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Determination of Paternity of A Child or An Adult in Nigeria: Is There Any Justification for the Distinction?

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Abstract
Judicial authorities have shown that in Nigeria, the determination of paternity has in these present times been frequent. This paper shows this tendency by citing several recent judicial authorities and further shows that the courts in the process of determining paternity, strike a distinction between a child and an adult. It opines that there is no justification for the distinction and recommends the elimination of it.
Keywords: paternity, child, adult, justification, Nigeria

1. Introduction

There is a close relationship between inheritance and determining paternity in Nigeria. The relationship is simply that only a child or a person to whom the deceased is the father is entitled to the inheritance of such deceased. For a child or a person born in the matrimonial home, such a person readily inherits, because there is a presumption that any child or person born in the matrimonial home of the deceased is of the deceased (*Anozia v. Nnani* 2015, ratio 5).

Where a child or a person is of the deceased, but was born out of the matrimonial home, the reverse is the case. There is a presumption that the child or person is not of the deceased until the contrary is proved. The proof is either by the deceased acknowledging paternity or by the result of a test scientifically conducted, at the instance of the child or person who wants to establish paternity or on the order of the court for the just determination of the case in court.

Almost always, the determination of the paternity of a child features in inheritance cases. However, sometimes, it could be without inheritance as a focal point, but just to determine who the father or procreator of another is. The contents of this paper shall be hinged on the latter.

If the paternity of a child fells to be determined, the court can make an order for the scientific evidence of the paternity of the child. The court makes such an order when there is need to ascertain whether the child was the biological child of the deceased. Conversely, where the assertion is that the child is not the biological child of the deceased, the court can also make such order. This is so because the court is always of the view that there would at all times be need to ascertain where a child belongs (*Anozia v. Nnani* 2015, ratio 5).

However, where the paternity of a person who is an adult, falls to be determined the latitude is not as large as in the case of a child. For a person who is an adult, the court would not make an order, for scientific test as an order for such test shall be an invasion of the right of privacy of such adult. In that circumstance, it would not be possible to scientifically proof that the adult is or is not of the deceased. This leaves uncertain the ascertainment of where the person belongs, marking the difference between the determination of the paternity of a child and a person (who is an adult) in Nigeria.

One is of the view that if there would always be need to ascertain where a child belongs, there should also always be the need to ascertain where an adult belongs. It is for this opinion that this paper is questioning the justification for the distinction.

The paper shall critically analyse the determination of the paternity of a child and a person in Nigeria and stress the distinction between the two. It shall contend that there is no need for the distinction and by conclusion, opine that the existing distinction be eliminated.

2. Determination of the Paternity of a Child or a Person in Nigeria

In Nigeria, the determination of the paternity of a child or person is either by an acknowledgment by the biological father or by proof via documents as decided by the Supreme Court in *Ukeje v. Ukeje* (2014) or medical report as provided for in section 63(1)(a) of the Child's Rights Act (Cap C.50, Laws of the Federation of Nigeria, 2010). In Nigeria, a child is anybody below the age of eighteen years. This is contained in section 477 of Child Rights Act. By implication, anybody up to and above eighteen years is not a child but an adult. The determination of the paternity of a child or person via medical report is statutorily provided for in the Child's Rights Act. In the words of the Act:

> In any civil proceedings in which the paternity or maternity of a person falls to be determined by the court, the court may, on application by a party to the proceedings give a direction for the use of scientific tests including blood tests and Deoxyribonucleic Acid tests to show that a party to the proceedings is or is not the father or mother of that person (Child's Rights Act, section 63(1)(a)).

The provision of the Act was not on the determination of a child, but of a person. The use of the word "person" instead of "child", is undoubtedly intentional. By the use of the word "person" the Act was firmly establishing that the scientific determination of paternity is not restricted to children. The word "person" contemplates children and adults.

The Child's Rights Act, wherein the provision for scientific ascertainment of paternity of a person has been provided for, was an Act made principally for the provision of and protection of children and their rights. In determining any provision of the Act, the Act has demanded that the determination shall be in the best interest of the child (Child's Rights Act, section 1). From the perspective of "best interest of the child" and as provided for in section 63(1)(a) thereof, when what is sought to be determined is whether a person is the father of a child, scientific test may be employed.

