CHAPTER VIII

EXAMINATION OF WITNESSES

The Examination of witnesses, which is one of the characteristics of the Common Law system which is adversary, is done orally. This is because the Common Law judges like to hear witnesses rather than read documents. Moreover, the oral evidence given by a witness from the dock (witness box) is by far the most common means of proving facts in issue in the Court of Law. Examination of witnesses requires the elucidation of facts by means of putting questions by the parties to witnesses who, for the most part of the trial are called by them. The importance of this practice of examining witnesses in trials by the parties resides in the rule that an accused person is presumed to be innocent until proven guilty, which the English Common Law attaches a lot of importance to.

Types of Examinations

There are three types of examination of witnesses, namely, examination- in-chief, cross-examination and re-examination. See. SS. 331(1-3) and 332 of the C.C.P.C.

1) Examination -in-Chief

When a witness is called, the law requires that he be first examined in-chief by the party calling him, cross -examined by the other party or parties and then re-examined by the party calling him.

Examination in-chief means the examining of witnesses by the party or counsel for the party calling the witnesses, the aim being to elicit testimony in support of the version of the facts which the party calling the witnesses seeks to establish. The whole aim of examination in-chief is to elicit from the witness a complete and coherent story as is relevant to the case. Skill in the choice and use of words in asking questions intended to guide the witness is very crucial here. In no circumstances should a party or counsel attack the character of a witness whom he has called himself or give evidence with the view of discrediting him.

Generally, no leading question should be asked during examination in-chief particularly where it is objected by the other party. *A leading question is one suggesting the answer which the person putting it wishes or expects to receive*. In other words, a leading question is one framed in such a manner as to insinuate a desired answer. See, SS. 379 and 380 of the C.C.P.C. A leading question should however be distinguished from a suggestive question, which is one that conveys a vivid picture so that if asked, it will set the mind of the witness at work and thus enable him to recollect the event in an orderly manner. A leading question on the other hand is one that tells the witness the answer he is expected to give.

2) Cross –Examination

At the end of the examination - in-chief, the witness may be cross-examined by his opposing party or his counsel, with the aim of testing the accuracy of the evidence adduced during the examination in-chief. It also aims at destroying the evidence of the witness as well as adducing facts which are favourable to the examiners case. See. S. 332 (3). It may also show how unreliable a witness may be either by attacking his credibility or his credit. Section 332(4) of the C.C.P.C. is to the effect that cross- examination may not be limited to the facts which the witness testified during his examination in-chief. Cross-examination is an area where professionalism and expertise of a lawyer are most needed, for, "*a law suit is a dwell between two lawyers, each armed with his sword, one holds a sword called examination in-chief, and the other holds another called cross-examination*". See, *Viscount Sankey L.C.* in **Mechanical Co. Ltd V. Austin [1935] A.C 346 P. 359.** Cross-examination enables the judge to assess the value of evidence-in -chief and so serves an important purpose in the administration of justice.

3) Re-Examination

A witness may be re-examined by the party who called him after his cross-examination. The purpose here is to explain the statement made during cross-examination as well as reduce any damaging effects which cross- examination might have had on the evidence. The matters re-examined should be limited to those arising during cross-examination. Fresh matters are not to be introduced during re-examination

except by leave of court. See **Christopher Ajaka Tamod V. Babila Denis Tita Sama [1998] 2 C.C.L.R. 246**.

The main purpose of re-examination is to reinstate any part of the testimony of the witness which has been shaken by the cross-examination. Re-examination does not provide an opportunity for counsel to raise issues which he omitted during examination in-chief unless the manner in which cross-examination was carried out makes this apparent both to counsel and judge.

Examination of Witness is not compulsory under the new Code of Criminal Procedure

This is because the code itself has circumvented the practice of cross-examination by leaving it at the discretion of the judge. See SS. 175(1) (2) (3). The reason for this is to prevent the system of examination from blocking the legal process especially in francophone Cameroon where the system had not been frequently in use. In fact, the mechanism of the Germano-Romanic system does not necessarily require cross-examination because the trial judge has a full knowledge of the case file having been sent to him by the Examining Magistrate. See S 256 of the C.C.P.C. This fact is buttressed by S. 176 of the C.C.P.C., which makes it possible for the State Counsel to take part in the Preliminary Inquiry enabling him also to be well acquainted with the fact of the case. But in the Common Law system, the judge is a neutral referee who does not take an active part in the trial as questions put to the witness do not pass through him, unlike his French counterpart who is an investigator at the trial. Since the French judge refers to his notes from time to time, he can easily exercise his rights of interrupting the witnesses with questions in relation to what he has read. See Art. 331 of the *French Code de Procedure Penal*.

Judicial Police Officers may be cross-examined under the new Code

The new code provides that the duties of the judicial police shall be performed under the supervision of the State Counsel and under the control of the Procureur General of the competent Court of Appeal. The Code therefore makes the judicial police officer and public servant of the judicial police auxiliaries of the State Counsel.

