



The Legal Status Of Adopted Child In Nigeria

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ABSTRACT

This paper examines the legal status of adopted child in Nigeria, using the doctrinal research approach. Specifically, the paper appraised the nature of adoption, formalities and procedure in Nigeria and also addresses the issues of persons who may adopt and be adopted as well as the restriction and prohibition on the adoption process. The study evidenced that, child adoption faces cumbersome process and that, the unnecessary length of time and complexity in the process of adoption in Nigeria is due to the post adoption laxity. Adoption has become a more prevalent and acceptable practice over the years and laws institutions has been set up to quid the process nationally and across various states. Child adoption is a parents and child relationship between persons who are unrelated, with all rights privileges and responsibilities of parents transfer to the adoptive parents. The significance of adoption therefore, is the creation of legal relations of parents child between persons who are not related by nature or blood affinity. Adoption still faces it challenges in Nigeria despite the domestication of the child's Right Act in Nigeria only 24 out of 36 states have officially accepted it. The ineffectiveness of the Nigeria legal system and the outlook many Nigerians have regarding the practice of adoption. Therefore this work recommends that legislative should force laws which override the customary/religious norms and stigmatization against child adoption. Also, the review of the cumbersome process of adoption.

Keywords: Adopted child, adoption, Child Rights Act

INTRODUCTION

The issue of childlessness and looking for an alternative means to be called parents through child adoption form the hallmark of this paper. In Nigeria and indeed African continent in which children are regarded as the fundamental concentration of any marriage, as a focal point of every marriage, a child is a traditional reason for marriage but sometimes this traditional expectation is defeated by issue of childlessness. Childlessness has accounted for several issue of marriage divorce and still counting, bearing in mind the negative social inclination, impression and mixed feelings associated with barrenness and child adoption. Adoption is a process by which the natural relationship between a child and his parents is totally cutoff and same be established between the child and a new parents.¹ Adoption proceeding usually creates a new status of relationship, which disconnects the adopted from his natural parents. The concept of adoption is closely related with other concepts like guardianship, fosterage in relation to the custody of a child. However they differ from adoption in that, adoption is of a permanent relationship between the child and he adoptive parents, guardianship or fosterage are temporary.

Nature of Adoption in Nigeria

Adoption is a common practice all over the globe from time immemorial, however, customs or laws and incidence of adoption varies from place to place. There are practices which involves the transfer of children from one person to another for a number of reasons in African and Nigeria in particular. One of the practices is the situation where a girl child may be given to or accompany a married sister upon

¹ B.A Garner Black's Law Dictionary (10th ed. Thomson Renters: 2004) p. 58

marriage to the matrimonial home for the sake of being taken care of, as a younger sibling. In most cases such a younger, usually the girl child may never return to her parents again, the elder sister or brother as the case may be takes over the duties and responsibilities of the girl, including given consent to her marriage on behalf of their parents. It is observed that, the past three to four decades, Africa has experienced societal disruptive, the present global pandemic (covid19) may necessitate the adoption of children whose parents died as a result of the global outbreak of Corona Virus. Diseases like Acquired Immune Deficiency Syndrome (AIDS) ravaged most sub-Sahara African Communities, it was estimated that about 14.8 million children in sub-Sahara Africa lost their parents to AIDS² and the children become orphans. In such situation, adoption is the utmost option in order for the children to be given opportunity to grow and develop in a home and family unit.³ Today, unwanted babies by unmarried young mothers who cannot keep or take good care of their babies whose putative father are either unknown or cannot be traced, even when known, who do not want the baby and unwilling to take care of the baby become automatic subject of adoption. Recently there was twist to the fortune of the unwanted babies heading to the emergence of baby factories in Nigeria where human, new born babies are being commercialized.⁴ Many baby factories operate under the guise of orphanages to perpetuate the crime and human rights violation. Adoption laws and practice is in dire need at this moment for the protection and promotion of the rights of the child. Infant babies of insane mothers who have no relatives available to provide care for the babies are recommended for adoption. In order to protect children who are in danger of harm, they are usually, placed in care where the state would temporarily assume guardianship in local-parentis. In general, children who are in danger of harm may by order of the court be taken out of the custody of their parents or guardians for the safety of the child. In a situation like this adoption may be the proper option in the best interest of the child because it offers permanent parental and family support to the child.

