



PATERNITY FRAUD: EXAMING ITS CAUSES, TORT OF DECIET AND VICTIMS COMPENSATION.

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ABSTRACT

The study examined the main causes of paternity fraud and means of compensating the victims of the fraud. The paper utilized both primary and secondary data in the cause of carrying out the study. It employed survey research method and primary data were obtained via open ended questionnaires. The responses from respondents were analysed in percentage tables. Findings from the analysis reveals that paternity fraud is prevalent in Nigeria. It further revealed that pressure from marriages quest for family expansion, error of child swapping and incidences of unwanted pregnancies are the root causes of paternity fraud in Nigeria. The study recommended among others that the society should desist from mounting pressure on the need for conception and child bearing in marriages and laws should be promulgated on punishment and compensation for perpetrators and victims of paternity fraud.

Keywords: *paternity fraud, Tort of Deceit, victims' compensation.*

1.0 INTRODUCTION

Paternity fraud also known as misattributed paternity or paternal discrepancy is when a man is incorrectly identified to be the biological father of a child. The underlying assumption of paternity fraud is that the mother deliberately misidentified the biological father. Paternity fraud is related to the historical understanding of adultery which is as old as the human race. Paternity disputes are not uncommon. They often occur between unmarried couples where a

father seeks to avoid financial liability for a child he does not believe to be his. A 2005 scientific review of international published studies of paternal discrepancy found a range in incidence around the world from 0.8% to 30%. According to Bellis, Hughes and Ashton (2005) who asserts that from 1991 to 1999 Mexico recorded 11.8%, Canada 4.0%, France 2.8% and UK 0.8% of paternity fraud cases.

In Nigeria, the perception of paternity fraud being high is not unfounded. In recent times, Nigeria has been ranked to have the second highest in rate of paternity fraud in the world after Jamaica (Sola, Yetunde & Evelyn 2021). In Africa, there are several cases of paternity fraud some of which include the confession of a dying Zambian nurse, Elizabeth Bwalya Mwewa, who owned up to swapping of about 5,000 babies over a period of 12 years “for the fun of it”. These women might never have restored their ruined homes or removed the garb of unfaithfulness and adultery as the truth behind the genetic discrepancies of their children’s paternity might never have been unraveled. This study intends to examine the root causes of paternity fraud, tort of deceit and possible ways of compensating the paternity frauds victims.

2.0 LITERATURE REVIEW

Concept and Meaning of Paternity Fraud.

Paternity fraud is the pretense that a father is the legitimate and biological father of a child. This may be either by misinformation, where the woman is wrong in her own belief as to who the child’s father is or may be outright fraud, where the mother knows categorically that the man is not the child’s biological father but for reasons best known to her, continually tells him “You are the father”. According to Marylin (2011), paternity fraud is a deception that reaches deep into our evolutionary selves. The urge to propagate one’s gene and blood is the most basic of all impulses. A single DNA test might not merely unravel a life time of commitment; it could make a mockery of the most important reason for one’s existence. (Marylin 2011). Most paternity fraud cases occur when a woman is having an unknown extramarital affair. It can also occur when a woman has multiple sex partners but identifies one of them as the father for the purpose of receiving an increased amount of child support. Child support is the financial contribution from the non-custodial parent to the custodial parent towards the expenses of raising a child. As it is with the common law fraud. A paternity fraud became a fraud when it is an act that is hinged on either an actual false statement or the intentional withholding of the truth with the desire to conceal the truth. A mother commits paternity fraud if she makes a false statement or fails to state the truth regarding a man’s status as a biological father, leading him to believe that he is the biological father when she knows that he isn’t the father.

