

Controversies in Paternity: An Insight into the Nigerian Culture

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ABSTRACT

The Blacks Law Dictionary defines a child as ‘a progeny of parentage’.

Nigeria is a patriarchal society and the pride of the family is in being able to procreate and even more, in having male children. Where a family is not able to have children spews all kinds of scandals, insults and uncanny speculations. Worse than not bringing forth children is a paternity dispute. This is a doctrinal research focused on unveiling issues emanating from paternity disputes by way of giving an insight into the Nigerian culture. The research has explored the opinions and rulings of legal authorities using cases and also delved into norms governing some societies as regards paternity. It was discovered that there are more paternity than maternity disputes. This research will be relevant to legal practitioners, families, community leaders and the general public as a whole. It is recommended that families should resort to DNA tests early enough to avoid the emotional trauma that accompanies paternity disputes.

KEY WORDS: Controversies, Paternity, Nigerian Culture

INTRODUCTION

There is a rebuttable presumption that a child born within wedlock is the biological offspring of the husband.

Paternity controversies sag the very essence of cultural acceptability of a person. The African society strives in mutual relationships. Family ties are strong and decades of extended family structures apply. Any break in traditional norms elicits punishment ranging from ostracization to banishment or even death. A determined parentage gives the child the right to bear the name of the husband, inherit properties and maintain connections between the nuclear and extended family. This in essence means that most

‘right thinking’ people would rather remain within the enclave of the norms and accepted practices of the society. Chief among the crimes frowned upon in the Nigerian cultural set up is immorality. Immoral behavior as regards promiscuity and unwanted or unexplainable pregnancies untraceable or unacceptable paternity results in scandals, shame, loss of respect and total annihilation from events within the locals.

A breakdown in an intimate relationship carries emotional, financial, and numerous social consequences which resonates even right to family members and the children involved. In Nigeria, There are several legislations to guide the conduct of parties so affected. Some of these are: the Matrimonial Causes Act 2020 which gives primary consideration to the welfare of the child and the Armed Forces Pensions Act (2004) which sets out to discharge the burden of proven for paternity. This is usually necessary for the disbursement of death benefits. Certain refutable reports even have it that Nigeria ranks 2nd, behind Jamaica, in paternity fraud in the world.

The Nigerian Perception of Paternity

Paternity controversies do arise from time to time in Nigeria as well as other climes. This could be as a result of rape, failed relationship or promiscuity. African families pride themselves in the virginity of their daughters and a virgin son on the other hand is mocked at for not being virile. Many complexities attain these strange customs.

Where a girl is put in the family way, without a man stepping forth to lay claim and perform necessary cleansing and marital rites, she and her family are placed under a harvest of ridicule and mockery. A situation too can arise where there is more than one suitor laying claim to the unborn child giving rise to deep animosity and sometimes outright communal clashes with

recorded deaths and loss of property. This could happen where there is no other known way of identifying the true paternity of the child other than gazing and peering at their physical attributes. It is humorously shared as an anecdote that a once upon rich man in Nigeria with concubines spanning the length and breadth of Nigeria and beyond once advised that the paternity of his children should be determined by the semblance they have to his sizeable ears.

In Nigeria, paternity is determined in the following ways:

1 By way of proof. This is by way of undergoing scientific authentication to ascertain the fact. If a claim is on an adult above 18 years the court would not order a DNA in order not to breach the right to privacy of the particular adult except by his consent. In *Anozia v Nnani & Anor.*(2015), a 57 year old man was the subject of dispute where a man claims to have had sexual relationship with his mother when her husband was terminally ill. The court in *Ukeje v Ukeje* recognized the content of a birth certificate as sufficient proof of paternity where certificate is genuine.

2. By presumption. This can be seen in the case of *Duru v Duru* (2016)

Where a person is presumed and accepts to be the father of a child in the lifetime of a marriage not minding the wife's promiscuity.

3 By acknowledgement. Once a man admits he is the father of a child, the child is deemed to be his.

Controversy in Paternity can refer to arguments and disagreements concerning the biological ownership of a child. It involves the process of tracing the identity of a child to his or her biological parents. Culture has to do with practice and daily activities of people of a given geographical location which has become a norm or a way of life so much so that it is peculiar to the people. *Eniola* (2011) posits that not many people want to live under a myth, and so it becomes sacrosanct for a parent to know his heir(s), and for the child to attach to his or her root. Sometimes the concerned persons may not want anything do with each other, but the strong desire to be identified properly bears heavily. Paternity is determined for inheritance, recognition of rights, determining ownership of properties, moral obligations, privileges, status and other inherent purposes, *Rabiu v Amadu*(2003). There is a very close relationship between inheritance and paternity in Nigeria and several related debates on these issues have continued to raise unprecedented legal

opinions. *Premium Times* posits that it is important to note that maternity tests too are available to ascertain the mother of the child. This could be for travel purposes or to settle disputes. Maternity tests are usually not as controversial or popular as paternity controversies. The chief geneticist at the DNA Centre for paternity test on Allen Avenue, Ikeja, confirmed that there has been an increase in DNA tests. From 100/month to over 400 in recent times. He confirms that 6 tests out of every 10 children turns out negative.

