

**THE ROLE OF DNA TESTING IN RESOLVING PATERNITY DISPUTES UNDER
THE MATRIMONIAL CAUSES ACT**

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**IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS (LL.B) OF THE UNIVERSITY OF BENIN,
BENIN CITY.**

NOVEMEBER

CERTIFICATION

I, **Nosamudiana Faith EGHIANRUWA**, with Matriculation Number **LAW2002854**, hereby certify that apart from references to other persons' works which have been duly acknowledged, the entire work is a product of my research, and this project has neither in whole nor in part been presented for another degree elsewhere.

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APPROVAL

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DEDICATION

I dedicate this project first and foremost to God, whose unending grace, wisdom, and faithfulness have sustained me through every challenge and guided me through every success.

I also dedicate this project to my mother, the one and only Iyè Call to Bar, whose love has been my foundation and whose prayers have carried me through my journey. Her sacrifices, encouragement, and constant belief in my abilities have shaped my path and inspired me to strive for excellence.

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Nigeria Data Protection Act 2023

United Nations Convention on the Rights of the Child (UNCRC) 1989

Universal Declaration of Human Rights

LIST OF ABBREVIATIONS

CRA - Child's Rights Act

DNA - Deoxyribonucleic Acid

HLA - Human Leukocyte Antigen

MCA - Matrimonial Causes Act

UNCRC - United Nations Convention on the Rights of the Child

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ABSTRACT

The determination of paternity has long been a sensitive and legally significant issue in matrimonial proceedings, particularly in cases involving custody, maintenance, and legitimacy of children. With the advent of modern scientific methods such as DNA testing, the resolution of paternity disputes has evolved from reliance on presumptions and circumstantial evidence to verifiable biological proof. This study critically examines the role of DNA testing in resolving paternity disputes under the Nigerian Matrimonial Causes Act (MCA) Cap M7 Laws of the Federation of Nigeria 2004. It explores the extent to which Nigerian courts have accepted and applied DNA evidence in matrimonial proceedings and whether existing legal frameworks adequately support its use. The research is doctrinal and analytical, relying on statutes, judicial decisions, textbooks, and scholarly articles. It examines the provisions of the Matrimonial Causes Act and the Evidence Act 2011 to determine the admissibility and evidential value of DNA testing in establishing paternity. Furthermore, the study analyzes the judicial attitudes toward scientific evidence in Nigerian courts and compares the Nigerian position with that of other jurisdictions, notably the United Kingdom, South Africa, and India. Findings reveal that while Nigerian courts recognize DNA testing as credible expert evidence, statutory and procedural gaps within the Matrimonial Causes Act hinder its consistent application. The study emphasizes the need for legislative reform to expressly incorporate DNA testing provisions, ensuring fair, accurate, and child-centred outcomes in matrimonial disputes. The research concludes that integrating scientific evidence within Nigeria's family law framework will enhance the administration of justice, uphold the best interests of the child, and strengthen public confidence in the judicial process.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 BACKGROUND TO THE STUDY

The need to decide the incidental rights of children, based on their relationship with their natural fathers, has, over the years, necessitated the evolution of various scientific procedures for affirming consanguinity¹. In light of the above, the freedom to confirm paternity using the best procedure available was affirmed in the U.N. Convention on the Rights of the Child, on the child's entitlement to be raised by their biological parents from birth².

Contemporary testing for paternal identity includes the use of the Deoxyribonucleic Acid, commonly known as DNA. This Acid, which is contained in the cells of all living things, serves as the primary unit of heredity³. Scientifically, it is discovered that in the course of human reproduction, some identical part of the DNA (from the father and mother) is passed along to the children. It is this flow of the acid in genes that is linked to the level of heredity transmitted from a parent to their child and consequent offspring. In other words, due to the position of DNA throughout the human framework, the DNA in materials such as Saliva, Blood, Sweat, Teeth, Skin tissue, Hair, fingernails, etc., of a child, when matched with that of the alleged father, has been repeatedly used to detect the biological relationship between persons⁴.

The Laws of many jurisdictions⁵ have long held on to the presumption of the legitimacy of children in marriages. Historically, the English Laws recognised an indisputable presumption

¹ The basic International and Local Laws on Child's Rights, Matrimonial Causes, Inheritance and that of Succession are basically invented on the presumption of consanguinity between fathers and their children.

² United Nations Convention on the Rights of the Child 1989 article 7, 8 and 9.

³ Oxford Advanced Learners Dictionary, Special Edition pg. 341

⁴ NHS 2014, National Genetics and Genomics Education Centre, DNA is Passed on from Parent to Child at <www.geneticeducation.nhs.uk> accessed on 12th October 2025.

⁵ Nigerian Evidence Act 2011 Section 5 and 165, Family Code of the Philippines (Executive Order No. 299, 1987 as amended) arts. 164, 166, 167, 170 and 171, Islamic Laws and several other Customary Laws, *Egunwoke v Egunwoke* (1962) NMLR 147.

of legitimacy. The regime was that the strict legal assumption that the husband is the father of the child born by a wife who is still married to him sustains public morality and chastity. This position persisted until the evolution of the Court of Chancery and the Rules of Equity⁶. By good conscience, the Court of Chancery as at the late 1800, began to uphold paternal disclaims, basically on the ground that, since children receive some of their physical features from their parents, there is the need to be fair when a child's eye color, hair or any other basic feature obviously varies from the assumed parents', but resembles that of the acclaiming father. The later liberal period in history witnessed the introduction of other processes for rebutting the presumption of legitimacy.

In 1865, Gregor Mendel⁷, a Scientist, developed formal theories on the inheritance of genes when he propounded that half of a child's features come from the mother and the other half from the father. By the early 1900s, there were scientific discoveries of human blood types - A, AB, B, and O⁸. Scientists observed that blood types were genetically inherited and that it was possible to predict the child's blood type by analysing the parents' genotype. The mid-1970s witnessed blood testing procedures using the human leukocyte antigen (HLA), until DNA was discovered by Francis Crick and James Watson in 1953. Crick and Watson identified the double-helix structure of DNA and established the role of DNA as the material that makes up the genetic code of living organisms.⁹

As of the late 1950s, scientific procedures for confirming paternity had become part of the English Courts' procedures. The English Family Law Reform Act 1969¹⁰ was the first enactment to allow the use of blood tests in resolving disputes. It provided that;

⁶ Supreme Court of Judication Act of 1873.

⁷ Austrian monk and scientist (20 July 1822 - 6 January 1884).

⁸ Walker RH, Analysis of parentage test case. Inclusion probabilities in parentage testing *Arlington* (American Association of Blood Banks, 1983) p 143-188.

⁹ Ibid.

¹⁰ Section 20 (1) of the Family Law Reform Act 1969, Uniform Parentage Act 2000.

In any civil proceedings in which the parentage of any person falls to be determined, the court may, either of its own motion or on an application by any party to the proceedings, give a direction

- (a) for the use of scientific tests to ascertain whether such tests show that a party to the proceedings is or is not the father or mother of that person; and
- (b) for the taking, within a period specified in the direction, of bodily samples from all or any of the following, namely, that person, any party who is alleged to be the father or mother of that person and any other party to the proceedings;

In the USA, the first State Appellate Court decision to uphold the admission of DNA evidence was in 1988¹¹ and by the mid-1990s, most American State Courts were taking DNA test results into evidence. Before the introduction of the English system of Laws into Nigeria, existing Customs and Islamic Law provided for the traditional processes of resolving paternal issues. During colonisation and afterwards, the English scientific procedures for blood testing were imprinted on the Nigerian medical environment. Also, upon the ratification of the United Nations Convention on the Rights of the Child (UNCRC) 1989 by the Nigerian government in 1991 and due to the implication of the provisions of Articles 7, 8 and 9 of the UNCRC 1989 incorporated in the Child's Right Act, specifically Section 5, 8 and 9¹², DNA testing became the most contemporary procedure for paternal proof recognised under the Nigerian Family Laws¹³ for the following reasons:

- i. In divorce, when mothers allege that the father has no right to contact, custody or visitation rights because he is not the biological parent of a child.
- ii. When women seek child maintenance from a man who denies that he is the child's father.

¹¹ Andrews v. State of Florida (1988) 533 So. 2d 841 ((Florida District of Court of Appeal).

¹² Nigeria Signed the International Treaty in 1991 and enacted same as the Child's Rights Act 2003.

¹³ This position is subject to the legislative restraints, on specifically identified forms of medical activities on persons. See, Medical and Dental Practitioners Disciplinary Committee v Okonkwo (2001) WRN, Section 11 of the Nigerian Child's Rights Act 2003, Section 8 of the English Law Reform Act 1968, Section 34 of the Nigerian 1999 Constitution.

- iii. To enable children or persons with severed family links to seek their biological backgrounds.
- iv. For persons who seek to identify one parent when the other parent is unavailable to give physical/oral evidence
- v. To assist in the identification of extremely mutilated persons who are beyond physical recognition
- vi. For determining family relations when proving inheritance rights
- vii. To determine whether twins are identical or fraternal
- viii. In circumstances when children/persons seek entry into foreign countries because the invitee is a blood relative.
- ix. For people to seek a second opinion from previously received inconclusive results.
- x. Where there is a need to establish financial or moral responsibility or settle other issues in controversy between the parents
- xi. for forensics and Investigation of crimes

The principal statute governing matrimonial proceedings in Nigeria, which is the Matrimonial Causes Act (MCA),¹⁴ does not expressly provide for DNA testing as a tool for resolving paternity issues. This legislative silence has created ambiguity, leaving the admissibility and probative value of DNA evidence to judicial discretion under the Evidence Act 2011, particularly Sections 68 and 70, which deal with expert opinions. Consequently, the treatment of DNA evidence in Nigerian courts has been inconsistent, depending largely on the disposition of judges and the willingness of parties to submit to testing.

The societal implications of paternity disputes are enormous. Allegations of infidelity, child switching, and disputed inheritance rights have increasingly led to the invocation of scientific

¹⁴ Cap M7, Laws of the Federation of Nigeria 2004.

testing.¹⁵ The media is replete with stories of men seeking DNA confirmation of children born within their marriages, reflecting growing public awareness of genetic technology.¹⁶ However, the absence of specific legal procedures governing such testing in matrimonial causes has resulted in conflicts between the right to privacy, family sanctity, and the pursuit of truth.¹⁷

The Nigerian legal system, being a hybrid of common law, statutory law, and customary principles, has struggled to integrate modern scientific methods within its evidential and procedural frameworks.¹⁸ Thus, this study seeks to explore the role, admissibility, and implications of DNA testing in resolving paternity disputes within the ambit of the Matrimonial Causes Act. It aims to evaluate whether the current legal framework adequately accommodates scientific evidence, or whether reforms are necessary to ensure justice and consistency in family law adjudication.

1.2 STATEMENT OF PROBLEM

Paternity fraud, defined as the misidentification of a child's biological father, presents profound ethical, legal, and social challenges worldwide. In Nigeria, the issue has garnered increasing attention due to its rising prevalence and far-reaching consequences for families, legal institutions, and societal norms. Recently, one of the leading DNA testing firms in Lagos showed a report which indicates that approximately 27% of paternity tests conducted in Nigeria yielded negative results, meaning that more than one in four tested men are not the biological fathers of the children they believe to be theirs.¹⁹ This statistic underscores the urgent need to

¹⁵ Metuonu I. C., 'Paternity Fraud in Nigeria, Ethical, Legal, Cultural, and Social Dimensions', *FNAS Journal of Basic and Environmental Research*, [2025] (2) (2) 101-108.

¹⁶ Smart DNA, 'Paternity test: 27% of Nigerian men not biological fathers – Report.' *Vanguard News*, <<https://www.vanguardngr.com/2024/09/paternity-test-27-of-nigerian-men-not-biological-fathers-report/TrekAfrica+2Vanguard News+2Arise Africa News+2> > accessed 12th October 2025.

¹⁷ Ibid.

¹⁸ Ojuroungbe O, 'Paternity Fraud in Nigeria: Cultural and Legal Implications' *The Guardian* (Lagos, 12 March 2024).

¹⁹ Ojuroungbe, S., 'One in four paternity tests in Nigeria returns negative — Report', *The Punch*, <<https://punchng.com/one-in-four-paternity-tests-in-nigeria-returns-negative-report/>> accessed 12th October 2025.

examine the causes and consequences of paternity fraud, as well as the legal and cultural frameworks that sustain it. The implications of paternity fraud are multifaceted. Affected men often suffer emotional distress, financial losses, and social stigma when they discover that they are not the biological fathers of children they have raised. Women implicated in paternity fraud may face legal consequences, family breakdowns, and societal ostracisation. The most affected, however, are the children, who may experience identity crises, psychological trauma, and inheritance disputes upon discovering the truth.²⁰ Despite the severity of these consequences, Nigeria's legal system lacks a clear statutory framework addressing paternity fraud, leaving affected individuals with limited recourse under general fraud or deception laws.²¹

Despite the global acceptance of DNA testing as a reliable means of determining paternity, its application in Nigerian matrimonial proceedings remains fraught with legal uncertainty. The Matrimonial Causes Act, which regulates divorce, custody, and maintenance, was enacted long before the scientific advent of DNA analysis. As such, it contains no explicit provision recognising or regulating the use of genetic testing in determining parentage.²²

This legislative gap has created several practical²³ and jurisprudential problems.²⁴ The absence of explicit legal provisions criminalising paternity fraud has led to inconsistent judicial rulings and a lack of standardised legal remedies. Additionally, cultural norms discourage open discussions and verification processes like DNA testing, as questioning paternity is often seen

²⁰ Oblong Media Unlimited, 'Paternity fraud in Nigeria: An overview', <<https://oblongmedia.net/2024/09/02/paternity-fraud-in-nigeria-an-overview/>> accessed 12th October 2025.

²¹ LawPavilion Blog, 'Is paternity fraud actionable under the law?' <<https://lawpavilion.com/blog/is-paternity-fraud-actionable-under-the-law/>> accessed 12th October 2025.