2.1 BRIEF STATISTICS OF PATERNITY FRAUD IN NIGERIA AND OTHER PARTS OF THE WORLD.

According to Herbert Gayle (2016), some 25 percent of Jamaican men are unknowingly raising children that are not biologically theirs. Furthermore, the leading anthropologist at the University of West Indies asserts that DNA testing required by the USA embassy in Kingston often reveals embarrassing figures of the number of men who were deceived about the children they believed were their own. In the same vein, a 2019 report by Polygenics Consulting firm, a Jamaican firm which offers DNA testing explained that all the paternity test that the company conducted since 2015 indicated that 70 percent of the men who presented themselves were not the father of the

children they presumed to be. According to the Caribbean news outlet, a woman in Jamaica who knowingly names a wrong man as her child's father on the birth certificate is seen as committing a breach of the registration Act which could fetch her a fine not exceeding \$250,000 or face imprisonment.

A Salford-based Bio clinic group, analyzed 5,000 results selected randomly from between January 2014 and June 2016. The result showed 48 percent of 2396 of UK men tested were not the biological father. Fifty-two percent of 2604 of those tested were proven to be the father. For England as a whole, 51 percent were ruled out as being the paternal father. In Northern Ireland, 42 percent were ruled out while in Scotland the figure was 39 percent. Accordingly, the 1999 study by the American Association of Blood Banks found out that in 30 percent of 280,000 blood test performed to determine paternity, the men tested were not the biological father.

Dakuku (2021) alluded that the perception that paternity fraud is high in Nigeria is not unfounded. He asserted that a DNA expert from Lagos University Teaching Hospital claimed that 30 percent of the Nigerian men who went to paternity testing centers were not the biological fathers of the children in their custody. Several reports have it that Nigeria has the second highest rate of paternity fraud in the world, after Jamaica. According to the American Association of Blood banks, globally a third of all men are not the actual fathers of their presumed children. Many men have been unknowingly raising children that are not theirs.

CAUSES OF PATERNITY FRAUD IN NIGERIA.

1. PRESSURE FOR MARRIAGE.

In most societies in Nigeria, a man is presumed to be a child's father once the child is born within the marriage. The question of who impregnated the woman is not necessary provided she is married and has a husband. In situations of this nature, the question of paternity does not arise unless the man has evidence to prove. There have been several incidences where an unmarried woman with an unwanted pregnancy gets married to a man before giving birth and the new born baby becomes the man's child. However, paternity fraud occur in Nigeria because of the high emphasis its society place on biological children. In Nigeria, marriage is often seen as incomplete if it does not produce any biological child.

2. THE QUEST FOR FAMILY EXPANSION.

A prerequisite for social acceptance in most Nigerian societies is the expansion of family unit. Therefore, in an instance where a woman suspects that her husband is not fertile and afraid of societal repercussions, she may get pregnant elsewhere to protect herself, her husband's name, and social standing, irrespective of how bad the act is.

3. THE ERROR OF SWAPPING CHILDREN.

Another very important reason for paternity fraud in Africa and Nigeria is due to the error of child swapping in the hospitals where there are born whether intentionally or unintentionally. Although this case is not common, it usually emanates from carelessness or in some instances acts of commission like the incident in Zambia, where a female nurse by name Elizabeth Bwalya Mwewa confessed on her death bed that she had swapped over 5,000 babies over a period of 12 years for the fun of it.

4. INCIDENCE OF UNWANTED PREGNANCIES.

The fourth major reason of paternity dispute or fraud is the growing incidences of unwanted pregnancies in Nigeria. A 2018 global family planning report by the International Conference on family planning (ICFP) claims that in year 2017, Nigeria recorded over 1.3 Million unwanted pregnancies. And only 13.8 percent of Nigerian women used contraceptive in the year under review. Therefore, in trying to avoid the social stigma of unwanted pregnancies and for the same other reasons, some women pin their pregnancies on some men who might not be the ones who actually got them pregnant.

5. EROSION OF RELIGIOUS AND TRADITION MORALITY

Our traditional core moral values are fast eroding and society is adopting a laissez-fair attitude to issues of morality. The condemnation of sex before marriage and the free secular idea of morality that allows for the relativity and subjectivity of morality are the two most important morality issues that have gained the attention of Nigerians in recent times. Although, Nigeria is a vast religious society, it is clear that religious and traditional morality is gradually been eroded. The sexualization of our society is moving at a fast pace than ever before. Thus paving the way for immorality and adultery which has continued to fuel the issue of paternity fraud in Nigeria.

