

PATERNITY FRAUD OR PATERNITY MISATTRIBUTION? A LEGAL DISCOURSE: REVIEWING THE RIGHTS OF VICTIMS OF PATERNITY FRAUD*

Abstract

Paternity fraud or paternity misattribution refers to the intentional or negligent misrepresentation of a child's biological father. It constitutes a growing but under-regulated challenge within Nigeria's legal system, raising profound questions of justice, privacy, family integrity, identity rights, and state responsibility. This paper establishes paternity fraud as not merely a domestic or moral concern, but a doctrinal, constitutional, evidentiary, and policy problem with significant implications for men, children, and society. The absence of a comprehensive parentage statute, the constitutional barrier posed by section 37 of the 1999 Constitution against compulsory DNA testing, lack of civil remedies or criminal sanctions for fraudulent mothers, weak birth registration systems and the insufficient protection of a child's right to identity are the major challenges. While comparative jurisdictions such as the United Kingdom and Canada maintain structured parentage-testing regimes, Nigeria's framework remains fragmented and outdated. The research methodology adopted in this paper is doctrinal and comparative research Methodology. Primary sources include Nigerian statutes, case law, constitutional provisions, and regulations. Comparative analysis draws on United Kingdom and Canadian family law instruments, judicial decisions, and administrative practices. Secondary materials include scholarly articles, commentaries, and international human rights instruments. The findings show that Nigeria's legal system provides no effective remedies for victims, lacks mechanisms for compelled DNA testing, and fails to safeguard children's identity rights. Policy implementation is weak, and sociocultural factors hinder reform. The conclusion and recommendations call for a comprehensive Parentage and Paternity Act, constitutional amendment to permit court-ordered DNA testing, criminalisation of deliberate misattribution, robust civil remedies, strengthened forensic infrastructure, and enhanced child-identity protections aligned with international best practices.

Keywords: Deoxyribonucleic Acid Test, Paternity Fraud, Paternity Misattribution, Victims, Legal Framework

1. Introduction

Paternity fraud, sometimes described in academic literature as paternity misattribution, is a phenomenon that arises where a man is incorrectly identified, intentionally or unintentionally, as the biological father of a child. In its most controversial form, it involves a mother knowingly misrepresenting the biological paternity of a child to a man who then assumes financial, emotional, and sometimes legal obligations on the mistaken belief that the child is biologically his.¹ Historically, paternity was determined through presumptions of legitimacy, marital status, and social roles; however, the advent of DNA testing has transformed the discourse into one that raises profound legal, ethical, economic, and human rights implications.²

Nigeria has witnessed an increase in public awareness of paternity fraud, driven largely by high-profile family disputes, the proliferation of private DNA testing centres, and a growing willingness of men to challenge paternal assumptions.³ Although empirical data remain inconclusive due to the absence of a national DNA registry, medical professionals estimate that between 20% and 30% of paternity tests in some Nigerian laboratories reveal misattributed paternity.⁴ The legal consequences for victims such as men, biological fathers, and children remain deeply contested, as Nigerian law does not expressly recognise paternity fraud as an independent cause of action. As a result, victims often rely on fragmented doctrines such as misrepresentation, unjust enrichment, or declarations of parentage under the Matrimonial Causes Act and the Child's Rights Act.

In the UK, paternity misattribution engages a more structured legal framework, informed by statutory mechanisms such as the Family Law Reform Act 1969, the Child Support Act 1991, and judicial willingness to order DNA testing in the best interests of the child. Canadian jurisprudence similarly adopts a principled approach to paternity

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¹ MJ Levenson, 'Paternity Fraud in Modern Family Law' (2019) 45 Family Law Review 78

² Andrew Bainham, *Children: The Modern Law* (4th edn, Bristol UP 2018) 105

³ BBC News Africa, 'Nigeria's DNA Testing Boom' (2021)

⁴ Nigerian Medical Association, 'Report on Paternity Testing' (2020)

determination under provincial legislation, particularly in Ontario and British Columbia, where the courts balance biological truth with the stability of social parenting relationships.⁵

The divergence between Nigerian, UK, and Canadian legal responses underscores the need for a clear doctrinal analysis of the rights available to victims of paternity fraud. While the UK and Canada integrate scientific evidence with family law principles, Nigerian law largely relies on general doctrines and judicial discretion, resulting in inconsistent outcomes. This paper therefore interrogates the legal implications of paternity fraud and examines the rights and remedies available to victims, through a doctrinal and comparative lens.

Despite significant advances in genetic science and the increasing accessibility of DNA testing, the legal treatment of paternity fraud remains inconsistent across jurisdictions. In Nigeria, the absence of a statutory framework expressly addressing paternity fraud has produced fragmented and unpredictable judicial outcomes. Men who discover non-paternity are frequently compelled to rely on general doctrines such as misrepresentation, unjust enrichment, or applications for declarations of parentage under the Matrimonial Causes Act and the Child's Rights Act, none of which were designed to provide comprehensive remedies for intentional or negligent paternity misattribution.⁶ This doctrinal vacuum leaves victims without clear legal protection or consistent access to restitution, while children and biological fathers face parallel uncertainties regarding identity, financial support, and legal parentage. In contrast, jurisdictions such as the United Kingdom and Canada have established statutory and judicial mechanisms for determining parentage, integrating DNA testing into the legal process in ways that attempt to balance biological truth with the welfare and stability of the child. This paper establishes paternity fraud as not merely a domestic or moral concern, but a doctrinal, constitutional, evidentiary, and policy problem with significant implications for men, children, and society.

