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**1. Stages of Criminal Trial in a High Court in Nigeria**

Criminal procedure can be described as the method of commencing, conducting and concluding criminal proceedings in a court. A trial on indictment or information in a High Court differs from a summary trial in a magistrate court only in the sense that there is an elaboration of certain procedures in a High Court trial.

A. ARRAIGNMENT AND PLEA

The choice between charge or information depends on the nature and seriousness of the crime and what the law stipulates. The charge or information sets out the particulars of the accused, the act or omission which forms the subject-matter of the charge, time, place, date of the act or omission and the law contravened or the law specifying punishment.

The arraignment is the calling of an accused person formally by name before the court at the beginning of a criminal proceedings, to read to him the indictment or information brought against him and to ask him whether he pleads guilty or not guilty. At the court, the registrar or other officer of the court calls on the accused and the accused goes to the dock. The registrar confirms his name, reads the charge or information aloud, asks him if he understands and wants to be tried summarily or on indictment at the High Court, takes his plea if he elects summary trial and having confirmed that the accused understood the charge(s). This is called arraignment of a person before a court. Having elected trial, the accused may plead as follows.

1. The accused may plead guilty as provided for in **section 218 of the Criminal Procedure Act 2004.**
2. The accused may plead not guilty as provided under **section 217 of the Criminal Procedure Act 2004.**
3. **Autrefois Acquit**: This is pleaded under **section 221 of the Criminal Procedure Act** if the accused person has been earlier tried and found "not guilty" for the same offence. This plea is an application of the principle that a person cannot be tried twice for the same offence- double jeopardy.
4. **Autretois Convict**: This plea or defence means that the accused person has been tried and convicted for the same offence before. This is provided for in **section 221 of the Criminal Procedure Act.**
5. **Pardon**: This is a claim that he has been tried, convicted and pardoned by the State for the same offence.
6. **Keeping Mute**: When an accused stands without saying anything, the law provides under **section 220 of the Criminal Procedure Act** that a plea of not guilty must mandatorily be entered for him.
7. **Plea of Guilty to a Lesser Offence**: the accused may plead guilty to a lesser offence which is not on the charge if he intends to plead not guilty to an offence on the information.

B. PLEA OF GUILTY

Where an accused person pleads guilty, the counsel for the prosecution gives a resume or summary of the evidence against the accused together with the character and criminal record of the accused, if any. The defence counsel usually makes his plea in mitigation of sentence and the court then passes its sentence. The court may confirm the plea and find him guilty if it satisfies itself that the accused clearly understands the meaning of the charge in all its details and essentials and also the consequence of his or her plea. The court may yet find him not guilty despite his admission of guilty in appropriate cases.

C. PLEA OF NOT GUILTY

When an accused pleads not guilty, the court records it, considers his bail or remand and and proceeds with or adjourns for trial.

Plea Bargaining

Provision for an accused to plead guilty to a lesser offence is made for under the criminal procedure laws in Nigeria. An accused who does not intend to plead guilty to the serious offence charged may plead guilty to a lesser offence. The plea usually results from a bargain reached between the counsel for the defence and the counsel for the prosecution. It is also often accepted with the Judge's approval. Consequently, the accused is sentenced in respect of the lesser offence. So plea bargaining involves negotiating and agreeing to plead guilty to a lesser crime, in exchange for the dismissal of the serious criminal charge brought against the accused person and for a quick disposition of the entire criminal proceedings. This is also called plea bargaining.

When an accused person pleas guilty to a lesser offence, the plea has to be accepted by the prosecution. Where the prosecution refuses to accept the plea of guilty to a lesser offence, the plea is regarded as withdrawn. The trial proceeds and as a rule of law, the accused person cannot be sentenced on the basis of his plea of guilty to the lesser offence. A trial judge may also allow an accused change his plea from guilty to not guilty and thus avoid a passing of sentence thereon. Where an accused changes his plea, then the trial proceeds. Otherwise, a refusal by the trial Judge to allow a change of plea at that point in time becomes an issue for appeal.