However, if what is sought to be determined is whether a person is not the father of a child, scientific tests may also be employed. The Act has provided that both tests shall be to ascertain whether or not "a party to the proceedings" is the father of the child whose paternity is to be determined.

By this provision, the tests shall not be ordered for where the party who it is sought to be established that he was or was not the father, is deceased (as the provision in the Act is that the proof must be for or against "a party to the proceedings" of which the dead cannot be) or alive but not a party to the proceedings.

Where it is a child that is asserting that they are the biological child of a party to the proceedings, the court can make an order for scientific tests to establish that fact. Conversely, where any person is asserting that a child is not the biological child of a party to the proceedings, the court shall also make same order. In this latter circumstance, the child is subjected to the test that would assist the adverse party to possibly prove their assertion that the child was not of the party to the proceedings. Instead of the person who has made the assertion to prove it, the child is subjected to scientific test which if it proves that the child was not the biological child of a party to the proceedings would assist the person who made the assertion to prove it. It is undoubtedly a wrong placement of burden of proof, by the provision of section 131(1) of the Evidence Act, 2011, that he who makes an assertion must prove it. This statutory provision has been reiterated by the Supreme Court of Nigeria in the case of *APC v. INEC* (2015, ratio 21) but is allowed by the courts, because it is in the best interest of a child for a child to know who, in fact their biological father is.

Again, where a man asserts that he is the biological father of a child, the onus is on him to prove the assertion. This he can readily do, by tendering scientific report that either establishes it or establishes the contrary. Such a person is incapacitated from producing such report, in the absence of convincing the child to undergo a scientific test and produce a report or convincing the guardian or custodian on them. A claimant may however be in difficulty, if the child refuses or fails to undergo the test or if the guardian or custodian was not convinced that the test be undertaken. The claimant encounters the difficulty of not being able to prove his assertion. The lean option to such a claimant is to pray the court to order his own scientific test and that of the child. Again, the court would ordinarily not do that as it is not the business of the court to make orders that would enable a party to proceedings to procure evidence, with which to prove his assertion and win his case. The attitude of the court in not making such order is not affected by the fact that it is possible that if the test is run, the outcome would, contrary to the assertion of the party to the proceedings, show that he was not the biological father of the child. Ironically, the fact that subjecting the child to a scientific test on the order of the court may prove or disprove the assertion of the party to the proceedings that he is the biological father of the child has made the court to make such order. Courts make such order for the simple reason that it is better for the child to know whether or not, the party to the proceedings is his father. For the courts, it is better and in the best interest of a child, for the paternity of a child to be determined, one way or the other, so that the child would know, where they belong and enjoy their paternal rights.

Sometimes, what the courts are called upon to determine, is the paternity of somebody who is not a child but, an adult. As in the case of a child, it may be the adult that is asserting that they are the biological child of another, dead or alive. For such party to the proceedings to succeed, they must produce evidence of proof of the assertion which may include scientific tests. Where the alleged father is dead, it shall not be possible to tender scientific test as sample for the test cannot be collected from the dead. The result of a scientific test can possibly be tendered if the sample from the deceased was collected while he was alive, and used to run the test from whence the result was generated. If the alleged father is alive, sample for a test could only be collected if he volunteers to subject himself to the test. Where he refuses, the court would not be disposed to compel him to be subjected to a test, just to enable the claimant have the evidence with which to prove that the alleged is their biological father. The indisposition of the court to make such an order is simply that to make such an order would not only make the court a facilitator of the claimant to source evidence with which to prove their assertion, but would be an infraction of the right of privacy of the alleged father, as set out in section 37 of the Constitution of the Federal Republic of Nigeria, 1999.

