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MATRIC NO: 16/law01/124

COURSE: NIGERIA LEGAL SYSTEM

Questions: state clearly the procedure from arraignment to imposition of sentence in a criminal trial in high court. Comment on the remedy available to the accused after the imposition of sentence.

ANSWERS

What is an indictment or information: An indictment or information is an accusation of crime brought against an accused for trial in a high court. It is also a criminal charge brought against a person by the attorney general or any of his subordinate legal officers on behalf of the state or country.

Proofs of evidence: 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. It also means the names, addresses and written statements of the witnesses, that the prosecution wishes to call and the list of exhibits, if any, that the prosecution wishes to put in evidence at the trial. The real essence of attaching these proofs of evidence is to put the accused on notice, to enable him take steps to prepare and state his defence. There are 4 kinds of evidence which are testimonial , documentary, demonstrative and real evidence.

Arraignment and plea: Arraignment is a formal reading of a criminal charging document in the presence of the defendant to inform the defendant of the charges against the defendant. In response to arraignment, the accused is expected to enter a plea. Acceptable pleas vary among jurisdictions, but they generally include "guilty", "not guilty", and the peremptory pleas (or pleas in bar) setting out reasons why a trial cannot proceed. Pleas of "nolo contendere" (no contest) and the "Alford plea" are allowed in some circumstances. Plea of guilty: where an accused person pleads, he may plead as follows

*Autrefois acquit: a plea that he has been tried for the same offence before and has been acquitted. It is in line with the rule of double jeopardy where a person cannot be tried twice for the same offence.

*Autrefois convict: where he has been tried and convicted for the same offence he cannot be tried again

*He may choose to stand mute, where a plea of not guilty would be mandatorily recorded for him

*He may plead guilty to a lesser offence not stated in the information, if accepted by the prosecution then the initial charge is dropped , allowing the court to sentence him for the lesser offence

*He may plead guilty

*He may plead not guilty

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, their character and their criminal record if he has any. Then the counsel usually makes an Allocutus (pleading for lesser punishment based on the condition of the accused) then the court passes its sentence.

Plea of not guilty : when an accused person pleads not guilty the procedures of the trial takes place and every other proceedings involving it will take place.

PLEA BARGAINING

Most times the defense and prosecution come together under the approval of the trial judge and reach a bargain, where the defense can plead guilty for a lesser crime which is not originally in the indictment. However this can only happen if the prosecution agrees to the bargain, where he fails to agree to the bargain, the trial continues and the accused cannot be sentenced on the basis of his plea of guilty to the lesser crime.

MENTALLY ILL PERSONS

As a general rule, every accused person is presumed to be sane until the contrary is proved. Some accused persons may be too mentally ill to make a plea to a a criminal charge, this is usually referred to as “unfitness to plead”, if the insanity is proven by use of substantial medical evidence and evidence of relevant witnesses, then the accused may be committed to a mental or psychiatric hospital for necessary care, as the case may be until the person is fit to be released.

Prosecution:. The counsel for prosecution always opens a criminal proceeding by calling evidence for the prosecution. His witnesses are each examined in chief and tenders any exhibit he might have, the witnesses are in turn cross examined by the defense counsel and re examined by the prosecuting counsel. In a criminal proceeding the burden of proof lies on the prosecution where he has to prove beyond reasonable doubt. This burden of proof which rests on the prosecution is never lowered down, this is because, it is better for a guilty person to escape justice than for an innocent person be unjustly punished. When the burden of proof is not discharged, the charge is dismissed and the accused is usually discharged and acquitted.

CHUKWUNWEIKE IDIGBE JSC in UKORAH v STATE said that :

“The Romans had a maxim that it is better ten guilty persons to go unpunished than for one innocent person to suffer”

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, the accused has no case to answer and therefore the case should not proceed further. Then the judge makes a ruling on this submission. The judge may accept the submission and make a ruling that the acussed has no case to answer. Thus being that the accused has been found not

guilty and is then discharged and acquitted based on merit, or just discharge the accused and not acquit him based on technicalities not on merit...