²² Tietie, F., '*Paternity fraud: Examining the legal and social implications*. Paper presented at the Nigerian Bar Association Section on Public Interest and Development Law (SPIDEL) Annual Conference, Ibadan, Nigeria, <<https://loyalnigerianlawyer.com/paternity-fraud-examining-the-legal-and-social-implications/>> accessed 12th October 2025.

²³ Ogunyemi, K., Adebayo, F., & Chinedu, P., 'Psychological effects of paternity fraud on men and children', *West African Journal of Mental Health*, [2022] 9(2), 145–163.

²⁴ Miller R and Johnson P, 'DNA Evidence in Family Law Proceedings', *International Journal of Law, Policy and the Family*, [2022] (48) 203.

as distrustful within Nigerian families.²⁵ Existing research primarily focuses on isolated aspects rather than offering a comprehensive analysis of its prevalence, causes, and impacts. The lack of clear legal frameworks and publicly accessible DNA testing facilities further complicates efforts to address the issue. This study seeks to fill these gaps by providing empirical data, examining legal and ethical implications, and assessing public perceptions to inform policy recommendations.

1.3 RESEARCH QUESTIONS

The research questions form the backbone of the research and guide the analysis throughout the chapters. To address the above problems, this study is guided by the following research questions:

- i. To what extent does the Matrimonial Causes Act provide a legal basis for the use of DNA testing in resolving paternity disputes in Nigeria?
- ii. How do Nigerian courts currently interpret and apply DNA evidence in matrimonial proceedings involving custody, maintenance, and legitimacy?
- iii. What are the major legal, ethical, and procedural challenges associated with the admissibility and enforcement of DNA testing in Nigeria?

1.4 AIM AND OBJECTIVES OF THE STUDY

The main aim of this research is to examine the role of DNA testing in resolving paternity disputes under the Matrimonial Causes Act and to determine whether the Nigerian legal framework adequately supports the application of scientific evidence in family law proceedings. To achieve this aim, the study pursues the following specific objectives:

- i. To analyse the legal framework governing matrimonial causes in Nigeria, particularly the provisions relevant to custody, legitimacy, and maintenance.

²⁵ Ibid.

- ii. To examine the evidential value of DNA testing under the Nigerian Evidence Act and its interaction with the presumption of legitimacy.
- iii. To evaluate judicial attitudes toward the use of DNA evidence in paternity disputes and identify inconsistencies in court decisions.

Through these objectives, the study seeks to establish a coherent link between science and law, ensuring that the administration of justice in family matters reflects both truth and humanity.

1.5 SIGNIFICANCE OF THE STUDY

This research holds immense significance both academically and practically. In the academic sense, it enriches the growing discourse on the intersection between law and science, particularly how advancements in biotechnology can enhance the administration of justice. It fills a notable gap in Nigerian legal scholarship by systematically examining how DNA testing interacts with matrimonial proceedings under the Matrimonial Causes Act (MCA), a statute that predates modern genetic science. Practically, the study has vital implications for law reform, judicial consistency, and family welfare. The increasing rate of paternity disputes in Nigeria, often sensationalised in the media, has exposed weaknesses in existing legal procedures. DNA testing, while scientifically conclusive, operates in a legal vacuum, with no statutory procedure guiding its application in family law. This study is timely in proposing frameworks for integrating scientific evidence into matrimonial litigation while safeguarding constitutional and ethical values.

For judges, this work provides a comprehensive legal analysis to guide judicial discretion when faced with applications for DNA testing. It discusses how courts can balance the presumption of legitimacy, privacy rights, and the best interest of the child while still ensuring truth and justice. The recommendations of this study will therefore help harmonise judicial reasoning and promote consistent case law.

For policymakers, particularly the Federal Ministry of Justice, the National Assembly, and the Nigerian Law Reform Commission, the study highlights the urgent need to review the Matrimonial Causes Act to explicitly accommodate genetic evidence. Such reforms would bring Nigerian family law in line with global standards and promote confidence in the judicial system. Furthermore, for family law practitioners, the study serves as a practical guide to the evidential requirements and ethical dilemmas of DNA testing. Lawyers engaged in divorce, custody, or maintenance proceedings will gain clarity on how to apply for, present, and challenge DNA evidence within Nigerian courts.

1.6 JUSTIFICATION OF THE STUDY

Paternity disputes have far-reaching social and economic implications. Children wrongly denied paternity lose access to maintenance, inheritance, and emotional stability. On the other hand, individuals burdened with false paternity suffer psychological and financial harm. A clear and fair legal process for DNA testing is therefore essential to protect the rights of all parties and uphold public confidence in the justice system.

Furthermore, the study is justified by the increasing public concern over paternity scandals and the moral panic associated with “DNA controversies” in Nigeria. The absence of legal clarity has led to abuse of testing, misinformation, and public humiliation. By proposing structured guidelines within the Matrimonial Causes Act, this study aims to promote responsible use of genetic evidence while preserving the dignity of families and children.

1.7 RESEARCH METHODOLOGY

The research adopts a doctrinal legal research methodology, which primarily involves a detailed analysis of statutes, case law, and scholarly writings. This approach is suitable for a study that seeks to interpret legal provisions, assess judicial practices, and recommend reforms.

The primary sources include statutory enactments and judicial decisions relevant to the topic. Chief among these are the Matrimonial Causes Act, Evidence Act 2011, the Constitution of the Federal Republic of Nigeria 1999 (as amended), Child's Rights Act 2003, and Judicial precedents from Nigerian courts that address DNA testing, legitimacy, and related evidentiary issues.

Secondary materials include textbooks, law journal articles, case commentaries, and authoritative online publications on family law, evidence, and biotechnology. Works from both Nigerian and foreign scholars are examined to provide a comparative and theoretical foundation.

1.8 SCOPE AND LIMITATION OF THE STUDY

Although DNA testing is a scientific process with near-perfect accuracy, this study is concerned only with its legal application and implications, not with the biochemical or forensic mechanisms of DNA analysis. The research does not delve into the scientific methodology of DNA extraction or testing procedures but focuses on how such scientific outcomes are interpreted and utilised in courts of law. Additionally, while the study draws lessons from foreign jurisdictions, it is mindful of the peculiar socio-legal context of Nigeria, including its religious, cultural, and ethical diversity. Hence, foreign models are used only as guides, not as templates to be adopted wholesale. A further limitation is the scarcity of Nigerian judicial precedents directly addressing DNA testing under the Matrimonial Causes Act. Many reported cases involve criminal law or child welfare proceedings rather than matrimonial causes strictly so-called.

1.9 SYNOPSIS OF CHAPTERS

This work is divided into five interrelated chapters, each addressing a specific aspect of the research problem to ensure coherence and logical progression.

Chapter One provides the background to the study, outlines the research problem, questions, aims, objectives, and methodology, and defines the scope of the study. It situates the issue of paternity disputes within the Nigerian legal and social context.

Chapter Two undertakes the conceptual clarification, theoretical framework, and literature review. It defines and analyses key concepts such as family, marriage, and paternity dispute resolution. It also explores relevant theories, including the truth and justice theory, the child welfare theory, and the privacy-autonomy theory, and examines existing literature on DNA testing and family law, both locally and internationally.

Chapter Three focuses on DNA testing in paternity disputes. It examines evidentiary principles, judicial discretion, and constitutional considerations, and analyses relevant Nigerian case law and statutory provisions.

Chapter Four undertakes a comparative analysis of how other jurisdictions, specifically the United Kingdom, South Africa, and India, regulate DNA testing in family law proceedings. It also identifies lessons for Nigeria, emphasising possible reforms and the harmonisation of law with modern science.

Chapter Five presents the summary of findings, recommendations, and conclusions. It synthesises the insights from the preceding chapters, proposes ten specific legislative and policy reforms, and concludes with reflections on the future of DNA testing in Nigerian family jurisprudence.

CHAPTER TWO

CONCEPTUAL CLARIFICATION AND THEORETICAL FRAMEWORK

2.1 CONCEPTUAL CLARIFICATION

Conceptual clarity is imperative for meaningful academic discourse. All good research proceeds from a thorough exposition and elucidation of the conceptual terminologies associated with the research topic.²⁶ This research is no exception, as it comprises several concepts that must be holistic, albeit succinctly clarified. Thus, this section is devoted to intricately analysing the concepts embedded in this research by clarifying their meaning and purpose. To begin, we will extricate the terms in this research that are recurrently used within the breadth of this work. Thereafter, we will define these terms lexically and within the context in which they are used in this research. It is intended that this definitional framework will provide a compass for navigating the subsequent expositions in this discourse. Each concept here is examined not merely for its dictionary or legal meaning, but for its implication in this work.

2.1.1 Family

There is no commonality in the concept of a family across countries. In Nigeria, without a statutory definition, social, cultural, or religious values and context determine what constitutes a family.²⁷ The family is constructed as a traditional, nuclear, or extended family, privatised and culturally defined. As the interrogation of assumptions that create a normative type of family continues, facets of family and marriage hitherto unknown continue to emerge to define their relationships.²⁸

²⁶ Bhat Ishwara, *Idea and Methods of Legal Research* (Oxford Academic 2020).
<<https://doi.org/10.1093/oso/9780199493098.001.0001> > accessed 16th October 2025.

²⁷ Itse Sagay, *Nigerian Family Law: Principles, Cases, Statutes and Commentaries*, First Edition.

²⁸ Margaret Chinyere Onokah, *Family Law*, Spectrum Books Limited, 2007 Edition.

The word family has a wide/loose and narrow/strict meaning. Loosely, some may refer to a non-blood relation as a family. For example, two Nigerians who are not blood-related, finding themselves in a foreign land, may regard themselves as family. The family has both a sociological and a legal connotation. Sociologists construct families with paradigms of symbolic interaction and functionalism. By this token, the individual's view of themselves as family plays a dominant role in the understanding of 'family.' To define their relationship, people associate with connections and emotional ties, such as living with students, friends, or flatmates.²⁹

Functionalist perception construes families in the light of the roles they perform for society internally (for the family itself) and externally (for society). The critical roles are physical, emotional, spiritual, and psychological.³⁰ Moreover, social well-being represents a core significance of family in any society. Parents provide nurture and socialisation for the children, and as they grow into adulthood, these children may take on the same role of caring towards their parents. The family provides the sociological role of caring, nurturing, supporting, teaching, and enforcing family and community values.³¹ The family of orientation and the family of procreation are significant to the individual's growth and happiness, and traditional Nigerian society cherishes them. Family provides a stable environment for children, as opposed to cohabitation.³² It provides a mutually supportive environment for parties and their kin.³³ Moreover, it enables role specialisation without risk, in that party cooperation and sharing of roles and responsibilities encourage mutual family life.³⁴

²⁹ Ibid.

³⁰ H.D. Krause and D.D. Meyer, 'What Family for the 21st Century?' *The American Journal of Comparative Law*, [2002] (50) 101-120.

³¹ *Fitzgerald v Sterling Housing Association* (1999) Unreported H.L. Considering the Housing Act 1988, the House of Lords held that a gay man was family to his deceased partner and entitled to succeed to the tenancy. Compare *Harrogate BC v Simpson* (1986) 2 FLR 91 C.A. Lesbian claimed to be a 'family' under the Housing Act 1980.

³² R. Probert, 'Cohabitation: Current Legal Solutions', *Current Legal Solutions* [2009] (316); K. Kiernan 'Unmarried Cohabitation and Parenthood in Britain and Europe' *Legal Policy* [2004] (16) (1) 33-55.

³³ M. Maclean and J. Eekelaar, 'The Obligations and Expectations of Couples within Families: Three Decades of Interaction', *Journal of Social Welfare and Family Law* [2004] 26.

³⁴ Ibid.

Unlike the fluidity of definition, the family composition is more specific, comprising husband, wife, and children in a nuclear setting. Again, this may be relative to the purpose of the definition. Olawoye noted that the word family, for 'family property' in Yoruba land, includes only the children entitled to inherit and excludes the wife of a deceased person. In 2010, research at the American State University of Indiana concluded that 98.8 % accepted that the husband, wife, and children were family, while 92% agreed that the husband and wife without children were family.³⁵ Family is, in one sense, all blood relations descended from a common ancestor, and in another sense, it includes all members of the same household made up of husband, wife, children, servants, and all those upon the death of the partner. The Court dismissed the claim lodged in the home.³⁶ Therefore, the essence has been captured that while it is easy for individuals to list their family members, a comprehensive definition may be difficult.³⁷

Family is a culturally subjective concept. Despite the social construct of 'family', Nigerian law still delineates 'family' by blood, marriage, and adoption.³⁸ The scope of the family is evident in traditional delineations of consanguinity and affinity, from which a person is prohibited from marrying. The family is central to Nigerian life and social relations. All issues of significance

³⁵ Romilly, M.R. in *Re Tyrry's Will* (1854), 19 Beav, 580 at 581 which held that family in the construction of wills means children. Words and Phrases Legally Defined states "'Family' when looked at as an object of a power, means anybody with blood relationship and is not confined to those nearest of kin or the statutory next of kin of the testator." Sir George Jessel, M.R. in *Pigg v. Clarke* said: "The word "family" has various meanings. In one sense it means the whole household, including servants, and, perhaps, lodgers. In another sense it means everybody descended from a common stock, that is to say, all blood relations... In a third sense, the word includes children only; thus when a man speaks of his wife and family, he means his wife and children. Now, every word which has more than one meaning has a primary meaning; and if it has a primary meaning, you want a context to find another. What, then, is the primary meaning of "family" It is "children"; that is clear upon the authorities which have been cited; and, independently of them, I should have come to the same conclusion." If, then, "family" prima facie means "children", and "children" prima facie means legitimate children, "family" means legitimate family unless the context indicates the contrary." *Makein v. Makein*, (1955) 1 All E.R. 57, per Harman, J., at page 62.

³⁶ Gillian Douglas and Nigel V. Lowe, *Bromley's Family Law* 12 edition.

³⁷ R. Probert & M. Harding, *'Cretney & Probert's Family Law'* (London, Sweet & Maxwell, 2018). p.1.