6. OTHERS

Others reasons such as the stigmatization of adoption, criminalization of abortion and other extreme cultural inclination towards reproduction and lineage longevity contribute to increased paternity fraud.

WHY WOMEN KEEP PATERNITY SECRETS

According to Turney (2011), women generally are demonized and accused of paternity fraud. However, there are multiple reasons why women keep paternity issues secret both when they have knowledge about false paternity and also when they have questions about paternity certainty. Some of the reasons are stated below:

1. EXPERIENCES FROM DOMESTIC VIOLENCE OR SEXUAL ASSAULT

Women who are victims of domestic violence and do not want to suffer more battering by revealing paternity uncertainty. According to Turney (2011) similar reasons make women who have been raped to keep the paternity issues secret and therefore refuses to disclose to the biological father.

2. UNCERTAINTY ABOUT THE CHILD'S FATHER.

Turney (2011) further explained that another reason why women keep secrets about paternity is because there were uncertain themselves about who the real father of the child was. Accordingly, this scenario has been defined as paternity uncertainty and not paternity fraud. For example, if a woman had several relationships or a one-night stand, she might find herself uncertain about the paternity and may typically assume that the father of the child is the one with the most enduring sexual relationship.

3. PASSAGE OF TIME AND FAMILY TIES.

One of the main obstacles to revealing paternity secrets is the passage of time. It has been argued that while the imperative for women to confess their secret is strong, the pragmatics of doing so may destroy the family and inter personal relationships. In addition to this, it has been discovered that since children are the main reason women give for keeping their paternity secrets. Women's appreciation of the importance of the social bound that had developed between the father and child could prevent them from exposing their paternity secret.

4. LEGAL ISSUES.

Another pertinent reason discovered for paternity secret sometimes emanates out of the fact of legal cases. This is because most times, society and judges assure that mothers hold the knowledge about paternity and keep it to themselves for selfish reasons. Betty(1997) posit that fraudulent conduct exists in every case where a wife gives birth to a child cognizant of the fact that paternity is uncertain, yet remains silent while her husband innocently assumes the care of the child. In contrast to this damning view, Turney (2011) explained that issues related to paternity secrets are held deeply, complex and difficult to disclose (Turney 2011). However, legal cases rarely give reasons why a woman might keep paternity secrets, instead reasons for women paternity lies is much more connected to the facts of multiple partners.

In addition to provide a balance to the moral panic and demonization of women over the issue of paternity fraud, it has been wisely suggested (Turney, 2011) that the society should view these "strong private matters" not in a "moralistic, judgmental and politicized manner, but rather should consider them to be unintended outcomes of the human condition, that is human error made by the actions of women and men in the contest of intimate relationships. The idea of the law promoting science as the highest consideration in truth claims is a wrong approach. Rather, courts and laws should sort out reproductive secrets about paternity in the social, legal and cultural contest (Sussan 2017)

3.0 TORT OF DECIET

According to Bernard (2020), the tort of deceit fall within paternity fraud. He further explained that the elements of the tort of deceit can be summarized in the following. The party must make a formal representation in relation to the fact by saying of words or conduct. Moreso, mere silence is not enough. He/she must know that the fact is untrue at the time the representation is made and the representation itself must be fraudulent either deliberately or recklessly made with the intention that it will be acted upon. Furthermore, the claimant must prove that he/she suffered a loss or damage.

Tort liability could also arise in the context of non-consensual artificial paternity. The typical elements of fraud are satisfied where for personal gain the defendant made an intentional and material representation of facts that reasonably induced the plaintiff to rely on the misrepresentation and thereby suffer damage (Daniel, 2007) Peter (2009) further explained that common law is a core feature of the "Law of deception" emerging as a "genius" comprising claims presenting similar problems of design, function and justification throughout the category (Peter2009)