In Nigeria, the institution of marriage is considered sacred by virtually all laws, cultures, and customs, religious and social standards. The extent of one's progeny gives an unquantifiable satisfaction. Nevertheless, it is believed to be easier for women to ascertain their offspring's fathers than it is for men. There is a popular proverb that it is only a woman that can determine the true father of a child. Many like to classify marriage as being under two categories being Marriage under the Act and Customary law. However, marriage is legitimately recognized in three major ways. These are firstly, marriage under the Marriage Act (Statutory Marriage), Marriage under religion being Christianity/Islam and thirdly under customary/traditional law.

Generally, there are certain antisocial customary behaviors which give rise to problems bordering on paternity and inheritance. Some of such conducts occur when there is failure to begin marriage process in a customary mode, failure to consummate, when cohabitation is unacceptable, deliberate rejection of customarily imposed titles or obligations, denial of parentage or fatherhood, failure to seek necessary customary recognition problems arising from illegitimacy and so on.

A popular belief is that for every three out of ten Nigerian men are not the biological fathers of their children. A report published in vanguard newspaper states DNA test revealed that *Christopher Johnson* was discovered not to be the biological father of all three children he had nurtured and invested in for almost two decades.

The children, *Esther 19, Shirley 17, and Stephen 15* were born by the same mother who unfortunately was deceased. *Christopher*, a successful but retired architect, was compelled to find out the truth about the paternity of the children after a stranger turned up one day to claim he was their biological father and challenged him to a deoxyribonucleic acid (DNA) paternity test. This resulted in a great shock when the result proved that the stranger was indeed the children's real father. It turned out that a long secret love affair

had produced the three children he erroneously assumed belonged to him. Many such occurrence is common place in many African societies though not an accepted practice.

Nigerian Values That Inculcate Family Ties

Societies in the traditional sphere have long since come to terms with the fact that stability in the home makes for a peaceful co-existence in the society.

The close involvement of both parents in the nurturing of their children makes for close affinity to family ties and respect for traditions and customs.

In an ideal world all children should know the true identity of both parents but sadly this isn't the case. An unsubstantiated estimate of between 5% and 20% of children in Nigeria regard the wrong person as their father.

Paternity tests are still unaffordable to most Nigerians due to its cost and gradual acceptance of the process. It, however, offers an accurate cost effective and confidential way of learning the facts concerning paternity. Delaying finding out the truth increases the risk of emotional destabilization that often results in a child bonding with a man who is not their father, causing psychological and unimaginable emotional trauma to both parties if they eventually discover they are not related at a future date.

Nigeria is a geographical location made up of 36 states and the Federal Capital Territory, Abuja. It has over 500 hundred languages and 250 ethnic groups all spread across the country. Each of these ethnic groups has a culture peculiar to itself. Although, they may at some points share some common traits or marriage rites.

According to CIFORB Country profile-Nigeria, there are several ethnic groups in Nigeria. Therefore, this article will take a further look at the paternity culture of an Ibibio man, a tribe to which this author belongs. Nigeria is estimated to have a population of 186,053,386 at July 2016. Within this is an ethnic grouping totaling 250. The most politically influential are the Hausa-Fulani 29%, Yoruba 21%, Igbo 18%, Ijaw 10%, Kanuri 4%, Ibibios 3.5% and Tiv 2.5%. Embedded in these diversity are multiple cultures and values pertaining to paternity practices. Majorly, the local way of ascertaining paternity is seeking similarity in physical or character attribute as has been stated earlier. Where no attribute is significant enough to pass the test, the child is pronounced a 'bastard'. Two families battled over a 16 year old girl in Isoko land. One family depended on facial

semblance and the discovery of a similar birthmark on the neck region of the said girl. The issue has brought about deep division between the communities and sympathetic listeners. While efforts are geared towards a DNA test, the traditional head and chief of the region has pressed that all parties involved be taken before the community shrine. Again most people have asked why the family pressing for custody had to wait 16 years before coming forth to claim their "daughter" allowing the man known as the father to cater for her all this while.

To an Ibibio man, his child whether male or female, is a member of his family and community. But this like in other cultures usually begins with the relationship between a man and a woman. Some children are a product of customary marriages; others are of statutory marriages and others are out of wedlock.

The admittance or acceptance of a child into a family starts with identification and acknowledgement by the father having been presented the child by the mother who had been in custody of the fetus inside her womb for nine months, less or more depending on the circumstance until delivery.

After child birth the mother or wife informs her husband, 'this is your child' and the man acknowledges paternity by welcoming and accepting the child unto himself and his family. By so doing, there is no room for controversy.