The introduction of the system of examination by the new code makes it possible for the Judicial Police officer who sends his report to the Court or to the Examining Magistrate to be cross-examined in court though this is at the discretion of the court. This enables the Judge or the Examining Magistrate to enjoy considerable authority, even in relation to senior police officers whose reports can be criticized in open courts. This system of procedure is Common Law oriented, giving the Judge in Anglophone Cameroon, the opportunity to personally interrogate the Judicial Police officers about the course of police investigation and the circumstances of the confession. The police experience the judge's power to control and sanction their behaviour in a public trial. The public sees for itself, that police officers have limited powers and that there is a controlling authority strong enough to protect individual rights against abusive State power. Unfortunately, the fact that cross examination is optional still makes it possible for the practice in Francophone Cameroon to prevail whereby a written report of a police officer about his interrogation of the accused can be substituted for his personal appearance at the trial. But unfortunately, unlike in the past where it was immaterial that a confession was obtained by inducement or threat, the new code renders such confession inadmissible in evidence. See, S. 122(2) of Cameroon C.P.C. Thus reports submitted in Court by Gendarmes and Judicial Police Officers on crime investigation, will no longer be considered as conclusive evidence.

CHAPTER IX

CRIMINAL AND CIVIL MATTERS TRIED JOINTLY

The commission of an offence is an infringement of a social value protected by the Criminal Law. The trouble caused to society as a result has to be punished. In order to do

this, a criminal action is envisaged which is generally carried out by the Department of Public Prosecution (the Legal Department).

But at times, besides the trouble which the commission of an offence causes to society as a whole, it may cause particular damage to certain persons. It could be injury to the person or his reputation or loss of property. The legislator provides to this category of persons, the possibility of engaging a civil action for damages as a result of the injury suffered or loss incurred.

Though coming from the same source (an offence) the two actions are fundamentally different. The institution of criminal proceeding aims at procuring a sentence or a preventive measure against an offender. A Civil action is intended to provide compensation for the damage resulting from an offence.

The criminal action, which is the principal action, is aimed at addressing the wrong which the offence has caused to society, while the civil action, which is an accessory action, subordinated to the criminal action, is aimed at compensating the victim for the damage he personally suffers as a result of the offence.

The criminal action is carried on by the Legal department on behalf of the State against the perpetrator(s) of the offence (offenders, co-offenders, and accessories), while the civil action is carried on by the victim of the offence or on his behalf by his personal representatives, against the perpetrator(s) of the offence and through him those civilly responsible for his actions. For example, parents for the acts of their minor children.

Today in Cameroon different statutory enactments give the courts the right to try Criminal and Civil matters jointly. These are Law No.2005/007 of 27 July 2005 on the Criminal Procedure Code and Law No.2006/015 of 29 December 2006 on Judicial Organization.

A civil claim may thus be made alongside a criminal action before the same court so long as they arise from the same offence. It may also be brought separately from a criminal action. In such a case, to avoid contradiction in decisions the law obliges the court seised of the civil matter to stay proceedings until a final decision on the Criminal action has been pronounced.

The joint trial of both Criminal and Civil matters is a purely inquisitorial system of trial where the role of the public prosecutor is not restricted to criminal cases as is the

case at Common Law but extends to all civil cases in which matters of public interest are raised.

The Commission of any offence may lead to the institution of criminal proceedings and, as the case may be, to a civil action.

As already seen, criminal proceedings shall be instituted and prosecuted by the Legal Department. They may also be instituted by any government department or by the injured person under the conditions laid down by the law.

In accordance with S.62 (1) of the CCPC, criminal proceedings shall be discontinued in the following cases:

a) the death of the suspect, the defendant, or the accused.

b) prescription

c) amnesty

d) repeal of the law

e) after a successful plea of autrefois convict or acquit.

f) by agreement between the parties if the law so expressly provides.

g) the withdrawal of a complaint where the lodging of such a complaint is the precondition for the commencement of prosecution.

h) the withdrawal of the complaint or the civil claim by the civil party who lodged the complaint in respect of a simple offence or a misdemeanor.

S.62 (2) provides that subsection (1) (h) above are applicable only where:

-the withdrawal is voluntary

-the matter has not been heard on the merits.

-the offence committed does not disturb public order or good morals.

-in case of many civil claimants, all of them withdraw their complaints or civil claims.

-the withdrawal is not as a result of violence, fraud or deceit.

In the case referred to in subsection (2) above, the court shall grant the application and award costs against the civil claimant. See S. 62 (3) of the C.C.P.C.

Where a court has been seised at the same time of a criminal action, the occurrence of one of the events provided for in section 62(1) above shall not bar the

continuation of the civil action, except in the case provided for in subsection 1(h) above. The judge seised of the matter shall be bound to adjudicate thereupon.

The entry of a *nolle prosequi* discontinues a criminal action but not the civil action that accompanied it. See S.64 (1), (3)& (5).

When hearing a criminal matter, the Court of First Instance shall, save otherwise provided by any other law, have jurisdiction to entertain actions for damages resulting from the commission of an offence. See S.15 (3) (a) of the December 2006 law.