3.1 COMPENSATION FOR PATERNITY FRAUD

Heater (2005) pointed that compensation for paternity fraud arise when misattributed paternity is discovered. This is because the un-suspecting man, assuming that he is the genetic father has treated the child as his son or daughter and accordingly has taken upon himself the responsibilities of fatherhood, including taking care of the financial needs of the child. When a man finds out that he has been misled, he will get to know or realized that he has been doing the functions of another man “supposedly the biological father of the child” As stated earlier in this paper, paternity fraud is another term for misattributed paternity, a term that explains that the mother (and maybe her lover) knew about the true paternity and deceived the man for financial gain (Heater, 2005). Paternity fraud can be discovered inadvertently during medical treatment, for example when a child is seen to have some genetic problems or genotype, blood group are identified on tissue matches are needed or it may be discovered where there are doubts about paternity for example based on the child display of his/her physical characteristic, or even suspicion of insincerity in marriage or infidelity.

THE BASIS OF CLAIMS FOR COMPENSATION IN PATERNITY FRAUD

According to Draper (2005) some of the basic elements which seems to justify a claim for compensation or reimbursement by an individual for misattributed paternity include:

1. THE FINANCIAL COST/EXPENSES FOR RAISING CHILDREN

The burden of raising children no doubt is an enormous task for both parents. However, it can be very great both absolutely and relatively. Moreover, Fathers with modest incomes could make personal sacrifices and constrain their life style choices just to take care of the cost implications of raising a child. This is indeed a painful experience if after sacrificing that much, it is confirmed that the pre-supposed father is not the actual father of the child. Thus, if paternity fraud is established, a man at this point is liable to sue for claims and compensation.

2. HARDWORK ASSOCIATED WITH RAISING CHILDREN

Accepting to be a good parent involves a lot of time and energy. Parents decide voluntarily to take up this task when they decide to have children: but if one carry out this enormous task regularly for someone else children, it is not unreasonable to expect to be paid for it.

3. PARENTS FALL IN LOVE WITH THEIR CHILDREN

Parents feel deeply and emotionally engaged with their children. When misattributed paternity is discovered, the man concerned may be deprived of the access to children that he still loves. On the other hand, he may feel a great sense of loss as though he has been deprived of the genetically related children he thought he had (mental torture)

4. THE DUTY OF REVEALING THE IDENTITY OF A CHILD’S FATHER LIES ON THE WOMAN.

It is the duty of the woman to tell her partner if she knows or has any reason to doubt the genetic relatedness of the children to him. If all things are working well, it is reasonable for men to assume that children born within a long standing relationship and maybe especially a marriage are children of the relationship.

5. PROOF OF INFIDELITY

A paternity test that reveals misattributed paternity is definitive proof of infidelity. This infidelity may evoke intense feelings of anger, betrayal, hurt etc. This may lead men to feel that they have been living a lie even to the point of nurturing someone else children.

4.0 METHODOLOGY

This study adopted the survey research design. The researcher gave out one Hundred (100) open ended questionnaires to elicit information from respondents. Out of the 100 questionnaires distributed, 94 were filled (94%) while 6(6%) were not returned. The returned questionnaires were analyzed via a percentage table to access the level of responses to the questions. The questionnaire were distributed to people within the metropolis of the federal capital Territory Abuja.

4.1 DATA ANALYSIS

QUESTIONNAIRE INFORMATION	NUMBER	PERCENTAGE
QUESTIONNAIRE RETURNED	94	94%
NOT TRETURNED	06	06%
TOTAL	100	100%

RESPONDENT DATA

MEN	WOMEN	TOTAL
63	31	94

4.2 QUESTIONNAIRE ANALYSIS TABLE RESPONSES

NO	QUESTIONS	STRONGLY AGREE	AGREE	STRONGLY DISAGREE	DISAGREE
1.	Do you agree that paternity fraud is prevalent in Nigeria?	60 (56.4%)	20 (21.3%)	10 (11%)	4 (4.3%)
2.	Do you Agree that a. Pressure from marriage. b. Quest for family Expansion. c. Error of child swapping. d. Incidences of unwanted pregnancies are responsible for paternity fraud in	72 (76.6%)	17 (10.1%)	3 (3.2%)	2 (2.12%)