However if the the judge rejects the no case submission, the trial proceeds and if the accused still chooses to stand by his No case submission, which had earlier failed, he'll be found guilty with the reason being that the accused failed to defend himself against a prima facie case made out against him.

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 one after the other, led in evidence by the 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. This is always the procedure. Here the accused and his witnesses are led in examination 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 if necessary, after this the the case of the defence closes.

Closing address: After the close of the case for 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 review the case on both sides. The general rule of closing speeches, is that the accused or his counsel is entitled to the last word, that is it's his right to round off the addresses. The counsel for the defence addresses the court next, he points out the weakness in the prosecution's case, if it's a mere lie or a fabrication or frivolous, if a sufficient case has not been made out ,enough to prove beyond reasonable doubt which is required by law to discharge the burden of proof that rests on the prosecution. If the defence counsel can argue this out in his own favor then he can surely urge the court to discharge and acquit the accused, as the case maybe. Another general rule here is that the accused in entitled to the last word.

Judgement: After the closing addresses by counsel for both sides, the judge fixes the judgement for a date provided that it is not a summary trial, and the court rises in adjournment to enable it deliberate or evaluate the totality of evidence in the case. In the judgement, the judge sums up, weighs, or reviews the evidence for both sides. He states his reasons for believing and accepting the case for either side and also give his reason for disbelieving and rejecting the evidence for the other side. The judge may find the accused guilty or not guilty as the case may be and they must administer the cases with justice.

Discharge: Where an accused person has not 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. On the other hand, if the prosecution failed on a technicality, then the court will usually discharge the accused but not acquit him.

. Finding of guilt and sentence: Where an accused is found guilty, before passing sentence an Allocutus is usually made by the counsel for the defence. After the Allocutus, the judge passes sentence on the accused.

REMEDIES AVAILABLE AFTER THE IMPOSITION OF SENTENCING

Post-Conviction remedies are a specific and complicated legal proceeding that challenges the legality of some aspects of the criminal trial or sentencing.

A criminal defendant has limited opportunities to challenge a conviction or sentence:

direct criminal appeal,

sentence modification

clemency

pardon

post-conviction relief proceedings

DIRECT CRIMINAL APPEAL

Direct criminal appeals are not like trial proceedings, they are completely different, even though they arise out of the same conviction.At the appeal stage, the goal is to convince the appellate court that an error at the trial court made the conviction or sentence unfair or contrary to law, warranting a different outcome.

SENTENCE MODIFICATION

Sentence modification is a separate and quite different process from a criminal appeal. Although both may feel like the same, the court involved, the available grounds that can affect a criminal sentence, and the procedures involved are quite different. While criminal appeals must be filed by strict deadlines, a sentence modification petition can be filed any time while an offender is serving a sentence.

CLEMENCY

Clemency, or the commutation of a sentence, is a form of relief that may reduce or alter a sentence but does not affect the conviction.

PARDON

A pardon is a type of post conviction relief that the President or Governor can give an individual serving time in prison, or facing other criminal consequences, that essentially forgives the remainder of the sentence.

OTHER REMEDIES INCLUDE

REMISSION:Complete or partial cancellation of the penalty, whilst still being considered guilty of said crime (i.e., reduced penalty). Also known as remand, the proceedings by which a case is sent back to a lower court from which it was appealed, with instructions as to what further proceedings should be had.

RESPITE: The delay of an ordered sentence, or the act of temporarily imposing a lesser sentence upon the convicted, whilst further investigation, action, or appeals can be conducted.

EXPUNGEMENT: The process by which the record of a criminal conviction is destroyed or sealed from the official repository, thus removing any traces of guilt or conviction.

2. METHODS OF COMMENCING CIVIL PROCEEDINGS IN HIGH COURT

There are four different ways or methods of commencing actions in the High Court. These are:

a) By writ of summons (a writ for short);

b) By petition;

c) By originating summons; and

d) By originating motion (also known as application).