Formalities and Procedure of Adoption

In many legal systems, adoption is a creation of statutory provision. The law regulating adoption varies from State to State in Nigeria. Upon the enactment of the Child's Right Act and the various Child Rights Law by most of the State in Nigeria, the various adoption laws in existence before the enactment of the child right Act seems to have been united as a single statute more so that the child's Right Act proclaim itself as the supreme law on any matter related to the child.⁵ The process of adoption is often initiated with an application usually made to the court in a prescribed form which shall be accompanied with the birth certificate of the applicant, when the applicants are married couple, their certificate or sworn declaration of marriage, two passport photographs of each applicant and other document as the court may require.

Where application is made to the Court, the court shall make an order for the investigation and suitability of the applicant as well as the situation of the child to be adopted. It is the responsibility of a child development officer, a supervision officer and any other person the court may deem fit to undertake the investigation.

Application for Adoption

Section 126(1)⁶ provides that: an application for adoption shall be made to the court in such form as may be prescribed and shall be accompanied with:

- a. Where the applicant is a married couple, the marriage certificate or a sworn declaration of marriage
- b. The birth certificate or sworn declaration of age of each applicant.
- c. Two passport photograph of each applicant
- d. A medical certificate of fitness of the applicant from a government hospital

² UNAIDS, UNAIDS reports on the global Aids Epidemic 2010.

³ Section 8(1) Child Right Act 2003, <http://www.unaid.org/globalreport> access on 20/01/2022.

⁴ S.E Kabu, baby factories in Nigeria: Anew phase of human trafficking and human rights violation in Nigeria p. 129-131.

⁵ Section 274 Child's Right Act 2003.

⁶ Child's Right Act 2003.

e. Such other documents requirements and information as the court may require for the purposes of the adoption.

Sub section 2 provides that on receipt of an application under subsection (1) of this section, the court shall order an investigation to be conducted by: -

- a. A child Development Officer
- b. A Supervision Officer
- c. Such other persons as the court may determine to enable the court to assess the suitability of the applicant as an adopter and of the child to be adopted.

Subsection 2 state that, the court shall in reaction to a decision relating to the adoption of a child have regard to all circumstances, first consideration being given to:

- a. The need to safeguard and promote the welfare and the best interest of the child throughout the childhood of the child
- b. Ascertaining, as far as practicable, the wishes and feelings of the child regarding the decision and given due consideration to those wishes and feelings, having regard to the age and understanding of the child.

Persons who may adopt

Persons who may make application for adoption must fall within the prescient of law. The following persons may apply for an adoption order:

- a. Married couple where-
 - i. Each of them has attained the age of twenty-five years
 - ii. There is an order authorizing them jointly to adopt a child
- b. A married person, if he has obtained consent of his spouse
- c. A single person, if he has obtained the age of thirty-five years provided that the child to be adopted is of the same sex as the person adopting.
- d. In all cases specified in paragraphs (a) (b) (c) and (d) above the adopter or adopters shall be found to be suitable to adopt the child in question by the appropriate investigation officers.⁷

Persons who may be adopted

The court shall not make an adoption order in respect of a child unless.

- a. The parents of the child or where there is no surviving parent, the guardian of the child consent to the adoption
- b. The child is abandoned, neglected or persistently abused or ill-treated and there are compelling reasons in the interest of the child why he should be adopted.⁸

The term abandoned, neglected or abused child may be refers to situations where a child or baby is abandoned by a parent or care giver with the intention of permanently separating from the child. It suffices to say that a child may be placed for adoption, where he has no parent or a guardian or has been abandoned by his guardian or parent, after reasonable inquiry and the parent or guardian cannot be found.