	Nigeria?				
3.	Do you agree that perpetrators of paternity fraud should be punished?	50 (53.19%)	24 (25.53%)	15 (16%)	5 (5.32)
4.	Do you agree that victims of paternity fraud decide on their compensation?	67 (71.2%)	20 (21, 27%)	4 (4.25%)	3 (3.19%)
5.	Do you agree that the act of misattributed paternity has negative impact on our society?	52 (55.3%)	22 (23.4%)	13 (13.8%)	7 (7.4%)
6.	Do you think monetary compensation is enough for victims of misattributed paternity?	80 (85.1%)	10 (10.63%)	3 (3.19%)	1 (1.06%)

4.3 DISCUSSION OF FINDINGS

From the analysis on Table 4.1 above, 60(56.4%) of the respondents strongly agree that they have the knowledge of paternity fraud. 20(21.3%) on the other hand agree that there is prevalence of paternity fraud in Nigeria, while 10(11%) 4(4.3%) strongly disagree and disagree with the fact that paternity fraud exist in Nigeria.

Also, 72(76.6%) and 17(10.1%) of the respondents strongly agree and agree that pressure from marriage, Quest for family expansion, Error of child swapping and incidences of unwanted pregnancies are responsible for paternity fraud in Nigeria. While 3 (3.2%) and 2(2.12%) strongly disagree and disagree with the assertions. In addition 50(53.19%) and 24(25.53%) of the respondents strongly agree and agree that perpetrators of paternity frauds be punished for their crime. While 15(16%) and 5(5.32%) on the other hand strongly disagree and disagree respectively.

Furthermore, 67(71.2%) of the respondents and 20(21.27%) of the respondents are of the opinion that victims of misattributed paternity decide what they would be paid as compensation for the crime committed against them. While 4(4.25%) and 3(3.19%) strongly disagree and disagree respectively. Moreso, 52(55.3%) and 22(23.4%) of the respondents strongly agree and agree that misattributed paternity has great negative impact on the society. While 13(13.8%) and 7(7.4%) strongly disagree and disagrees that the menace could impact negatively on the society. Finally, 80(85.1%) and 10(10.63%) of the respondents are of the agreement that monetary compensation is the best form of compensation for victims of paternity fraud. While 3(3.19%) and 1(1.06%) strongly disagree and disagree with the idea of monetary compensation for victims of misattributed paternity in Nigeria.

5.0 SUMMARY, CONCLUSION AND RECOMMENDATIONS:

5.1 SUMMARY.

This study examined the causes of paternity fraud and its impact on the victims. The research study further explained the role of the court in compensating the unsuspecting victims of paternity fraud. Other issues discussed in this paper include among others the tort of claims for non-consensual and deceitful paternity, major focal reasons for the perpetration of paternity frauds in Nigeria and ways of ameliorating the pains experienced by victims.

5.2. CONCLUSION

When paternity fraud is discovered, it is sometimes important for money and property to be reimbursed. However, this is not the case in every paternity fraud circumstances especially where a social father decides to continue in his role as the father. In situations like this, the claims need to be differentiated between what might be actually owed to the man who discovers that he has been cheated via paternity fraud. And compensating him for the wife's infidelity attitude per se.

Although paternity testing may aid in proving paternity fraud. However, these facts still need to be legally ascertained by the law with a view to determining the actual level of compensation due to the victim of paternity fraud

5.3 RECOMMENDATION

In line with the above findings, the following recommendations are being made:

1. The awareness about paternity fraud should be encouraged among Nigerians.
2. The Nigerian society should desist from mounting pressure on the need for conception and child bearing in marriages, Also, hospitals authorities should be on the watch to guard against child swapping which happens to be a major cause of paternity fraud.
3. Laws should be enacted and promulgated on the punishment and compensation for paternity fraud victims in Nigeria.
4. Recognizing the negative impact of paternity fraud in our society, the Government, religious organizations, responsible and respected individuals should be at the fore front of discouraging the act of misattributed paternity.
5. Monetary compensation for misattributed paternity is not enough, perpetrators ought to pay for their crimes

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