³⁸ Even in liberal Western societies, the government is still careful to include only certain parties in this group. For example, the U.S. Census Bureau defines family as a group of 2 people or more (one of whom is the holder) related by birth, marriage, or adoption and residing together.

in life, including birth, marriage, burial, medical treatment, and religious persuasions, are tied to family decisions, influence, or approval.

Africans construe the family widely to include common ancestors.³⁹ In Nigerian customary laws, families are those related by blood or marriage. In this connotation, a husband and wife are family. However, in succession, a relationship by marriage will not count as a family to entitle the wife to an inheritance in the husband's property. This construction will generally apply to nuclear and extended families. Obligations flow from nuclear and extended family members depending on the issues. For example, in questions of marriage and burial, all those in the bracket of blood relations are expected to play a role. Some communities also leave significant roles for in-laws, such as purchasing the casket for burying the father-in-law.

According to section 277 of the CRA, 'family,' concerning a child, includes a person who has parental responsibility for the child and a person with whom the child is living or has been living. Oputa JSC in *Chinweze v Masi*⁴⁰ noted:

A man's family consists typically of the man, his wife (under monogamous marriage), or wives (if it is a marriage under the customary law), and the children born to him by such wife and wives. In the instant case, whether it is a monogamous or polygamous marriage, the appellants, having been born after the death of Peter Chinweze, were therefore not his natural sons, for it is contrary to the course of nature for a dead man to produce children. Furthermore, they were not his adopted or 'acknowledged' children and thus legitimised under the rule in *Alake v Pratt* and *Bamgbose v Daniel*.... The plaintiffs/appellants, who are not children of Chinweze, are excluded from the succession.

³⁹ SNC Obi, *Modern Family Law in Southern Nigeria* (London, Sweet & Maxwell, 1966); PC Lloyd, *Yoruba Land Law* (Oxford University Press, London: 1963).

⁴⁰ [1989] 1NWLR (pt.97) 254. In *Oloba v Akereja* (1988) 7 SCNJ (Pt.1) 56, Obaseki, JSC defined a "family" in the Nigerian context to include "blood relations in its widest connotation even to the 100th degree or relationship by marriage." See also *Chukwu v Okoh* [2016] LPELR- 42117 (CA). See also, Sheila Bone *Osborn's Concise Law*

2.1.2 Marriage

The Marriage institution is a universal institution because it exists in all societies, though its conception and consequences may differ. In most societies, marriage was the acceptable mode for families to emerge. While this remains true of sub-Saharan Africa, it is no longer the case in the Western world, as the changes in the identities and the legalisation of unions outside the traditional heterosexual construct of man and woman have created different modes of family formation. The emergence of same sex and other unions, like civil partnerships, creates a family devoid of the natural procreative abilities between the parties.⁴¹

Marriage is both a social and legal institution.⁴² Marriage is an open secret because the law regulates its celebration to create a private relationship. The values a society attaches to marriage determine its status and consequent regulation. For example, in 18th-century England, marriage was a religious institution governed exclusively by the Canon Law of the Roman Catholic Church. Before colonisation in Nigeria, society's central values were determined by indigenous customs and traditions, from which marriage practices proceeded.

Marriage in Nigeria may be described as a heterosexual union, monogamous or polygamous, celebrated by the laws of Nigeria or any other country that relates to heterosexual unions as *lex loci celebrations* of the marriage.⁴³ Marriage is intended to last for the lifetime of the parties and confer rights and obligations between them, as well as privileges exclusive to marriage under the law.⁴⁴

The rights and obligations of marriage flow from global treaties on marriage and domestic laws in Nigeria. They convey the idea that marriage should be a cherished institution that provides

⁴¹ Ibid.

⁴² Cretney Stephen Michael, *Principles of Family Law*, Third Edition, Sweet and Maxwell Publishing.

⁴³ Fidelis Nwadialo, *Modern Nigerian Law of Evidence*, Second Edition, 1999.

⁴⁴ Itse Sagay, *Nigerian Family Law: Principles, Cases, Statutes and Commentaries*, First Edition.

mutual respect for the parties' rights and responsibilities to each other and their children (if any) without discrimination as to gender, with the right to freely enter and leave as the need arises and equal access to succession in the event of death.⁴⁵

The marriages in Nigeria may be grouped under two systems: monogamous and polygamous.⁴⁶ By Section 18, Interpretation Act 1964, a monogamous marriage is a marriage recognised by the law of the place where it is contracted as the voluntary union of one man and one woman to the exclusion of others during the continuance of the marriage. The monogamous union is recognised under the Nigerian Marriage Act 1914 and is popularly called statutory marriage or Act marriage.⁴⁷

2.1.3 Child

The concept of the Nigerian child is quite nebulous. This is because Nigeria adopts a plural legal system, comprising both statutory and customary law rules, with different interpretations of a child, inter se and intra se. Thus, the concept of childhood in Nigeria is dependent on the content of an enactment or judicial interpretation on one hand, and on the other, the customary law interpretation of the area under consideration.⁴⁸

A Child is a person who has not yet reached the age of adulthood, whether natural, cultural or legal.⁴⁹ There are conflicting statutory and judicial decisions on the actual age of a child. For example, the Children and Young Persons Act defines a Child as under the age of 14 years; the case of *Febisola Okwueze v Paul Okwueze*⁵⁰ Uwais JSC ruled that custody would not be granted

⁴⁵ Margaret Chinyere Onokah, *Family Law*, Spectrum Books Limited, 2007 Edition.

⁴⁶ *Chukwuma v Chukwuma* [1996] 1. NWLR (pt. 426) 543 CA; Niki Tobi, *Sources of Nigerian Law* (1966, MIJ Professional Publishers, Lagos) 153-166.

⁴⁷ Ibid.

⁴⁸ Michael Akpa Ajanwachuku, 'The Nigerian Child and the Right to Participation: A Peep through the Window of the Best Interest Clause of the Child's Right Act, 2017', *Beijing Law Review*, (8) (2), < <https://www.scirp.org/journal/paperinformation?paperid=76932>. > accessed 18th October 2025.

⁴⁹ Black's Law Dictionary 9th Edition.

⁵⁰ *Febisola Okwueze v Paul Okwueze* (1989) 3 NWLR Part 109 Page 321

to a Child who has attained the age of 16 years. In the Matrimonial Causes Act, Courts are empowered judicially to grant custody of a Child below 21 years.⁵¹

Recent legislation, such as the Child Rights Act 2003⁵², the Child Rights Act (Enforcement Procedure Rules 2015),⁵³ defines a Child as a person under the age of 18 years. This is also similar to the Interpretation Section of the Administration of Criminal Justice Law of Lagos State 2021, as amended,⁵⁴ and the Interpretation Section of the Administration of Criminal Justice Act 2015.⁵⁵

Court decisions had relied on the Criminal Procedure Act⁵⁶ and the Evidence Act 2011 as amended⁵⁷ in defining who a child is. In the *State v Njoko Obia*⁵⁸ and *Okon v State*,⁵⁹ Courts have described a Child as a Person above the age of 7 but has not attained the age of 14. The Court has two duties in determining whether a child can be on oath or affirmation before becoming a competent witness. Firstly, it is to determine whether the Child possesses sufficient intelligence, and secondly is whether the child is capable of understanding the nature and implications of an oath.⁶⁰ The Nigerian Constitution imposes a non-actionable obligation to adequately protect a child from exploitation, moral and material neglect.⁶¹

Although there is no standard definition of the child's best interest, it merely means the term that courts undertake when deciding custody of a child. Best interest determinations are generally

⁵¹ The Matrimonial Causes Act CAP M 7 Laws of Federation 2004, Section 71 (1)

⁵² Child Rights Act 2003 Cap C50 Laws of Federation 2004

⁵³ The Child Rights Act (Enforcement Procedure Rules 2015), order 31, Interpretation Section

⁵⁴ Administration of Criminal Justice Law of Lagos State 2021 as amended, Chapter 29 Interpretation Section.

⁵⁵ Administration of Criminal Justice Act 2015, section 494 (1).

⁵⁶ The Criminal Procedure Act, section 2.

⁵⁷ The Evidence Act 2011 as amended, section 183 (1) and 155 (1).

⁵⁸ *State v Njoko Obia* (4) E.C.S.L.R 67.

⁵⁹ *Okon v State* (1988) 1 NWLR 172.

⁶⁰ Fidelis Nwadialo, '*Modern Nigerian Law of Evidence*', Second Edition, 1999, ISBN 978-017-043-X

⁶¹ The Constitution of the Federal Republic of Nigeria 1999 as amended, LFN 2004, Section 17 (3) (f).

made by considering several factors related to the child's circumstances and the parent's or caregivers' circumstances.

The Black's Law Dictionary²⁴ defines the best interest as when a party is delegated to take the best action for another party in the current situation. Child's best interest means that all custody and visitation discussions and decisions are made to foster and encourage the child's happiness, security, mental health, and emotional development until young adulthood.⁶²

Best interest or the child's best interest is a child's right principle, which is derived from the U.N. Convention on the Rights of the Child, Article 3.⁶³ Putting the child's best interest means considering the child before a decision affecting his/her life is made. There is no precise definition of the phrase 'interest of a child' either in the Matrimonial Causes Act or elsewhere.⁶⁴

The fact was emphasised in the case of *Odogwu v. Odogwu*⁶⁵, where Belgore J.S.C. opined that the phrase is not limited to material provisions but includes those things that will assist the psychological, physical and moral development of the child, something that would promote the happiness and security which a child of tender years requires. The interest of children envisaged under Section 71 Matrimonial Causes Act embodies several factors that depend on the peculiar circumstances of each case.

The major legislation that protects a child in Nigeria is the Child's Rights Act of 2003. This act was enacted by the National Assembly in 2003 to provide for and protect the rights of every Nigerian child. It provides that the best interest of a child should be paramount in all actions that concern a child. This Act was enacted to give full effect to the provisions of the United

⁶² Ilodibe Stephen Ifenna, Chimeziri Nneoma Gift, *'Review of the best interest of a Child's Custody in Nigeria'*,

⁶³ United Nations Convention on Right of the Child, Article 3.

⁶⁴ Osawaru David Iyasere, *'Divorce and Child Custody: the Legal Perspective, a Case Study in Nigeria'*, 2019, Academia Online Publishing.

⁶⁵ *Odogwu v Odogwu* (1992) LLJR- SC.

Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of a Child. Part II and Part III of the Act deal with the Rights and Responsibilities of a Child, and the Protection of the Rights of a Child.⁶⁶

2.1.4 Child Custody

Legal Custody refers to the long-term parenting of the child. The parent with legal custody is responsible for deciding major issues that concern the life of the child, issues such as education, medical arrangements and religion.⁶⁷ There are also situations where both parents bear “joint legal custody” of the child, where both parents are actively involved in the legal custody of the child; in other words, both parents bear the responsibilities involved.⁶⁸

According to Onokah, the general law on custody of children of statutory marriages is akin to English law, upon which it is based. The statutory provision for such custody cases is now contained in the Matrimonial Causes Act 1970⁶⁹, following which doubts were expressed by Cotran about whether the Nigerian Courts would refrain from referring to English decisions. Section 71 (1) has no application whatever in respect of custody disputes of children of customary law marriages. Here again, the Nigerian Legislature missed a very good opportunity to provide a uniform federal law on the custody of every Nigerian Child.⁷⁰ The Section provides as follows: “in proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage, the court shall regard the interests of those children as the

⁶⁶ Oyetola Muyiwa Atoyebi, ‘*An Overview Legal Rights of a Child in Nigeria*’, 2023, Law pavilion, <<https://lawpavilion.com/blog/an-overview-legal-rights-of-a-child-in-nigeria/>> accessed 18th October 2025.

⁶⁷ Eseroghese Joshua Oyitso, ‘Child Custody in Nigeria Guiding Principle and Considerations’, Research Gate Online Publishing.

⁶⁸ Osawaru David Iyasere, ‘*Divorce and Child Custody: the Legal Perspective, a Case Study in Nigeria*’, 2019 <<http://https://www.academia.eu> > accessed 18th October 2025.

⁶⁹ Matrimonial Causes Act 1970, section 71 (1).

⁷⁰ Margaret Chinyere Onokah, ‘*Family Law*’, Spectrum Books Limited, 2007.

paramount consideration and subject thereto, the court may make such order in respect of those matters as it thinks proper”.⁷¹

In *Nzelu v Nzelu*,⁷² the court made it clear that the principle guiding the award of custody under the Marriage Act is a paramount consideration for the welfare of the child or children of the family in the surrounding circumstances of the case. The court further decided that the guideline is not a punishment for the guilty party or a reward for good conduct.

In deciding custody cases under this welfare principle, the courts take into consideration the age, sex, personal preferences of the child, the arrangement made by either party to the marriage for the upbringing and education of the children, the children’s social background, the need to keep them together, the moral welfare of the children and the financial position of the parties.⁷³

In *Buwanhot v Buwanhot*⁷⁴, the Court of Appeal held that the welfare of the child of a marriage, in terms of their peace of mind, happiness, education and co-existence, is the prime consideration in granting custody. In *Oduote v Oduote*⁷⁵, the Court stated that the interest of the Child would include the welfare, education, security and overall well-being and development.

It is a trite law that primary consideration for the grant and custody is the interest and welfare of the Child. This is the position of the Child Rights Act⁷⁶ and the Matrimonial Causes Act.⁷⁷ If it can be proved that it is not in the best interest of the Child for custody to be granted to a party, the Court will consider such opinion and arguments before reaching its own decision. The

⁷¹ The Matrimonial Causes Act 1970 LFN 2004, section 71 (1).

⁷² *Nzelu v Nzelu* (1997) 3 NWLR 472.

⁷³ Margaret Chinyere Onokah, *‘Family Law’*, Spectrum Books Limited, 2007.

⁷⁴ *Buwanhot v Buwanhot* (2011) FWLR Part 566 Page 552 at 563 Paragraph A.

⁷⁵ *Oduote v Oduote* (2012) 3 NWLR Part 1288 Page 478 at 437.