Where a Court of First Instance hears a suit (civil) as a result of a criminal offence it shall have jurisdiction even where the amount of damages claimed is above 10.000.000(ten million) CFA francs. See Art.15 (3) (b) of the December 2006 Law.

CHAPTER X
THE TRIAL

Meaning of Trial and Preliminary Issues

In **Kajubo v. The State [1988] 3 SCNJ at p. 231,** Wali, J.S.C., made use of the definition contained in Black Law Dictionary where a trial is defined as follows:

"A judicial examination and determination of issues between the parties. A judicial examination in accordance with the law of the land or of a cause, either civil or criminal, of the issues between the parties, whether of law or fact before a court that has proper jurisdiction".

Therefore, a trial is a judicial examination and determination of issues between the parties in accordance with the law of the land. A trial court is a legal body responsible for hearing and determining any matter brought before it in compliance with the law, and where applicable pronouncing the penalty or measure provided for by law. See, S. 288 (1) of the C.P.C. Issues between the parties may be civil or criminal. Where the issues between the parties are criminal, criminal trial is being undertaken by the court.

When a person comes to court, i.e., when he comes before a Magistrates' Court or a High Court on a charge, the offence is either *a summary conviction* offence or *an indictable offence*. *A summary conviction offence* is one for which preliminary inquiry has not been conducted while an *indictable offence* is one for which preliminary inquiry has been conducted. Before the coming into force of the new Criminal Procedure Code, *summary conviction offences* were punishable in principle by a Magistrates' Court, while *indictable offence*s were in principle punishable by the High Court. Today, simple offences and minor misdemeanours are tried in the Court of First Instance, while the High Court tries serious misdemeanours and felonies.

An accused person is arraigned in court upon a charge sheet. A charge sheet therefore contains the charge or charges against the accused person. A charge itself is defined as *"the statement of offence or statement of offences with which an accused is charged in a summary trial before a court"*. See S. 2 of C.P.O., Cap. 43 of the 1958 Laws of the Federation of Nigeria.

It has been rightly submitted that this definition is restrictive because a charge is not restricted to a statement of offence in a summary trial. (See Doherty, Criminal Procedure in Nigeria: Law in Practice, Blackstone Press Ltd, London, 1990, p. 170.) A charge is a statement of offence in a summary trial and in a trial on information.

Therefore, information also contains a charge or charges. The new code empowers the Examining Magistrate to draft charges. Once he has decided that the case is ready for trial, that is to say, that he considers the evidence sufficient to put the accused on trial, he shall commit him for trial and shall, until the trial, either admit him to bail or send him to prison for safe keeping. The Judicial Act by which the Examining Magistrate commits the accused for trial is known as *a committal order*. See S. 256(3) of the C.C.P.C. Where the Examining Magistrate finds that the facts of the case constitute a simple offence or misdemeanor, he shall make a committal order, thereby forwarding the case before the court which has jurisdiction over simple offences or misdemeanours. See S. 256(4). Where he finds that the facts constitute a felony, he shall make an order committing the accused for trial before the court which has jurisdiction over felonies. See S. 256 (5). An inquiry file which has been closed by a *no-case-ruling* shall be filed at the registry of the trial court.

The Arraignment

A charge is filed in the Registry of the trial court by the prosecutor who in our case is the Examining Magistrate. When the charge has been preferred and filed in the Registry of the court by the Examining Magistrate, the latter becomes "*functus officio"* and it is the State Counsel who prosecutes the matter in court.

On the day fixed for the hearing of the case, the Registrar of the court calls out the names of the parties to the criminal matter. The accused person then proceeds to the dock, where he is sworn in keeping with the provision of S. 183(2) of the C.C.P.C.

The Registrar of the court, after the accused has taken oath, reads out to him the allegations against the accused as contained in the charge sheet. The general practice is that the person to be tried upon any charge or information shall be placed before the court unfettered unless the court shall see reason otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the Registrar or other officer of the court and such persons shall be called upon to plead instantly thereto. See SS. 359 (1) and 338(1) of the C.C.P.C.

The allegations as contained in the charge sheet must be read over and explained to the accused. The trial court must ensure that the allegations as read to the accused are understood by him. It is only after these procedures have been undertaken by the

Registrar of the court that the accused should be asked to plead to the charge. See **Kajubo v. The State** (supra). The accused was arraigned on information containing two counts of robbery. He was convicted and sentenced to death. On appeal against conviction, it was contended that the offences alleged against the accused were neither read to him nor explained to him even though there was evidence of a plea on the record of the proceedings. The Supreme Court allowed the appeal. It held that the provisions of S. 215 of the C.P.O. (the equivalence of S. 359(1) of the C.C.P.C) are mandatory and failure to comply with them renders any proceedings null and void. In **Inspector General of Police v. Rossek [1958] L.L.R. 73**, the charge was not read to the accused, neither was a plea taken from him. He was tried by the magistrate as if he had entered a plea of not guilty. The accused was discharged and acquitted by the prosecutor on the grounds that the charge was not read over to the accused nor a plea obtained from him. The Court of Appeal held that the failure of the lower court to read the charge to the accused and obtain a plea from him rendered the trial a nullity. Thus the appeal was allowed.