Prohibition and Restrictions in Adoption

A sole applicant for an adoption order must not be less than thirty-five years of age and the child to be adopted must be of the same sex or gender with the applicant.⁹ This may forestall the possibility of sexually abusing the adopted child. In the case of joint applicants, none of them must be less than twenty-five (25) years old and must be at least twenty-one (21) years older than the child. The applicant, or in he age of persons to be adopted may begin from zero to less than 18 years.

⁷ Section 129, Child's Right Acts, 2003.

⁸ Section 128 C.R.A.

⁹ Section 129(c) Child's Right Act.

case of joint application, both or at least one of the spouses and the adopted child must be resident in the same State.¹⁰ An applicant for adoption order must have been resident in the state where the application is made for a period of at least five years penultimate the application, the same rule applies to joint applicants. Where it is joint application both of them must be citizens of Nigerian.¹¹ A Nigerian woman married to an alien (husband) cannot present a joint application for adoption because the foreign husband is not a citizen of Nigeria. A wife who is a Nigerian may by sole application seek an adoption order in respect of any child, while the consent of the foreign husband may be require to grant the adoption order in favour of the woman. An adopter shall not receive money or any form of benefit reward, inducement or promises of favour in furtherance of any adoption of a child. Equally he shall not give or pay money, and extend reward or benefit to anyone in furtherance of securing the requisite consent of person(s) whose consent is required for adoption order. It is therefore an offence to receive or give money as well as any form of inducement or favour in order to obtain consent for adoption. A person who violate any of the prohibitions above, commits an offence and shall be liable upon conviction to a fine maximum of thirty thousand naira only (N30,000) or a lesser amount or to a term of imprisonment for a term not exceeding three years or to both fine and imprisonment.¹² However, the payment or giving of money to obtain consent for an adoption order or any form of indictment whatsoever may not automatically vitiate an adoption order obtained in pursuance of the prohibited payment or inducement contrary to the law. The court may allow the adoption process or may reserve same at the discretion of the court with regards to all surrounding circumstance, especially in the best interest of the child. The law on adoption in Nigeria prohibits inter-country adoption, more limiting is the serious restriction placed on interstate adoption within Nigeria depicting the resilient posture of Nigeria against inter-country adoption. Except where the minister grants a license, no person shall be permitted to procure the care and possession of a child with a view of getting the child adopted by any person outside the state in which the adoption order was made. A person who permits or procures the possession of a child for the purpose of giving the child to any other person to be adopted outside the state in which the adoption order was made commits an offence and shall be liable upon conviction to thirty thousand Naira (N30,000) fine or imprisonment for a term not exceeding a year or to both fine and imprisonment.¹³ Where a child is to be taken outside the state where in the adoption order was made, it must beat the permission of the minister who is charged with the responsibility to grant a license for such inter-state adoption the failure to obtain the license of the minister amounts to an offence and same punishable. The minister has the power to refuse the grant of license subject to such conditions and restrictions as he may think fit for the purpose of the care and protection of the child's interest.¹⁴ Notwithstanding the power of the minister to grant license for inter-state adoption, same is subject to the requisite consent of persons required under the law for the making of an adoption.¹⁵ In granting the license for inter-state transfer of an adopted person, the minister is enjoined to give due consideration to the wishes of the child, with regard to the age and understanding of the child and that the transfer is for the welfare and in the best interest of the child.

Required Consent for Adoption Order

Consent means that a parent or legal guardian agrees to relinquish a child for adoption. States have various rules about what is required to give consent. Most state insist on a written document that is either notarized by a notary public or signed in the presence of a judge or other designated official.¹⁶ The

¹⁰ Ibid. Section 131(1).

¹¹ Ibid. Section 131(1)d.

¹² Section 26(2) C.F.R.N 1999.

¹³ Section 143(1) & (2) C.R.A

¹⁴ Ibid Section 14(3).

¹⁵ Ibid Section 127

¹⁶ Consent to adoption- introduction www.findlaw assess on 19/04/2022.

purpose of the consent requirement is to protect everyone involved in the adoption process by ensuring that there is no doubt or legal ambiguity about the choice to give a child up for adoption. This clarity is important because consenting to an adoption means voluntarily terminating one's rights as a parent or guardian.