Mentally Ill Persons

Mentally ill persons are provided for under **section 220 and 223 of the Criminal Procedure Act 2004.** Persons who are too mentally ill or insane may be unable to make a plea to a criminal charge. They are considered unfit to plead. Such accused persons may be referred for psychiatric examination. Upon confirmation of their condition, the accused may be committed for treatment at a psychiatric hospital at the pleasure of the President or Governor, depending on whether it is a federal or state offence. When the person is certified mentally fit, the person is released.

As an alternative, the counsel for the defence may put up a defence that the accused is insane. If it is successful, the accused is usually acquitted on the grounds of insanity. This was what happened in the case of **R v. M'Naghten (1843) 10 C & F 200,** where the accused was acquitted from a charge of murder on the ground of insanity. Ever accused person is presumed to be sane until insanity is proved by the defence leading evidence on the balance of probability. The defence usually establishes insanity by evidence of relevant witnesses and medical evidence. Insanity is a fact to be decided by the court. The defence has a duty and right to raise the issue of insanity. The Judge may also raise it suo moto or the prosecution may inform the court of it.

D. PROSECUTION

The trial begins. The parties and their witnesses are present in court. The case is called, the accused enters the dock while the witnesses leave the court and out of hearing. The prosecutor always opens a criminal proceedings or his case by calling evidence for the prosecution. He may or may not make a statement. He calls his first witness and leads him or her in evidence-in-chief. The accused or his counsel cross-examines and the prosecution re-examines. The process is repeated for each witness. The case for the prosecution then closes.

The burden of proof in criminal proceedings is beyond reasonable doubt. The burden of proving the guilt of the accused person rests on the prosecution. Where this burden of proof is not discharged, the charge is usually dismissed and the accused is legally entitled to be set free and is accordingly discharged and acquitted. A learned Justice of the Supreme Court said in **Ukorah v State (1977) 4 SC 167 at 171, "**The Romans had a maxim that it is better for ten guilty persons to go unpunished than for one innocent person to suffer."

E. SUBMISSION OF NO CASE TO ANSWER

At the conclusion of the case for the prosecution, the counsel for the defence may submit that there is no case for the accused to answer to. He states that the prosecution has not produced sufficient evidence or made out a prima facie case against the accused and therefore the court should not proceed with the case. This submission is made by the defence counsel in an address. The prosecuting counsel usually replies. The Judge then gives a verdict on this submission. The judge may accept the submission and make a ruling that the accused has no case to answer and may discharge and acquit the accused on merit or discharge and not acquit if the submission succeeded just on technicality and not on merit. If the Judge rejects the submission, the trial proceeds and the accused is required to state his case by giving evidence in his defence. Should the accused refuse to give evidence in his defence and stand by his earlier no case submission, the court may convict him.

F. DEFENCE

At the close of the case of the prosecution, that is, when the court is done with his last witness, and should the no case submission fail, the trial proceeds. The accused must be warned of his right. These rights include his right to keep mute, his right to elect to give evidence from where he is at the dock and he will neither be sworn nor questioned and his right to elect to testify on oath in the witness box and be cross-examined. If he elects to testify in the witness box as a witness, he and his witnesses, if there are any, are led in evidence-in-chief by the defence counsel, cross-examined by the prosecution and re-examined by the defence counsel, one after the other. If a witness is to be called out of turn, good reason must be given for it such as ill-health, being very busy or living far off from the court.

G. CLOSING ADDRESSES

At the conclusion of the case for the defence, the counsels on both sides make closing addresses. The prosecution always addresses the court first and goes ahead to sum up the case on both sides. The prosecution brings out the strong points in the case for the prosecution and identifies any weaknesses there might be in the case for the defence. He thereafter urges the court to find the accused guilty as charged. The prosecution cannot rely on any weaknesses in the defence's case to succeed. The case for the prosecution must succeed on its own by discharging the burden to prove beyond reasonable doubt. The accused is not bound to give a defence and may even rest his defence on the case for the prosecution in appropriate circumstances.

When the defence counsel addresses the court, he points out the weaknesses in the prosecution's case and states whether a prima facie case has been made out or not. He may also say whether or not the prosecution has discharged the burden of proof by adducing sufficient evidence. He then urges prays the court to discharge and acquit the accused on the charges. It is the right of the accused or his counsel to round off the addresses.

