

The Protection of Illegitimate Children and the Search for Paternity: The Position under Cameroonian Law

Kigha Nwanyeg Fred^{1*}, Djieufack Roland²

Abstract

The main purpose of this study is to show how Cameroonian law protects illegitimate children and how the law guides them in the search for paternity in Cameroon. Some of these children face a lot of challenges during the search for paternity, mostly when the presumed father is deceased. This paper examines the different methods used by competent courts in paternity determination, including the use of genetic tests which are very accurate in determining the relationship between parent and child based on their genetic traits. The difficulties the court itself usually encounters are that these cases do not prosper when the alleged father is deceased. Cases are filed late at times, either because of the high cost of a DNA test or because there is an expectation that the presumed father may change his mind in favour of voluntary recognition or acknowledgment of the child. The aim of this paper is to encourage the use of DNA tests before the competent courts as the only accurate evidence in cases filed in court for the search of paternity.

Keywords: Affiliation, child, DNA, civil status, illegitimate child, paternity

INTRODUCTION

Marriage takes a key place in human life [1]. It gives birth to new life. Family is the first cell for uniting society. It includes the union of spouses, their relationships and responsibility towards each other, children, surrounding people, and society. Consequently, the number of single mothers has also increased in Cameroon [2]. It is also important to notice that the existence of illegitimate children raises a lot of problems, both for the children and their mothers.

According to Cameroonian law [3], governing the civil status of persons, different rules apply to establishing the paternity of a child. But we realize that it is not easy for all illegitimate children to have the proof or evidence imposed upon them when the alleged parent has died. This paper was chosen in order to show the problem related to the recognition of illegitimate children when the presumed father is deceased and the mother is left without evidence to identify the child as that of the deceased father. Some of these difficulties are due to the fact, that in most cases, the mother did not cohabit with the presumed father.

*Author for Correspondence

Kigha Nwanyeg Fred
E-mail: kighafred75@gmail.com

¹Researcher, Department of Law, University of Bamenda, Bamenda, Cameroon

²Associate Professor, Department of Law, Higher technical teachers Training College (HTTTC), University of Bamenda, Bamenda, Cameroon

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In the case of the search for paternity of illegitimate children, it is the court [4] that has jurisdiction to rule that a given man is the father of an illegitimate child, depending on the evidence presented to the court by the child or his or her guardian. The court's decision shall be based on the law relating to the civil status of a person [5].

AN OVERVIEW OF THE ESTABLISHMENT OF PATERNITY

Paternity means fatherhood. In this paper, we will talk about some of the reviews about the search for paternity of an illegitimate child whose

alleged father has died and how they are protected under Cameroonian law. It is not easy for children born out of wedlock to seize the court since the establishment of paternity requires convincing evidence beyond a reasonable doubt [6]. This paper will give us a clear synopsis of illegitimate children, and we will also discuss the principles for the establishment of paternity for illegitimate children. Nowadays, one of the problems faced by society is the establishment of the paternity of illegitimate children whose alleged father has died. Also, we have to say that the 1981 ordinance establishing the civil statute of persons is weak and needs to be revised, and if possible, an amendment of the said ordinance should be done.

GENERALITY ON ILLEGITIMATE CHILDREN

Illegitimacy

It is the status of children begotten and born outside of wedlock [7]. The term non-marital child is also used interchangeably with illegitimate child [8]. Non-marital children throughout history have had the distinction of being regarded as virtual outlaws. Consequently, they suffered from several incapacities that were gradually withheld as humanitarian considerations in the legal system developed. Illegitimate children were regarded by society as inferior beings and were almost always subjected to unfavourable statutory schemes across different legal systems [9].

An illegitimate child is a child whose parents are not married. In Cameroon, there is a presumption of paternity if it can be proved that both parents were living together as husband and wife. This presumption can be rejected where there is proof that the mother of the child has been living a reckless and irresponsible life.

To establish paternity for illegitimate children, the legislation considers certain principles and procedures, as discussed in our subsequent writings here. According to Article 44 (1) (a), (b) of the 1981 Ordinance, the recognition of a child born out of marriage can be done by the declaration of the father before the civil status registrar during birth. In such a case, the declaration of the presumed father shall be accepted by the civil status registrar with the consent of the mother and in the presence of two witnesses.

Illegitimate children are classified into natural children, incestuous children, and adultery children.

Natural Child

A natural child is a child born out of wedlock, but the parents are ready and capable of entering into a lawful marriage with each other at the time of the birth of the child. Once the parents of a natural child become officially married to each other, the natural child automatically becomes a legitimate child through the process of legitimization as a result of the celebration of the parents' marriage [10]. After the legitimization of the natural child as a result of the officiation of the marriage of his or her parents, the child enjoys the same rights of a child born out of wedlock.