Each of the above is referred to as originating process. Almost, as a general rule, it is by the writ of summons that most actions are commenced, each of the remaining originating processes being resorted to where the Rules or a statute or a rule of practice prescribes the particular process as a mode of starting specified type of actions.

WRIT OF SUMMONS

A writ of summons is a formal document issued by a court stating concisely the nature of the claim of a plaintiff against a defendant, the relief or remedy claimed and commanding the defendant to "cause an appearance to be entered" for him in an action at the suit of the plaintiff within a specific period of time, usually eight days, after the service of the writ on him, with a warning that, in default of his causing an appearance to be entered as commanded, the plaintiff may proceed therein and judgment may be given in defendant's absence.

Generally, all actions are to be commenced by the writ of summons except where there is any express legislation prescribing another mode – Order 3 Rule 1 & 2 Lagos High Court (Civil Procedure) Rules 2004; Order 1 Rule 2, Uniform Civil Procedure Rules (UCPR); and Order 4 Rule 2, Abuja. From the cases, writ of summons is the appropriate mode for commencing an action which by its nature is contentious. Usually, action commenced by a writ of summons requires the filing of pleadings and possibly a long trial – Doherty v. Doherty (1968) NMLR 241; NBN Ltd v. Alakija [1978] ANLR 231.

Under the Lagos High Court (Civil Procedure) Rules. 2004. All civil actions commenced by writ of summons shall be accompanied by:

a) Statement of claim;

b) List of witnesses to be called at the trial;

c) Written statement on oath of the witnesses; and

d) Copies of every document to be relied upon at every trial – Order 2 Rule 1, Lagos.

Where a claimant fails to comply with the above, his originating process shall not be accepted for filing by the Registry – Order 2 R. 2, Lagos. Under Order 4 R. 17 Abuja, a certificate of pre-action counseling signed by counsel and litigant shall be filled along with the writ where proceedings are initiated by counsel, showing that the parties have been appropriately advised as to the relative strength or weakness of their respective cases, and the counsel shall be personally liable to pay the costs of the proceedings where it turns out to be frivolous.

ENDORSEMENT OF THE WRIT OF SUMMONS

All writ of summons must have endorsed on it by the claimant (plaintiff) the nature of the claim being made or the relief sought. This endorsement is at the back of the writ of summons. This is to enable the defendant tell at a glance the nature of the action and the relief claimed against him.

A writ is endorsed when it contains a concise statement of the grounds of the complaint or claim and the relief or remedy to which the plaintiff or claimant considers himself entitled. This concise statement of the plaintiff or claimant is called the "particulars of claim" and it is required to be endorsed at the back of the writ.

If a party types his claims on a separate sheet of paper and affixes to the writ, that will be an improper endorsement and the writ will be invalid and is liable to be struck out. In Alatede v. Falode (1996) ANLR 101, it was held that typing on a separate paper and then gumming the same to the writ was an irregularity and not in compliance with the rules. Therefore, the writ may be struck out as not being properly endorsed; Nwonye v. Road Construction Ltd. (1966) NMLR 254.

However, where there has been a valid endorsement on the writ of summons and the space provided is insufficient to accommodate the claims, a separate paper may be used in addition to the writs.

It can also be said that:

1. If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, the Writ must show it.

2. In probate actions the endorsement must show whether the plaintiff claims as creditor, administrator, legatee, next-of-kin, Heir-at-Law, successor under native law devisee or in any other character.

3. In all cases in which the plaintiff desires to have an action taken the Writ must be indorsed with a claim that account be taken.

4. In actions for libel the endorsement on the Writ must state sufficient particulars to identify the publication which is the subject matter of the complaint – Order 4, Lagos.

In all cases, the parties to the action should be correctly described and at the back of the writ a concise statement of the nature of the claim must be stated. If a person acting under a Power of Attorney sues

on behalf of the donor, it is the name of the donor not that of the donee that should appear on the writ – D. J Perera v. Motor & General Insurance Company Ltd. (1971) 1 NMLR 181.

