**

This means that he has been tried a d convicted for the same offence on previous occasion, he cannot be tried again which is against the rule of double jeopardy.

1. **He may stand mute**

That is without saying anything, a plea of not guilty is usually entered for the accused.

1. **Plea of guilty to a lesser offence**

An accused may plead guilty to a lesser offence which is not on the information, where this plea is accepted by prosecution the court may its sentence accordingly. Here the prosecution usually drops the instant charge pacing way for the court to sentence the accused for the lesser offence admitted. There is no room for plea bargain.

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

**Plea of guilty**

This is when 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, character and his criminal record after this the defence counsel makes his allocotus or plea in mitigation of sentence and then the court passes its sentence.

**Plea of not guilty**

When the accused pleads not guilty, the trial then proceeds.

**Plea bargaining**

Plea bargaining involves negotiating for an accused to plead guilty to a lesser crime, in exchange for dismissal of the serious crime brought against him and for quick disposal of the criminal proceedings. The idea of plea bargaining is not new to the Nigerian legal system as the criminal procedure laws have provisions for an accused to plead guilty to a lesser offence instead of a more serious offence brought before him. However, where the prosecution fails to reach an agreement with the defence, the accused cannot be sentenced to a lesser offence.

**Cases of mentally ill persons**

Some accused persons may be too mentally ill or disordered to make a plea to a criminal charge Usually referred to as **unfitness to plea.** Such accused person may then be referred for psychiatric examination and treatment. Also, the defence may put up the defence of insanity, if successful the accused is usually acquitted based on grounds of insanity. In the case of ***R V M Naghten,*** the accused was charged with murder, a plea based on the grounds of insanity was successfully made for the accused. This is usually the duty of the defence to raise the issue of insanity, however in obvious cases the trial judge may raise it ***suo motu,*** that is of its own motion. It is usually established by evidence of relevant witnesses, including medical evidence.

**Prosecution**

The counsel for the prosecution always opens a criminal proceeding by calling evidence. Exhibits are rendered, the witnesses are also cross examined by the defence counsel and re examined by the prosecution counsel as may be necessary and the case for the prosecution closes. The burden of proof on the prosecution is proof beyond reasonable doubt, the burden of proof rest on the prosecution to prove the guilt of the accused beyond reasonable doubt, this burden of proof test is never watered down or lowered.

**Submission of “no case to answer”**

At the close of the case for the prosecution, the defence may submit that the prosecution has not submitted enough 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 usually makes the submission by addressing the court, which may be accepted by the judge which makes a ruling that the accused has no case to answer. This is a ruling of not guilty and the court may three upon 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. Where the judge rejects 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 will often usually convict the accused.

**Defence:** After the close of the case for the prosecution and failure of a no case submission, if such a submission was made the case for the defence then opens, if such submission was made the case for the defence opens. The accused and his witnesses, if any are one after the other led in evidence in chief by the counsel for the counsel defence and are cross examined by the prosecuting counsel and re-examined by the counsel for defence as may be necessary.

**Closing address**

After the close of the case for the defence for the defence, the counsel for both sides then make closing speeches by addressing the court from their filed written address. The prosecution counsel is always the first to address the court. The case for the prosecution must succeed on its own strength proof must be given beyond reasonable doubt. 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 addresses the judge fixes the judgement for a date provided that is not a summary trial, on the adjourned date the court resumes sitting. In the judgement the judge summons up and weighs or reviews the evidence for both sides. He also states his reason for his judgement. In conclusion the judge may fund the accused guilty or not guilty as the case may be.

**Discharge**

Where an accused has not been found guilty, on merit, the judge will dismiss the information or changes, discharge and acquit the accused person, 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:**

1. Dismissal order;
2. Order of discharge
3. Order of acquittal
4. Order of compensation as the case may be for the false, frivolous, vexatious or malicious or false imprisonment of the accused and so forth as may be relevant according to the circumstances of the case. In the case of the accused the judge passes the final judgement.