⁷⁶ Child’s Right Act 2003, section 69.

⁷⁷ Matrimonial Causes Act 1970, section 71.

evidence provided determines the outcome.⁷⁸ When it comes to child custody, the burden of proof is on both the defendant and the plaintiff to prove and convince the Court in the best interest of the child's future.

A party seeking custody may be able to obtain custody if he or she can prove that he or she can provide a sound education and provide for the physical and mental well-being of the child. He must also, to an extent, prove that the other party will or may deny the child these three factors.⁷⁹

The Court of Appeal in *Alabi v Alabi*⁸⁰ went further and held in a ruling and opinion of Agube J.C.A., stated the following considerations inter alia, the key in determining who should have custody:

This certain relevant criteria must be considered in the determination of the welfare of the child as in this case and they include: the degree of familiarity of the child with each of the parents (parties), the amount of affection by the child for each of the parent and vice versa, the respective incomes of the parties, education of child, the fact that one of the parties now lives with a third party as either a man or a woman, and the fact that in the case of children of tender age custody should normally be awarded to the mother unless other considerations make it undesirable.

The financial capabilities of any of the parties are not the only criteria for the court to consider, as stated in the case of *Alabi supra*, the court must be mindful when considering the evidence placed before it to utilise its discretion judiciously and judicially.⁸¹

It is also a trite law that the conduct of a party claiming custody is a major consideration. In the obiter of Obaseki J.S.C held in *Williams* that the welfare of an infant, although the first and

⁷⁸ Eseroghese Joshua Oyitso, '*Child Custody in Nigeria Guiding Principle and Considerations*', <<http://www.google.com>> accessed 16th October 2025.

⁷⁹ Eseroghese Joshua Oyitso, '*Child Custody in Nigeria Guiding Principle and Considerations*' <<http://www.google.com>> accessed 16th October 2025.

⁸⁰ *Alabi v Alabi* (2007) 9 NWLR (Part 1039) 297 at Pg. 347-348 Paragraph G-A

⁸¹ Eseroghese Joshua Oyitso, '*Child Custody in Nigeria Guiding Principle and Considerations*' <<http://www.google.com>> accessed 16th October 2025.

paramount consideration, is not the sole consideration and the conduct of the parties is a matter to be taken into account". Also, Courts have held that there is no settled law that a child of tender age or a female must be in the custody of the mother.

In *Odogwu v Odogwu*,⁸² in the case where the female infant is 2 years old, Belgore J.S.C. at 560 at paras D-E held that:

If the parents are separated and the child is of tender age, it is presumed that the child will be happier with the mother and no order will be made against this presumption unless it is abundantly clear that the contrary is the situation – e.g. immorality of the mother, infectious diseases on the mother, insanity or cruelty to the child. These are the matters to be tried." The honourable Judge referred cases such as *Ojo v Ojo*⁸³ and *Apara v Apara*.⁸⁴

Courts have also considered custody of a child born out of wedlock. In *Muojekwu v Ejikeme*⁸⁵, the Court of Appeal gave a guiding principle on the custody of a child born out of wedlock. It was held in the above case that:

The Custody of any child born out of wedlock follows that of the mother in the absence of any person claiming custody of the child based on being the natural father. This must be so since the child must belong to a family and should not be rendered homeless for a situation he did not create

Under the MCA, if a party is denied custody, the Courts may grant the party visitation rights to the child. The Matrimonial Causes Act provides that:

Where the court makes an order placing a child of a marriage in the custody of a party to the marriage, or of a person other than a party to the marriage, it may include in the order such provision as it thinks proper for access to the child by the other party to the marriage, or by the parties or a party to the marriage, as the case may be⁸⁶

⁸² *Odogwu v Odogwu* (1992) 2 NWLR (Pt. 225) 539.

⁸³ *Ojo v Ojo* (1969) 1 All NLR 434

⁸⁴ *Apara v Apara* (1968) 1 ALLNLR 241

⁸⁵ *Muojekwu v Ejikeme* (2000) 5 NWLR (Pt. 657) 402 at Page 426 Paras A-B

⁸⁶ Matrimonial Causes Act Cap M7 Laws of Federation 2004, Section 71 (4)

A Mother can claim Child Custody under relevant Statutory Provisions and Conventions. For example, the Constitution of the Federal Republic of Nigeria 1999 As Amended⁸⁷, the Child's Right Law of Lagos State 2007⁸⁸, The Family Court of Lagos State (Civil Procedure) Rules 2012⁸⁹, The Universal Declaration of Human Rights⁹⁰, and the Convention on the Elimination of all Forms of discrimination against women.⁹¹ Where both parties claiming custody are unfit to be granted custody, the court may grant custody to another person other than the party to the marriage.⁹²

2.1.5 Paternity Dispute Resolution

Paternity dispute resolution refers to the legal and evidentiary process of determining the biological or legal father of a child.⁹³ Such disputes often arise in contexts where the legitimacy of a child is questioned, especially during divorce, separation, or maintenance proceedings.⁹⁴ Traditionally, paternity was presumed based on marriage or acknowledgement by the father. Under customary law, a man's acceptance of a child as his own, known as acknowledgement of paternity, was sufficient to establish legal fatherhood, even in the absence of biological proof.⁹⁵

However, with modernisation and the increased accessibility of scientific testing, DNA analysis has emerged as the most reliable method for confirming biological paternity.⁹⁶ Under the Evidence Act 2011, DNA testing falls under expert evidence admissible under Sections 68 and

⁸⁷ Constitution of the Federal Republic of Nigeria 1999 as amended, Section 38(1), 42 (1) (A) - (B) And (2)

⁸⁸ Child's Right Law of Lagos State, Section 37 (2) and (8) (D)

⁸⁹ The Family Court of Lagos State (Civil Procedure) Rules 2012, Order 13 Rule 1 (A), Rule 2 (2) (A) and (7) (B)

⁹⁰ The Universal Declaration of Human Rights, Article 7 And 18

⁹¹ The Convention on the Elimination Of all Forms of discrimination against women, Article 1, 2(D) and (F).

⁹² Matrimonial Causes Act Cap M7 Laws of Federation 2004, Section 71 (3).

⁹³ Oblong Media Unlimited. (2024, September 2). Paternity fraud in Nigeria: An overview, <<https://oblongmedia.net/2024/09/02/paternity-fraud-in-nigeria-an-overview/>> accessed 17th October 2025.

⁹⁴ Anderson E and Ross M, 'The Psychological Impact of Paternity Disputes', *Journal of Family Psychology* (2020) 34 415.

⁹⁵ Ibid.

⁹⁶ Anderson, B., & Ross, M., 'The impact of paternity fraud on families: A psychological analysis', *Journal of Family Psychology*, (2020) (34) (3) 214-230.

76, which permit opinions from persons specially skilled in science or medicine. Nigerian courts have gradually recognised DNA testing as reliable, although its use remains discretionary. Cases such as *Nwosu v Nwosu*⁹⁷ illustrate how courts navigate the tension between scientific accuracy and the sanctity of marriage. In some instances, courts have refused to compel DNA testing where it might destabilise the family, prioritising social harmony over biological truth.

The process of resolving paternity disputes typically involves the following steps: (a) an allegation or denial of paternity, (b) a court order or application for scientific testing, (c) presentation of expert evidence, and (d) judicial determination based on a balance of probabilities. The guiding principle in all cases remains the best interest of the child, as enshrined in Section 1 of the Child's Rights Act 2003. This ensures that scientific determinations do not jeopardise the welfare or emotional stability of the child.⁹⁸

Modern paternity dispute resolution under the Matrimonial Causes Act, therefore, operates at the intersection of law, morality, and science.⁹⁹ DNA testing has transformed the evidentiary landscape, providing precision where traditional presumptions once prevailed. Yet, the legal system must continue to evolve to harmonise scientific truth with human dignity and family stability.¹⁰⁰

2.2 THEORETICAL FRAMEWORK

Every legal inquiry is grounded in certain philosophical and theoretical principles that shape judicial reasoning and legislative policy. The resolution of paternity disputes through DNA testing under the Matrimonial Causes Act engages various theories of law, morality, and social

⁹⁷ (2012) 8 NWLR (Pt. 1301).

⁹⁸ Miller R and Johnson P, 'DNA Evidence in Family Law Proceedings', *International Journal of Law, Policy and the Family* [2022] (48) 203.

⁹⁹ Ilodibe Stephen Ifenna, Chimeziri Nneoma Gift, 'Review of the best interest of a Child's Custody in Nigeria', 2020, *International Journal of Advanced Research*, 8 (08), 358- 376, ISSN 2320- 540.

¹⁰⁰ Michael Akpa Ajanwachuku, 'The Nigerian Child and the Right to Participation: A Peep through the Window of the Best Interest Clause of the Child's Right Act, 2017, *Beijing Law Review*, Vol. 8 No. 2.

policy. This section examines three principal frameworks relevant to the study which are, Legal Positivism, Sociological Theory of Law, and the Best Interest of the Child Principle.

2.2.1 Legal Positivism

Legal positivism posits that law derives its authority from its sources rather than from its moral content. The theory, championed by scholars like John Austin, H.L.A. Hart, and Hans Kelsen, emphasises that the validity of law depends on whether it emanates from a recognised sovereign authority, not on its ethical or social desirability. Austin’s definition of law as “a command of the sovereign backed by sanction” underscores this perspective. Applied to DNA testing and paternity determination, legal positivism demands that such procedures must find their legal justification within existing statutory provisions, such as the Matrimonial Causes Act and the Evidence Act 2011. If the law does not expressly provide for the use of DNA testing, then courts can only rely on implied principles or discretionary powers. This theoretical stance highlights the rigidity of legal interpretation in contexts where science advances faster than statutory reform. In the Nigerian setting, positivism explains why courts have sometimes hesitated to compel DNA testing without express legislative authorisation. Judges, bound by the doctrine of separation of powers, cannot create law but only interpret it. Consequently, positivism underscores the need for legislative amendment to formally recognise DNA testing as a valid evidentiary tool in family proceedings. Moreover, legal positivism aligns with the procedural safeguards of the Evidence Act 2011, which insists on due process in the admission of expert testimony. Thus, while positivism may appear conservative, it ensures legal certainty and protects individuals from arbitrary interference in private and family life.

2.2.2 Sociological Theory of Law

The sociological theory of law, advanced by scholars like Roscoe Pound and Eugen Ehrlich, views law as a social institution designed to respond to the needs, values, and realities of the

society it governs. Pound's concept of "law as a tool of social engineering" posits that law should balance competing interests to promote order, stability, and justice.

In the context of paternity disputes, the sociological approach recognises that law must adapt to societal transformations, including technological and scientific developments such as DNA testing. The traditional reliance on presumptions of legitimacy or acknowledgement under customary law may no longer meet the expectations of a modern, scientifically aware populace.

Sociological jurisprudence thus advocates for the integration of scientific evidence within family law to promote social justice and factual accuracy. Nigerian courts, operating in a pluralistic legal environment, must navigate between traditional norms and contemporary scientific standards. For instance, while customary law emphasises communal acknowledgement, sociological theory would argue that biological truth, verifiable through DNA testing, better serves justice in an era of globalisation and human rights consciousness.

Furthermore, sociological theory justifies judicial activism in filling legislative gaps. Where statutes like the Matrimonial Causes Act are silent, judges may interpret provisions purposively to align with current social realities. This approach explains the evolving judicial attitudes toward DNA evidence in Nigeria from initial scepticism to cautious acceptance, as courts strive to ensure that justice reflects both moral and factual realities.

Ultimately, the sociological theory underscores that law must evolve alongside society. As family structures, technology, and ethical values change, so too must the mechanisms for resolving disputes that affect the very core of human relationships.

2.2.3 The Best Interest of the Child Principle

The Best Interest of the Child Principle is a cornerstone of family law and an essential theoretical framework for resolving paternity disputes. It is codified in Section 1 of the Child's Rights Act

2003, which mandates that in all actions concerning children, whether undertaken by courts or administrative bodies, the best interest of the child shall be the primary consideration. This principle, rooted in Article 3 of the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child, emphasises that decisions involving children must prioritise their welfare, stability, and psychological well-being. In the context of DNA testing, the best interest principle demands a careful balancing act.

On one hand, establishing biological truth may secure the child's right to identity, inheritance, and proper parental support. On the other hand, compulsory DNA testing can destabilise family relationships or expose the child to emotional harm. Courts must therefore evaluate whether ordering a DNA test serves the child's best interest in each particular case.

2.3 CONCLUSION

This chapter has examined the foundational concepts of family, marriage, and paternity dispute resolution, situating them within Nigerian and comparative legal contexts. It has also analysed relevant theoretical frameworks, which are legal positivism, sociological theory, and the best interest of the child principle, which collectively inform the role of DNA testing in matrimonial disputes. The literature review revealed significant scholarly debate on the admissibility and ethical implications of DNA testing. The chapter concludes that while DNA testing offers scientific precision, its legal integration under the Matrimonial Causes Act remains incomplete, warranting reform to align law with modern realities and child-centred justice.

CHAPTER THREE

DNA TESTING IN PATERNITY DISPUTES IN NIGERIA

3.1 INTRODUCTION

The determination of paternity has historically posed complex challenges in family law. Before the advent of modern science, courts and communities relied on presumptions of legitimacy and social acknowledgement to establish fatherhood. However, as technology advanced, DNA testing emerged as a scientific and highly accurate method for establishing biological relationships. In Nigeria, the issue of paternity is not merely biological but also legal, touching upon rights to maintenance, inheritance, legitimacy, and custody under the Matrimonial Causes Act (MCA). This chapter examines the legal framework governing DNA testing in Nigeria and explores judicial attitudes toward its admissibility and evidential weight in matrimonial proceedings. It highlights the interplay between statutory law, judicial discretion, and evolving social values, particularly within the context of the Nigerian Matrimonial Causes Act 1970 and the Evidence Act 2011.