H. JUDGEMENT

The court must give a verdict after the closing addresses by both the counsel for the defence and the prosecution. The Judge usually fixes a date for the judgement where it is not a summary trial. The period will enable the court evaluate all the evidence before it in the matter. On the adjourned date, the court sits, calls the case and the Judge makes his ruling on the case. However, where it is a summary trial, the judge can deliver judgement on the same day after he has considered judgement in his chamber. He may also give the judgement on an adjourned date. The Judge gives a summary of the evidence and case of both sides and states his reasons for accepting the case of either side, as well as his reason for rejecting the case for the other side. The judge may find the accused guilty or not guilty.

I. DISCHARGE

The accused may be found guilty or not guilty. Upon a verdict of not guilty, the accused must be discharged and acquitted in accordance with **section 301 of the Criminal Procedure Act 2004**. The Judge gives one of these orders: a dismissal order dismissing the charges, order of discharge of the accused on the charges, order of acquittal or an order of compensation of the accused for malicious prosecution or false imprisonment.

However, where the court finds that the prosecution has proved its case beyond reasonable doubt, it would pronounce a verdict of guilty if the accused is sane or "not guilty by reason of insanity" if the accused is insane. But if the prosecution failed on a technicality, the court will usually discharge but not acquit the accused.

J. SENTENCE

Upon a finding of "not guilty", before passing a sentence on the accused, the court asks the convict if he or she has anything to say as to why a sentence should not be passed on him or her according to the law. This is an allocutus. The court usually receives any evidence in the accused's favour such as the date of birth, education, family and domestic life, previous conviction, date of circumstances, date of arrest, general reputation and association or the date of last discharge if he or she has been previously convicted. The accused may also plead for mercy or leniency. It is important to note that factors listed above can either aggravate or mitigate the sentence of the convict.

The sentence of court may be one of the following:

1. **Death sentence** (with the exception of pregnant women and those under seventeen years of age): This punishment stipulated that an offence is punishable by death, that is, taking the life of the offender. Such offences include murder, treason and armed robbery and they are referred to as capital offences since they impose the highest punishment for crime. Death penalty has been abolished in some countries of the world like Britain. It has been substituted by life imprisonment in such countries. Death penalty is usually carried out by hanging the offender by the neck until he dies unless a law prescribes that it should be carried out by another means such as firing squad. Some remedies are available for those on whom a death sentence has been passed.
2. **Imprisonment:** The offender leaves his personal residence in his community and takes up accommodation in a prison as provided under **section 377 - 383 of the Criminal Procedure Act.** A sentence of imprisonment may be imposed with or without hard labour. The main objectives of imprisonment are to deter people from committing crimes, protect the society and to reform offenders so that they become responsible members of society. However, it is not certain whether imprisonment has really reduced crime in the world. As a general rule, if a law prescribes a maximum term of imprisonment for a crime, a Magistrate or Judge cannot impose a term exceeding that on any person. There are some other general rules which apply to imprisonment as punishment for crime. Imprisonment can range from days to months to years and even to life sentencing.
3. **Caning:** This may be imposed under the Criminal Procedure Law for an offence which prescribes it. It may be imposed alone or in addition to other sentences. An order for caning, however cannot be made in respect of certain persons like a female, or a male who is over the age of forty-five years. Other restrictions are put on this order by a court as are found under **sections 384 - 388 of the Criminal Procedure Act and Laws.** Caning has also been abolished in countries like the United Kingdom. Under the **Child Rights Act, 2003,** caning is also prohibited for children (those under 18 years of age).
4. **Fine:** Fine is a sum of money that the court orders a convict to pay to the government treasury as a penalty for committing an offence. It can be imposed in lieu of a term of imprisonment imposed for the same offence under **section 382 of the Criminal Procedure Act** or both fine and imprisonment can be imposed where the crime is aggravated.
5. **Deportation:** This is imposed on persons who are not citizens of Nigeria. The person is expelled from Nigeria and placed in another country, usually the country of origin of the offender. The right of deportation is contained in the **Immigration Act. Criminal Procedure Act and Laws** in Nigeria provide that if an alien is convicted of a crime in Nigeria which is punishable by imprisonment without an option of fine, the option for the court to recommend deportation of such person to the Minister of Internal Affairs is available. The alien offender is remanded in custody pending the decision of the Minister to deport him. The offender is deemed to be in lawful custody during this period.
6. **Probation order: Section 435(1) of the Criminal Procedure Act** provides for probation under Nigerian law. Probation is a period of time during which an offender must behave well and or be of service to the community, otherwise the offender will be imprisoned for a fixed period of time. The offender is not usually kept in prison during this time. He can freely move about but he must regularly see his probation officer and ensure not to commit any other crime during the probation period. The probation officer counsels and supervises the offender to help in his or her rehabilitation. Probation may be imposed on persons sixteen years and older for a period between six months and three years. In addition to a probation order, a court may also impose a fine, a suspended sentence or a community service order.
7. **Order for costs:** The court may order a convict to pay, in addition to any penalty that has been imposed, such reasonable costs as it thinks fit. Also, in a private prosecution, where an accused is discharged and acquitted, the court may order the private prosecutor to pay such reasonable costs to the accused as the court may fix except where the private prosecution is justifiable in the opinion of the court. A private prosecutor does not include those prosecuting on behalf of the state or a police officer or pubic official acting in their official capacity. Costs awarded must however not exceed prescribed sums in the case of a Magistrate and a Judge.
8. **Award of Damages:** Where there is insufficient evidence to establish a charge of theft or receiving stolen property but a case of wrongful conversion or detention of property is established, a court nay make an order for restoration of the property to the owner and in addition make an order for award of damages for wrongful detention or conversion. This is provided for under **the Criminal Procedure Law.** The aggregate of the value of the property and the amount of damages must not exceed a specified sum.
9. **Order for the Disposal of Property:** The **Criminal Procedure Act and Laws** provide that property with respect to offences have been committed or property which a party originally possessed or controlled may be ordered by the court to be disposed. Such orders are made either during trial or at the close of the trial. The property may be disposed of by way of forfeiture to the State or Federation, confiscation or seizure by a government agency or by sale or release to an appropriate person.
10. **Binding over order:** Under **section 400 of the Criminal Procedure Act,** where a person found guilty of a crime has been released for any reason or where an action is dismissed, the defendant or both parties to the action with or without having sureties, such person may be bound over to keep peace and be of good behaviour. This order is usually for a period of time specified in the bond and where the person breaches the court order, he is liable to a maximum term of three months in jail. This may be with or without hard labour or any other punishment the court may impose.
11. **Order for detention during the pleasure of the President or Governor:** Persons who may be detained at a lunatic asylum, psychiatric hospital or prison for medical care and attention during the pleasure of the President in respect of federal offences or during the pleasure of the Governor in respect of state offences include those found to be of unsound mind and incapable of making a defence and those found not guilty on the ground of insanity. Provision is made for these under the **section 401 of the Criminal Procedure Act and Laws.** The persons are detained until they are deemed safe to be released at the pleasure of the President or Governor.

The laws creating criminal offences also prescribe which of the above punishments should be imposed on persons convicted of certain crimes. The laws usually allow the courts to exercise discretion in imposing these punishments but give maximum or minimum requirements to be met. For example, for some crimes, a sentence exceeding a term of seven years in jail cannot be imposed on a person convicted of the particular crime.

**REMEDIES AVAILABLE TO THE ACCUSED AFTER SENTENCE**

Sentencing is the action of a court of criminal jurisdiction formally declaring an accused the legal consequences of guilt to which he has confessed or of which he has been convicted. Generally, a sentence is the punishment imposed on a convict at the end of trial. A sentence is the pronouncement the court makes on a criminal offender that has been found guilty.

After sentence has been inflicted on a convict, there are some remedies that are available to him or her. Post-conviction relief is a procedure that allows the defendant in a criminal case to bring more evidence or raise additional issues in a case after a judgement has been made. These post-conviction remedies are a complicated and separate group of legal proceedings which challenge the legality of some aspects of the criminal trial or sentencing.