Incestuous Child

An incestuous child is a child whose parents are relatives at the forbidden degree in order to celebrate official marriage. An incestuous child is an illegitimate child due to the prohibition of sexual intercourse between ascendant and descendant by the Cameroonian Penal Code [11].

A natural child can be considered an adultery child if, at the moment of conception, one of the parents of the child was married to a third party.

Adultery Child

An adultery child is a child born to a married person or where one of the parents is married to another person during conception or birth. That child has the same rights in succession as other children on the side to which he or she belongs [12].

LEGAL PRINCIPLES FOR ESTABLISHING PATERNITY FOR ILLEGITIMATE CHILDREN

Several reasons account for the establishment of paternity. The establishment of the paternity of a child is important to the child in that it will help the child discover his or her real affinity. On the other side, paternity establishment will help a doubtful father of a child born outside wedlock confirm that he is the real father of the child. This will also go a long way towards bringing the responsibilities (child alimony) of the father towards his child onto the side of the mother of the child. Paternity establishment will help her obtain alimony and child care or maintenance from the child's father. If the presumed father is not the biological father of a child, child support, as an obligation that weighs on the presumed father, will be lost [13].

In Cameroon, the evidence to establish a child's paternity can be seen on the child's birth certificate. Upon failure, a DNA test will be the best means to establish the paternity of an illegitimate child. A paternity search can be brought by either the mother or the father, or by the child when he becomes an adult [14].

There are three ways we can establish paternity:

1. The paternity of a child could be determined by the court. This is the same with the cases for adoption of a child;
2. As for the mother, the birth or delivery of a child by a woman shall be equivalent to child recognition by the said mother [15];
3. A child born out of wedlock may be recognised by the natural father. In this case, the mother of the child shall be heard, and if she is a minor, her parents too shall be heard.

The Presumption of Paternity and Marriage under Cameroon Law

The presumption of paternity for a child comes as a result of the fact that:

1. The child is born out of wedlock. This implies that the husband of the mother is the father of the born child;
2. During the conception period, the woman was living with the man as husband and wife, and the woman did not live a loose life. However, any action in search of the real father shall be rejected if, during the legal period of conception, the mother led a loose life, had intercourse with another man, or if the alleged father was physically unfit to be the father [16].
3. Where the presumed father of the child has been living in the same house with the child and the mother. In this case, evidence of a blood link is not necessary [17].

The Search for Paternity by the Competent Court

As demonstrated here, the paternity of a child can be established by the court in accordance with the 1981 Ordinance. The time limit is 2 years when the search for paternity of a child is brought to court by the child's mother when the child is a minor. The court's authority to hear or adjudicate in a paternity case is seized in the same way as an ordinary claim. In this case, the parties will be heard before the court.

The Formal Acknowledgment of Paternity in Accordance with the Statute (Voluntary Establishment or Recognition of a Child)

Paternity means legal fatherhood. Establishing paternity means legally determining the biological father of a child. When parents are not married, paternity can be established by them voluntarily before the competent court [18]. The father and mother sign a paternity statement or voluntary declaration of paternity, acknowledging in writing, under penalty of perjury, that the child belongs to them.

AFFILIATIONS

The affiliation is a legal bond between the child and their parents. Affiliation constitutes the parent basis, that is, the relationship between a person and a descendant of the same ancestor in a direct line

[19] or a collateral line [20]. All children have the same affiliations with their mother and father, as they have the same rights and obligations in the lineage of their mother or father [21]. Affiliation is also considered the relationship between a person and his ascendant [22]. We could distinguish them among others.

Maternal and Paternal Affiliations

The distinction is based on the biological differences between maternity and paternity. Maternal affiliation is a direct relation proved by the act of giving birth to a child by the mother [23], whereas paternity affiliation is proved either by the presumption “*pater is est quem nuptiae*” demonstrant [24] or by genetic test.

Legitimate and Illegitimate Affiliations

By considering the marriage regime in Cameroon and its consequences for other forms of cohabitation, they also led to the existence of children with different statuses due to the different forms of sexual relationships that existed between parties.

Children born within wedlock are accorded a status that is superior to that of children born out of wedlock in the context of the establishment of affiliation. From the children of natural affiliation, we can distinguish between the simple natural child and the adultery natural child. This status of children born out of marriage is inferior as compared with that of children born inside wedlock [25]. Also, customary law in Cameroon ignores the differences that exist among children due to their affiliation in cases of natural affiliation or paternity [26].

Artificial Affiliation and Affiliation by Blood

Apart from legitimate affiliation and natural affiliation which have a biological foundation or basis, we can also witness the existence of adoptive affiliation under the Cameroonian positive law [27]. Adoption creates an artificial affiliation between the adopted child and the parents. Adoptive affiliation is based on a court ruling or judgment [28] which creates a parental bond or link between the parent and the adopted child without any relationship based on blood. Adoptive affiliation creates an artificial bond between people due to the bi-jural legal [29] system in Cameroon. In Cameroon, with the bi-jural system that exist in the country, the common law legal system inherited from Great Britain shall apply in the Anglophone regions while the civil law system inherited from France shall be applicable in the Francophone speaking regions of the country. Under the civil law system, there are two forms of adoption.