3.2 DNA TESTING IN PATERNITY DISPUTES IN NIGERIA

Issues involving child paternity in Nigeria were previously covered by the provisions of the CYPL¹⁰¹ as enforceable in the Juvenile Courts¹⁰². As earlier stated, in 2003, the Nigerian government enacted the Nigerian Child's Right Act, which proposed the establishment of Family Courts in the various States. The 2003¹⁰³ Law provided that;

"In any civil proceedings in which the paternity or maternity of a person fails to be determined by the court bearing the proceedings,

¹⁰¹ Sections 26(1) of the Children and Young Persons Amendment Act 1965 allows the court to determine the paternity disputes in any manner as it deems fit. See the decision in *Ernest Aiyabo & Ors v family welfare Officer & Ors* Suit No LD/46/A/70 on the relevance of the evidence admissions of the mother of paternity fraud and the use of blood tests to decide paternity.

¹⁰² The CYPL as received from the English Regime and as re-enacted in 1943,1945,1947,1950 and 1955 provided for the creation of Juvenile Courts.

¹⁰³ Sections 63 of the Nigerian Childs Rights Act 2003.

the court may, on application by a party to the proceedings, give a direction for –

- a. the use of scientific tests, including blood tests and deoxyribonucleic Acid tests, to ascertain whether the tests show a party to the proceedings is or is not the father or mother of that person; and
- b. for the taking within a period to be specified in the direction of blood sample or other samples from that person, the mother of that person, the father of that person and any party alleged to be the father or mother of that person or from any of those persons.

The above provisions, with emphasis on the highlighted words, empowered the Nigerian courts to order DNA testing only when all other means of proof have failed to determine paternity. The quoted section above invariably proscribes the judicial use of DNA testing in resolving paternity disputes, unless there is a formal application from any of the parties to resort to that option. The procedure may also be allowed by the courts, only in the absence of any other circumstances that will prejudice the rights of the child.

3.2.1 DNA Procedure in Respect of the Child of an Existing Marriage

It is the presumption of the Laws¹⁰⁴ that any child born in a marriage or within a specified time after the dissolution of the same is the child of the husband.¹⁰⁵ The Nigerian Courts are enabled to decide the paternal fate of a child of an existing marriage in any way that guarantees the best interest of the child¹⁰⁶. Independent of an application for divorce and notwithstanding the result of the scientific or unscientific proof of paternity¹⁰⁷, a Nigerian Court reserves the discretion to award a child to a father, which it considers as willing to serve the interest of the child better. The Courts, in a bid to uphold the stability of the family unit, often juxtapose the advantage of holding up the welfare of the child, with the right of such a child to know its real identity²⁴.

¹⁰⁴ Section 5, 205 and 165 of the Evidence Act 2011,

¹⁰⁵ Section 69 and 84 of the Matrimonial Causes Act Cap M7 LFN 2004

¹⁰⁶ Section 4, Part 1. Nigerian Childs Rights Act Chapter C 50

¹⁰⁷ A father may be adjudged to be the Legal father of the child as against the biological father. See Section 75 Evidence Act

Although aware of the right of the child to his/her full identity, the Court may refrain from making an order for DNA when;

a. Such a dispute is due to a claim by a third party to a marriage, for a child conceived before. But given birth to during the marriage, such a claim is made by a third party to a marriage, but against the wishes of the married partners in union where the child is born. In *Tony Anozia v Mrs Patricia Okwunva Nnani & Ors*¹⁰⁸.

The court held that it was morally scandalous for the appellant to apply for a DNA test to proclaim that he was the father of a 57-year-old man who had grown up in another home and who had never once requested proof of paternity.

b. An acclaimed biological father applies for an order in respect of an adopted child.

c. Issues arise with the identity of Children from Assisted Reproductive Techniques.¹⁰⁹

3.2.2 Application of DNA as a Means of Proof in Matrimonial Causes

The Nigerian Courts are bound to do justice in the appropriation of responsibilities and duties between divorcing parents.¹¹⁰ The courts, in order not to bind a man to a child that was never his, will readily grant an Application for a DNA test to decide on the claim of non-paternity.

In *Gbadamosi v Kabo Travel Ltd*,¹¹¹ the Court of Appeal encouraged the use of DNA when appropriate, when it held that judges are required to keep abreast of time and not to live in complete oblivion of happenings around them. They are to keep pace with the times.

¹⁰⁸ CA/OW/29/2013; LN-e-LR/2015/20 (CA)

¹⁰⁹ See the Decision in *Re Baby M*, *Family Law Reporter*, 14 (1988) 2010 (NJ. Sup. Ct 1988). Although cases on ART are still foreign to the Nigerian Courts

¹¹⁰ Sections 69-74 of the MC.A C.AP N7 LFN 2004, 2004, *Article 18(2)* OAU Charter 1990

¹¹¹ (2000) 8 NWLR (pt. 668) 248 at 288.

3.2.3 Application of the DNA Procedure in Disputes between Unmarried Persons.

In disputes between the supposed parents of a child,¹¹² the prevailing consideration is the welfare of the child, i.e maintenance and care of the child¹¹³. Sections 63 to 67 of the Child Rights Act put the courts in the best position to do justice, relying on the existing proof and facts of the case. Unlike where the court is very protective of the existing union for the security of the child, the lack of any familial relationship between the parties makes the Court more disposed to granting an order for the use of DNA. In *Leaders & Co Ltd. v Kusamotu*,¹¹⁴ *Atoyebi v Bell*.¹¹⁵ The Court of Appeal readily upheld the appellant's appeal in line with his Counsel's generalised submission that no amount of oral evidence can decide conclusively on the issue of paternity. The absence of a married parent would also be said to have informed the approach of the Court *Olayinka v Adeparusi & Anor*¹¹⁶, per Denton West JCA, where it was held that if one party is claiming paternity, it is trite that a Court of law should be allowed to determine the same only by referral for a DNA test of the parties involved.

3.2.4 Voluntary DNA Testing

The need to do a voluntary DNA test on a child in the absence of a paternity dispute can arise in any of the following circumstances;

- i. Issue arising from assisted reproductive processes
- ii. Existence of Voluntary organisations.
- iii. Companies policies
- iv. Travelling policies.
- v. Foreign policies

¹¹² Section 68 (1) and 69 of the Childs Rights Act 2003, Article 18(3) OAU Charter 1990

¹¹³ Section 6, 68 and 69 of the Childs Rights Act 2003

¹¹⁴ (2004) 4 NWLR (pt.864) 519

¹¹⁵ (1992)11 NWRL (pt.528) 268

¹¹⁶ (2011) LPELR 8691 CA

The Nigerian CRA has no express provisions for situations where a party/person not already in court decides to conduct DNA testing on a child. In other words, the Law does not prohibit non-litigants from utilising the DNA procedure on a child, notwithstanding the absence of a valid Court Order. However, the Legal position is that the consent of a child who has attained the age of 16 years is necessary¹¹⁷ for the process, and in the case of a child under 16 years, it is the consent of the person who has their care and control that is relevant¹¹⁸. Also, the Nigerian Child Law protects the child from non-discretionary exposure to genetic testing by individuals or institutions. Such proactive intentions may also be deduced from the provisions of the Criminal Code and other Laws on the Right to human dignity.¹¹⁹

3.2.5 The Application of DNA Procedure under the Nigerian Customary Laws

The Nigerian Customary Laws have been severally defined to be the laws regulating the affairs of the indigenous persons. These Laws were very many in the Nigerian multi-legal system and were designated as the laws guiding the indigenes, their practices, culture, social lifestyle and ways of living. Before the advent of the English methods of paternity proof, these systems had their various traditional means of ascertaining parenthood, which included but were not restricted to:

- a. Unorthodox practices are believed to be very effective upon appropriate application to children during the mother's pregnancy or immediately after birth.¹²⁰
- b. The strict presumption that a child conceived and given birth to during the pendency of a marriage is that of the mother's husband;¹²¹

¹¹⁷ Section 64(2) of the Childs Rights Act.

¹¹⁸ Sections 64 (3) of the Childs Rights Act.

¹¹⁹ Obilade AO, Nigerian Legal System Spectrum Law Sweet & Maxwell London, (1979) p 83, Sec 34 & 37 1999 Constitution, Article 3,8 (2), 19 of CRC 1989, Sections 2, 11 and 16 CRA 2003

¹²⁰ *Marima v Sadikeu Ejo (1961)* NRNLR 81, *Lawal v Younan (1961)*WNLR 197

¹²¹ Sections 9 and 10 of the Idoma Declaration. *Mary Ogabila v Isa Agbede* MD/320 A/1979 (unreported) a woman who divorced her husband but became pregnant within the customary recognized waiting period of three months had her contention that it was her new husband that has her child rejected

- c. The identification of children by their resembling features with their father;
- d. Admissions and Evidence given on oath, especially that of the mother as to her adultery or to prove that the child belongs to a particular father;¹²² and,
- e. Through the peculiar facts of each case¹²³

The above methods, however, do not interfere with the powers of the customary/native Courts to decide issues on the paternity of children¹²⁴ in line with the provisions of their enabling laws. The Nigerian Customary Courts have very low records, but with the incidental jurisdiction to allow the use of scientific procedure in paternity disputes.¹²⁵ Nevertheless, with the presumed power to make Orders for DNA testing, it is uncertain whether the informal structures of Nigerian Customary Courts, with the lack of concise codification and adequate records, can withstand the Financial and Legal rigours necessary for an uninfluenced DNA testing.

In fact, the Customary Courts, also aware of their limitations, have the power to grant the requisite leave for appeals to Higher Courts¹²⁶. They have the well to refer special matters to the appropriate institutions within the larger framework.

The Sharia Law on paternity is strictly based on the notorious presumption of the legitimacy of children born during the subsistence of an Islamic Law marriage. By the Muslim Personal

¹²² Amongst the Yoruba it is popular believe that *lya omo lo mo baba omo* (it is only the mother of the child that can categorically say who the biological father is) in *Margeret Okorie v Obande Ochei MD/164/1980* Unreported the court held that the evidence given by the mother of the children after swearing an oath that her children belong to her deceased husbands brother was acceptable.

¹²³ In *Margerat Okorie v Obande Ochei MD/164/1980* Unreported, the court held that it was impossible for the deceased to have impregnated his wife who has consequently after the husband death lived with the husbands brother. The court held that no provisions in law or customs will endorse the fact that a dead person impregnated his wife. That the court will not give an award that will rob the children of the need to know their real father.

¹²⁴ In the Idoma case of, *Owute Icho v Igbekwu Oluga MD/337A/1979* (unreported) *The Area Court Grade H* declined to award a child to a man who was no the natural father because "their welfare would be in jeopardy over there"

¹²⁵ Sections 256 of The Evidence Act 2011, *Section 16(3) and 17(2) of the Oyo State CC laws, 256 EA 2011, Sec 21 No 4, 1st Schedule to the CC Lam of Kaduna 2001 also the Childs Rights Laws in applicable States.*

¹²⁶ See 280(1), 282 (1) of the Nigerian 1999 Constitution.

Law, husbands are not vested with the right to informally deny the paternity of a child born to them by their wives.¹²⁷

In the resolution of family disputes, the Islamic Laws largely protect the interests of muslims and recognise the importance of ensuring a stable and dignified life for the faithful. Such laws on personal dignity, therefore, make it very uncertain that the law will unrestrictedly facilitate the award of the child of a marriage to an acclaimed biological father who is not the husband. In other words, a claim to a child of a marriage by another man may not sail through a Sharia Court, without an exposure of the incidental facts of adultery.¹²⁸

However, when the Paternity of a child is bound to be proven, Islam does not condone decisions of paternity based on mere intuition. It allows for the specific use of proofs in certainty (Bayyinah) in the light of the requirement for the truth, justice and best of evidence given through;

- i. The evidence, confessions and admissions as given by the parties, especially the mother of the child,
- ii. The testimony (Al-Bayyinah) of a third party (witnesses) who must have his knowledge by personal perception of the facts surrounding the parentage of the child,
- iii. The laid down rules in the Figh books on the testimonies in special circumstances,
- iv. The Qiyafah, any other equitable means as devised by the Qadi,
- v. The verdict of a Physiognomist as to the resemblance and inherited traits of the child from the parents¹²⁹

¹²⁷ For example see Section 2 West Pakistan Muslim Persona Law (Shariat) Act, 1962, also the narration of an episode where a man asked the prophet why his wife gave birth to a black baby" He was not allowed to deny the child's parentage as reported by Al-Bukhiri in his Sahih, Book of Divorce, no. 5305, p. 948 the Prophet (*Sallallahu alayhi wa-sallam*) explained to the man that the human genes are interrelated and that traits seen in children may be traced back to their ancestors in spite of the very long time interval between the former and the latter.

¹²⁸ Chapter 22 Section 387 and 388 of the Northern Nigeria Penal Code

¹²⁹ JND Anderson(1949), Muslim Procedure & Evidence, Journal of African Administration Vol 1, No 4 pg

The Islamic system of admitting evidence in paternity issues over the years has moreover, equitably expanded to accommodate several other causes of paternity uncertainty, apart from cases of adultery. The contemporary Islamic Family Laws, therefore, do not object to the use of scientific processes, including DNA, to prove paternity, so long as such means do not contradict the provisions of the Quran, Sunnah, ijma and the Qiyas. In Conclusion, no major views have evolved on the status of DNA amongst other procedures for proving paternity under Muslim Law.

3.3 RELEVANCE OF DNA TESTING IN MATRIMONIAL PROCEEDINGS

DNA (Deoxyribonucleic Acid) testing has transformed the evidentiary landscape of family law globally. It offers a near-absolute method of identifying biological relationships, with accuracy exceeding 99.9%.¹³⁰ In matrimonial disputes, DNA testing plays a pivotal role in three main areas:

- a. Legitimacy of Children – determining whether a child born during the subsistence of a marriage is the legitimate issue of the parties.
- b. Custody and Maintenance – establishing parental responsibility and the financial duty of care.
- c. Inheritance Rights – confirming lineage in cases involving succession, especially under the Administration of Estates Law.