ENDORSEMENT OF CLAIM AND PLAINTIFF'S ADDRESS - Order 4 R. 1, Lagos; Order 5 R. 10 and 12 UCPR; Order 4 R. 10 Abuja.

Plaintiff's address must be endorsed on the writ. If plaintiff is suing by a legal practitioner, the legal practitioner must endorse address of plaintiff and also his own name or firm and his place of business within the jurisdiction of the court – Order 4 Rule 12(1) Abuja.

It should be noted that the plaintiff's address must be given at all times whether or not he is suing by a legal practitioner – D. J Perera v. Motor & General Insurance Company Ltd (supra). In Lagos, if the writ of summons does not contain an address for service the writ cannot be accepted by the registrar and if it contains illusory fictitious or misleading address, it may be set aside by a Judge on application of the defendant – Order 4 R. 8, Lagos. If after giving his own address for service a legal practitioner ceases to act for his client, he must inform that court and furnish his client's address and that of the new legal practitioner acting for him. However, where a plaintiff fails to comply with the provisions of Order 4, Lagos, a defendant may, before entering appearance or upon entering a conditional appearance (or appearance under protest object to the writ on the ground that it is defective. Kigo (Nig.) Ltd v. Holman Brothers (Nig) Ltd (1980) NSC 251; Sken Consult v. Sekondy Ukey (1981) ISC. 6; (1981) NSCC 1. Similarly, any legal practitioner who receives instruction from a client during the pendency of proceedings should inform the court of the address where service on the client can be effected – Gbagbeke Okotie v. C.O.P (1959) WRNR 2 at 5.

Where a claimant sues through a legal practitioner, the legal practitioner shall state on the originating process his chambers address as the address for service. If the legal practitioner is based outside the jurisdiction, he shall state a chamber's address within the jurisdiction as his service address – Order 4 R. 6(2) Lagos. Under Order 4 R. 11(2) Abuja, where a writ is issued in an action brought by a person resident outside the jurisdiction, it shall be endorsed with a statement of that fact and with the address of the person resident outside jurisdiction. If a plaintiff sues in person, and his place of residence is not within jurisdiction, or he has no place of residence, the writ shall be endorsed with the address of a place within the jurisdiction where documents for him may be delivered or sent – Order 4 R. 12(3) Abuja; Order 5 R. 12 UCPR.

BY PETITION

A petition is a written application in the nature of a pleading setting out a party's case in detail and made in open court.

It is, however, only used where a statute or Rules of court prescribe it as such a process – Order 1 R. 2(3) UCPR. For example, section 410(1) of Companies and allied Matters Act (CAMA) 2004 provides that an application to the court for the winding-up of a company shall be by a petition. Also, section 54(1) of Matrimonial Causes Act, 1970 provides that proceedings for dissolution of marriage are commenced by petition. The Electoral Act also states that petitions are the only modes of procedure in election

litigations. An election petition has been said to be similar to pleadings in civil matter as it is in that the practitioner sets out all the material facts he relies on for his petition – Egolum v. Obasanjo (1999) 5 SCNJ 92 at 125.

A petition as the Uniform Procedure Rules provides, shall include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby and at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served a statement to that effect - Order 7 R. 2(1) UCPR.

ENDORSEMENT OF PETITION

It shall be endorsed with the names and addresses of the petitioner and his Legal Practitioner, or where the petitioner brings a petition in person and corresponding to those made in the case of a writ, with the endorsements of the name and addresses of the plaintiff and his Legal Practitioner – Order 7 R. 2(3) UCPR.

Where a person brings a petition in person, it shall be endorsed with:

a) The address of his place of residence, and if his place of residence is not within the jurisdiction, or if he has no place of residence there, the address of a place within the jurisdiction at or to which the documents for him may be delivered or sent;

b) His occupation; and

c) An address for service – Order 7 R. 2(4) UCPR.

A petition is presented in the Court Registry and a day on which it is required to be heard is fixed by the Registrar – Order 7 R. 3 and 4(1) UCPR. Unless the Court otherwise directs, a petition which is required to be served on any person shall be served on him not less than seven days before the day fixed for hearing of it - Order 7 R. 4(2) UCPR.

