

A PRESENTATION ON CRIMINAL JURISDICTION & STAGES OF CRIMINAL
TRIAL IN UGANDA
PLEA TAKING TO SENTENCING
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High Court

1) Jurisdiction.

Original Jurisdiction: This is the trial of cases in the first instance. The High Court has jurisdiction to try any offence under any written law. (S.1 of the Trial on Indictments Act). However, no criminal case can be brought under the cognisance of the Court for trial unless the accused has been committed for trial to the High Court after holding preliminary proceedings. Normally the High Court tries Offences of murder, treason aggravated robbery, rape, kidnapping with intent to murder and attempts to commit these offences.

Sentencing Powers: The High court may pass any lawful sentence, combining any of the sentences which it is authorised by law to pass as provided for under S.2 of Trial on Indictments Act.

Appellate Jurisdiction: The Court entertains appeals from decisions of Chief Magistrates and Magistrates Grade ones as per S. 204(1)(a) of the MCA.

Other powers of the High Court:

Revisionary power S.50 of the criminal Procedure Code Act.

Confirmation of sentences under section 173 of M.C.A.

Withdraw and transfer of cases under S. 218 of M.C.A.

Determine reserved question of Law under Section 206 of M.C.A.

Chief Magistrate's Court:

Criminal Jurisdiction: The original jurisdiction of a Chief Magistrates Courts is governed by section 161 of M.C.A and may try any offence other than an offence in respect of which the maximum penalty is death.

A chief Magistrate may combine any of the sentences which is authorised by law to pass as per S. 172 of the MCA.

Sentencing Powers: A Chief Magistrate may pass any sentence authorised by Law as per S.162(2). This means that he can pass a maximum sentence of imprisonment for Life. There is no limit on the amount of fine he may impose.

Power to transfer cases S.167 of MCA

Appellate Jurisdiction: A Chief Magistrate hears appeals from decisions of Magistrates Grade 2 or 3 as per S. 204(1)(b) of the MCA

Supervisory Powers: In accordance with S.221 of M.C.A. a Chief Magistrate has general supervisory power over all magistrates within the area of his local Jurisdiction.

Magistrates Grade 1

Criminal Jurisdiction: He has original jurisdiction only. He may try any Offence other than an offence in respect of which the maximum penalty is death or imprisonment for life as provided for under S. 161(1)(b) of the MCA.

Sentencing Powers:

A magistrate grade 1 may pass a sentence of imprisonment for a period not exceeding 10 years or a fine not exceeding four million eight hundred thousand shillings or both such imprisonment and fine as per S. 162(1)(b) of the MCA.

STAGES IN THE TRIAL PROCESS IN A HIGH COURT

1. Pre-Trial

The trial process in the high court is almost the same as that of the magistrate's court. However, it starts with the preliminary proceedings, that is, drawing up an indictment and a summary of case by the DPP, and signing the same, then presenting the same to the magistrate who reads them to the accused after giving him a copy of the indictment and summary of a case, and then commits the accused to the next high court criminal session. The record is transmitted to the registrar crimes division of the nearest high court who cause lists the case for trial. When this is done, he gives a notice of trial to the accused person.

The trial commences with the choosing of assessors as seen in section 67 of the Trial Indictment Act and the Assessors Rules who are lay persons selected by the chief magistrate. After Assessors have been assigned a criminal session, the trial will commence.

2. Plea Taking

The law governing the taking of plea in the High Court, by any person indicted of an offence triable by the High Court, is in section 60 of the Trial on Indictments Act. It spells out the procedure Court should follow during the taking of plea. It provides, inter alia, that an officer of the Court must read over the indictment to the accused person. It provides further that, if need be, the officer of Court shall explain the indictment to the accused, or it may be interpreted by an interpreter of the Court; and the accused person shall be required to plead instantly to the indictment. It also provides for instances where the accused person may, as of right, decline to plead to the indictment against him or her.

Accused is arraigned in court and informed of the charge against him and asked to plea. There are five pleas available to the accused that is to say Plea of guilt, Plea of not guilty, Plea of autrefois acquit, plea of autrefois convict or plea of pardon.