In plenary adoption, the adopted child belongs to his or her adopted family. He has no rights to his original family. This implies that he or she cannot inherit from his or her original family. There is also simple or ordinary adoption; here, the adopted child continues to maintain relations with his natural and biological family, and as such, he maintains succession rights with his family of origin [30].

DIFFERENT WAYS OF THE ESTABLISHMENT FOR THE PATERNITY OF ILLEGITIMATE CHILDREN

In this part of our work, we will discuss different ways of establishing the paternity of children born outside marriage.

Voluntary Acknowledgement

The presumed father can voluntarily acknowledge that he is the father of an illegitimate or natural child before a civil statute official of the place of birth of the child. If the father of the child has doubts about his paternity, as indicated by the mother of the child, it is in his position to prove that he is not the father of the said child.

The mother of the natural child shall be heard along with two witnesses.

THE POSITION OF THE COURT IN THE ESTABLISHMENT OF PATERNITY AND A DNA TEST UNDER CAMEROON LAW

Where there is existing evidence beyond reasonable doubt that a father is the presumed father of a child and where there is confusion between both parents, the competent court seized may submit him to a genetic test in order to determine the paternity of the child.

The Participation of the Court in Biologically Electronic Proof of Research of Paternity Any Time the Presumed Father Died

The court was often the final arbiter on what it took to raise responsible citizens, and those decisions rested on pure discretion, or “intuition” [31]. “A judge’s intuition is a judge’s discretion to decide, independent of the parties’ wishes or the dictate of a pre-ordained law [32]”. This type of jurisprudence pushed the best interests standard to be so completely dependent on judicial discretion. It apparently and cleverly led to a movement for children’s rights.

The competent court may order services or a DNA test for the child and the presumed biological father, if the court determines that the services will benefit the child [33].

CONCLUSION

A paternity search or case is a case launched in search for the true father of a child born outside wedlock, or whose father is unknown, or whose father is doubting his position as the biological father of the child.

This state of confusion produces some consequences for the child’s future, both in terms of his or her social integration in society, health, and daily child maintenance, or care and support. This may be the case if a child knew his or her true parents, since establishing child paternity may lead to child support from the presumed father [34].

If the alleged father denies paternity, genetic testing will be ordered. This means that the mother, child, and alleged father will have samples of their DNA taken and compared by a laboratory in order to determine whether the man is the biological father. Where a man is contesting his position as the father of a child, a court may order a blood test to be taken.

The problem resides in whether the presumed father is deceased without showing any sign of recognition and there is no other evidence of paternity; also, the high cost of a DNA test has a greater impact on the establishment of paternity and can do a favour, be it positive or negative, to the alleged father who denies paternity. Consequently, some illegitimate children could lose their legal rights.

SUGGESTIONS

It is illegal to knowingly put false information on a child’s birth certificate, so women should be careful when naming the father of their child. It is also prohibited to write on the birth certificate of a child “unknown father” because it is abusive. Women who falsify records or evidence or provide false information to the court or to the civil status registrar may be responsible for paying money damages to a man incorrectly found to be the biological father.

There should be lots of care and precaution during paternity cases because the outcome will be used to establish who must pay child support and whether the man has rights to visitation or custody of the child. This process also helps to protect the rights of the child who deserves to be supported and know who his father is. The paternity research proceeding is the first step for many fathers to establish a relationship with their child. When the alleged father has died, it becomes very difficult because the only evidence is the DNA test result. Contrary to the case where the alleged father received notices about paternity cases being filed against them, he should contact a lawyer immediately and be present before the court during judgment.

An experienced lawyer who is familiar with these types of cases should be able to protect the rights of the man, mother, and the child.

1. To the court, we recommend that the court order a DNA test as a real proof of paternity.
2. To the government, we recommend that the government should provide a certain percentage from the state budget for a DNA test for the person with marginal resources and this test should be done to everyone at his birth, and the DNA test result should be served electronically. That is, it should be inserted into the identity card in such a way that it can be checked whenever need arises in order to be used for a longer period of time. Checking the result and any other malpractices without authorization from the competence court should be prohibited and punishable by law in line with the provision of Article 341 of the Cameroonian Penal Code [35].
3. It is a habit in developed countries to save data in order to prevent crimes and detect the authors of a crime if the states have different identifications for their citizens. To all human beings, it is important to guarantee the rights of new-borns specifically those whose father is dead before recognizing him or her, and the father's family dismisses the child due to succession or other rights from which he or she can benefit.

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