18/law01/052

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QUESTION 1

In a criminal trial, the trial of an accused depends on whether or not the offence is a capital offence or non-capital offence.

***ARRAIGNMENT***

In a trial for a non-capital criminal offence in the high court, after arraignment which is the formal reading of the criminal charging document in the presence of the defendant to inform the defendant of the charges against the defendant, the accused is expected to enter a plea. This can be seen in *section 285(1) of the Criminal Procedure Act (2004) hereinafter known as the CPA 2004*.

***PLEA***

If the defendant says that he is guilty or pleads guilty and the court is satisfied that he intends to admit the offence and shows no cause or no sufficient cause why sentence should not be passed the court shall proceed to sentence as stated in *section 285(2) of the CPA 2004*. If the defendant says that he is not guilty the court shall direct that all witnesses shall leave the court and upon such direction, the provisions of section *186 of the Evidence Act* shall apply. As seen in *section 285(3) of the CPA 2004*.

The judge enters the plea of the defendant and set down the case for hearing and in agreement with the council on the case or suo motu (on his own accord) adjourn the case to a future date for hearing. In this case, counsel to the defendant can apply for bail for the defendant. When bail is not granted, the defendant will be remanded in prison custody.

***PROCECUTION***

On the adjourned date or after the defendant gives his plea of non-guilt, the prosecution will open their case to prove the guilt of the accused as he is innocent until proven guilty beyond all reasonable doubt. During this, the court proceeds to hear the complainant and such witnesses as he may call and such other evidence as he may adduce in support of his complaint, and also to hear the defendant and such witnesses as he may call and such other evidence as he may adduce in his defense and also, if the court thinks fit, to hear such witnesses as the complainant may call in reply if the defendant has called any witnesses or given any evidence. As seen in *section 285(4) of the CPA 2004*.

***SUBMISSION OF “NO CASE TO ANSWER”***

Where counsel of the accused is of the opinion that the prosecution had not proved any solid points he is at liberty to make a no case submission i.e that the accused, based on the evidence adduced by the prosecution, has no case to answer. Where the judge rules that the accused have no case to answer, thee accused will thereupon be declared discharged and acquitted since the accused has been found to not have a case to answer to. Where the no case submission is overruled, the accused will be required to open his defense as seen in *section 287(1b) of the CPA 2004*

***DEFENCE***

If the defendant is not represented by a legal practitioner the court shall at the close of the examination of each witness for the prosecution ask the defendant whether he wishes to put any questions to that witness, and shall record his answer on the minutes as seen in section *285(6) of the CPA 2004*. If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the defendant sufficiently to require him to make a defense the court shall, as to that particular charge, discharge him but at the close of the evidence in support of the charge, if it appears to the court that a prima facie case is made out against the defendant sufficiently to require him to make a defense the court shall call upon him for his defense and if the defendant is not represented by a legal practitioner, the court shall inform him that he has three alternatives open to him, which are-

1. He may make a statement, without being sworn, from the place where he then is; in which case he will not be liable to cross-examination; or
2. he may give evidence in the witness box, after being sworn as a witness; in which case he will be liable to cross-examination, or
3. he need say nothing at all, if he so wishes, and in addition the court shall ask him if he has any witnesses to examine or other evidence to adduce in his defense and the court shall then hear the defendant and his witnesses and other evidence, if any. According to *sections 286 and 287(1a) of the CPA 2004.*

If the defendant is represented by a legal practitioner, the court shall call upon the legal practitioner to proceed with the defense. If the defendant or his legal practitioner states that he has witnesses to call but that they are not present, the court may, in the circumstances set forth in sections 186 to 193 of this Act, take the steps therein mentioned to compel their attendance. *As seen in section 287(2) of the CPA 2004.*

***CLOSING ADRESS***

After the close of the case for the defense, 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. He sums up or reviews the case on both sides. And then the counsel for the defense addresses the court. The general rule of closing address is that the defense counsel is entitled to the last words.

***JUDGEMENT, DISCHARGE AND SENTENCE***

After the defendant has led and closed his defense, the case will be adjourned for judgment on the adjourned date. On that date, the judge will deliver his judgment and if in his findings, the accused is not guilty, he will declare the accused not guilty as charged. Where this is the case, the judge will further declare the accused discharged and acquitted. Before passing sentence, an allocutus, plea for mercy is usually made by the defense counsel. Where the judge finds the charge proved beyond reasonable doubt, he will in his judgment declare the accused guilty as charged. He will then impose sentence in accordance with the provision of the law under which the accused is charged.

In a trial for a capital offence, the defendant is arraigned on charges of murder and the judge is compelled to enter a plea of not guilty for the defendant whether or not the defendant so pleads.

Unlike in the case of non-capital offence, the law requires that the defendant is represented by a counsel. The trial will commence and close as in the case of non-capital offences. And in a case of a capital offence, the judge is specific in his judgment in the way the defendant’s life will be taken.

(b) After the imposition of sentence by the high court the accused is entitled to an appeal to a higher court to see if they can get the sentence changed or overruled. The court of appeal in this case is a higher court and the appeal for the judgment of the High court can be taken to the court of appeal. If the defendant is not comfortable with the decision of the Court of appeal then he can appeal to the Supreme Court which has the final say on the case.

QUESTION 2

There are four methods by which civil proceedings may be commenced in the high court.

* By Writ of Summons: Subject to the provisions of these rules or any applicable law requiring any proceedings to be begun otherwise than by writ, a writ of summons shall be the form of commencing all proceedings as seen in *order 3 rule 1 of the high court of Lagos state civil procedure rule 2012*. Civil actions that can be instituted using the writ of summons include,
* Any relief or remedy for any civil wrong
* Damages for breach of duty, whether contractual, statutory or otherwise.
* Damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or property.

The writ of summons in the high court is the first step towards instituting a civil action in the high court. Contemptuous proceedings are commenced by way of writ of summons.

* By Originating Summons: Any person claiming to be interested under a deed, Will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested as *seen in order 3 rule 5 of the high court of Lagos civil procedure rules 2012.*  Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of Construction and for a declaration as to the right claimed as seen in *order 3 rule 6 of the high court of Lagos civil procedure rules 2012.* A Judge shall not be bound to determine any such question of construction if in his opinion it ought not to be determined on originating summons but may make any such Orders as he deems fit as seen in *order 3 rule 7 of the high court of Lagos civil procedure rules 2012.*
* By Originating Motion: originating motion is a method of instituting action in the high court. Every motion must be served within 5 days of filing and the judge may strike out the application if it is not served within the stipulated period. As seen in *order 39 rule 2 of the high court of Lagos civil procedure rules 2012*
* By Petition: a proceeding in the high court can be instituted with the use of a petition. An action relating to revenue matters may be proceeded in the high court by filing a petition. The form of the petition shall have the name of the petitioner and the description of the petitioner and the name and description of the respondent. As seen in *order 55 rule 3 of the high court of Lagos civil procedure rules 2012.* The petitioner is expected to show sufficient particulars also things such as the account or book of accounts by which the claim is based is to be presented.