1. **Expungement:** This is also called expunction. It is he process of sealing arrest and conviction records. It is a court-ordered process in which the legal record of an arrest or a criminal conviction is sealed or erased in the eyes of the law.
2. **Pardon:** Pardon is a decision usually taken by the Chief Executive officer of government to allow a person to be relieved of some or all of the legal consequences resulting from a criminal conviction. The grant of pardon is a constitutional right of the President of the Federation and the Governor of a State in Nigeria under the **1999 Constitution of the Federal Republic of Nigeria (as amended in 2011)** and it is final**.** It is not subject to judicial review. The President is granted this power by **section 175(1) of the Constitution** and the Governor is granted this power by **section 212(1) of the Constitution.** Whereas the President grants pardon to those convicted of offences created by a federal law or military law, either free or subject to lawful conditions, the Governor of a State grants pardon to those convicted of offences created by a Law of the State. The President or Governor may also substitute, remit, reduce or commute the length of sentence or the severity of the punishment imposed on the convict. Pardon is available by a convict applying either personally or through a solicitor or even through the prison authority where he or she is incarcerated. The President exercises this power in accordance with the advice of the Council of State. The Governor exercises this power in accordance with the advice of an advisory council of the State. Once a person is granted pardon, he or she does not serve the remainder of the punishment for the forgiven offence.
3. **Clemency:** Clemency differs quite significantly from pardon. Clemency can come in form of reprieve, which is a temporary putting off of punishment while the situation is analyzed further or a commutation, which is the substitution of a form of punishment fro a lighter one. Under **section 175(1) and 212(1) of the 1999 Constitution (as amended),** the President and a Governor are empowered to grant clemency to those convicted of federal crimes and state crimes respectively. Clemency reduces or alters the sentence but does not affect the conviction. Clemency is the act of reducing a penalty for a particular criminal offence without clearing the person's criminal history. A pardon is a form of clemency.
4. **Sentence Modification:** Criminal sentences can be modified after trial has been completed and even if the criminal is already serving time in jail. Criminal sentence can be modified where an error was made during sentencing that needs to be corrected or where the sentencing guidelines of the state has changed. This differs from criminal appeal in the sense that a sentence modification petition can be filed any time while an offender is serving a sentence. The defendant usually has to establish the existence of a new set of facts highly relevant to the imposition of sentence but unknown to the trial judge at the time of sentencing. This is either because it was not in existence at the time or it was unknowingly overlooked by all the parties.
5. **Direct Criminal Appeal**: Anyone convicted of a crime has the right to appeal against the decision of the trial court if they believe a legal error has occurred. In criminal cases, the appeal asks a higher court to look at the record of the trial proceedings to determine if a legal error occurred that may have affected the outcome of the trial or the sentence imposed by the judge. This differs from trial proceedings in the sense that at this appeal stage, the goal is to convince the appellate court that an error was made at the trial court which makes the conviction or sentence unfair. Under **section 19 of the Court of Appeal Act,** the Court has jurisdiction to hear and determine appeals from decisions of courts below it sitting at first instance. **Section 20 of the Act** empowers the court to quash a conviction and direct a verdict of acquittal to be entered or order retrial of the appellant by a court of competent jurisdiction if it allows an appeal against conviction. Also, in appeal against sentence or appeal against conviction, the court, if it thinks that a different sentence should have been passed, quash the sentence passed at the tril and pass such other sentence warranted in law in substitution for it. Under **Part IV of the Act,** in a criminal appeal from the decision of a court below sitting in its appellate jurisdiction, the Court of Appeal may exercise any power that could have been exercised by the court below or may order retrial of the case by a court of competent jurisdiction
6. **Remission:** This is a complete or partial cancellation of the penalty for a crime while the person is still considered guilty of the said crime. It is also known as remand, the proceedings by which a case is sent back to a lower court from which it is appealed, with instructions to what further proceedings should be had. Remission implies reducing the period of sentence without changing its character.
7. **Post-conviction Bail:** Bail is the procedure by which a person arrested for an offence is released on security being taken for his appearance on a certain day and in a certain place. The kind of bail available after sentencing of a convict in Nigeria is post-conviction bail and it is of two types: bail pending sentencing and bail pending appeal. The type that concerns this work is bail pending appeal. The power of the courts to grant bail pending appeal is statutory. In Nigeria, the statutory power is in most part contained in the statute establishing the court. For instance, **section 31(1) of the Supreme Court Act** and **section 29(1) of the Court of Appeal Act** empower the Supreme Court and the Court of Appeal respectively to grant bail to convicts pending appeal. The High Court Laws of the States and the Magistrate Court Laws also contain provisions which allow the courts to grant bail to deserving applicants. The Criminal Procedure Code ( Northern Nigeria) also grants this power to the Magistrate Courts and certain grades of native courts. However, under **section 283(4) of the Criminal Procedure Code,** there is no right to bail for a person in custody after conviction pending appeal unless the sentence is caning only and it will only be granted in special circumstances such as where there is a doubt as to the correctness of the conviction on the point of law.
8. **Suspended sentence/ Probation:** The word "probation" is often used interchangeably with "suspended sentence". Suspended sentence or probation is a sentence or punishment give to a criminal in a court of law to the effect that such criminal would go to prison if he commits another crime within a particular period of time. The criminal is often put under the supervision of a probation officer. This may take the form of respite which is the delay of an ordered sentence or the act of temporarily imposing a lesser sentence upon the convict whilst further investigation, action or appeals can be conducted. However, suspended sentence is largely a mirage in Nigeria. Under **section 435 of the Criminal Procedure Act,** the court may order a convict to be released on probation even when it is of the opinion that the charge has been proved. It however has regard to the age, character, antecedents, health or mental condition of the person charged or the trivial nature of the offence. Suspension of the sentence means that the sentence has been withdrawn for the time being. **Section 460(1) of the Administration of Criminal Justice Act** provides that a sentence can be suspended by a court where it sees reason to do so and the convict will not be required to serve the sentence in accordance with the conditions of the suspension.
9. **Stay of Execution of Death Sentence or Term of Imprisonment:** This is an order of the court to temporarily suspend the execution of a court judgment or other order of the court. A stay can be granted automatically or conventionally when both parties in the criminal case agree that no execution shall occur for a certain period. I f a party appeals against a decision, any sentence issued by the trial court may be stayed until the appeal is resolved. Where a death penalty has been imposed, a stay of execution is usually sought to defer the execution of the convicted person or in an attempt to have the sentence commuted to life imprisonment.
10. **Parole:** **Section 468 of the Administration of Criminal Justice Act 2015** provides for parole. Parole is a temporary release of a convict who agrees to certain conditions before the completion of the duration of his sentence. A parole officer is usually attached to the convict and any violation of the conditions of his parole will result in his return to prison. Parole can be ordered by the court at the instance of the Comptroller General of Prisons who presents aa report recommending that the convict be released on parole on account of his good behaviour and having served at least one-third of his term of imprisonment of at least fifteen years or life imprisonment. The release ma be ordered with or without conditions. A convict on parole shall attend a rehabilitation programme in a government facility or any other appropriate facility to enable him to learn skills that would enable him to fend for himself when he reintegrates into the society.

