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1)What are the rights of a person charged before the court for a offense

Finding a person guilty of a crime can't be taken lightly. Because of this, the law guarantees the accused certain fundamental rights that must be respected until the judge makes a decision.

Presumption of Innocence

A person accused of a crime is presumed innocent until the judge or jury finds him guilty. This is called the "presumption of innocence."The presumption of innocence is one of the most important rights in our criminal justice system.

This right means many things:

The accused does not have to prove his innocence. The prosecutor, who is the lawyer for the government, must prove and convince the judge that the accused committed the crime.

The prosecutor must prove that the accused is guilty "beyond a reasonable doubt". At the end of the trial, if the prosecutor has not presented enough evidence, or if the judge still has a reasonable doubt about whether the accused committed the crime, he must be found not guilty. In other words, he will be "acquitted".

The judge must be fair. They can't be prejudiced against the accused during the proceedings. For example, a judge can't be involved in a case if the victim is a member of her family.

Right to Be Informed of Evidence

The accused has the right to defend himself against an accusation that he committed a crime. To prepare a proper defence, he has a right to know all the evidence the prosecutor has against him.The prosecutor must inform the accused of all evidence against the accused before the trial begins, including the names of the witnesses who will testify. ("Testifying" means answering

questions about a case.) When the trial begins, the prosecutor starts by presenting the evidence and questions the witnesses testifying against the accused. Then the accused or his lawyer can question the witnesses. Next, the accused presents a defence, either with or without the help of a lawyer. He can testify, present evidence and question his own witnesses. However, the accused can chose to remain silent and not testify in his own defence.

Right to Remain Silent

The accused has the right to remain silent in all the steps of the criminal process, from an arrest by police until the end of the case. The accused is therefore not required to testify to defend himself. He can simply remain silent. The prosecutor can't force an accused to testify. The right to remain silent exists in part because the accused is presumed innocent until proven guilty, and he can't be forced to hurt his case by testifying against himself. As a general rule, if the accused decides to remain silent, the judge must not interpret this as proof of his guilt. A person is presumed to be innocent until found guilty. The prosecutor must prove guilt "beyond a reasonable doubt". Although he has the right to remain silent, the accused can choose to testify in his own defence. If he does this, he will be questioned by his own lawyer and then by the prosecutor. However, sometimes there are certain questions the prosecutor cannot ask the accused.

Right to Be Represented by a Lawyer

A person has the right to talk to a lawyer when he is arrested. The right to a lawyer applies from the beginning to the end of a criminal case. The accused can therefore be represented in court to get help defend himself. The accused must usually pay for his lawyer. However, an accused with a low income might qualify for government legal aid. In other more rare cases, the judge can give the accused a lawyer free of charge. This can happen, for example, if the accused does not qualify for legal aid but the judge believes the help of a lawyer is needed for the process to be fair. The accused also has the right to act on his own without a lawyer. If the accused does this, the judge can offer some help to make sure the trial is fair, for example by briefly explaining the different steps in the case. If necessary, the judge can have a lawyer help the accused to ensure the trial runs smoothly.

2) Is Bail a right?

Bail can be defined as the process whereby a person accused or being charged for the commission of an offence is released by the constituted authority who is detaining him, on the condition that he will appear or report to a police station or court or other identified location in future whenever his presence is required or so ordered.

The right to be granted bail is a constitutionally guaranteed right and it is a fundamental right as well. There are several reasons for granting bail to a person accused of an offence, however, one ofthe major rationales behind releasing any person so accused is based on the presumption of innocence in law of any person accused of, or charged with an offence until the contrary is proved as long as the court is satisfied of the conditions for bail as mentioned above. This is an age long principle established by William Blackstone as far back as 1765 in his Commentaries on the Laws of England and also re-echoed by the old English court in the case of Woolminghton vs DPP, decided in 1935 when the court held that "It is better that ten guilty persons escape than that one innocent suffer" . In other words, it is better to let the crime of a guilty person go unpunished than to condemn the innocent. The right of an accused to be granted bail will not only give the accused person enough time and liberty and space to prepare his defence, it is also available as a guarantee of the accused person's fundamental human right as entrenched in the 1999 Constitution of the Federal Republic of Nigeria.

