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LPI 204

Nigerian legal system ii

1. Procedure of arraignment to imposition of sentence in a criminal trial in the high court;

I. Proof of evidence: A Proof of Evidence is a written summary of what a witness will say in evidence during a hearing. Often a Claimant solicitor will get the client to produce a full story about the accident and the impact that it has had. A Proof of Evidence contains information which will help or hinder the claim and this is how it differs from a Witness Statement.

ii. Arraignment and plea: Although the initial appearance of the arrested person before a magistrate is sometimes referred to as an *arraignment*, it is not a true arraignment, which only comes after the defendant has been both arrested and formally charged. In all but extremely rare cases, arraignment also takes place before any suppression hearings and the trial itself. The interests at issue in an arraignment are the defendant's right to know of the charges against him or her and the defendant's right to have adequate information from which to prepare a defense. The state also has an interest in having the defendant make a plea so it can prepare accordingly.

ii. Plea of guilt

iii. Plea of not guilty

iv. Prosecution : the institution and continuance of a criminal suit involving the process of pursuing formal charges against an offender to final judgment or can be explained as the party by whom criminal proceedings are instituted or conducted.

V.Submission of "no case to answer " : case answer refers to a submission made by a defendant or accused in a court, which states that the claim or prosecution is not sufficient for conviction or judgment. The defendant supports his/her submission by pleading that that the case is based on insufficient legal grounds or insufficient factual evidence. A successful no case submission results in the end of a trial and release of the defendant. No case to answer is heard after prosecution evidence and arguments. In this submission, the accused asks the judge to tell the jury to find that s/he is not guilty. When a no case submission is made, it basically means that the defendant is asking the court for an acquittal without it having to present a defence. The defendant is literally saying to the court that there is no case to answer i.e. the prosecution has not sufficiently proven the legal threshold to establish the commission of a crime in the court of law.

Vi.Defense: in civil proceedings a defence maybe one of the following:

- (i) a traverse, i.e. a formal denial of an alleged fact

- (ii) a denial of the plaintiff's claim
- (iii) an allegation of counterclaim
- (iv) a confession and avoidance

Viii . Closing address: the final address to the jury by the attorney for each side of a case in which the attorney usually summarizes the evidence and his or her client's position . Also called *closing statement, final argument, summation, summing-up*
NOTE: Rule 29.1 of the Federal Rules of Criminal Procedure requires the prosecution to open the closing argument after the closing of the evidence. The defense replies, and the prosecution may offer a rebuttal.

ix. Judgement: *decision by a court or other tribunal that resolves a controversy and determines the rights and obligations of the parties.* A judgment must be in writing and must clearly show that all the issues have been adjudicated. It must specifically indicate the parties for and against whom it is given. Monetary judgments must be definite, specified with certainty, and expressed in words rather than figures. Judgments affecting real property must contain an explicit description of the realty so that the land can easily be identified.

X. Discharge : in any obligation, the termination of that obligation without liability on either party. In the Scots law of contract, discharge maybe by performance or novation, compensation, confusion, acceptance payment or delegation.

Xi. Finding of guilt and sentence : A finding of guilt is a ruling made by a judge. A judge will make a finding of guilt in one of two situations: An accused has pled guilty and accepts facts that amount to a criminal offence; OR the crown has proven at a trial that an accused committed a criminal offence. Except in certain cases, if a judge makes a finding of guilt, the judge will . Depending on the type of sentence given, the judge may also register a conviction against the offender.

1b. Remedies available to the accused after imposition of sentence :

Suspension of Fine:

1. Whenever an offender is ordered to pay fine, such payment should be made forthwith. Section 424 of the code, however, enables the court to suspend the execution of sentence in order to enable him to pay the amount of fine either in full or in installments. It deals with two types of cases which are like this.

2. Sub-section (1) provides that when an offender has been sentenced to fine only and to imprisonment in default of payment of fine and the fine is not paid forthwith, the court may order that the fine should be paid in full within 30 days, or in two or three installments the first of which should be paid within 30 days and the other or others at an interval or intervals of not more than 30 days.

3. Sub-Section (2) refers to a case where there is no sentence of fine but an order of payment of money has been made by the court and for non payment of such amount,

imprisonment is awarded. In such cases also, the court can grant time to pay amount. In either case, if the amount is not paid, the court may direct the sentence of imprisonment to be executed at once.

4. Hon'ble Supreme court in Ravikant S.Patil Vs. Sarvabhuma Bagali (2007) 1 SCC 673) has held that:Para- 15 "It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative. Be that as it may. In so far as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction **continues to operate even after stay of conviction**".