The above reliefs or remedies are available to all classes of persons convicted of crimes in Nigeria subject to condition precedents that must be fulfilled under the statute that permit their operation.

**2**. **Methods of Commencing Civil Proceedings in High Courts in Nigeria**

A civil proceeding is a proceeding brought for the purpose of enforcing or declaring a right, recovery of money or property or in relation to status. Civil proceedings are commenced by way of originating processes which are issued and served by courts.

Commencement of a civil action in a court is the procedure or process that is taken by a party to institute an action before a competent court to determine the issues between the parties. There are primarily four ways of instituting civil actions in the High Courts in Nigeria (High Courts of the State and the FCT, Abuja and he Federal High Court). They are:

1. By Writ of Summons,
2. By Originating Summons,
3. By Originating Motion or Application and
4. By Petition.

Each of the methods above is referred to as originating process. It is important to note that the mode to be used in commencing a civil action is dependent on the nature of the case that is to come before the court. So, it is pertinent that parties get the proper advice of a counsel before instituting any action so that the court does not strike out the case for wrong cause of action. This will prevent waste of time and resources.

**Writ of Summons**

A writ of summons is a formal document issued by a court which states concisely the nature of the claim or grounds of complaint of a plaintiff against a defendant, the relief or remedy claimed and which commands a defendant to appear in an action at the answer the suit of the plaintiff at the court, within a specified period of time, usually eight days after the writ has been served on him. The summons also includes a warning that the failure of the defendant to appear in court will entitle the plaintiff to proceed and judgement may be given in he defendant's absence.