Who must Consent:

The birth mother and birth father hold the primary right to consent to the adoption. Where the birth parents are not married, the birth father may need to properly establish paternity in order to be involved in an adoption decision. Sometimes, the role of given consent can fall to others beside the birth parents such as a guardian or a child welfare officer that has custody of the child. This can happen if neither birth parent are available or if their parental rights have been terminated through a legal proceeding, such as for abandoning or neglecting the child. Under the Child's Right Act consent is provided for in Section 132(1) – 7 which provides as follows:

1. Where a married person is the sole applicant for an adoption order, the court may, if it thinks fit, refuse to make the order if the consent of the spouse of the applicant to the making of the order is not first obtained.
2. Where it appears to the court that a person other than the parent or relative of a child has any right or obligation in respect of the child under an order of the court or any agreement or under customary law, the court may, if it thinks fit, refuse to make the adoption order, if the consent of that person is not first obtained.
3. The child development officer, on an application for an adoption order in respect of a child, shall prepare a report to assist the court in determining whether a person who is not a parent or relative of the child has any right or obligation in respect of that child and whether the consent of person ought first to be obtained.
4. A consent under this section may be given either-
 - a. Unconditionally
 - b. Subject to conditions with respect to the religious persuasion in which the child is to be brought up
5. In giving consent under this section it may not be necessary for the person giving the consent to know the identity of the applicant for the adoption order
6. The court may dispense with any consent required under this section if it is satisfied that the person whose consent is required cannot be found or is incapable of giving his consent or is withholding this consent unreasonably.
7. while an application for an adoption order is pending in any court, no person who has given this consent to an adoption order to be made in respect of a child shall withdraw the child from the care and possession of the applicant without the leave of the court and the court shall have regards to the welfare of the child in considering whether or not to grant the leave.

Cumbersome and Complexity in Adoption Procedure

- i. In Nigeria, child adoption faces cumbersome pre-adoption process. Many couples and individuals desiring to adopt a child spend months into years on the waiting list for adoption, the former vice-president of the Federal Republic of Nigeria, Professor Yemi Osinbajo in the Heritage Adoption Support and Advocacy Group (HASAAG) annual conference in Lagos, called for the simplification of the adoption process. He noted the paradox in difficulty of the adoption process, while numerous children are found wandering in the streets daily evidently in need of care.¹⁷

¹⁷Sunday Aikulola 19 November 2018 Osinbajo, Alakija others canvass support for child adoption accessed 1st May 2023.

- ii. The unnecessary length of time and complexity in the process of adoption in Nigeria is due to the post adoption laxity. The Child's Right Act (section 148) instructs the Child Development Officer of each State to monitor and have knowledge of the well-being of all children under his or her jurisdiction. He or she is to make routine check-up regularly, however, the contrary is the case of Nigeria as the post-adoption process is usually not transparent. Often, it is common to observe that the authorities concerned abandon such responsibilities until the child reaches or surpasses the age of maturity.
- iii. Due to the laxity of the post-adoption process, the room for child abuse, child-trafficking and slavery and engaging children in Baby Factories and for cheap labour is left open unattended, defeating the very purpose of adoption.

Legal Effects of Adoption

Adoption of a child is a process by which the legal relationship between the child and his natural parent is severed and same re-established between the child and third party. Upon the grant of the application for adoption, the rights, duties obligations and liabilities of the parents of the child legally and naturally terminates and vests in the adopter.

The law provides:

1. On an adoption order being made:
 - a. All rights, duties, obligations and liabilities including any other order under the personal law applicable to the parent of the child or any other person in relation to the future custody, maintenance, supervision and education of the child, including all religious rights, right to appoint a guardian and to consent or give notice of dissent to marriage, shall be extinguished
 - b. There shall vest in and be exercisable by and enforceable against the adopter;
 - i. All rights, duties, obligations and liabilities in respect of the future custody, maintenance, supervision and education of the child;
 - ii. All rights to appoint a guardian and consent to give notice of dissent to marriage of the child as would vest in the adopter as if the child were a natural child of the adopter and in respect of these matters the child shall stand to the adopter in the relationship of a child born to the adopter.¹⁸