It can be summarized from the above that when we say that the accused is arraigned, we simply mean that he is charged before the court. All what happens to the accused from the time that he enters into the witness box up till when he enters his plea, whether of guilty or not guilty, is what is known as the arraignment. *The arraignment of the accused person consists of the charging of the accused or reading over the charge to the accused and hearing his plea to the charge in accordance with the law*.

Recording of Plea

As aforesaid, the person to be tried upon any charge or information shall be placed before the court unfettered, unless the court shall otherwise order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the Registrar or other officer of the court. After, these formalities, such person shall be called upon to plead to the charge or information. **R v. Richard Pepple 12 WACA 441**. It was held in **Mary Ngem Kimbu and Thomas Ngong Kimbu v. The People [1997] C.C.L.R. 115** (*Justice Arrey*) that where an information or charge contains more than one count, a separate plea shall be recorded to each count, that is to say, there shall be separate charges for distinct offences.

Plea of Guilt

At the commencement of the hearing, the court shall state or cause to be stated to the defendant the substance of the complaint and shall ask him whether he is guilty or not.

If the accused says that he is guilty, the court in accordance with S.360 of the C.C.P.C:

a) shall record his plea;
b) the Legal Department shall present the facts of the case, give the statement of offence and state the provisions of the law in application;
c) the civil party shall be called upon to address the court on the facts presented by the Legal Department;
d) the accused shall be given the right of audience to make any statement he deems fit;
e) the court shall rule on the plea of guilty.

If the court accepts the plea of guilty, it shall give the right of audience to the civil party or his counsel to apply for damages and the prosecution shall then produce the criminal records of the accused and make its submission on the applicable penalty, and where necessary on the damages. The court shall then proceed to hear the counsel for the accused if he has one, and thereafter the accused shall be called upon to make his final statement. See S.361 (1) of the C.C.P.C.

After the prosecution's submissions, the addresses of counsel and the final statement of the accused, the court shall declare the hearing closed and shall proceed as provided for in S.388 of the CCPC, that is, to render judgment or reopen hearing if need be. See S. 361(2).

If the court does not accept the accused's plea of guilty, it shall proceed with the case as if the accused plead not guilty in accordance with the provisions of S.365 of the C.C.P.C.

It is important to note that by international standards, a plea of not guilty is recorded for an accused who pleads guilty to a capital offence. That is to say, when the accused pleads guilty to a capital offence, the court must not convict on that plea but must record a plea of not guilty.

S. 369 of the C.C.P.C. directs that "the accused who pleads not guilty may at any stage of the trial change his mind and plead guilty". In the face of this type of a situation, the court shall proceed in accordance with the provisions of SS. 361 (1) and 362 of the C.C.P.C.

Plea of Not Guilty

Every person who enters the plea of not guilty shall without further formality be deemed to have put himself upon trial and the trial shall commence. If the accused pleads not guilty to some counts of the charge but guilty to others, the court shall proceed as if he had pleaded not guilty to all the counts. See. S. 368 of C.C.P.C. Where the accused pleads not guilty, the court shall hear the witnesses for the prosecution and for the civil party in compliance with the provisions of SS. 328 and 330 of the C.C.P.C. See S. 365(1) of the C.C.P.C. If after hearing the witnesses, the submission of the Legal Department and where necessary, the observations of the civil party, the court finds that the evidence adduced does not sustain the offence or that the facts do not constitute any offence, it shall discharge the accused. See S. 365(3) of the C.C.P.C. But if the court finds that there is evidence to warrant the accused to be put to his defence, it shall put the following three options to him:

a) that he may make a statement in his defence not on oath;
b) that he may say nothing; or
c) that he may give evidence on oath as a witness. See S. 366(1) of the C.C.P.C.

The Presiding Magistrate shall inform the accused that where he opts to say nothing or to give evidence not on oath, he shall not be asked any questions, and that where he opts to give evidence on oath, the prosecution, the civil party and the court may ask him questions. See S. 366(2) of the C.C.P.C. He shall further inform the accused that evidence given on oath shall have more probative value. See S. 366(3) of the C.C.P.C. At this point he shall ask the accused whether he has witnesses he wants to call or other evidence to adduce. Failure to comply with S.366 of the C.C.P.C. shall render the trial and the judgment null and void.

Failure to plead

If the accused when called upon to plead shall deliberately say nothing (stand mute of malice) or will not or cannot answer when called upon to plea to the charge, the

court shall enter or will be called upon to enter a plea of not guilty on behalf of such person and this shall be made as if he has pleaded not guilty. See S. 370 of the C.C.P.C. Otherwise the court may try to find out whether the accused person is of sound or unsound mind and if he is found to be of sound mind, the plea of not guilty shall be entered and the trial will commence. But if he is found to be of unsound mind, the court shall investigate the matter and may have the accused remanded for the obligation to see a medical doctor at a mental home which includes any hospital. If the accused is found to be unsound in mind, the trial shall be postponed. If later he becomes of sound mind and this is so certified by a medical doctor, he shall be taken before a court and the trial then shall proceed. See. S. 371 of the C.C.P.C.