In Nigeria, DNA testing has become increasingly relevant in divorce and separation proceedings, where allegations of infidelity, denial of paternity, or maintenance claims are raised. Although the Matrimonial Causes Act does not explicitly mention DNA testing, courts may admit it as part of expert evidence under the Evidence Act 2011.

¹³⁰ 181 42The Islamic Fiqh Academy of the Muslim World League adopts this opinion. Oblong Media Unlimited, DNA Testing in Nigeria: Facts and Figures (Oblong Media 2024).

3.4 CHALLENGES IN THE APPLICATION OF DNA TESTING IN NIGERIAN FAMILY LAW

Despite the growing recognition of DNA testing as a reliable tool for resolving paternity disputes, several challenges hinder its effective use in Nigeria.

- i. The Matrimonial Causes Act does not explicitly provide for DNA testing or genetic evidence. This legislative silence leaves courts to rely on general evidentiary rules and judicial discretion, leading to inconsistent decisions. Some judges readily admit DNA reports as expert evidence, while others reject them on procedural grounds, thereby creating uncertainty.
- ii. DNA testing remains expensive and largely inaccessible to the average Nigerian. Most accredited laboratories are located in urban centres. Consequently, many litigants, especially those from low-income backgrounds, are unable to afford it, thus limiting the practical use of DNA evidence in family disputes.
- iii. Nigeria lacks a national framework to regulate DNA testing procedures, certification of laboratories, or accreditation of experts. This absence of oversight raises doubts about the authenticity of results and increases the risk of tampering or falsification. Without a recognised chain of custody, courts may be reluctant to rely solely on such evidence.
- iv. DNA testing implicates privacy rights and ethical considerations. Compelling an individual to undergo a test without consent may violate the constitutional right to personal liberty and dignity under Sections 34 and 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
- v. Cultural norms and religious beliefs often oppose the use of DNA testing, especially where it may expose infidelity or disrupt family harmony. In many communities, lineage and inheritance are grounded in traditional notions of legitimacy, and the revelation of non-paternity may cause social ostracism or conflict.

These challenges collectively illustrate that while DNA testing provides near-infallible scientific accuracy, its application within Nigeria's socio-legal context is still evolving. A comprehensive legislative framework and ethical guidelines are needed to harmonise science, morality, and justice.

3.5 THE ROLE OF THE COURTS IN BALANCING PRIVACY, MORALITY, AND SCIENTIFIC EVIDENCE

Nigerian courts are tasked with the delicate duty of balancing the pursuit of scientific truth with respect for personal rights, moral values, and family stability. This balance is particularly crucial in matrimonial proceedings where emotional, social, and cultural dimensions are at stake. Courts often consider:

- i. Consent – whether parties voluntarily agree to undergo testing.
- ii. Best Interest of the Child – whether disclosure of results would emotionally harm or stigmatise the child.
- iii. Public Policy – whether ordering a test may encourage moral decay or invasion of privacy.

By maintaining this balance, Nigerian courts strive to integrate scientific truth into family law without eroding the moral and constitutional values that underpin matrimonial justice.

3.6 RECOMMENDATIONS

The analysis concludes that the only express regulation on DNA in Nigeria is as provided for under the Children's Rights Act, 2003¹³¹. While the issues on the enforceability of the Child Law in the Nigerian Courts of records are appropriate for another discourse apart from this, an unimpressive fact is that the lower Courts do not possess any expressly requisite direction on the use of DNA as a means of proof. These Courts include those that, although they are not

¹³¹ Sections 63-67 of the Childs Rights Act 2003.

bound by evidential procedures (Evidence Act 2011), have jurisdiction to decide the fate of children. The paper at this juncture recommends the inclusion of DNA as an acceptable means of proof in the Evidence Act¹³² and other Procedural Laws, especially those that are applicable to children. However, such a dynamic contribution to the Nigerian Law may not be achieved without a progressive formal restatement of the existing unwritten Codes and Laws that regulate sensitive affairs, such as issues relating to children.

Furthermore, the fact that, among the other procedures, DNA testing is still the least available to the common man in Nigeria is unfortunate. The situation is such that while it has several scientific benefits today,¹³³ the continuous abandonment of that critical facility in Nigeria does not indicate an appreciation of its importance. The Nigerian authorities still consider such a laboratory too expensive to domesticate and will rather utilise the more expensive procedure of financing all requisite investigations abroad¹³⁴. The onus here is on the Nigerian government, through the Ministry of Health, to establish at least an efficient DNA laboratory in the country. This could be achieved solely by the government or as a government-private sector investment. This initiative will not only save Nigerians a great deal of foreign exchange it will also enhance the health facilities and provide the service to those who require same at very realistic rates. Also, the lack of a DNA laboratory in the existing system connotes that, as at present, no State of Molecular Biology Research can be fully done in Nigeria. Invariably, this fact is bound to incapacitate Nigerian researchers. The situation ultimately gives the international impression that the country is an unsuitable environment for sophisticated research in genetic studies. This condition, with no doubt, only encourages the

¹³² The Provisions of the Nigerian Evidence Act 2011 on Previous Conviction at Sections 448-450 projects Fingerprinting as the most sophisticated form of identity proof in the Nigerian Evidential regime.

¹³³ Besides its relevance in forensic analysis of victims of disasters, investigation of crime, and resolution of parental identification issues, contemporary and impacting scientific research is almost impossible without a DNA facility.

¹³⁴ Mostly the US, Europe and South Africa. For example foreign forensic facilities have been used so far for missing victims of the Nigerian Air Line tragedies, the victims of the recent Synagogue Church collapse etc.

flight of Nigerian scientists to other countries to conduct outstanding research under the rights and auspices of the hosting Nation.

Finally, apart from the financial implications of setting up a typical DNA laboratory in Nigeria, a major reason why private investors are uninterested in such a potentially lucrative business is that it is too capital-intensive for any outfit to delve into such an investment without an assurance of satisfactory profits. Unfortunately, DNA analysis and incidental activities can only thrive in an environment that functions properly. An environment where the health sector is coordinated and properly funded, a system devoid of constant industrial strikes, where there is adequate electrical power supply and where the government means well and the citizens are willing to collaborate with all efforts to make their lives better off.

3.7 CONCLUSION

The fact that DNA testing has revolutionised the existing framework on paternity dispute resolution cannot be overemphasised. It has established itself as a more accurate form of testing, and this fact is underscored by the willingness of the Courts to apply the procedure as a means of proof. While the discretionary restrictions of the Court still exist, the financial incapacity of the interested person and other social/ economic reasons have hindered the achievement of an efficient DNA testing environment. The implication of the habitual referral of parties by the Nigerian Courts to local laboratories, in the absence of requisite analysis facilities, is that the Courts continue to enhance the unsecured exportation of their citizens' body parts to other countries. In conclusion, therefore, the Nigerian present framework on the use of DNA is dependent on the continuous shipping of invaluable resources and revenue abroad daily.

CHAPTER FOUR

COMPARATIVE PERSPECTIVES ON DNA TESTING FROM OTHER JURISDICTIONS

4.1 INTRODUCTION

Comparative analysis is a useful method for understanding how different legal systems approach similar issues, particularly in emerging fields like the intersection of science and family law. This chapter examines the legal frameworks governing DNA testing in paternity and matrimonial disputes in three jurisdictions – the United Kingdom, South Africa, and India. These jurisdictions were chosen for their diverse legal traditions, historical influence on Nigerian law, and progressive development of family law jurisprudence. The United Kingdom represents the common law tradition from which Nigeria’s legal system evolved; South Africa exemplifies a mixed system incorporating constitutional human rights principles, while India reflects another common law jurisdiction grappling with similar moral, religious, and social concerns surrounding DNA evidence.

4.2 THE UNITED KINGDOM

In the United Kingdom (UK), the application for Child Custody begins first by attending a Mediation Information Assessment Meeting (MIAM). In this case, a non-partial mediator well-trained and not connected with the parties’ case helps to resolve the dispute. The mediation meeting helps to resolve disputes in relation to child custody, finances and properties.¹³⁵

Application for Family mediation and the cost of mediation is now done via the UK government website.¹³⁶ Also, a booklet on parenting plans can be downloaded, which is in a Welsh version, from any CAFCASS Cymru office or on the Welsh Courts website. The UK Family Court makes most decisions under the Children Act of 1989 by applying to the Court

¹³⁵ CBI- Making an Application- Children and the family Courts, <
<https://assets.publishing.service.gov.uk>>cbieng. > accessed 19th October 2025.

¹³⁶ www.gov.uk and www.gov.uk/legal-aid

for an ‘Order’. An Order is made when the Judge, legal advisor or panel of magistrates makes a decision. Court orders which can be applied for under the Children Act 1989 are as follows: child arrangement order, specific issue order, prohibited steps order, parental responsibility order, financial provision, appointment of a guardian, specific guardianship order, order related to enforcement of a child arrangements order and adoption.¹³⁷

The Court may or may not make an order if it thinks that would be best for the child. The Court might make an order, change an order (called varying the order), or end an order (called discharging the order). This court has the judicial powers to give directions to parties or transfer a case to another court. The courts are covered by the Children Act 1989, the Family Procedure Rules and the Practice directory.

Under the UK jurisdiction, some parties can apply for an order of Child Custody or Guardianship by right, while other parties must seek court permission to apply to court for an order of child custody and guardianship.¹³⁸

A child must seek court permission in relation to cost orders on child arrangement order (including to vary or discharge an existing order), specific issue order (including to vary or discharge an existing order), prohibited steps order (including to vary or discharge an existing order), discharge of the appointment of a guardian and discharge of a parental responsibility order or agreement.¹³⁴ A mother can apply for a court order on a child arrangement order, specific issue order, prohibited steps order, financial provision and discharge of a parental responsibility order. A father or parent can apply for the same orders as a mother above.¹³⁹ Others include step-parents, grandparents, guardians, people with a child arrangement order,

¹³⁷ CBI- Making an Application- Children and the family Court < <https://assets.publishing.service.gov.uk>>cbieng. > accessed 19th October 2023.

¹³⁸ Ibid.

¹³⁹ Human Fertilisation and Embryology Act 2008, Section 42 and 43.

and other people can apply for a court order on child custody, guardianship and adoption. The UK Court has the power to make orders affecting the exercise of the parental rights and duties under the following procedures: the inherent jurisdiction of the High Court to make a Child a ward of Court; under this procedure, the parental rights and duties vest in the court. The Court makes orders dealing with care and control and other rights over the child,¹⁴⁰

The Statutory jurisdiction to make orders for legal custody under the Guardianship of Minors Act 1971 to 1973,¹⁴¹ the statutory powers of the High Court and Divorce County Court to make orders relating to custody and education under the Matrimonial Causes Act 1973,¹⁴² the statutory powers of the domestic court to make orders for legal custody under the Domestic Proceedings and Magistrates' Court Act 1978,¹⁴³ the statutory power of the Juvenile Court to make care orders under the Children and Young Persons Act 1969, and the statutory power of local authorities to assume parental rights over a child under the Children Act 1948¹⁴⁴ and the statutory power to make a custodianship order under the Children Act 1975.¹⁴⁵

In England, section 20 of the Family Law Reform Act 1969 governs the position where one of the parties to a paternity dispute refuses to submit to DNA testing. This section simply requires a court to give a direction for the use of blood tests to determine paternity. The court is not empowered to order an unwilling adult to a test. The reason for this is the great emphasis placed by English law on the protection of the personal liberty of the individual.¹⁴⁶ The court may, however, derive a negative inference from an adult's refusal to undergo a test.¹⁴⁷ In *Re A* (a

¹⁴⁰ Cretney S. M., *'Principles of Family Law'*, Third Edition, 1979, Sweet and Maxwell Publishing.

¹⁴¹ Guardianship of Minors Act 1971 to 1973.

¹⁴² Matrimonial Causes Act 1973.

¹⁴³ Divorce Proceedings and Magistrates' Courts Act 1978.

¹⁴⁴ Children and Young Persons Act 1969 and the Children Act 1948.

¹⁴⁵ Children Act 1975.

¹⁴⁶ *S v McC: W v W* [1972] AC 24 43E.

¹⁴⁷ In terms of s 23(1) of the Act; see Barton and Douglas Law and Parenthood (1995) 60.

minor) (Paternity: Refusal of Blood Test),¹⁴⁸ the Court of Appeal inferred that the recalcitrant testee was the father of the child, reasoning that the test is so reliable that it can allay all doubt as to paternity. Although the Court of Appeal in *In re F (a minor) (Blood Tests: Parental Rights)*¹⁴⁹ departed from the view of the House of Lords in *S v McC: W v W*, that a direction for blood tests should ordinarily be made, reasoning that the child's interests lay in providing support and protection to the existing family unit in preference to ascertaining the "abstract" truth as to her genetic parentage¹⁵⁰ this approach has been criticized for not giving sufficient weight to the psychological value of the child knowing her true origins, and for failing to separate the issue of genetic parentage from the putative father's prospects of establishing a meaningful social relationship with the child.¹⁵¹

In *In re H (a minor) (Blood Tests: Parental Rights)*¹⁵² the Court of Appeal reverted to the *S v McC: W v W* approach, and in so drawing a clear distinction between genetic and social parents, and emphasizing that "a child can have two 'fathers': one genetic and one social", who may serve very different functions in respect of the child.¹⁵³ Thus, the right to knowledge of one's genetic parentage does not presuppose that a social relationship will follow upon such knowledge, and therefore, the right to know does not threaten the parenting role of the social parent. In the light of the Human Rights Act of 1998 it was held in *Re T (a child) (DNA tests: paternity)*¹⁵⁴ that the rights to knowledge of true paternity should be weighed heavier than the right to family life, and that any infringement on the right to family life would be proportionate to the legitimate aim of providing the child with invaluable knowledge of his paternity.

¹⁴⁸ [1994] 2 FLR 463.

¹⁴⁹ [1993] Fam 314 (CA).

¹⁵⁰ Harris Short and Miles Family Law: Text, Cases, and Materials (2007) 683.

¹⁵¹ Fortin "Re F: The Gooseberry Bush Approach" 1994 57 Modern Law Review 296 298.