**Types of sentences imposed by court**

1. **Imprisonment, usually with hard labour:** Detention of the offender in prison as long it has been stipulated.
2. **Fine:** Imposition of a monetary sanction which depends largely on the crime.
3. **Death sentence:** This is known as a capital offence/punishment. In Nigeria, offences which carry such punishment include; treason, arm robbery, murder etc.
4. **Caning, deportation** etc. Under the criminal procedure law, canning is part of the punishment that may be imposed.

**Order sanctions include:**

* Binding over order; a person is found guilty but has been released for any reason.
* Order of costs;
* Award of damages
* Probation order
* Order for disposal of property etc.

**QUESTION 1b.**

Post-Conviction remedies are a specific and complicated legal proceeding that challenges the legality of some aspects of the criminal trial or sentencing.

A criminal defendant has limited opportunities to challenge a conviction or sentence:

**1.** A Direct criminal appeal,

**2.** Sentence modification

**3.** Clemency

**4.** Pardon

**5**. Post-conviction relief proceedings

1. **DIRECT CRIMINAL APPEAL**

Direct criminal appeals are not like trial proceedings, they are completely different, even though they arise out of the same conviction. At the appeal stage, the goal is to convince the appellate court that an error at the trial court made the conviction or sentence unfair or contrary to law, warranting a different outcome.

1. **SENTENCE MODIFICATION**

Sentence modification is a separate and quite different process from a criminal appeal. Although both may feel like the same, the court involved, the available grounds that can affect a criminal sentence, and the procedures involved are quite different. While criminal appeals must be filed by strict deadlines, a sentence modification petition can be filed any time while an offender is serving a sentence.

1. **CLEMENCY**

Clemency, or the commutation of a sentence, is a form of relief that may reduce or alter a sentence but does not affect the conviction.

1. **PARDON**

A pardon is a type of post conviction relief that the President or Governor can give an individual serving time in prison, or facing other criminal consequences, that essentially forgives the remainder of the sentence.

**OTHER REMEDIES INCLUDE:**

* **REMISSION**: Complete or partial cancellation of the penalty, whilst still being considered guilty of said crime (i.e., reduced penalty). 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.
* **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.
* **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.

1. Appeal to court of Appeal,
2. Apply for bail pending Appeal
3. Stay of execution of death sentence/ term of imprisonment
4. Modification of term of imprisonment e.g. with hard labour to without hard labour.
5. Suspended sentence/ probation etc.

**QUESTION 2.**

**MODE AND PROCEDURE OF COMMENCEMENT OF ACTION IN THE HIGH COURT**

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

Essentially, there are ***four*** different ways or methods of commencing actions in the High Court.

An action may be commenced in a high court by a counsel filing one or a combination of the following papers or originating processes in court:

These are:

1. By writ of summons (A writ for short)
2. By Petition;
3. By Originating summons
4. By Originating motion (Application)

They are referred to as ***ORIGINATING PROCESS***

1. **WRIT OF SUMMONS**

Writ of summons or originating summons, together with a statement of claim, is an official document issued by a court stating concisely the nature of the claim of a plaintiff against a defendant, the relief or remedy claimed and commanding the defendant to “cause an appearance to be entered” for him in an action at the suit of the plaintiff within a specific period of time, usually eight days, after the service of the writ on him, with a warning that, in default of his causing an appearance to be entered as commanded, the plaintiff may proceed therein and judgment may be given in defendant’s absence.

A writ of summon when filed is usually sealed or stamped with the court’s name by the bailiff on the defendant to give him notice of the claim made against him. In some parts such as in Lagos state the writ of summon shall be accompanied by a statement of claim, list of witnesses, written statements, copies of every document to be relied on that trial etc. A writ is required to be served on the defendant personally

A writ of summon usually contains the following endorsement or information:

* **The name of the plaintiff or claimant and his address**
* **Name of defendant and address**
* **Name of plaintiff’s solicitor and his business address for service of court processes**.