Failure to plead may be as *a result of malice or as a result of visitation of God.* Visitation of God is an expression for inability to plead as a result of insanity. Refusal to plead is a deliberate withholder of plea which is not the case where the accused fails to plead as a result of visitation of God. If the accused person fails to plead out of malice, the court must enter a plea of not guilty. See **Gaji v. The State [1975] 5 SC 61.**

In order to establish whether an accused person is unable to plead as a result of visitation of God, the procedure set out under the enactment must be followed. The procedure is contained in S. 371 of the C.C.P.C.

If the accused fails to plead to the charge because he is deaf or dumb, the court must endeavour to communicate with him and obtain his plea in a manner understood by him, such as by sign language or lip reading or writing. See SS. 333 and 358 of the C.C.P.C.

Special Pleas of *Autre fois Acquit*, Convict and Pardon

The accused person may not plead generally to the charge for some reasons and these are brought out by S. 395 (3) of the C.P.C which stipulates:

"Anyone finally acquitted or convicted of an offence shall not be retried on the same facts even under a different statement of offence".

The pleas of Autre fois acquit, convict or pardon are special pleas in law. The raison d'être of the plea is that a person shall not be tried twice for the very offence for which he had previously been charged and acquitted, convicted or pardoned. In **Inspector General of Police v. Sydney Marke [1957]2 FSC 5**, it was decided that a

complaint whether stated to be on the merits or not at the end of the case for the prosecution is a dismissal on the merits amounting to an acquittal that will entitle the accused to a plea of autre fois acquit. Sydney Marke is saying here that if at the close of the case for the prosecution, the Magistrate (if it is a charge) or the judge (if it is an information) discharges the accused and does not say that such dismissal will amount to an acquittal, an accused can plead autre fois acquit subsequently. This is because the prosecution has brought a case against the accused and there is no prima facie case established. In **The People v. William Nchabanu Nkemasong and Boniface Acha Nkemasong [1971-1973] UYLR 157**, it was held that the exhibit of discharge which the first accused pleaded was on a "no prima facie case" found at the end of a Preliminary Inquiry which finally did not cooperate to bar any subsequent charge in respect of the same fact.

For a plea of autre fois acquit or autre fois convict to succeed, a number of conditions have to be proved to the satisfaction of the court.

1) The accused must have been previously tried on a criminal charge;

2) The former trial must have been conducted before a court of competent jurisdiction;

3) The trial must end with an acquittal or a conviction. Where the trial ends with a discharge, it has not ended with an acquittal or a conviction, and so the accused cannot plead autre fois acquit or autre fois convict to any subsequent action filed against him.

4) The criminal charge for which the accused was tried should be the same as the new charge against him or alternatively the new charge should be one in respect of which the accused could have been convicted at the former trial, although not charged with it.

Amendment, Defect and Essence of Accuracy of Charges

A defective charge is a charge that contravenes any or all of the rules of the drafting of charges. A defective charge may be amended. The leave of the court is not required to amend a charge if the accused has not pleaded to it, but after the plea of the accused has been taken, leave is required. The prosecution may of its own motion seek leave of the trial court by an oral application to amend a defective charge. He may also seek leave to amend a defective charge as a result of a sustained objection to the charge raised by the defence counsel. The trial court may also amend the charge *suo motu,* i.e., on its own initiative. See SS. 362 (1) & 363 of the C.C.P.C.

Under the relevant sections of the law, the duty of the court is to grant leave to amend a charge or to amend a defective charge *suo motu*. The court cannot draw up an entirely new charge completely different from the original charge filed by a Prosecutor (in our case the Examining Magistrate) because it is the duty of the Prosecution to draft a charge and not that of the court. All that the court can do by way of amendment is to substitute a similar charge or permit the substitution of a similar charge for the original charge. In **The State v. The Chief Magistrate, Aboh Mbaise, Ex Parte Onukwue [1978] 1 LRN 316,** it was held that the amendment sought by the Prosecutor may take different forms such as deletion of errors, addition or inclusion of essential particulars that were omitted, substitution of a correct section of the law for one incorrectly stated.

A charge may be defective for several reasons. The statement of offence or the particulars of the offence may be erroneous or imperfect; the courts may allege the wrong offences while committing to charge the correct and proper ones. If a defective charge is tried, it might lead to the acquittal of the accused. If he is not acquitted, the Court of Appeal may quash a conviction based on such a charge.

As aforesaid, the courts have powers to amend a defective charge. The amendment may be made by the court *suo motu* or with leave of the court by the Prosecution. If the court finds that the facts of the case as presented by the prosecution sustain a different offence, it shall amend the charge and inform the accused accordingly. Similarly, if in the course of the hearing new facts emerge against the accused, the judge shall amend or alter the charge in that respect. See SS. 362, 363 of the C.C.P.C. The case of **Kenny Elian v. The People [1971-73] UYLR 118**, clearly demonstrates the type of embarrassment which the prosecution had to face in attempting to frame a charge on an enactment which created an offence but failed to prescribe the punishment for it. See the following cases.