At some other times, the man on looking at the child's face and body and not noticing something peculiar to him or his family can start developing negative thoughts and feelings about the identity of the child when suspicion starts creeping in, it is then that the question of paternity begins to rear its head begging for answer.

When the controversy about the paternity of the child arises, the mother will be questioned by her husband and jealous family members about where she got the pregnancy from because the child or baby is not theirs; going by his or her looks and perceived strange behavior.

At this point the mother of this child will be exposed to ridicule, blackmail and scandal. This controversy can amount into a very big challenge that the woman may be told to pack her luggage and leave her husband's house to her parents' house if the conflict is not resolved amicably in good time.

It is worthy of mention that paternity controversies is not peculiar to Nigerian culture or society but that it is a global issue. Modern times has seen the resort to deoxyribonucleic acid (DNA)

tests to confirm the paternity of a child. This discovery became popular after Alfred Hershey and Martha Cahse in 1952 performed an experiment which confirmed that DNA had a role in heredity.

The innovation in medical science particularly as it related to DNA has to a large extent resolved many controversies in most families who are knowledgeable and can afford to conduct the DNA test to enable them ascertain the paternity of a child. This innovation has also contributed to reduce the suspicions usually made against the mother of the child in undeserved circumstances.

In extreme cases, once a child is rejected by his father, that child is seen by the society as a bastard. This is for situations where may be the couples are married or but where they are not married; the child is also seen as a bastard and illegitimate while the mother will be taken to be a prostitute and an irresponsible woman or girl depending on her age.

Nigerian Legislations on Paternity

Before the constitution of the Federal Republic of Nigeria 1999 (as amended), illegitimacy used to be a strong point of legal debates and controversies in many families and communities in the Nigerian society but thanks be to the Almighty God for the innovation brought about by the amendment which put an end to the issue of illegitimacy and tests. All legal and equal rights are for all children irrespective of their circumstance of birth.

Particularly, section 42 provides:

1. A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person;-
 - a. Be subjected either expressly by or in one practical application of any law in force in Nigeria or any executive or administration action of the government to disabilities or restrictions to which citizen of Nigeria of other communities ethnic groups, places of origin, sex, religions, or political opinions are not made subject or
2. No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

Legally, it can be confidently said that section 42 (2) of the constitution of the federal republic of Nigeria 1999 as amended has resolved the attainment of the paternity of a child. But it must be emphasized that in the Nigeria culture the

law cannot force a responsibility on an unwilling person (the man) in this circumstance who may feel that he is not the father of the child for reasons based known to him. This is because the Nigerian legal system is not rich with provisions for social welfare, where support can easily or readily be gotten.

The Child Rights Act 2003,s 63 to 67, statutorily provides scientific measures to test paternity but only for children under the age of 18.

The Matrimonial Causes Act 2020 in S 84 a child born during a valid marriage or within 280 days after dissolution of the marriage, even as the mother remains single, the court shall presume the child in question legitimate. S 69 also validates any child adopted since the marriage by the husband and wife or by either of them with the other's consent.

The Evidence Act 2011 in section 265 points to the fact that on ground of public policy it is disadvantageous to enquire into the paternity of a child whose parents have access to each other during the existence of a valid marriage, *Oduche v Oduche* (2006). Also in *Rabiu v Amadu* (2003) 5 NWLR (part 813) where the father had hitherto denied paternity of a child born eight months after the wedding, the court held that unless a child is delivered within a period less than 6 months paternity cannot be denied.

The Armed Forces Pensions Act CAP A 23 LFN (2004) in section 8 (3) requires a person born out of wedlock to proof paternity before death benefits can be paid. Anyone who presents a false proof of paternity, with the intention to mislead, in order to collect such benefits of a parent who died in active service has committed paternity fraud.

The Islamic Law recognizes children born in a marriage as legitimate and totally condemns 'zina' or fornication. The Hadith of the Prophet Muhammad(SAW) states that a Child belongs to one on whose bed it is born. This principle reiterates in *Idahosa v Idahosa* (2020)⁶ NWLR (part 1720) where Honourable Okoro, JSC gives backing to the lead judgment by Peter- Odili, JSC where it is surmised that any child born in a marriage is recognized and the onus of proof to the contrary.

In conclusion, law and society are dynamic and it is the main reason why it is often argued that the most common and or constant phenomenon in life is "change" even though we do plead that such should be a positive one, and that is change for the better. Our law the "constitution" which is the grund norm of all laws in Nigeria, foundation and

base upon which every other laws has its root and legal authority for application, has in the wisdom of the legislators overridden or modified the principle of illegitimacy but it must be said that it unfortunately, has not totally settled the controversies surrounding paternity in the Nigeria culture and society, which is to say that more still needs to be done beyond legislation and a suggestion is a change of attitude and more responsible behaviour.

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