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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 the imposition of sentence. 2. Comment on the various methods by which civil proceedings may be commenced in the High Court.

Question 1

a) Arraignment and plea

Arraignment is the calling of an accused person formally before the court by name 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. In other words, arraignment means. The registrar or other officer of 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 a satisfactory way and asking the accused to make his plead thereto instantly, this is called the arraignment of a person before a court. An accused person may plead as follows:

Autrefois acquit: meaning a plea that he has been tried for the same offence before and has been acquitted.

Autrefois convict: meaning a plea that he has been tried and convicted for the same offence on a previous occasion

He may stand mute: where an accused stands mute, that is without saying anything, a plea of not guilty is usually entered for the accused.

Plea of guilty to a lesser offence: while intending to plead ‘not guilty’ to the offence charged, an accused may plead guilty to a lesser offence which is not on the information.

He may plead guilty to the offence charged

He may plead not guilty

b) Plea of guilty

Where an accused person pleads guilty, the counsel for the prosecution will give the court a summary of the evidence together with details of the accused person’s background, that is, character and his criminal record, if any. After this the counsel for the defence usually makes his allocutus or plea in mitigation of sentence and the court then passes its sentence.

c) Plea of not guilty

Where an accused person pleads not guilty, the trial proceeds.

d) Prosecution

The counsel for the prosecution always opens a criminal proceeding by calling evidence for the prosecution. He calls his witnesses 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 prosecution closes. 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 and is accordingly usually discharged and acquitted. CHUKWUNWEIKE IDIGBE JSC IN *Ukorah v State* said that “ 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 close of the case for the prosecution, the defence counsel may submit that the prosecution has not produced sufficient 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 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 a technicality and not on merit.

f) Defence

After the close of the case for the prosecution and the failure of a no case submission, if such submission was made, the case for the defence then opens. The accused and his witnesses, if any, are, one after the other, led in evidence-in-chief by the counsel for the defence and are cross-examined by the prosecuting counsel and re-examined by the counsel for the defence as may be necessary. Each witness undergoes the whole process, before another witness is called. It is never mixed up. This is always the procedure. Generally, unless a witness has finished his testimony and undergone necessary cross-examination and re-examination, if any, another witness may not be called, except there are good reasons to do so. Some good reasons to call a witness out of turn, include the need to take evidence of a witness who is obviously very busy or who may not be readily available to testify, or who lives in a distant town or place, or who is suffering from ill health, travelling to far place, and so forth. After the witness for the defence has testified and tendered any exhibit they may have, the case for the defence closes.

g) Closing addresses

After the close of the case for the defence, the counsel for both sides then make closing speeches by addressing the court from their filed written addresses. 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 weaknesses if any of the defence and then urges the court to convict the accused as charged. However, the general rule of law is that the case for the 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 proven beyond reasonable doubt, but not beyond the shadow of doubt. The case for the prosecution must succeed on its own strength. Thus the case for the prosecution cannot rely on the weakness of the defence to succeed. For this reason, an accused person is not bound to put up a defence and may in appropriate circumstances rest his case or defence on the case for the prosecution.

Next, the counsel for the defence addresses the court. In his address he points out the weaknesses of the case for the prosecution. If the case for the prosecution is a pack of lies and a mere fabrication, conjecture, imaginative, malicious, frivolous, vexatious and an abuse of court process, he calls it so. If a *prima facie* case has not been made out, or sufficient evidence has not been adduced as required by law to discharge the burden of proof that rests on the prosecution in criminal proceeding, which is proof beyond reasonable doubt, he points it out to the court and finally, he urges the court to discharge and acquit the accused on the charge or charges, as the case may be. 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.

h) Judgement

After the closing address by the council for both sides, the judge fixes the judgment 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 give 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 chamber to consider judgement and resume sitting to deliver it on that 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 reasons for believing 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.

i) Discharge

Where an accused person has 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. 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:

Dismissal order-dismissing the information, or charge(s), Order of discharge of the accused on the charge(s), Order of acquittal, Order of compensation-as the case may be for the false, frivolous, vexatious or malicious prosecution or false imprisonment of the accused, and so forth as may be relevant according to the circumstances of the case.

j) Sentence

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

Types of sentences court may impose

When an accused has been found guilty of a crime, a court may under the criminal procedure act or law pass sentence and make one or more appropriate orders as follows:

- 1) imprisonment, usually with hard labour: this is a punishment for criminal offenses which consist of the detention of the offender in a prison.
- 2) fine: in this context, a fine is a sum of money which a court orders an offender to pay to the government treasury as a penalty for the commission of an offense.
- 3) death sentence: a death sentence is a judgement of court which stipulates that an offender should suffer death for the offence committed.
- 4) caning: under the criminal procedure law, caning is part of the punishment that may be imposed. It may be an order for caning only or in addition to other sentences.
- 5) deportation: this generally means expulsion from a country.

Other orders a court may make include:

- 6) binding over order (and suspended sentence and community service in western countries).
- 7) order for determination during the pleasure of the president or governor as the case may be
- 8) order for disposal of property
- 9) order for costs (10) award for damages (11) probation order.

Question 1b

Comment on the remedy available to the accused after the imposition of sentence.

The age of the convict

_ First offender status of the convict

_ Provocation

_ Reasonable, repentant or humane behavior of the offender after commission of the crime.

_ Plea of guilty by the accused

_ Length of time spent in custody, if any before conviction

- _ Rarity of the offence or accidental nature of the offence

- _ Good work record of the convict or good antecedents of the convict generally

- _ Illiteracy or level of education of the accused

- _ Minor role played by the accused

- _ Membership of the same family by the parties concerned

- _ Effect of the sentence on the wife, children or dependants of the convict and by extension of the cumulative effect of the sentence on society as a whole: in western societies, a host of other sanctions and orders are imposed instead of prison sentences and so forth.

Question 2

Comment on the various methods by which civil proceedings may be commenced in the High Court

I) By writ of summons: The Writ of Summons (WOS) is one of the two modes used in commencing a civil action against a person. It is a formal document addressed to the defendant requiring him to appear before the court if he/she wishes to defend himself against the plaintiff's claim. A writ is usually accompanied by an Endorsement of the Claim or a Statement of Claim so that the defendant is made aware of the claim against him/her.

II) By 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.

III) By originating motion: This is used only when provided for by a statute or a rule of court. Examples of actions to be commenced by this way includes:
a. Application for habeas corpus, **b.** Order for mandamus, **c.** Prohibition or certiorari, **d.** Application for judicial review, **e.** Action for the enforcement of fundamental rights under the Fundamental Rights Enforcement Procedure rules 2009

Where a statute provides that action be commenced by application but does not specifically provide the procedure, originating motion should be used.

IV) By petition: a formally drawn request, often bearing the names of a number of those making the request, that is addressed to a person or group of persons in authority or power, soliciting some favour, right, mercy, or other benefit. As may be such as, in a matrimonial proceeding for divorce and so forth, or winding up of a company for its inability to pay its debts in a federal high court and so forth.