- **Fai Ndichangong and 3 Others v. The People [1971-73] UYLR 97;**
- **Thomas Mosenja v. The People (No-2) [1971-73] UYLR 32;**
- **Shoga v. R [1952] 14 WACA 22;**
- **Rudolf Ndifor v. The People [1968-70] UYLR 17 (CA).**

In **Commissioner of Police v. Henry Veenhuyzen [1968-70] UYLR 93 (CA**), the charge was preferred under a wrong section of the code. The conviction was bad at law because of the defective charge.

There must be separate charges for distinct offences. See S. 169 of the C.P.O. If this is not done, the charge will be bad for duplicity. For a charge to be accurate, and therefore not bad for duplicity, it must not carry two or more distinct offences. This means that the indictment must not be doubled, that is to say, no one count of the indictment should charge the prisoner of having committed two or more distinct offences. See:

- **William Loka Kingue v. The People, unreported 1976 case;**
- **Daniel Nkulu Esonganyi v. The People unreported 1970 case;**
- **Police v. Oyewusi [1957] WRNLR 87.**
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THE COURSE OF THE TRIAL

1) Opening the case for the Prosecution

In Cameroon the Minister of Justice supervises and directs a body of public officers collectively called in English Law as the Department of Public Prosecution (DPP) or the Legal Department and in French: *le Ministère Public*, *le Parquet*, *Magistrats debou*ts who are attached to the Ordinary Courts of Law. Members of the DPP are State Prosecutors charged with conducting all Criminal Prosecutions. They also perform important functions in civil cases either as a joint party or a main party. As representatives of the government before the courts of law, members of the DPP are not covered by the principle of irrevocability. This means that unlike judges who can be challenged, they cannot be so challenged. See SS. 593, 591 *et seq*. In **The People v. Gorji Dinka [1968-70] UYL 112,** it was held *obiter* that the function of the prosecution acting on behalf of the people in criminal cases is to act fairly and impartially in the interest of justice and that it is not the duty of the prosecution to secure conviction and especially not to use their official positions for their own personal advantage.

After the accused has pleaded not guilty to the charge, as per S. 365 of the C.C.P.C., the court shall order all witnesses in the case, except technical witnesses, to

leave the court. The prosecution may make an opening speech and then call witnesses, have them sworn or affirmed to adduce other evidence in support of the case. The prosecution will examine their witnesses -in-chief and the defence, if they are so minded, will cross-examine every witness.

After the defence has cross-examined each prosecution witness, the prosecution will be entitled to re-examine such witnesses.

No particular number of witnesses shall be required to prove any fact. See S. 372 of the C.C.P.C. A witness may withdraw after giving evidence unless the judge decides otherwise. See S. 378 of the C.C.P.C. According to S. 379(1) of the new Code, the Presiding Magistrate may not allow any question which is indecent, offensive, scandalous or leading, related to facts so remote in time that verifying them will be impossible; of such a nature as to prolong the proceedings unnecessarily. Leading questions may be asked during cross-examination but shall not if objected to by the adverse party (on the opposite side) be asked during examination in-chief or in re-examination, except with the leave of the court. See 380 of the C.C.P.C.

After the case for the prosecution is concluded, the accused or the Legal Practitioner may submit to the court that on the evidence adduced by the prosecution, a charge had not been made out and if upheld, he will be acquitted. If the court of its own motion at the close of the case for the prosecution finds that the prosecution had not made out a prima facie case to put the accused on trial, the court will accordingly discharge him. Such a discharge will amount to an acquittal if it is on the merits. See **Inspector General of Police v. Sydney Marke (Supra).** A no- case-submission before the defence opens its case applies both in the summary trial and in the trial on information. See SS. 256(6), 258(1), 259 &260 of the C.C.P.C.

Meaning of *A No- Case- Submission*

S. 256(6) of the C.C.P.C. is to the effect that where the State Counsel finds that the facts of the case do not constitute an offence or that the author of such offence is not identified or that there is insufficient evidence, he shall give “a no case ruling”. Such a ruling shall immediately set the defendant free unless he is detained for some other cause and shall also revoke any measures of judicial supervision taken against him. See S. 258(1) of the C.C.P.C.

A submission of no case means that there is no evidence of which, even if believed, the court will convict the accused. In a Practice Directory dated 9th February 1962 QB Division of the High Court of England [1962] I WLR P. 227, Lord Parker laid down the following rule:

"*A submission that there is no case may properly be made and upheld:*
a) Where there has been no evidence to prove an essential element in the alleged offence;
b) When the evidence adduced by the prosecution has been so discredited as a result of cross-examination or it is so manifestly unreliable that no reasonable tribunal could safely convict upon it".