The implication of the above is that, there is a total cessation of the rights, duties and responsibilities of the natural or biological parent in totality and same rest in another, the adoptive parent who is now the parent of the child in all ramifications. Where a husband and wife jointly adopt a child, they are jointly responsible for the custody, care, maintenance, education and health care of the child as well as the right of access to the child. In all respect, the adopters stand to and for each other in the same relationship as they would have stood where the adopted child is their natural child and in respect of all matters. The child also shall stand to the adoptive parent in all relationship like a child born to the adopters. The adopter has the right to change the name of the adopted child to be called and addressed by the name of the adopter. This is made possible because the adopted child is legally entitled to inherit the estate or property of the adoptive parent upon death.¹⁹ The law recognizes and treats the adopted child as a child born to the adopter.

In *Aduba v Aduba*²⁰ the respondent was the plaintiff at the trial High Court in Imo State, was received and accepted by a couple Mr. Aduba Ohagwam Nwaemere and Mrs. Felicia Nwugo Aduba from the Ministry of Health and Social Welfare in 1972. Aduba Ohagwam Nwaemere married two wives, Felicia Nwugo Aduba and Hiudma Aduba: Felicia Nwugo Aduba was the first wife, she had a son for Mr. Aduba Ohagwam Nwaemere who died at a very young age but she has other female children. The second wife Hiuoma Aduba had many male children, including the appellants. After the death of the only male child of Felicia Nwugo Aduba, she and her husband Aduba Ohagwam Nwaemere adopted the respondent in

¹⁸Section 141 (1) a & (b)

¹⁹Section 141 (3) C.R.A.

²⁰(2018) LPELR 45756 (C A)

1972 which was documented in exhibit F as tendered in court. Upon the adoption, the respondent was given the surname and was assorted as one of the children of the family, he was trained and nurtured by Mr. Aduba Ohagwam Nwaemere and his wife Mrs. Felicia Nwugo Aduba as their son and he grew up with the other children into adulthood. In 1990, the said Titus Aduba (the adopted son) got married and gave birth to his own children, who equally were treated as the grand children of Aduba Ohagwam Nwaemere and nobody challenged his status as a member of the family of Aduba Ohagwam Nwaemere until the death of both parents. After the death of Aduba Ohagwam Nwaemere and his wife Felicia Nwugo Aduba, the appellants, started objecting to the membership of the respondent as a member of Aduba Ohagwam Nwaemere family. They excluded the respondent from the share of the estate of their father late Aduba Ohagwam Nwaemere. As such, the respondent challenged them at the trial court and won, the declaration of the trial High Court that the respondent is an adopted son of the late Aduba Ohagwam Nwaemere and his wife late Felicia Nwugon Aduba as such, entitled with the judgment of the trial High Court the appellant appeal to the court of appeal Owerri Division: The court of appeal held per Mbabe J.C.A in a lead judgment thus:

I think this case is at the net of national public policy and constitutional rights of persons/citizens in our jurisprudence. Where a child taken from an orphanage or social welfare department, is adopted or received and integrated into a family of the adopter(s) or person who shows love and benevolence to the unfortunate child, he should not and cannot be left at the vice or mercy of the other children/relations of the adopters be they biological children or other beneficiaries of the estate of the adopters. It would be wrong, in my view, to remain and play back the sad and ugly circumstances of the child's birth, taunt, mock and discriminate against him, and subject him to ridicule, just because somebody wants to deny him the benefits of the estate of his adopter.

