

NIGERIAN LEGAL SYSTEM

LPI 204

MATRIC NO: 18/SMS13/002

ASSIGNMENT 1: CIVIL AND CRIMINAL PROCEEDINGS

1. PROCEDURE OF CRIMINAL TRIAL IN THE HIGH COURT (FROM THE ARRAIGNMENT TO THE SENTENCING)

-ARRAIGNMENT: Arraignment is a call before a court to answer an indictment. It may be initiated in the following ways:

By charge: bringing a person arrested without a warrant before a court upon a charge by a police officer

By information: Filing information before a high court with the consent of the Judge.

- laying complaint before a high court
- first information report before a court

An arraignment must be adhered to . **Pursuant to section 143 of the criminal procedure act** any person who is bound by any recognisance entered into under the act to appear before the court does not do so, the officer presiding over the court may issue a warrant directing that such person be arrested and brought before him.

The choice between charge or information depends on the nature and seriousness of the crime and what the law stipulates.

The charge or the information sets out the particulars of the accused, the act or omission which forms the subject matter of charge, time, place, date of the act and the law specifying punishment or the law contravened. **Section 162 of the Criminal procedure act 2004** provides that when a person is affiliated for trial on an erroneous or imperfect charge the court may permit or direct the framing of a new charge or add to or alter the original charge. The original copy of the charge sheet is retained by the court while the accused is served a copy.

-APPEARANCE IN COURT: In a criminal trial it is mandatory that both sides be present. At the court the registrar calls the accused to the dock. The registrar confirmation his name, reads

the charge out loud, ask him if he understands and would like to be tried summarily or on indictment. If he chooses summarily and confirmed that he understands the charges. The court provides an interpret. For choosing trial the accused can plead:

Guilty: The police prosecutor gives a resume of evidence. The court can then confirm the plea and find him guilty if it is satisfied that the accused understand the charges thoroughly and also the consequences of his plea. In some occasions the court may find him not guilty despite his plea of guilt.

Not guilty: The court records this plea, considerate his bail or demand and adjourns for trial. **Section 217 of Criminal Procedure Act** provides that where a person pleads not guilty, the trial is still to continue.

Autrefois acquit: This is pleaded if the accused person had earlier been tried and found not guilty for the same offence. This is also known as plea against double jeopardy and is provided for in **section 221(1b) of the Criminal Procedure Act.**

Autrefois convict: The accused has been tried and convicted for the same offence

Pardon: A claim that he had been tried convicted and pardoned for the same offence

Keeping mute to malice: That is saying nothing and the court enters a plea of not guilty.

-THE TRIAL: The trial is the hearing of evidence by judge and the full inquiry into a case culminating in a verdict. Here, parties and other witnesses are present in court. The case is called, the accused enters the dock while the witnesses exit the court and out of hearing. In the course of a trial the following activities take place:

- PROSECUTION:** The prosecutor opens his case with or without making a statement. He calls his first witness leads him/her in evidence-in-chief. The counsel of the accused cross examines and the prosecutor re examines. The process is the same for each witness.

- DEFENCE:** When the court is done with the last witness, the accused is briefed of his right. They include:

His right to elect to keep silent and remain where he is at the dock

His right to elect to give evidence at the dock and he will neither be sworn or questioned

His right to elect to testify on oath in the witness box and be cross examined

The excuse must choose and his chose recorded. Where he chooses to testify in the witness box he will be treated like other witnesses. The judge has power to call any witness or on an earlier witness. At the conclusion of the case for the defense, the counsels on both sides address the court. As is provided for in **section 241-243 of the Criminal Procedure Act**.

-VERDICT: After hearing both sides the court must pass a verdict of either guilty or not guilty. If the verdict is not guilty then the accused must be discharged and acquitted by virtue of **section 301 of the Criminal Procedure Act** but where the court finds that the prosecution has proved its case beyond reasonable doubt it would pass a guilty verdict but in a case where the accused is not mentally stable it will pass a verdict of not guilty by reasons of insanity.