Apart from these two situations, a tribunal should not in general be called upon to reach a decision as to conviction or acquittal, until the whole of the evidence, which either side wishes to tender, has been placed before the tribunal. If, however, a submission is made that there is no case to answer the decision should be arrived at not so much as to whether the adjudicating tribunal will at that stage convict or acquit, but on whether the evidence is such that a reasonable tribunal will convict. If a reasonable tribunal might convict on the evidence so far adduced there is a case to answer. **In R. v. Coker [1952] 20 NLR P. 62**, *Hubbard J.* said:

"*The meaning of a submission of no case is that there is no case for an accused person to answer, in that there is no evidence of which even if the court believed it, it could convict. The question whether or not the court thus believes the evidence does not arise nor is the credibility of the witness an issue at this stage. It is not proper for counsel at this stage to address the court on the weight of the evidence. The submission should be limited to the statement that on one or more of the essential elements of the offence, there is no evidence on which, if the court believes it, it could convict. E.g. counsel might submit that there was no evidence of identity or in the case of theft that there was no evidence of extortion or in the case of murder that there was no evidence of death. But if in any of these cases, there was evidence which if believed would establish the element of the offence in question, then there will be a case for the accused to answer"*.

Effects of a Submission of No Case

At the end of the case for the prosecution, before the defence is called upon to make a defence, the court on its own initiative may submit such a point as "*Submission of*

no case" which is to the effect that the prosecution has failed to prove an essential element of the offence(s). A discharge of the accused at this stage unlike the entry of a *nolle prosequi* amounts to an acquittal. See **Inspector General of Police v. Sydney Marke (Supra)**. See, however, S. 259 of the C.C.P.C which provides that: *"a no case ruling shall not bar the re-opening of the inquiry if new facts are discovered."*

A no case submission is different from the entry of a *nolle prosequi* in that a *nolle prosequi* entered by the Procureur General under the instructions of the Minister of Justice terminates the criminal proceedings. The proceedings are therefore stayed. Upon the proceedings being terminated, the accused person will simply be discharged but not acquitted. Thus *a nolle prosequi* operates as a mere discharge and not as an acquittal as is the case with a no case submission. For details concerning the entry of a *nolle prosequi*, see S. 64 of the C.C.P.C. In **The State v. S.O. Olori [1983] 1 SC NLR P. 115**, *Aniangolu J.S.C.* stated the effect of the *nolle prosequi* as follows:

"*The Attorney General may therefore enter the nolle prosequi for as many times as the occasion demands. It is to be appreciated that a nolle prosequi is only a temporary proceeding which has the effect only of a stay and not of a quashing of the indictment which technically may later be prosecuted without a fresh indictment".*

2) The Defence

If at the close of the case for the prosecution, the court rules that a prima facie case has been made out against the accused to require him to make the defence, then the accused shall be called upon to make his defence. He can do it by himself or through his counsel. The ethics of a lawyer's profession obliges him to take on a case no matter how bad, unpopular or distasteful it may be and no matter how dishonorable the client may be. It is not the duty of the advocate to deduce a man guilty of an offence; that is the job of the judge after he has heard both sides of the story. (*Audi alterem partem*).

Again, S. 366 of the C.C.P.C. provides that:

"(1) If the court finds that there is evidence to warrant the accused to be put to his defence, it shall put the following three options to him:

a) That he may make a statement not on oath; or

b) that he may say nothing; or

c) that he may give evidence on oath as a witness.

(2) The presiding magistrate shall inform the accused that where he opts to say nothing or to give evidence not on oath, he shall not be asked any questions and that if he opts to give evidence on oath, the prosecution, the civil party and the court may ask him questions.

(3) The presiding magistrate shall further inform the accused that evidence given on oath shall have probative value.

(4) The presiding magistrate shall ask the accused whether he has witnesses he wants to call or other evidence to adduce".

Failure to comply with the above provisions renders the trial and the judgment null and void. See. S. 367of the C.C.P.C. Where the accused is not represented by counsel, he must be told of the right to cross-examine witnesses. Counsel must be aware of the rights of his client and need not be told. See **R. v. Shoga (1952); Jones v. Police (1960).**

Other Pertinent Issues involving the Trial

a) Submissions of the Legal Department

In keeping with the provisions of S. 382 of the C.C.P.C, the prosecution shall during the hearing make any oral or written submissions. Any other interested party may do same. With regard to the role of the Legal Department at the trial, see S. 128 of the C.C.P.C. The Legal Department shall also be heard even when its submissions are based only on the civil claim.

b) Obligation of accused to appear at the trial

The appearance of the accused is very essential in a criminal trial so that the courts can at least watch his demeanour. In the Inquisitorial System of Law, the accused must appear in court at least once for the purpose of identification otherwise he need not appear in court since much of the prosecution has already been done and handed over to the Procureur General by the *Juge d'instruction*. But the adversary System ensures that the parties play a greater role than the courts in the conduct of their case. The court plays an almost inactive or passive role in the conduct of litigation.