A writ is required 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.

From the cases, writ of summons is the appropriate mode for commencing an action which by its nature is ***contentious.*** Usually, action commenced by a writ of summons requires the filing of pleadings and possibly a long trial ***– Doherty v. Doherty (1968) NMLR 241; NBN Ltd v. Alakija [1978] ANLR 231.***

By virtue of the ***Order 5 rule 2 Lagos High Court (Civil Procedure) Rules. 2019***. All civil actions commenced by writ of summons shall be accompanied by:

a) Statement of claim;

b) List of witnesses to be called at the trial;

c) Written statement on oath of the witnesses; and

d) Copies of every document to be relied upon at every trial – Order 2 Rule 1, Lagos.

**ENDORSEMENT OF THE WRIT OF SUMMONS**

All writ of summons must have endorsed on it by the claimant (plaintiff) the nature of the claim being made or the relief sought. This endorsement is at the back of the writ of summons. This is to enable the defendant tell at a glance the nature of the action and the relief claimed against him.

If a party types his claims on a separate sheet of paper and affixes to the writ, that will be an improper endorsement and the writ will be invalid and is liable to be struck out. ***In Alatede v. Falode (1996) ANLR 101,*** *it was held that typing on a separate paper and then gumming the same to the writ was an irregularity and not in compliance with the rules*. Therefore, the writ may be struck out as not being properly endorsed; ***Nwonye v. Road Construction Ltd. (1966) NMLR 254.***

However, where there has been a valid endorsement on the writ of summons and the space provided is insufficient to accommodate the claims, a separate paper may be used in addition to the writs. In all cases, the parties to the action should be correctly described and at the back of the writ a concise statement of the nature of the claim must be stated. ***D. J Perera v. Motor & General Insurance Company Ltd. (1971) 1 NMLR 181.***

**ENDORSEMENT OF CLAIM AND PLAINTIFF’S ADDRESS**

*- Order 6 Rule 1,* ***Lagos state High Court (Civil Procedure) Rules. 2019;*** *Order 5 Rule 10 and 12 UCPR*

Plaintiff's address must be endorsed on the writ. If plaintiff is suing by a legal practitioner, the legal practitioner must endorse address of plaintiff and also his own name or firm and his place of business within the jurisdiction of the court – Order 4 Rule 12(1) Abuja.

1. **BY PETITION**

A petition is a written application in the nature of a pleading setting out a party’s case in detail and made in open court. It is, however, only used where a statute or Rules of court prescribe it as such a process – ***Order 1 Rule 2(3) UCPR.***

For example**,**

1. **section 410(1) of Companies and allied Matters Act (CAMA) 2004** provides that an application to the court for the winding-up of a company shall be by a petition.
2. ***Section 54(1) of Matrimonial Causes Act,*** 1970 provides that proceedings for dissolution of marriage are commenced by petition.
3. ***The Electoral Act*** also states that petitions are the only modes of procedure in election litigations. An election petition has been said to be similar to pleadings in civil matter as it is in that the practitioner sets out all the material facts he relies on for his petition – ***Egolum v. Obasanjo (1999) 5 SCNJ 92*** ***at 125.***

**ENDORSEMENT OF PETITION**

It shall be endorsed with the names and addresses of the petitioner and his Legal Practitioner, or where the petitioner brings a petition in person and corresponding to those made in the case of a writ, with the endorsements of the name and addresses of the plaintiff and his Legal Practitioner ***– Order 7 Rule. 2(3) UCPR.***

Where a person brings a petition in person, it shall be endorsed with:

a) The address of his place of residence, and if his place of residence is not within the jurisdiction, or if he has no place of residence there, the address of a place within the jurisdiction at or to which the documents for him may be delivered or sent;

b) His occupation; and

c) An address for service – ***Order 7 Rule. 2(4) UCPR.***

The High Court Rules of Lagos stipulate that a petition shall be presented by being left with the Registrar and that the party presenting it shall hand a copy to the Registrar. These Rules further require that the original should be sealed with the seal of the court and filed.