Section 63 of the Act provides that upon the accused person pleading guilty, the Court shall record the plea of guilty; and may convict the accused person on it. It is noteworthy to point out that while the Act provides that an accused person may be convicted upon his own plea of guilty to the indictment, it is now a well-established and mandatory requirement founded on Court decision - see **Adan vs Republic (1973) EA 445**- that after Court has entered the plea of guilty, the prosecution must state the facts of the case. It is only after the accused person has admitted that the facts as stated by the prosecution are correct, that Court may proceed to convict the accused person on his or her own plea of guilty.

Court should record a conviction and proceed to hear further facts relating to the sentence. The accused will then be sentenced accordingly.

However, where the accused does not plead guilty, then the hearing should commence.

3. Hearing of the prosecution case.

This stage comes into play when the accused has pleaded not guilty. The State attorney will either call or fix the case for hearing. This means he will call all the material witnesses relating to the case so as to place the accused at the scene of crime and prove that the accused committed or participated in committing of the offence.

These witnesses will be examined in chief by the state attorney, cross examined by the accused or his defence counsel and re-examined by the state attorney.

4. Ruling on a prima facie case.

When all the prosecution witnesses have testified, the prosecution will close its case. At this moment, court will make a ruling on a no case to answer or prima facie case. A prima facie case is one where a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence as stated in **Bhatt vs. Republic [1957] EA 332a** .

Section 73(2) of the TIA where the court considers that there is sufficient evidence that the accused person committed the offence shall inform each accused person of his right to give evidence on his behalf, make unsworn statement or call witnesses in his/her defence.

If no prima facie case is made out, then the court will dismiss the case and accused will be acquitted.

5. Opening of the defence case and hearing.

Where a prima facie case is made out, then the accused will be put to his defence. He will be informed of his rights, i.e. to either remain silent, or to give evidence on oath where he will be cross examined by the state attorney, or to give unsworn evidence. Whatever he chooses, he has a right to call witnesses.

6. Submissions both by the Prosecution and defence.

When the accused has finalized giving his testimony and that of his witnesses, he will close his case. Then the prosecution and the defence will address court on the evidence and the law in regard to their respective cases.

7. Judgement .s.85 TIA

When both sides have finished making their submissions. after the final submissions where the judge will sum up the evidence and the relevant law to the assessors who are expected to give their opinion. After giving their opinions, the judge will make his judgement as per section 85 of the TIA or reserve it for another date. This Judgement is given in presence of both parties however the same shall not be invalid by reason of absence of any party or his or her advocate. In the judgement, the Judge will either find the accused guilty and convict him, or find him not guilty and acquit him and release him from custody.

8. Allocutus, mitigation and Sentence.

If the accused has been found guilty, then the court will invite the state attorney to give a record of the accused to enable it to make out a proper sentence. This is what is termed as allocutus. The accused will also be given a chance to mitigate the sentence. After, the judge will pass a sentence that he considers proper in the circumstances.

Types of sentences

The court may impose any options of the following sentencing options; -

- a) Death penalty
- b) Imprisonment for life;
- c) Imprisonment for a specified period of time;
- d) A fine;
- e) Community service;
- f) Probation;
- g) A caution and discharge without punishment; and
- h) Any other lawful sentence option.

Sentencing orders

The court may make any of the following orders when sentencing an offender-

- a) conditional discharge;
- b) costs;
- c) compensation;
- d) restitution;
- e) forfeiture; or
- f) any other lawful sentencing order.

Sentencing procedures on conviction

The court shall upon conviction, allow a reasonable period not exceeding seven days to determine the appropriate Sentence for the offender.

The court may, before imposing a sentence or during the sentencing hearing, ask the offender and the prosecution to indicate to the court an appropriate sentence in respect of the offence.

The court, before passing any sentence other than a sentence of death, may make such inquiries as it thinks fit in order to inform itself as to the proper sentence to be passed and may inquire into the character and antecedents of the accused person either at the request of the prosecution or the accused person and may take into consideration in assessing the proper sentence to be passed such character and antecedents including any other offences committed by whether or not he or she has been and the accused person convicted of those offences; except that-

- (a) The accused person shall be given an opportunity to Confirm, deny or explain any statement made about him or her and in any case of doubt the court shall in the absence of legal proof of the statement ignore the statement.
- (b) No offence of which The accused person has not been convicted shall be taken into consideration in assessing the proper sentence unless the accused person specifically agrees that the offence shall be taken into consideration and a note of that request shall have been recorded in the proceedings; and
- (c) If for any reason the sentence passed by the court is set aside, the accused person shall not be entitled to plead autrefois convict in respect of any offence taken into consideration in assessing the sentence that was set aside