Under the Cameroon C.P.C, a detained accused is brought unrestrained before the courts by an officer of the forces of law and order. Where an accused had personally been served with a summons, he shall be bound to appear before the courts. He shall also be

bound to appear if it is proved that he had knowledge of the summons in accordance with the laws in force. Where an accused on which personal service has been effected does not appear and does not give good reason for not appearing, no right of audience shall be given to his counsel except only to justify the absence of the accused and the judgment delivered shall be considered as having been delivered after full hearing. Where substituted service is effected on the accused and he does not appear, he shall be tried in absentia. However, where the court considers that the personal appearance of the accused is necessary, it shall so order by an interlocutory ruling and fix a new date for the hearing, which shall be notified to him by the Legal Department. The accused who appears may be assisted by a lawyer. See generally SS. 347 -353 of the C.C.P.C.

Where an accused speaks a language other than one of the official languages understood by the members of the court or where it is necessary to translate any document produced in court, the court shall provide him with the services of an interpreter who should not be less than 21 years of age. See SS.354-358 of the C.C.P.C.

In instances where the trial cannot be finished in one sitting, the Presiding Magistrate shall adjourn the matter and announce the day and hour when it shall resume. See S. 384 of the C.C.P.C.

Conclusion of the Trial and Judgment

At the end of the trial, the court shall, in the same judgment decide first on subsidiary issues and objections, and then on the merits of the case. It shall by a separate decision rule on any objections taken on grounds of public policy. See S. 382 of the C.C.P.C.

The conclusion arrived at by the judge at the end of the trial is known as a judgment. A judgment crystallizes the rights of the parties in respect of the subject matter of the litigation.

Judgment shall either be delivered immediately or in the next 15days after the close of the hearing. When the matter is adjourned for judgment, the Presiding Magistrate shall inform the parties of the day when it shall be delivered.

Every judgment shall consist of three parts:

-the heading;

- the reasons; and

-the verdict.

The part of the judgment comprising *the heading* shall include:
the date of the verdict, the name of the Court, full names of the members of the court, full names and ages of the interpreters, if any, mention of the oath taken by the interpreter, full names and ages of the accused, and full names of his advocate(s) if any, full names of the other parties and their advocates, if any, and full names of the witnesses.

The part of the judgment comprising *the reasons* shall set forth the facts and the law on which the judgment is based. The reason shall relate to the criminal action and, where applicable, to the civil claim. The court shall in its reason judgment deal with each count and reply to the submission made on it.

The part of the judgment known as *the verdict* shall indicate the nature of the judgment, the level of the court, and whether the accused is guilty or not guilty.

In case of a collegiate bench, the member of that bench who holds a minority opinion may write his dissenting judgment and insert it in the case file. The presiding magistrate shall read the judgment in open court. The non-compliance of the above formalities shall render the judgment null and void.

One of the main objectives of the new code is to recover fines as soon as judgment is delivered, be there an appeal or not. By instituting *imprisonment in default of payment,* the new code makes it possible for persons who fail to pay pecuniary sentences and civil awards to be imprisoned as a means of forcing the execution of the court decision. Upon completion of the prison term, if the convict does not still pay for the judgment debt then forceful recovery could be engaged against such a recalcitrant judgment debtor. However, an order of imprisonment in default of payment cannot be passed against a person less than 18years or more than 60 years old or against pregnant women at the time of execution. See SS. 387, 388, 389, 556, & 557 of the C.C.P.C.

As mentioned earlier, all judgments must set out the reasons upon which they are based in fact and in law. See **Re Daniel Ekpombang v. Benji Gbaruko [1962-64] WCLR 62 and Joshua Nwana v. Commissioner of Police [1965-67] WCLR 15.**

The rule that judgment must *be reasoned* enables the superior courts to control the decisions taken by the inferior courts. Such reasons therefore ought to be stated clearly

based on the evidence. See **Matinez Joseph v. Nkweatta's Metal Enterprise [1968-70] UYLR 50.**

The practice of delivering an oral judgment and filing reasons subsequently appears to be in accordance with the following sections of the Criminal Procedure Code: 381, 388 (3) 405 and 406. However, it has been held that once a judge or magistrate has pronounced judgment he is *functus officio* and any judgment reduced into writing or any reason given subsequently are of no effect and cannot be looked at subsequently. See **Unakalamba v. The Police [1938]; Fadina v. R. [1958].**

If the court finds the accused guilty, it shall be the duty of the court to convict him and to ask him whether he has anything to say, why judgment should not be passed on him according to the law. This is known as *allocutus.* If an accused person is found guilty of an offence, the court may, in passing judgment, take into consideration any offences then pending against the accused.

Whenever, there is an error which does not affect the substance of the judgment but hinders its execution, the court that delivered the judgment shall be called upon to rectify it. See S. 548 of the C.C.P.C. See also S.549(1) of the C.C.P.C., which makes it possible for any party to the proceedings to seise the same court for the interpretation of his own judgment if such a party considers the decisions to be obscure or ambiguous.

The Presidents of courts shall ensure that orders and judgments of their courts are enforced. A register for the execution of court decisions shall be established in the Registry and in the Legal Department of each court. See SS.545, 546 & 548 of the C.C.P.C.