Service is effected in the same manner as a writ of summons. A respondent normally files a reply to the petition and at the trial, oral evidence is taken.

1. **BY ORIGINATING SUMMONS**

Generally, originating summons is used for ***non-contentious*** actions, that is, those actions where the facts are not likely to be in dispute (a question of law rather than disputed issues of facts). When the principal question in issue is or is likely to be one of construction of a written law or any instrument or of any deed or will or contract, originating summons may be used for the determination of such questions or construction – ***Director, SSS v. Agbakoba (1999) 3 NWLR (Pt. 595) 425; NBN Ltd. v. Alakija (supra); Doherty v. Doherty (supra); In Unilag v. Aigoro (1991) 3 NWLR (Pt. 179) 376,*** *it was held that originating summons is used where it is sought to correct errors in a judgment;* ***In Orianwovo v. Orianwovo (2001) 5 NWLR (Pt. 752) 548,*** *it was held that an action for declaration of title to land ought not to be commenced by originating summons.*

***In Fagbola v. Titilayo Plastic Industries (2005) 2 NWLR (Pt. 909) 1 at 19****, it was held that where proceedings are commenced by originating summons, pleadings are not used, that is, no statement of claims or defense are filed. Rather, affidavit evidence in support of originating summons and counter affidavit will take the place of pleadings –* ***Order 3 R. 5 and 6 Lagos; Order 1 Rule 2(2) Abuja; and Order 1 Rule 2(2) Kano.***

**FORMS OF ORIGINATING SUMMONS**

An originating summons shall be in Forms 3, 4 and 5 in the Appendix to the Rules with such variations as the circumstances of the case may require. An originating summons shall be prepared by the applicant or his legal practitioner and shall be sealed and filed in the Court Registry. When it is so sealed and filed, the summons shall be deemed to be issued – ***Order 5 Rule 5(3) Lagos state High Court (Civil Procedure) Rules. 2019.*** In Lagos, an originating summons shall be accompanied by:

a) An affidavit setting out the facts relied upon;

b) All the exhibits to be relied upon; and

c) A written address in support of the application ***Order 5 Rule 5(3c).***

d) Pre-Action Protocol Form 01 with necessary document.

1. **ORIGINATING MOTION OR APPLICATION**

This is the last of the originating processes. Unlike a petition, this may be used where a statute has not provided for it. Originating application is used when facts are not in dispute and it is used when the action relates to the interpretation of a document. In an application for prerogative orders of ***Certiorari, Prohibition, Mandamus, Habeas Corpus or enforcement of Fundamental Human Rights,*** originating motion may be used. Significantly, *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; 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 (1977) 5 SC 161,*** it *was held that the appropriate method of making an application to the court, where a statute 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.***

**All other stages involved in a civil procedure in a high court include:**

1. **Appearance**: A defendant may acknowledge the service of a writ, and then enters appearance in the case and then show up to defend or settle. However, where a defendant fails to enter appearance, within time limited, the plaintiff may by motion on notice obtain final judgement against the defendant in default of appearance.

After law suit is filed, whether or not a defendant has entered appearance any of the following procedures may be applied:

**Stay of proceedings, nonsuit, discontinuance, settlement, summary judgement etc.**

1. Ex parte motion, with or without a writ of summons and a statement of claim which may be filed later;

The following are examples of circumstances where an *ex parte*motion may be appropriate:

* *Situations involving safety*
* *Situations involving children*
* *Situations involving property*
* *Situations of support (hardship)*

**THE CONCEPT OF FRONTLOADING**

This is the requirement of filing the statement of claim together with all other documents along with the writ.