(b) Right of the accused against " Double Jeopardy" Art; 20 (2) of the constitution and Sec. 300 of Cr.P.C Art. 20 (2) of the constitution lays down that" no person shall be prosecuted and punished for the same offence more than once:-The right of the accused against Double Jeopardy is the recognition of the latin maxim - "Nemo debet bis vexari pro eadem causa" that means no man shall be punished or put in Jeopardy or Peril twice for the same offence. Article 20 (2) of Constitution of India bars prosecution and punishment after an earlier punishment for same offence. Where the complaint is permitted to be withdrawn and as a result the accused is acquitted. Trial of accused on fresh complaint for the same offence based on the same facts would be barred by section 300 Cr.P.C (Eciyo coconut oils Pvt. Ltd Vs. State of Kerala 2002 (2) crimes 147). Second trial is barred when accused is convicted or acquitted. There is a difference between acquittal and discharge, discharge of the accused does not amount to acquittal and thus no bar on proceedings U/sec. 300 Cr.P.C in Ranvir Singh Vs. State of Haryana, 2008

(c) RIGHT OF THE ACCUSED AND APPLICATION OF THE PRINCIPLE OF "RES-JUDICATA' OR 'ISSUE -ESTOPPEL" TO CRIMINAL PROCEEDINGS:-

The maxim Res- Judicata pro veritate accipitur, is no less applicable to criminal than to civil proceedings. In Lalta Vs. The State of U.P., in AIR 1970 SC 133 the Apex court of India, held that when an issue of fact has been tried by a competent court on a former occasion and a finding of the fact has been reached in favour of the accused, such a finding would constitute an estoppel or res-judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even might be permitted by the terms of section 300 (2), code of Criminal Procedure, 1973. Section 300 does not preclude the applicability of this rule of issue -

estoppel. The same view has been affirmed in some other decisions.

(d) RIGHT OF THE ACCUSED NOT TO SUFFER IMPRISONMENT FOR LONGER THAN MAXIMUM.

(e) RIGHT OF ACCUSED TO BE HEARD ON QUESTION OF SENTENCE IN WARRANT CASES; The relevant provision as to the right of the accused to be heard on question of sentence in warrant cases exclusively triable by a court of Session is provided in Section 235 (2) of the Code of Criminal Procedure, whereas in cases pending trial before Judicial Magistrate can be located in Section 248 (2) of the same code. This provision of hearing on question of sentence is mandatory. Non-compliance with the provisions of section 235 (2) of the code of Criminal Procedure, is not an irregularity, but is an illegality which vitiates the sentence.

(f) PROTECTION AGAINST CONVICTION OR ENHANCED PUNISHMENT UNDER EX-POST FACTO LAW (ARTICLE 20 (1) OF THE CONSTITUTION:- Substantive law imposing liability of penalty cannot be altered to the prejudice of the person supposed to be guilty with retrospective effect held in Rao Shiv Bhadur Singh Vs. State of Vindhya Pradesh, AIR 1953.

2. Methods to which civil proceedings may commence in a High Court.

1. Originating Summons

Originating Summons (OS) is one of the two modes in commencing a civil action. An action is commenced by an OS when (1) it is required by a statute or (2) a dispute, which is concerned with matters of law, is unlikely to be any substantial dispute of fact. An Originating Summons may be in *Inter partes* or *Ex-parte* of the Rules of Court.

OS is heard based on affidavits filed in support. OS cases are heard by registrars or judges in chambers or in open Court. A judicial decision is made by hearing the lawyers and assessing the affidavits filed either in support of or in opposition to the OS.

Witnesses may be called to give testimony and pre-trial conferences may or may not be conducted.

An application can be made to convert an OS into a Writ at any stage of proceedings.

Alternatively, the Registrar or Judge can decide to convert an OS into a Writ without any application from the parties. Once the decision to convert has been made, the steps relating to a Writ applies. The Registry will assign a new Suit Number to the proceedings and a pre-trial conference will be called for the service of the Statement of Claim.

Examples of originating summons

Judicial Management

This type of OS case can be filed if the selected legislation is **Companies Act**.

Taxation

This type of OS case can be filed if the selected legislation is **Legal Profession Act**.

Probate and Administration or Legislation

The applicable legislations for this OS are:

- Probate and Administration Act (Cap. 251)
- Rules of Court with the provision number as Order 71 or Order 72

Accordingly, the Nature of Case is Probate and Administration.

General

Other types of legislation fall under the OS (General) type. No additional fields are displayed when for this OS case.

Enforcement of Syariah Court Order

This type of OS can be filed if the selected legislation is **Cap 3 Administration of Muslim Law Act**.

Mental Capacity

This OS type is filed under the **Mental Capacity Act** legislation.

Guardianship of Infant

The legislation applicable for this OS case is **Cap 122 Guardianship of Infants Act**.

Division of Matrimonial Assets During Marriage

The applicable legislation for this type of OS is **Cap353 Women's Charter Section 59**.

OS (To Commence Divorce Within Three Years of Marriage)

The applicable legislation for this type of OS is **Cap353 Women's Charter Section 94**.

2. Originating motion

A type of document that starts a civil proceeding. This is often required when:

- i. There is no defendant.
- ii. you are making an application to the court under a particular Act, or
- iii. the Supreme Court (General Civil Procedure) Rules 2015 or the Supreme Court (Miscellaneous Civil Proceedings) Rules 2018 tell you to use an originating motion.

3. Writ of summons

The most common type of document that starts a civil proceeding. A writ is used unless an originating motion is required.

4. Petitions

Petition is a legal document formally requesting a court order. Petitions, along with complaints, are considered pleadings at the onset of a lawsuit.

- A petition is a formal request seeking a specific court order, made by a person, group or organization to the court, typically at the start of a lawsuit.

- A petition is made to the court by a petitioner against a respondent, versus a complaint, which is filed by a plaintiff against a defendant.