2c)) in what circumstances will a convict be granted or refused bail

The right to bail is not automatic and is therefore not granted as a matter of course. While it is well established that bail can be granted in respect of almost all the offences known to law, certain conditions must be fulfilled before a person is admitted to bail. The Act only provides for the substantive principles and procedure to be followed in granting bail in court and by the Police leaving out the various conditions precedent to be considered before bail is granted. The Act specifically leaves these conditions to the discretion of the particular Judge or Magistrate. The conditions can however be found in plethora of judicial decisions, some of the conditions that

have been applied by the court in granting and/or refusing an application for bail over the years are:

a) bail will be refused where the accused is likely to jump bail
b) bail will be refused where the accused is likely to repeat the offence for which he is charged if released on bail
c) where the accused has a criminal record in respect of the same or similar offence
d) the nature of the offence, the character of the evidence, and the possibility of supressing vital evidence while on bail
e) the prevalence of the offence
f) availability of sureties that can meet the conditions of bail.

3) Distinction between civil and criminal wrong

Crimes are regarded as committed against the state (as the custodian of the people's liberty) and the person who suffers the criminal action (although as a secondary party). Thus, generally, it is the state that prosecutes crime through the instrumentality of the police or the office of the Director of Public Prosecution.

However, this does not prevent private individuals from instituting their own private criminal suit. This was decided by the court in the locus classicus of Gani Fawehinmi vs Akilu & Anor (1987) vol 2 NSCC. In this case, the appellant had applied for an order of mandamus against the DPP in order to endorse a certificate of prosecution in order to enable him to privately prosecute the murderers of Dele Giwa.

The appellant, who was a legal representative to the deceased, had carried out private investigations into the murder of Dele Giwa and as a result, he got some evidence as to the killers. This evidence was submitted, together with the information, to the respondent. The

respondent refused to prosecute on the basis that the evidence was not cogent enough to warrant prosecution. He alsofailed to endorse the certificate based on the information provided by the appellant. He thus applied for mandamus.

The trial court ruled against the appellant. At the court of appeal, his case was also dismissed on the ground that he had no locus standi based on the provision of S.6(6)(b) of the 1979 Constitution and the case of Adesanya vs President of Federal Republic of Nigeria (1985) vol 2 NCLR.

The appellant thus appealed to the Supreme Court which held inter alia that:

The Criminal Code does not confer complaint in respect of murder on a particular set of people. Anyone, who has sufficient information in relation to the murder can bring it up to aid in the prosecution.

The narrow confines to which 6(6)(b) have been limited have been broadened by the Criminal Procedure Laws, the Criminal Code and the Constitution itself.

Thus, by the above provisions, any private citizen can choose to prosecute a criminal case if and only if he is an eye witness or he has a reasonable basis for suspecting the accused. See also: Attorney General Anambra vs Nwobodo (1992) NWLR pt 236.

However, in civil cases, it is a necessity that only those that have been directly affected by the action would have the locus standi to institute a case in that respect.

In the case of Abraham Adesanya vs President of Nigeria & Anor, the appellant instituted an action against the respondents challenging the appointment of the second respondent by the first respondent to the post of chairman of an electoral commission. The case was dismissed due to the fact that the action of the respondents didn't have a direct impact on the appellant. He was thus held not to possess locus standi in that case.

In Criminal cases, an Attorney General of a State or the Federation can enter a nulle prosecui to terminate a prosecution. This is supported by the provisions of S.174(1) of the Constitution for the AGF and 211(1) CFRN 1999 for the AGS. For Civil cases, the person that instituted the case can also at any time before the judgement discontinue the case and settle out of court.

In criminal cases, according to S.135 of the Evidence Act, the prosecution has to prove its case beyond reasonable doubt. This means that the prosecution has to go to greater lengths to prove its case. In Civil cases, S.134 of the Evidence Act provides that each party's case has to be proved on the balance of probability and the preponderance of evidence. Thus, it is the party that has a weightier evidence that would walk out of the court victorious.

In criminal trials, when the accused is convicted, he is usually punished either by a death sentence, a prison term or payment of fine. In civil cases, the plaintiff, if successful is usually rewarded with an order for damages, injunction, specific performance or other consequential orders. In criminal cases, after the conviction of the accused, the sentence is automatically enforced by the court. In civil cases, in order to enforce the sentence, the plaintiff has to get a writ of fi.fa.

Sources

Okonkwo and Naish: Criminal Law in Nigeria

The Evidence Act 2011

The Constitution of the Federal Republic of Nigeria 1999(as amended)