It should be noted that in frontloading, processes are not to be accepted for filing and if wrongly accepted for filing, the court shall strike it out but in Abuja Rules, there is no provision as to the effect of not frontloading.

**ISSUING OF ORIGINATING PROCESSES**

A writ of summons in Lagos and other originating processes shall be deemed to be issued when the Registrar seals it. All writs of summons must be duly signed by a legal practitioner or by the claimant where he is not represented. At the time of presenting the document for filing, the legal practitioner or claimant, as the case may be, is expected to leave as many copies as possible with the Registrar for service on the defendant.

**SERVICE OF WRIT**

The aim of this service is to give notice to the defendant, so that he may be aware of, and be able to resist, if he may, that which is sought against him – ***United Nig. Press Ltd & Anor. v. Adebanjo (1969) 1 All NLR 431 at 432.*** The issue of service is fundamental and where a writ of summons or other originating processes are not served, the Court would lack jurisdiction to entertain the matter.

It is the duty of the **Sheriff** or the **Bailiff** of Court or a **Police** constable or any other person so appointed to serve the writ of summons or other originating processes. There are two modes of service:

1. Personal service; and

2. Substituted service.

**PERSONAL SERVICE**

This is the delivery of the originating process to the person to be served personally – ***Order 9 Rule 2 Lagos High Court (Civil Procedure) Rules. 2019***, in some cases, personal service may not be required where the defendant has authorized his legal practitioner in writing to accept service and such a legal practitioner enters appearance on his behalf.

**SERVICE OF A WRIT ON A LUNATIC OR DETAINEE**

If a lunatic or a detainee in prison is to be served with a writ of summons or other originating process, services should be effected on the head of the asylum or prison, as the case may be – ***Order 11 Rule 10 Abuja, and Order 12 Rule 10 Kano.***

**SERVICE OF A WRIT ON PARTNERSHIP**

Where a partnership is sued, the originating process may be served on any of the partners or at the principal place of business within the jurisdiction

**SERVICE OF A WRIT ON COMPANIES**

***Section 78 of the Companies and Allied Matters*** Act provides for service of processes on companies registered under the Act. It states that such service should be in accordance with the rules of Court that is applicable.

**SERVICE OF WRIT ON AN UNINCORPORATED BUSINESS ENTERPRISE**

The process may be served on a partner or a person apparently in control of the management of the business – ***Iyke Medical Merchandise v. Pfizer Incorporated (2001) 10 NWLR (Pt. 722) 540,*** where it was held that *service on an unincorporated business enterprise is effected by service on a partner or on the person having de facto control or management of the business using the business and its principal place of business*

**SUBSTITUTED SERVICE**

Where a party attempts unsuccessfully to effect personal service, he is entitled to bring an application *ex parte* for leave of court to effect substituted service. Such an application will be supported by an affidavit disclosing the various attempts made at personal service. When an order is granted upon satisfaction by the court, then the other party would be served by the substituted means.

**APPEARANCE**

Once a writ of summons or other originating process has been duly served, the defendant is required to enter appearance either in person or through a legal practitioner of his choice within the time allowed under the rules.

**JUDGMENT THEREOF**

A judgment obtained pursuant to such an application for default of appearance is called a “**Default Judgment**”.

Since a judgment which a plaintiff or claimant obtains by reason of failure to enter appearance is a default judgment, that is, not a judgment on the merit, then the court has jurisdiction to set aside or vary such a judgment – ***Order 12 Rule 9 Lagos High Court (***

**CONCLUSION**

In conclusion, in order to successfully initiate a civil action in court, the lawyer and the litigant must ensure that this factors that may be determined and considered by the court are strictly adhered to in order to undertake smooth and successful litigation

Some legislations/rules require the compliance of certain conditions for initiating a civil action in court. For instance, ***The High Court of Lagos State (Civil Procedure) Rules 2019*** and provide that for any person to institute an action in Lagos such person must have complied with the pre-action action steps stipulated in the pre-action protocol directives.

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