This is used to institute actions which are contentious in nature and relate to dispute of facts. Thus, all actions in which the facts are disputed by the parties must be commenced by writ of summons. Generally, all actions are to be commenced by writ of summons except where a legislation expressly provides that another mode should be used.

Writ of summons is used for contentious action, that is, where there is a dispute as to the facts. It is a formal document issued by a court that states precisely the complaint of the plaintiff against a defendant and the remedy or relief which the plaintiff believes he is entitled to. The writ of summons also commands the defendant to cause an appearance to be entered for him within a specified number of days (usually eight) after the writ has been served on him. It also warns him that a default on his part to appear in court will entitle the plaintiff to proceed with the action and have judgement given in his absence. **Order 5 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules 2019,** provides that writ of summons shall be used to commence proceedings where a claimant claims any remedy for a civil wrong, damages for breach of contractual or statutory duty, damages for personal injury to or wrongful death of any person or in respect of damage or injury to property. It is also used where the claim is based on or includes an allegation of fraud or an interested person claims a declaration.

Writ of summons when filed, is stamped with the name of the court on it for service by a bailiff on the defendant. The writ gives a defendant notice of the claim made against him and requires him to acknowledge receipt of the service and if does not admit the claim, he is to defend it. A statement of claim is usually filed along with the writ or later on within fourteen days of the service of the writ on the defendant. In Lagos State, such writ is also accompanied by list of witnesses, written statements of witnesses except those on subpoena, written address in support of the action and copies of other documents as may be necessary, otherwise it will not be accepted at the registry.

**Originating Summons**

The originating summons is used to commence actions that are non-contentious. This means that it adopted where there is a question of law rather than a dispute over facts. The facts are not being disputed by the parties. Instead, the question in issue is usually one as to the interpretation or construction of a written law or a written deed, will, contract or instrument. Originating summons is the appropriate method to determine this sort of issue.

A party may apply by originating summons for the determination of a question as to the construction of a written law, instrument, will, contract or deed and for a declaration of the rights of the persons interested. This is provided for under **Order 5 Rule 4 of the High Court of Lagos State (Civil Procedure) Rules.** An originating summons is accompanied by an affidavit setting out the facts to be relied upon, all exhibits to be relied upon, a written address in support of the application and Pre-Action Protocol Form 01 with necessary document as provided under **Order 5 Rule 5 of the Rules.**

It applies where there is a specific statutory provision for action. 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 judgement.

**Originating Motion or Application**

Originating motion may be used where a statute has not provided for it. Originating application is used when facts are not in dispute or when the issue in question relates to the interpretation of a document. This is the method adopted to institute certain proceedings like an application for prerogative orders of mandamus, prohibition, certiorari or habeas corpus. It is also used to commence actions which relate to the enforcement of fundamental human rights under **Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended),** originating motion should be used. Also, where a staute has not provided a method for enforcing a right conferred by that statute, and a party seeks to enforce such right, originating motion should be used - **Order 40 Rule 5(1) Lagos High Court (Civil Procedure) Rules 2004.** The above rule was upheld in the case of **Chike Arah Akunna v A.G. of Anambra State & Ors (1977) 5 SC 161 and Kasoap v. Kofa Trading Co. (1996) 2 SCNJ 325 at 355.**

**Petition**

A petition is described as a written application in the nature of a pleading which sets out a party's case in detail and which is made open in court. This method can only be used to institute civil actions where s statute or the Rules of a court expressly provide it as the originating process to be used. Certain proceedings like those for divorce, election matters can only be initiated by way of petition.

For example, the **section 54(1) of the Matrimonial Causes Act, Cap M7, LFN 2004** provides that matrimonial causes such as divorce proceedings should be by way of petition. Also, the **Electoral Act** states that petitions are the only modes of procedure in election litigations. In addition, **section 410(1) of Companies and Allied Matters Act, 2004** provides that an application for the winding up of a company shall be by a petition. A petition is made to the court by a petitioner against a respondent.

The type of originating process used to commence actions in High Courts in Nigeria depend on the various statutes which require their use to commence particular civil actions and also depend on the High Court Laws and Rules of the various States of the Federation.

**REFERENCE**

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