¹⁵² [1997] Fam 89.

¹⁵³ Ibid.

¹⁵⁴ [2001] 3 FCR 577 (Fam Div).

The UK model provides a balanced approach between scientific accuracy and human rights protection. Courts maintain discretion, ensuring that the use of DNA testing does not violate personal autonomy or family stability. The regulatory framework also guarantees that DNA evidence meets the evidentiary threshold of reliability, relevance, and authenticity.

For Nigeria, the UK experience demonstrates the importance of legislative clarity and institutional oversight. Explicit statutory authorisation for DNA testing under the Matrimonial Causes Act, accompanied by guidelines for laboratory accreditation and consent procedures, would enhance both consistency and public confidence in judicial outcomes.

4.3 INDIA

India, like Nigeria, operates a common law system heavily influenced by English legal principles, yet uniquely shaped by its cultural and religious diversity. There is no specific legislation governing DNA testing in family law. Instead, courts rely on the Indian Evidence Act 1872, the Code of Civil Procedure 1908, and various judicial pronouncements to determine admissibility and use of scientific evidence.

This duality between statutory presumption and scientific evidence has produced a complex jurisprudence in India, where courts must balance truth, morality, and the sanctity of marriage.

Indian courts have developed a cautious yet increasingly progressive stance toward DNA testing. In *Goutam Kundu v State of West Bengal*,¹⁵⁵ the Supreme Court held that courts should not order blood tests as a matter of course in matrimonial disputes, as such orders could violate the right to privacy and dignity. The court emphasised that DNA testing should only be allowed when there is a strong prima facie case disputing paternity and when the test's outcome will materially affect the case.

¹⁵⁵ (1993) 3 SCC 418.

However, judicial attitudes evolved. In *Banarsi Dass v Teeku Dutta*,¹⁵⁶ the Court reaffirmed that scientific tests cannot be ordered casually, yet acknowledged that where the truth of paternity is crucial, refusal to permit DNA testing could lead to miscarriage of justice. A landmark shift occurred in *Nandlal Wasudeo Badwaik v Lata Nandlal Badwaik*,¹⁵⁷ where the Supreme Court declared that when a conflict arises between the presumption of legitimacy under Section 112 and scientifically proven facts from DNA testing, the latter should prevail. The Court observed that the truth revealed by DNA science cannot be ignored in the name of legal fiction.

Thus, Indian jurisprudence has gradually evolved from rigid preservation of marital legitimacy to the acceptance of scientific truth as the ultimate determinant of justice. Yet, courts remain cautious, ensuring that orders for DNA testing respect individual privacy, marital harmony, and child welfare.

The Indian experience underscores the delicate balance between legal presumptions, cultural values, and scientific progress. Indian society, like Nigeria's, places a high premium on family honour and marital stability. Consequently, courts avoid using DNA testing in a manner that could stigmatise a child or destroy a marriage. The Protection of Children from Sexual Offences Act 2012 (POCSO) and the Juvenile Justice Act 2015 also demonstrate India's effort to ensure that the use of DNA evidence, particularly in child-related matters, aligns with the best interests of minors.

India's approach reflects a middle ground between scientific realism and social conservatism. The courts have recognised the evidential superiority of DNA testing while maintaining judicial restraint to avoid misuse. This nuanced jurisprudence provides valuable lessons for

¹⁵⁶ (2005) 4 SCC 449.

¹⁵⁷ (2014) 2 SCC 576.

Nigeria: courts must integrate DNA evidence without disregarding moral, cultural, and constitutional safeguards.

4.4 SOUTH AFRICA

The South African courts initially held that they could not compel any person to undergo blood tests,¹⁵⁸ although they were prepared to accept evidence obtained through voluntary testing.¹⁵⁹

The potential consequences of the courts refusing to compel testing are that a non-biological “father” will be compelled to maintain the child. More recently, the South African courts have seen fit to order blood tests in paternity disputes, although whether such orders should be made remains controversial.

Since the inception of the Children’s Act 38 of 2005, children in South Africa are no longer labelled as “legitimate” as was previously the case, where the parents were married or “illegitimate” if the parents were unmarried. The Act has shifted the emphasis to labelling the parents.¹⁶⁰ As a result, where the parents are married, the child is referred to as a child born of married parents, and if the parents are unmarried, the child is referred to as a child born of unmarried parents.¹⁶¹

In most instances, paternity, as opposed to maternity, is in dispute, and as a result, the law has created two presumptions. The first is *pater est quem nuptiae demonstrant* (the husband of the mother is the father of the child) in the case of a woman who is married or party to a civil union.¹⁶² In the case of a woman who is not married or party to a civil union, a man is presumed

¹⁵⁸ *E v E* 1940 TPD 333.

¹⁵⁹ *Ranjith v Sheela* 1965 3 SA 103 (D); *Van der Harst v Viljoen* 1977 1 SA 795.

¹⁶⁰ *Ibid.*

¹⁶¹ Children’s Act ss 19-21; 38; 40 and 233.

¹⁶² Van Heerden “Legitimacy, Illegitimacy and the Proof of Parentage” in Van Heerden et al (eds) *Boberg’s Law of Persons and the Family* 2ed (1999) 327 353ff.

to be the father of a child if it is proved that he had sex with the mother at the time when the child could have been conceived.¹⁶³

Both presumptions are rebuttable. In the case of parties who are married, the man presumed to be the father must show on a balance of probabilities that he is not the father. However, in the case of a child born to an unmarried woman, and in terms of section 36 of the Children's Act, the man must provide evidence to the contrary which "raises a reasonable doubt".

Various factors can be raised to rebut both presumptions. These include the absence of sexual intercourse at the time that the child could have been conceived, sterility and impotence. In addition, the party who seeks to rebut the presumption may also use the period of gestation as another factor; that is, he could prove that due to the length of the period, it is not possible that he could have fathered the child.

DNA tests remain the most accurate method of determining, with almost 100% accuracy, whether a particular man is the father of a child. In *M v R*,¹⁶⁴ an expert witness stated that the statistical probability of a particular man being the father could be as high as 99.9%. Whilst, as noted above, in the past blood tests were seldom used as a result of their unreliability, the accuracy of the tests has improved with advances in medical science. The position of the courts in respect of whether they have the power to compel tests in cases where parties do not consent, however, still remains unsettled. In the discussion which follows, we shall highlight the manner in which the courts have dealt with applications relating to the testing of a child in a paternity matter, as opposed to the way in which courts have dealt with applications relating to adults in the same context.

¹⁶³ Children's Act s 36.

¹⁶⁴ (1989) 1 SA 416 (O) 425.

In *Seetal v Pravitha*,¹⁶⁵ and for a critical analysis of this case, see Singh, “The Power of the Court to Compel any Person to Submit to Identification Tests in Paternity Disputes: The Unquestionable Need for a Rule” 1993 De Jure 115, the applicant had sued the first respondent for divorce on the grounds of her alleged adultery. He also applied for an order declaring the four-year-old child born to the respondent whilst married to him illegitimate. The applicant contended that the child was conceived as a result of the alleged adultery. The first respondent refused to submit herself or her minor son to undergo the blood tests required by the applicant. The applicant thereafter made an application to the court asking the court for an order directing her to comply. The application was opposed by the first respondent and a curator ad litem on behalf of the second respondent.

The court ruled that the Supreme Court (the erstwhile appellation of the High Court) did have the capacity to order parties to submit themselves to blood tests (832D). The court did not, however, answer the question of what circumstances would permit it to exercise such power. The court ruled further that, as far as minors were concerned, it did have the power to consent to blood tests on the minor’s behalf. The court was able to do so based upon its position as the upper guardian of all minors (862D-863A). In agreeing that it possessed this power, the court did point out that this would only be done where it was shown to be in the child’s best interests (864G-H). In the instant case, the court found that it would not be in the best interests of the child (865G). It was held that the identity of the father was not in much doubt, and it would be a disadvantage to the child to be without a father (865G-H). The court declined to order the blood tests, without expressing a view on whether an adult could be compelled to submit to blood tests.

¹⁶⁵ (1983 3 SA 827 (D)).

In *Nell v Nell*,¹⁶⁶ an application was made by the applicant for specific performance of a settlement agreement that had been entered into between the parties. A clause in the agreement provided for the fact that the respondent and minor child would subject themselves to tissue tests to confirm the paternity of the applicant. The applicant also appealed to the inherent capacity of the court to issue orders of a procedural nature (894C). The court accepted that the settlement agreement existed between the parties, but found that it was within its discretion to order specific performance thereof (894E). The court was disinclined to order the tests based on the fact that the parties had failed to provide details of the tests and what they entailed (894F). Further to this, the court also found that it was not in the best interests of the child to do so.

The view of the court was that the ordering of the tests was not simply a matter of procedure (895H). The court disagreed with both *Seetal and M v R*, where both courts had held that it was within the inherent jurisdiction of the High Court to order blood tests. In the judgment, the court also highlighted the fact that the right to privacy of parties may be outweighed by other fundamental interests, but that this was normally regulated by statute (896H). The Children's Status Act (82 of 1987, applicable at the time) simply created a presumption that where a party was unwilling to subject themselves to blood tests, the party in question was concealing the truth regarding paternity. The parties could not be statutorily compelled to undergo blood tests (896H-I). The court also pointed out that if the ordering of blood tests was a matter of procedure, it would still not order the tests as it was not in the interests of the child to do so (896C-E).

In *S v L*¹⁶⁷, the Eastern Cape High Court (per Mullins J) was faced with the decision as to whether it could override the decision of a parent who did not consent to a minor child

¹⁶⁶ (1990) 3 SA 889 (T).

¹⁶⁷ (1992) 3 SA 713 (E); and for a critical analysis of this case, see Taitz and Singh "Does the Supreme Court

undergoing blood tests. The court also had to decide whether it could compel an unwilling adult to submit to blood tests. The court referred to section 2 of the Children's Status Act and concluded that "the Legislator was not satisfied that there were any legal means available to compel a party to submit to a blood test" but went on to state that "it does not necessarily follow therefrom that the court does not have the power to compel the taking of blood tests" (719C-D).

After consideration of all the relevant authorities, the court found that compelling a party to submit to a blood test was not a matter of procedure and further that the court did not have the power to make the order (719I). With regards to the minor child, the court found that the court did not have the power to interfere with the decision of a guardian where the guardian had refused permission for the child to undergo blood tests (721I-J). This was even though the court might have come to a different decision. It was also the view of the court that the ordering of blood tests would not be in the best interests of the child even if it had the power to make such an order (722C).

In the case of *O v O*,¹⁶⁸ the court held that it had the power to override the objections of a guardian and could order blood tests in its capacity as upper guardian of all minors (139H-I). It was thus held that the court may authorise tests on a minor despite the objections of his/her parents. The court also found that there was no statutory or common-law power enabling a court to order an adult to undergo blood tests (139I-J). In this matter, the court, however, declined to authorise the tests on the child based on the "best interests of the child" principle.

¹⁶⁸ Enjoy the Inherent Power to Order Relevant Parties to Submit to Blood Tests to Establish Paternity?" 1995 58 THRHR 91. (1992) 4 SA 137 (C).

In *D v K*,¹⁶⁹ the applicant requested that the court compel the respondent to undergo blood tests to prove that he was the father of a child born to her as a result of an intimate relationship with him. The respondent, although paying maintenance to her for the upkeep of the child, had at no time acknowledged paternity. During her relationship with the respondent and when the child was born, the applicant was married. Her husband was excluded as the father of the child by DNA tests carried out on him. It was only when the child expressed the intention of pursuing a tertiary education did the respondent indicate that he was unwilling to pay for the studies. The applicant was advised to have blood tests done on him and the child.

In his judgment, Moodley AJ pointed out that no rule of law authorised a court to compel blood testing (212I-J). Whilst the court acknowledged that the Supreme Court had the inherent jurisdiction to regulate its own procedures in the absence of any provisions in the Rules and where justice dictated that it do so (213B-C), it had to decide whether or not this power extended to the compulsory taking of blood samples from unwilling adults.

It was the view of the court that the search for the truth and respect for privacy were ideals which should at all times be sought to be upheld. One should not lightly be sacrificed for another, and a court should not become a party to the sacrifice (217D-E). It was held by the court that the taking of blood samples was not simply a matter of procedure but amounted to a creation of evidence (217J-218A). The taking of a blood sample also amounted to a violation of the personal integrity of the person as well as a minor assault (218B). In light of these factors, the court found that the taking of a blood sample therefore went far beyond being just a simple procedural step and entered into the realm of substantive law (218B).

Moodley AJ proceeded to point out that if the legislature intended to compel a person to submit to blood tests, it would have made provision for this in the Children's Status Act. The judge

¹⁶⁹ (1997) 2 BCLR 209 (N).

concluded, therefore, that the legislature, by implication, did not approve of compelling unwilling adults to submit to blood tests. The legislature was satisfied with the presumptions contained in the Children’s Status Act (see 218C-219B; this Act, which has been repealed in favour of the Children’s Act, has substantially similar provisions in this regard).

The court thus found that although it had an inherent right to regulate its own procedures, it did not extend to cover compulsory blood testing. As the only post-constitution case that dealt with the power of the High Court to compel blood tests in paternity disputes, the court’s treatment of the constitutional arguments is significant. Moodley AJ accepted the applicant’s argument that the taking of a blood sample is “relatively painless” in nature and can thus “hardly be described as cruel, inhuman or degrading treatment or punishment” (220I-J), and consequently not an infringement of the right to freedom and security of the person. However, it was held that although the infringement of the right to privacy might “appear to be minor, the consequences of such intrusion could in some instances be devastating” (221A-B), and therefore, in the light of the less intrusive means of dealing with the matter provided by the presumptions in the Children’s Status Act, such infringement could not be regarded as justifiable.

From the comparative analyses of the United Kingdom, South Africa, and India, several lessons emerge that are instructive for Nigeria’s evolving legal system in managing paternity disputes and the role of DNA testing.