The High Court Rules of Lagos stipulate that a petition shall be presented by being left with the Registrar and that the party presenting it shall hand a copy to the Registrar. These Rules further require that the original should be sealed with the seal of the court and filed.

Service is effected in the same manner as a writ of summons. A respondent normally files a reply to the petition and at the trial, oral evidence is taken.

BY ORIGINATING SUMMONS

It is a summons that initiates proceedings. However, a summons in a pending matter does not initiate proceedings but it is used for making interlocutory applications in a pending cause or matter.

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 – Director, SSS v. Agbakoba (1999) 3 NWLR (Pt. 595) 425; NBN Ltd. v. Alakija (supra); Doherty v. Doherty (supra); In Unilag v. Aigoro (1991) 3 NWLR (Pt. 179) 376, it was held that originating summons is used where it is sought to correct errors in a judgment; In Orianwovo v. Orianwovo (2001) 5 NWLR (Pt. 752) 548, it was held that an action for declaration of title to land ought not to be commenced by originating summons.

In Fagbola v. Titilayo Plastic Industries (2005) 2 NWLR (Pt. 909) 1 at 19, it was held that 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 – Order 3 R. 5 and 6 Lagos; Order 1 Rule 2(2) Abuja; and Order 1 Rule 2(2) Kano.

FORMS OF ORIGINATING SUMMONS

LAGOS –

An originating summons shall be in Forms 3, 4 and 5 in the Appendix to the Rules with such variations as the circumstances of the case may require. An originating summons shall be prepared by the applicant or his legal practitioner and shall be sealed and filed in the Court Registry. When it is so sealed and filed, the summons shall be deemed to be issued – Order 3 Rule 8(1) Lagos. In Lagos, an originating summons shall be accompanied by:

a) An affidavit setting out the facts relied upon;

b) All the exhibits to be relied upon; and

c) A written address in support of the application – Order 3 Rule 8(2), Lagos.

The person filing the originating summons shall leave at the Registry sufficient number of copies thereof together with the documents in sub-rule 2 above for service on the respondent or respondents – Order 3 Rule 8(3), Lagos.

ABUJA AND KANO

The originating summons shall be in Forms 54, 55, 56, 57 or 58 in the Appendix to the Rule as the circumstances of the case require – Order 5 R. 1(1) Abuja; and Order 6 R. 2(1) Kano. Usually, a party taking out an originating summons is described as the “plaintiff” and the other party as the “defendant”. In Abuja and Kano, an originating summon shall be accompanied by:

a) A statement of questions, which the plaintiff seeks determination or directions of the court; and

b) A concise statement of the relief or remedy claimed with sufficient particulars to identify the cause(s) of action.

ORIGINATING MOTION OR APPLICATION

This is the last of the originating processes. Unlike a petition, this may be used where a statute has not provided for it. Originating application is used when facts are not in dispute and it is used when the action relates to the interpretation of a document. In an application for prerogative orders of certiorari, prohibition, mandamus, Habeas Corpus or enforcement of Fundamental Human Rights, originating motion may be used. Significantly, where a state has not provided for a method for enforcing a right conferred by that statute, originating motion should be used – Order 40 Rule 5(1) Lagos; Order 43 Rule 5(1) Kano; and Order 42 Rule 5(1) Abuja. It is rarely used in the Magistrate Court.

Its use was highlighted in the case of Chike Arah Akunna v. A-G of Anambra State & Ors (1977) 5 SC 161, it was held that the appropriate method of making an application to the court, where a statute provides that such an application may be made but does not provide for any special procedure, is an originating motion; Fajinmi v. Speaker, Western house of Assembly (1962) 1 All NLR (Pt. 1) 206.

This rule was also re-stated in Kasoap v. Kofa Trading Co. (1996) 2 SCNJ 325 at 335, that where it is sought to enforce a right conferred by a statute, but in respect of which no rules of practice and procedure exist, the proper procedure is an originating notice of motion.