It is possible that it is a party to the proceedings that is asserting that an adult person is his child. Again, where the person that is making the assertion desires to prove the assertion scientifically, and the alleged adult child has

not willingly subjected themselves to the test, the person making the assertion would not be able to prove the assertion. The person making the assertion may be constrained to asking for court order on himself and the alleged adult child that both undergo scientific test. As already stated, the court shall refuse to make such order for reasons already hinted, i.e that such order would amount to the court assisting the claimant to generate evidence with which to prove their assertion and would constitute a breach of the constitutional right of privacy of the alleged adult child. These reasons for refusal to make such order were emphasized by the High Court and Court of Appeal in the recent case of *Anozia v Nnani supra*. In that case, the Claimant/Appellant filed a suit at the High Court of Imo State High Court, Oguta presided over by Onunihu, J., claiming the paternity of the 2nd Defendant/Respondent, who was 57 years old at the time of filing the suit. He alleged that he had sexual affair with the 1stDefendant/Respondent (a married woman) and the 2ndDefenant/Respondent was the outcome of it. The 1st Defendant/Respondent denied having any sexual affair with the Claimant/Appellant and stated that her husband (who died within the year of but after the birth of the 2nd Defendant/Respondent) was the father of the 2nd Defendant/Respondent.

He prayed the court for an order of Deoxyribonucleic acid (DNA) test on him and the 1st and 2nd Defendants/Respondents (mother and son, respectively) to prove that he was the biological father of the 2nd Defendant/Respondent. The court refused the application for which the Claimant/Appellant appealed to the Court of Appeal Owerri Division. The Court of Appeal unanimously dismissed the appeal. The reasons for the refusal of the application by the trial court was because by making such order

The court would have abandoned its role of adjudication to play the role of inquisition.

The court would have ceased to be a court of trial and become an investigative agency or body.

The court would have subscribed to the expectations of the Claimant/Appellant of assisting him to procure the evidence which he needed, to prove his case.

The Court of Appeal agreed with the reasons for the refusal of the application as in dismissing the appeal, the Court of Appeal reasoned that:

i. It is the Claimant/Appellant who has asserted that the 2nd Defendant/Respondent is his child that shall establish that claim.
ii. It has long been the law that he who asserts proves.
iii. If the mode of proof that the Claimant/Appellant desires is Deoxyribonucleic acid test (as is evident in the suit), it is for the Claimant/Appellant to go for it on his own, and or woo the respondents to do so.
iv. The Claimant/Appellant cannot resort to the coercive powers of the Court, to compel his adversary to supply him the possible evidence he needs to prove his case.
v. To make an order of the 1st and 2nd Defendants/Respondents (who are adults) to undergo the test (for the court to ascertain whether or not the Claimant/Appellant was the father of the 2nd Defendant/Respondent) is in defiance of their fundamental rights to privacy.

3. The Distinction between Proof of Paternity of a Child and An Adult

Where a child alleges that a party to the proceedings is their father, the court may make an order on the alleged father to undergo a scientific test to prove (or disprove) that allegation. Here it is immaterial that the child is being assisted to procure evidence, with which to prove their case and that by making of such order, the privacy of the alleged father shall be violated. If on the other hand, it is a father that alleges that a child is his, an order for scientific test may be made on the child inspite of the fact it would translate to assisting the claimant to prove (or disprove) his claim and also be a violation of the child's right to privacy. The court readily makes the order in these two circumstances because they are always of the view that it is in the best interest of the child for it to be known where the child belongs (*Okonkwo v. Okagbue* 1994, 344).

The reverse is the case where the paternity of an adult person falls to be determined. Where an adult person is alleging that a party to the proceedings is their father, the court will not make an order for scientific test on the purported father, as such order would not only enable the adult child use the court to procure evidence in proof (or disprove) of their claim, but would be a breach of the right of privacy of the purported father. Also, where a party to the proceedings is alleging that an adult is his child the court would not make an order for scientific test on the alleged child, as such order would not only enable the claimant father use the court to procure evidence in proof (or disproof) of his claim, but will be a breach of the right of privacy of the alleged adult child. For these same reasons, the court would also not make the order on an adult child where a party to the proceedings alleges that he is the biological father of the adult child.

This distinction was clearly reflected in ratio 2 of the case of *Anozia v. Nnani supra* where the Court of Appeal stated as follows:- "Where a person is a minor (not mature adult) and his paternity is in issue, the court can order the conduct of DNA test in the overall interest of the child to ascertain where he belongs. However, this is not the situation in the instant case where the appellant had a duty to establish his claim on the 2nd respondent independently, and to produce such evidence to the court. Of course, if he elected to use the DNA test, to establish his claim it was up to the appellant to go for it on his own, and/or woo the respondents to do so, without

a resort to the coercive powers of the court, to compel his adversary to supply him with the possible evidence he needed to prove his case."