- i. Nigeria’s Matrimonial Causes Act should be amended to expressly authorise DNA testing as a legitimate means of establishing or disproving paternity. This will eliminate ambiguity and enhance judicial consistency.
- ii. Like the UK and South Africa, Nigeria needs accredited laboratories, ethical standards, and procedural guidelines to ensure the reliability and authenticity of DNA results.

- iii. Any use of DNA evidence must respect fundamental rights under the 1999 Constitution, particularly privacy, dignity, and fair hearing. The South African example demonstrates how constitutional safeguards can coexist with scientific truth.
- iv. Judges should receive continuous training on interpreting and assessing scientific evidence. This will minimise conflicting judgments and enhance the evidential value of DNA reports.
- v. Nigeria should adopt the “best interest of the child” principle as applied in the UK and South Africa. DNA testing should not be permitted where it may emotionally harm or stigmatise a child.
- vi. The Indian experience shows that while science offers certainty, cultural sensitivity and marital harmony remain important. Nigerian courts should, therefore, ensure that DNA testing serves justice without eroding societal values.
- vii. The government should subsidise DNA testing or establish state-supported laboratories to make testing accessible to all socio-economic groups.
- viii. Public enlightenment campaigns can help demystify DNA testing and reduce cultural or religious resistance to its use in family law proceedings.
- ix. In line with the Nigeria Data Protection Act 2023, strict rules must govern the storage and handling of genetic information to prevent misuse or unauthorised disclosure.
- x. Nigeria must harmonise the Evidence Act 2011, Matrimonial Causes Act, and Child’s Rights Act 2003 to create a coherent legal framework that accommodates scientific advances while upholding justice and equity.

4.5 CONCLUSION

This chapter has demonstrated that DNA testing plays a pivotal role in resolving paternity disputes across diverse legal systems. The United Kingdom’s statutory precision, South Africa’s constitutional alignment, and India’s cautious judicial approach collectively offer

instructive models for Nigeria. While all three jurisdictions recognise the evidential superiority of DNA testing, they also emphasise the importance of human rights, procedural fairness, and the welfare of the child. For Nigeria, the lessons are clear: the Matrimonial Causes Act must evolve to reflect modern realities. Courts must be empowered to rely on DNA testing within clear ethical and procedural boundaries. Balancing scientific truth with social and moral considerations will ensure that paternity determinations under Nigerian law are not only accurate but also just, humane, and in harmony with the best interests of all parties involved.

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND GENERAL CONCLUSION

5.1 SUMMARY OF FINDINGS

This study examined the role of DNA testing in resolving paternity disputes under Nigeria's Matrimonial Causes Act (MCA), emphasising its growing importance in modern family law. Paternity disputes remain among the most sensitive and complex issues in matrimonial litigation, often intertwined with questions of legitimacy, custody, maintenance, and succession. Traditionally, Nigerian courts relied on presumptions and circumstantial evidence to determine paternity. However, with scientific progress, DNA testing now offers an accurate and objective means of resolving such disputes.

The study began in Chapter One with an introduction to the background of paternity disputes in matrimonial proceedings and the legal challenges posed by technological innovation. The Matrimonial Causes Act of 1970, which still governs divorce and related reliefs in Nigeria, was found to be silent on DNA testing, reflecting an era before scientific advances were incorporated into law. The statement of the problem identified the tension between the pursuit of truth and the need to preserve family stability, especially when DNA results reveal infidelity or challenge the presumption of legitimacy. The study's objectives were to assess the extent to which Nigerian law supports the use of DNA testing in paternity disputes and to explore possible reforms that would bring legal practice in line with modern scientific realities.

Chapter Two offered conceptual clarification, theoretical foundations, and a review of relevant literature. It defined "family," "marriage," and "paternity dispute resolution" within the context of Nigerian law and social practice. The conceptual analysis showed that family, as a legal and social institution, underpins personal identity and social order. Marriage creates the legal presumption of legitimacy, which DNA testing now questions by providing biological certainty. The theoretical framework is drawn from Legal Positivism, the Sociological Theory

of Law, and the Best Interest of the Child Principle. These theories collectively show that while law should reflect social morality, it must also adapt to empirical realities and prioritise the welfare of children.

Chapter Three critically examined the Nigerian legal framework governing DNA testing. It revealed that neither the Matrimonial Causes Act nor the Evidence Act 2011 contains explicit provisions mandating or regulating DNA testing. However, Section 68 of the Evidence Act permits expert evidence, which courts may interpret to include DNA results. The chapter analysed judicial attitudes and found inconsistency. Some courts readily accept DNA evidence as reliable proof, while others reject it on grounds of privacy, consent, or lack of statutory authority. The chapter also examined the presumption of legitimacy under Section 165 of the Evidence Act, which states that a child born during a valid marriage is presumed to be legitimate. This presumption can be rebutted by strong evidence, including DNA results. Nonetheless, the judiciary remains cautious about admitting DNA evidence that could disrupt family harmony or stigmatise a child. The findings also indicated that cost, lack of regulation, and ethical concerns limit the effective utilisation of DNA testing in Nigeria. The study observed that while the technology is available, the legal infrastructure remains underdeveloped.

Chapter Four provided a comparative analysis of three jurisdictions—the United Kingdom, South Africa, and India. The UK framework, under the Family Law Reform Act 1969 and Children Act 1989, offers clear statutory authority for DNA testing and designates accredited laboratories to ensure authenticity. South Africa incorporates DNA testing within a constitutional framework, emphasising dignity, privacy, and the best interests of the child. These comparative insights demonstrate that DNA testing, if properly regulated, can promote justice and fairness without compromising moral and social values.

Overall, the study concludes that DNA testing has become essential in modern paternity adjudication. However, its integration into Nigerian family law remains incomplete due to statutory silence, inconsistent jurisprudence, ethical issues, and socio-cultural resistance. The study thus advocates for comprehensive reform of the Matrimonial Causes Act and related statutes to align legal processes with scientific progress while protecting the rights and welfare of all parties involved.

5.2 RECOMMENDATIONS

This study makes the following ten recommendations for reforming and strengthening the legal framework for DNA testing in resolving paternity disputes in Nigeria:

1. The Matrimonial Causes Act should be amended to expressly recognise DNA testing as admissible evidence in paternity disputes. Such an amendment should outline procedures for obtaining consent, ordering tests, and presenting results in court. This will eliminate ambiguity and provide uniform guidance for judges.
2. Nigeria should establish a statutory body to regulate DNA testing, similar to the UK's accreditation system. The agency should license laboratories, certify experts, and maintain quality standards to prevent falsified or unreliable results. This will enhance judicial confidence in DNA evidence.
3. Judges and legal practitioners should undergo continuous training in forensic science, particularly genetics and DNA analysis. Understanding the scientific basis of DNA testing will reduce judicial errors and ensure informed decision-making. The National Judicial Institute (NJI) could incorporate forensic literacy into its annual training programmes.
4. To ensure fairness, the government should subsidise or provide legal aid for DNA testing in indigent cases. Many litigants cannot afford the high cost of testing, which

currently limits its use to the wealthy. The establishment of public DNA testing centres would promote equal access to justice.

5. Courts should prioritise the “best interest of the child” principle in ordering DNA tests. Tests should not be permitted where they would emotionally harm the child, destroy family stability, or lead to social stigma. This approach aligns with Section 1 of the Child’s Rights Act 2003 and international standards under the UN Convention on the Rights of the Child.
6. The Evidence Act should be revised to include a clear provision on the admissibility and evidential value of DNA testing. This would harmonise the Evidence Act with the Matrimonial Causes Act and remove interpretive uncertainty.
7. The use of DNA evidence must respect individual privacy and human dignity, as guaranteed under Sections 34 and 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Courts should only order DNA testing upon showing compelling reasons and with informed consent. Unauthorised use of DNA material should attract legal sanctions.
8. DNA information is highly sensitive. Compliance with the Nigeria Data Protection Act 2023 is essential to ensure confidentiality, prevent misuse, and protect the genetic privacy of individuals. Laboratories must maintain secure databases and disclose results only to authorised persons.
9. Government and civil society organisations should conduct public awareness campaigns to educate citizens about the purpose, benefits, and ethical use of DNA testing. This will reduce misconceptions, cultural resistance, and the social stigma associated with paternity verification.
10. Nigeria should align its domestic laws with international best practices, such as those established by the United Nations and the Hague Conference on Private International Law regarding parentage and child welfare. Harmonisation will enhance Nigeria’s

credibility in international family law and ensure consistency with global human rights norms.

5.3 GENERAL CONCLUSION

The development of family law in Nigeria reflects society's broader change—from traditional, community-based systems relying on presumption and social norms to modern, science-based frameworks grounded in objectivity and human rights. At the core of this evolution is the question of paternity, which intersects biology, morality, and justice. Historically, paternity was assumed rather than proven, with legitimacy inferred from marriage rather than confirmed genetically. But DNA technology has transformed this landscape, providing certainty where there was once doubt and forcing the law to confront uncomfortable truths about fidelity, legitimacy, and identity.

This research shows that DNA testing is now a crucial tool for justice in establishing biological relationships. It can resolve disputes, prevent wrongful maintenance obligations, and uphold children's identity rights. However, it also raises sensitive ethical and psychological issues, especially when DNA results upset family relationships or reveal infidelity. The Nigerian legal system, balancing these competing realities, must carefully navigate between truth and social stability. As shown in earlier chapters, Nigerian law remains underdeveloped in addressing the legal status, admissibility, and impact of DNA testing in matrimonial cases. The Matrimonial Causes Act 1970, more than fifty years old, predates DNA technology and offers no clear guidance on genetic evidence. Similarly, the Evidence Act 2011 broadly references expert evidence without specific criteria for its use in paternity cases. Consequently, courts rely on their discretion, leading to inconsistent and sometimes contradictory approaches to DNA evidence. Some judges recognize DNA as the most reliable method for establishing biological truth, while others hesitate to mandate testing, citing privacy and bodily integrity concerns.

This lack of uniform policy creates uncertainty, undermining public confidence and risking injustice in cases where scientific evidence could clarify the truth. On a broader level, this research shows that DNA testing, despite its scientific basis, has significant social consequences—able to dismantle families, stigmatize children, and expose private secrets. Therefore, the law must approach DNA evidence with sensitivity to its emotional and moral implications, aiming to promote justice while safeguarding dignity and welfare. This is especially vital in Nigeria, where social identity, inheritance, and family bonds are deeply rooted in traditional values. Looking at other jurisdictions offers lessons for Nigeria: the UK has integrated DNA testing into family law with clear guidelines and safeguards; South Africa emphasizes constitutional rights like dignity, privacy, and equality, balancing them with the need for truth; India combines respect for cultural values with recognition of the importance of forensic science. These examples demonstrate that the challenge is not whether to use DNA testing but how to regulate and incorporate it into justice effectively. Nigeria’s future should focus on harmonizing law and science, individual rights and societal interests, truth and compassion. A revised Matrimonial Causes Act should explicitly regulate DNA testing, including judicial discretion guided by clear standards, procedures for consent, confidentiality, and protection for minors. These measures would bolster the legitimacy of DNA evidence and ensure justice in both legal and human terms. The judiciary should also develop expertise in forensic science, enabling judges and lawyers to interpret DNA results accurately and distinguish genuine evidence from manipulation.

Establishing specialized family courts with experts in family law and forensic science could improve consistency and efficiency in paternity disputes. Beyond legal reforms, societal education is essential. The Nigerian public needs information about DNA testing: its purpose, limitations, and proper use—not as a tool for accusations or revenge, but as a means to uncover truth and uphold children’s rights. Misunderstanding, stigma, and fear often hinder acceptance,

but with proper education and community involvement, these concerns can be addressed. Religious and community leaders can help frame DNA testing within moral and ethical contexts aligned with Nigerian values of truth, responsibility, and family integrity. Lastly, it's crucial to recognize that DNA testing is not infallible.

Human errors in collection, analysis, or interpretation can compromise results. Thus, only accredited laboratories, operating under strict standards of quality and confidentiality, should be authorised to conduct such tests. The establishment of a national DNA regulatory authority would ensure credibility, protect citizens' genetic data, and promote uniform standards across the country. This would also prevent the exploitation of vulnerable litigants by unregulated or fraudulent testing centres. Another key consideration is the protection of data privacy. In an era of increasing digitalisation, genetic data must be treated with the highest level of confidentiality. The Nigeria Data Protection Act 2023 provides a legal framework for safeguarding personal information, but its implementation must extend explicitly to genetic data. Unauthorised access, disclosure, or manipulation of DNA information should attract severe legal sanctions, given the potential for lifelong social and psychological harm. From a broader human rights perspective, DNA testing also intersects with the constitutional guarantees of dignity, privacy, and equality. Compelling an individual to undergo DNA testing without consent may violate these rights, particularly when the request is made not for justice but for malice or revenge. Courts must therefore weigh each application carefully, granting DNA orders only where necessary for determining a child's welfare or preventing manifest injustice. In this sense, the law must serve as both a guardian of truth and a protector of human dignity. Ultimately, this research underscores that the pursuit of truth must not be divorced from compassion.

The biological truth revealed by DNA testing must be reconciled with the social truth upon which families and communities are built. A purely scientific approach risks reducing complex

human relationships to mere genetics, while an overly sentimental approach risks perpetuating falsehoods and injustice. The ideal balance lies in a system that acknowledges both the certainty of science and the humanity of law — a system that upholds justice while preserving the emotional and moral foundations of society. In conclusion, the integration of DNA testing into Nigeria’s matrimonial law is both inevitable and desirable. Science has given the law a tool of unprecedented precision; it is now the responsibility of lawmakers, judges, and legal scholars to ensure that this tool is wielded with fairness, wisdom, and respect for human dignity. The reform of the Matrimonial Causes Act, the harmonisation of the Evidence Act, and the establishment of clear procedural and ethical guidelines will mark a significant step toward modernising Nigeria’s family justice system. When properly regulated and sensitively applied, DNA testing can serve as a bridge between truth and justice — ensuring that the search for biological certainty does not destroy the social bonds that define our humanity.

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