-THE SENTENCE: Upon pronouncing the accused guilty the court ask the accused who is now a convict if he has anything to say why a sentence should not be passed on him according to the law. This is referred to as **allocutus**. The court receives evidence of the accused antecedent. This compromises evidence of anything in favor of the convict. Previous convictions, date of birth, education, employment, domestic and family life, general reputation, circumstances, association, date of arrest whether he has been on bail or remand or if convicted previously, the date of last discharge. The totality of this information aids the courts to arrive at an appropriate sentence. A sentence could be death penalty, imprisonment, flogging, probation, restitution and a host of others as the law demands. The sentence is essentially in criminal proceedings and as Justice Stephen Brown said "It is to trial what the bullet is to a gun".

REMEDY AVAILABLE TO ACCUSED AFTER THE IMPOSITION OF A SENTENCE

- Right to appeal: When tried and found guilty if the convict is not satisfied with the decision of the high court he can appeal to the court of appeal. The right of appeal is guaranteed by the 1999 CFRN. The constitution allows for appeals from the High courts and Federal high courts to the court of appeal. Appeals from the supreme court then go to the Supreme court which is the highest court.

2. METHODS OF COMMENCING CIVIL ACTIONS IN HIGH COURT.

Civil actions in a high court are commenced through:

- Writ of summons
- Petitions
- Originating summons
- Applications/ Originating motions

WRIT OF SUMMONS: This is the most common used method of commencing civil proceedings. It is recommended for all actions except where otherwise provided. A writ is an order from a court commanding the defendant to enter appearance in the action within a stipulated time.

The writ contains the name of High court and the judicial division, the suit number, names of parties and other endorsement, it will also contain formal endorsement like the plaintiff and his counselors address if he has one and the defendants address. A writ may be a general or specially endorsed. In a case of general endorsement the writ will contain a summary of the nature of the plaintiffs claim and remedy sought. This will be followed by a more elaborate statement of claim later. The plaintiff may choose not to separate the statement of claim and the writ by specially endorsing the writ. In such a case, a statement of claim is included in the writ and served with the summons.

However a specially endorsed writ is prohibited in claims of malicious prosecution, allegations of fraud, seduction, libel and false imprisonment, breach of promise to marry.

A writ has a span of **12 months** within which it must be served although in Lagos it is 6 months. It can however be renewed before the end of its span. An expired writ is invalid. When signed and sealed by the registrar a writ is said to have been issued. An action is commenced when the plaintiff has completed with all that is required of him by law.

PETITIONS: Petitions are special applications made in special form backed up by facts. It is the originating process required in election, divorce or winding up of a company for its ability to pay its debts and so on and so forth. When filing a petition the documents stated below must follow it:

- statement of claim
- list of witnesses to be called at trial
- Written statement on the oath of the witness
- Copies of all document to be relied on at trial

ORIGINATING SUMMONS: This type of process is used when a dispute is concerned with question of law and there is no substantial dispute of fact. These may be construction of a written law or instrumental, will, deed, etc.

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. In the case of **SSS v. Agbakoba (1999)** it was held that originating summons is used where it is sought to correct errors in a judgment.

Where proceedings are commenced by originating summons, pleadings are not used, that is, no statement of claims or defence are filed. Rather, affidavit evidence in support of originating summons and counter affidavit will take the place of pleadings.

In Lagos, an originating summons shall be accompanied by:

- An affidavit setting out the facts relied upon
- All the exhibits to be relied upon; and
- A written address in support of the application

APPLICATIONS/ORIGINATING MOTIONS: This procedure is required in certain proceedings. Motion is a written or oral application made to a court or judge seeking for certain ruling or order while originating used here means commenting. Therefore it follows that although a motion or application may be brought at any stage of a proceeding this time it is the originating process. Originating process being the form by which an action is commenced. Most typical actions commenced by the procedure are prerogative orders like habeas corpus and mandamus and fundamental right enforcement actions.

REFERENCES

Criminal procedure act 2004

Ese Malemi Nigerian Legal Method

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