In matters of adoption, even where the disposition of property is done before the date of adoption order, reference to the child or children of the adopter, shall unless the contrary is proved includes a reference to the adopted child. This is because the law regards that person related to the adopted child in any degree shall unless the contrary intention is proved or appeared as a reference to the person who would be related to him in that degree if he were the natural child of any person²¹. For the court to hold that a person entitled to share the estate of a supposed adopter, it must be shown or proved that there was an actual adoption as required by law. In *Olaiya v Olaiya*²² the court held that, proof of adoption is essential for the adopter and the adopted person or any other person for the purpose of devolution of property on the intestacy. In the above case, the plaintiff alleged that there was an adoption of two children Sarah and Emmanuel by herself and her late husband Solomon Kayode Olaiya. The first respondent married late Solomon Kayode Olaiya sometimes in 1963 under the marriage act, in England and later relocated to Nigeria, and they lived together and according to the 1st respondent, they adopted two children Emmanuel O. Olaiya and Sarah O. Olaiya until the husband died intestate in 1981. The 2nd and 3rd respondent (brothers of late Solomon Kayode Olaiya) took over the estate of late Solomon Kayode Olaiya and they started managing same without commuting with the 1st respondent (Mrs. Cornelia T. Olaiya). The action of the 2nd and 3rd respondent angered the 1st respondent who thereafter sued the 2nd and 3rd respondent seeking declaration that: The 1st respondent along with the children of late Solomon Kayode Olaiya Emmanuel O. Olaiya, Sarah O. Olaiya and Remilekun Olaiya are the exclusive beneficiaries of the estate of the said late Solomon Kayode Olaiya who died intestate in 1981. To the contrary, the 2nd and 3rd respondent, contended that their brother, late Solomon Koyode Olaiya had only one biological daughter miss Remilekun Olaiya and to the best of their knowledge, their late brother never adopted Emmanuel and Sarah at any point. In deciding the issue, the Supreme Court held that: You cannot pick children anyhow, since Emmanuel and Sarah are not biological children of the plaintiff and her late husband,

²¹Section 141 (4) C.R.A

²²(2002) & NWLR (pt 782) p 652 at 670

evidence of adoption as material proof of adoption is essential both for the adopter and the adopted for the persons or any other person for the purpose of devolution of property on the intestacy. The burden of proof rest on the plaintiff/respondent who asserted the affirmative of adoption of Sarah and Emmanuel. If she could tender a certified true copy of the marriage certificate between her and the deceased husband, it was strange that she was unable to tender any documentary evidence establishing the adoption or offering any acceptable evidence to that effect. For there to be adequate proof of adoption, there must be available evidence beyond question

to substantiate the actual adoption preferably the adopted children register or a certificate of adoption to that effect.

It is interesting to know that, what people refer to as child adoption under customary law and other social practices, in the real sense does not qualify as adoption. The situation where an individual takes over care and housed destitute children or orphaned children even from infancy up to adulthood does not in strict legal sense qualify as child adoption. It may at best be regarded as custody and guardianship or foster care.

CONCLUSION

The process of adopting a child in Nigeria is a rigorous procedure. This research has looked at the adoption process and the legal effect in Nigeria under the child's right act. The practice of adoption constitutes a very good alternative route for childless couples to satisfy their desire to have a child of their own. However the adoption process in Nigeria is fraught with cumbersome and complexity procedure, some of which have been identified by this paper. It is noted that there are several reasons for the adoption of a child and the reason vary from couple to the other. However in other to make the process of adoption a blessing to couple seeking to have a child of their own, the whole adoption procedure in Nigeria should be reviewed in order not to make the adoption process not to be cumbersome for couples who want to adopt a child.²³ There's need for strict and total compliance with the Child's Right Act by all 36 states and FCT. It is important to note that, only 24 states out of the 36 States of the Federation have adopted the Child's Right Act as a State Law leaving the 12 Sharia State nonparty to the law and not applicable.

RECOMMENDATIONS

This work in keeping up with the necessity to put forward solution to the identified problems recommends as follows;

1. The whole adoption process should be reviewed as to not be so cumbersome for persons willing to adopt a child.
2. There should be a better training for officials within the adoption agencies so they would be able to do thorough investigation about the adopting parents in order to aid the discharge of adoption order.
3. The parties involved in the adoption process should be given adequate counseling.
4. There should be periodic visits of the adopted child by the Welfare Officer to ensure that, the child is being taken care of.
5. The legislature should enforce laws which override the customary/religious norms and stigmatization against child adoption.
6. We strongly recommend that, the Child's Rights Law of various State should be harmonized with the Child's Right Act to create uniformity in respect of child.