In further embellishment of non-making of an order for an adult to undergo a DNA, in order to ascertain their paternity, Mbaba J.C.A (who read the lead judgment, with whom Agbo and Agube J.J.C.A unanimously agreed) commented as follows:-

I doubt whether that form of proof can be ordered or is necessary to determine the paternity of a 57 years old man who does not complain about his parenthood, just to please or indulge a self acclaimed predator, who emerges to destabilize family bonds and posts as a biological father (*Anozia v. Nnani* 256-257).

4. The Justification

Where the paternity of a child is to be determined, the courts insist on so doing and indeed do so, even to the extent of ordering a test, the effect which could be to arm the claimant with the evidence with which to establish his claim. This, as already seen in this write-up, is because it shall be in the interest of a child to know where he belongs.

One holds that where an adult is involved, a similar order should also be made, so that such an adult would ascertain who their biological father is. It is not only for a child, that it will be in his own interest to know their roots. Adults equally need to know. This has been asserted by the Supreme Court, in the case of *Okonkwo v. Okagbue* (1994). In that case, the deceased who died intestate in 1931 had five surviving sons and two sisters. The two sisters 'married' the 3rdDefendant/Respondent for their deceased brother, thirty years after the death of their brother. The 3rd Defendant/Respondent begat six children (four sons i.e Izuchukwu, Okwudi, Victor and Okechukwu and two daughters i.e. Uju and Obiageli) who at the time of filing the suit at the High Court of Anambra State of Nigeria were adults. The suit had judgment delivered thereon in 1983 at the High Court, 1987 at the Court of Appeal, and 1994 at the Supreme Court. By the contents of page 326 of the Law Report, one out of the four sons was a legal practitioner. The sons of the deceased sued the two sisters of the deceased (1st and 2nd Defendants/Respondents) and the mother of the children (the 3rd Defendant/Respondent) seeking a declaratory order that the six children of the 3rd Defendant/Respondent who parade themselves as the children of the deceased were not and should not parade themselves as such. The sons of the deceased also sought a further declaratory order that the six children were not entitled to inherit from the estate of the deceased. The sons of the deceased lost at the High Court and Court of Appeal, but succeeded at the Supreme Court. On the need for the six children to know their root and where they belong, the Supreme Court per Ogundare J.S.C stated as follows:-

It is in the interest of the 3rd defendant's children to let them know who their true fathers are (were) and not to allow them to live for the rest of their lives under the myth that they are the children of a man who died many decades before they were born (*Okonkwo v. Okagbue* 344).

Again, the relevance of determining the paternity of a child (even if by the court making an order for scientific tests and possibly arming a claimant with the evidence to assert their claim and violating the rights to privacy of the person on whom the order has been made) is to ensure that the biological father of a child is ascertained and the child returned to him. This is so because the non-determination of paternity could make a child to be retained by the person who is not the father. The retention is undoubtedly contrary to natural justice, equity and good conscience.

For an adult, the steps as in the case of a child should also be taken so that the biological father could be ascertained, for the father to have the heir of his body. For a man to be unable to assert that he is the father of the heir of his body and recover such heir, simply because the heir is an adult is no less contrary to natural justice, equity and good conscience as in the case of a child.

One believes that there is no justification in the existing difference between the determination of the paternity of a child and of an adult in Nigeria.

5. Conclusion

This paper has reviewed several judicial authorities on the determination of the paternity of a child and an adult in Nigeria. The review has shown that the determination of paternity is quite frequent in the courts in these recent years. The review has also shown that in the determination of paternity a distinction is made between a child and an adult.

The practice of the courts as observed in the cases reviewed shows that the courts are less stringent when the determination of paternity is with respect to a child, unlike when it is with respect to an adult.

This paper contains that the determination of the paternity of an adult should be treated in the same way as in that of a child. This is so because the interest of a child to know who their biological father is and return to him or the family, if the father is dead is no less the interest of an adult to also know who their biological father is and return to him or the family, if the father is dead.

Also, the interest of a biological father or the family if the biological father is dead, to recover the infant child is no less the interest of a biological father or the family if the biological father is dead, to equally recover the adult

child. This paper concludes that there is no need for the distinction between the determination of the paternity of a child and that of an adult and advocates that the distinction be eliminated.

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