The antecedents of the accused person together with other mitigating factors should be taken into account. The inquiry includes hearing evidence as part of the sentence hearing

The inquiry may include consideration of the employment, earning ability, financial resources and assets of the offender at present or in the future, including any circumstance that may affect the ability to make reparation, pay compensation or a fine; or information relating to any benefit, financial or otherwise, derived directly or indirectly, as a result of the commission of the offence. "

The court may summon and examine a day person give evidence regarding: -

- a. any custom prevalent in any area;
- b. the way of living of any community; or
- c. the background against which the alleged offence was committed.

The court shall take into account any period spent on remand in determining an appropriate sentence. Failure to comply with this requirement renders the subsequent sentence a nullity. Where the trial court finds that the appropriate sentence is a death sentence, there is no obligation on the trial court to take this period spent on remand into account only when a term of imprisonment is considered as the appropriate sentence.

The court shall then allow both the prosecution and defence to make brief submissions on the appropriate sentence.

9. Appeals.

Court has a duty to inform the party that has lost the case of its right of appeal. Normally, this right will run within 14 days from the date of passing the sentence. An accused can appeal against the conviction or sentence or both.

Appeals from Magistrates Grade I and Chief Magistrate Courts to the High Court section 204 of the MCA .

An appeal Shall lie to the High Court, by any person Convicted On a trial by a court presided over by a chief Magistrate or a magistrate grade on a matter of fact And Law.

Where an accused person has been acquitted by a Magistrate's Court, The Director of Public Prosecutions may appeal to the High Court, where the accused person has been acquitted by a court presided over by a chief Magistrate or a magistrate grade I.

Any party to an appeal decided by the Chief Magistrate may Appeal against the decision of the chief magistrate to the High Court on a matter of law (not including severity of Sentence) but not on a matter of fact.

The Director of Public Prosecutions may appeal to the High Court from the decision of a Chief Magistrate on the ground that it is erroneous in law.

No appeal shall be allowed in the case of any person who has pleaded guilty and has been convicted on that plea by a Magistrate's Court except as to the legality of the plea or to the extent or legality of the sentence.

Appeals from the High Court to the Court of Appeal Section 132 of the TIA

An accused person may appeal to the Court of Appeal from a conviction and sentence by the High Court in the exercise of its original jurisdiction, as of right on a matter of law, fact or mixed law and fact.

An accused person may, with leave of the Court of Appeal, Appeal to the Court of Appeal against the sentence alone imposed by the High: Court, other than a sentence fixed by Law.

Where the High Court Acquitted Has, in The Exercise of its original jurisdiction, Acquitted an accused Person, the Director of Public Prosecutions may appeal to the Court of Appeal as of Right on a matter of law, fact or mixed law and fact, and the Court of Appeal may;-

1. Confirm, vary or reverse the conviction and sentence,
2. in the case of an appeal against the sentence alone, Confirm or vary the sentence; or
3. Confirm or reverse the acquittal of the accused Person.

Where the Court of Appeal reverses an acquittal, it shall order the accused person to be convicted and Sentenced according to law.

No appeal shall be allowed in the case of any person who has pleaded guilty in his or her trial 'by the chief magistrate or Magistrate grade I or on appeal to the High Court and has been convicted on the plea, except as to the legality of the plea or to the extent or legality of the sentence.

On any appeal from a decision of the High Court acting in the Exercise of its original jurisdiction, the court may reappraise the evidence and draw inferences of fact and in its discretion, for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial court or by a commissioner, when additional evidence is taken by the Court, it may be oral or by affidavit and the court may allow The cross-examination of any deponent.

In an appeal, the court may, so far as its jurisdiction permits, confirm, reverse or. Vary the decision of the High Court, or remit the proceedings to the High Court with such directions as may be appropriate, or order a new trial, and make any necessary, incidental or consequential orders. On any second appeal from a decision of the High Court acting in the exercise of its appellate jurisdiction, the court shall have power to appraise the inferences of fact drawn by the trial court, but shall not have discretion; to hear additional evidence. On any third appeal, the court, shall decide the question of law which is put before it.

THE END by

Hon. Justice Ajiji Alex Mackay.