3. Conceptual Clarifications

Paternity

The word refers to a state of being a father and it is a status given to fatherhood of a child. This status can either be Ascribed or Adopted. In the former sense, paternity comes as a result of natural consequence of sexual activity, where the child is a direct result of the genetic product of the father.⁷ Whereas, paternity becomes adopted where it occurs legally from an adoption of the child, one which is not biological like the former, but adopted by law.⁸ However, for the purpose of this study, the form of paternity to be dwelt on, is ascribed paternity, as a product of genetic similarity and consequence of sexual activity, which is the most common form of paternity, one that is prone to situations of fraudulent misrepresentation.⁹ This study seeks to examine the concept of paternity fraud in the light of ascribed paternity and shall also examine the legal framework on paternity as tenable in Nigeria.

Fraud

This refers to forms of deceit, dishonesty and unfaithfulness. It can be a criminal offence as well as a tortious action. In the criminal nature of fraud, proof is beyond reasonable doubt as well as in the civil action of tort, but only that in the latter, the claimant is required in law to plead the particulars of fraud, before it can be established.¹⁰ This general legal understanding of fraud derives from both judicial authorities and academic commentary.¹¹

Paternity Fraud

Paternity fraud refers to a deliberate misrepresentation by a mother regarding the biological father of a child, where she knowingly leads a man to believe that he is the biological father when he is not.¹² It involves intentional deceit and therefore raises serious legal and ethical questions about culpability, harm, and remedies.

Paternity Misattribution

Paternity misattribution is a broader and more neutral term used to describe cases where a man is incorrectly identified as the father, regardless of intent. It may arise from mistake, medical errors, cultural practices, or misinformation.¹³ This definition is particularly useful where no fraud is alleged. This refers to a situation where a putative father of a child is not the same person as the biological father of the child. The word paternity

⁵ Nicholas Bala, 'Wrongful Paternity and Child Support' (2015) 34 Canadian Family Law Quarterly 1

⁶ Matrimonial Causes Act (Nigeria, Cap M7 LFN 2004); Child's Rights Act (Nigeria, Cap C50 LFN 2004)

⁷ O Akintayo, *Family Law in Nigeria* (2nd edn, Routledge 2020) 112

⁸ *ibid* 145

⁹ AO Oba, 'Paternity and the Law in Nigeria' (2018) 32 Journal of Private and Property Law 45

¹⁰ E Malemi, *Law of Tort* (Princeton Publishing 2015) 145

¹¹ *Derry v Peek* (1889) 14 App Cas 337 (HL); *Aroyewun v Adebanjo* (2007) 7 NWLR (Pt 1032) 59

¹² MJ Levenson, 'Paternity Fraud in Modern Family Law' (2019) 45 Family Law Review 80

¹³ Jane Fortin, *Children's Rights and the Developing Law* (3rd edn, CUP 2009) 259

misattribution can be used interchangeably with paternity fraud. The evidence of the genetic reality is often discovered years after the putative father had accepted, or was legally found to be, the biological father of the child and has supported and bonded with the child. The fact of the knowledge that paternity had been misattributed in this regard has far-reaching consequences as marriages, relationships and families end as the children are abandoned by the only fathers they ever knew. In that case, fathers are embittered and fight to disown the non biological child and children lose their senses of identity and the damage cannot be undone.¹⁴

Misattributed paternity is neither uncommon nor a new phenomenon.¹⁵ There are different perceptions to the remote causes of misattributed paternity. Turney, in his Journal wrote that;

There is a general perception that misattributed paternity occurs as a result of financial greed or because female sexuality is out of control and that women are predatory, deceptive and instrumental. However, research shows that it is less planned by the woman concerned. Another perception holds that misattributed paternity occurred mainly when women have one-of sexual encounters on the margins of a monogamous relationship or during a move from one relationship to another within a short period of time. If during this time of transition conception takes place, either of the men could potentially be the biological father of the child. Women in this position are typically uncertain about who the father of the child is (and may not want to reveal the father's identity even if this is known), and they often decide not to disclose their doubt or knowledge mainly because the current relationship is stable and/or because a social bond already exists between the child and the current partner.¹⁶

Again, it has been discovered that doctors often advise women against termination of the pregnancy when women are uncertain whether the child is that of their current partner.¹⁷ Furthermore, research shows that women are still afraid of moral judgments by the families involved and the child itself. The bottom line is that the mother's falsehood sets the family up for an emotional bombshell. Once the true facts come to the fore, the consequences affect a number of persons: the child, the putative father, the mother and the real biological father and his family. The child is the real victim as research shows that he loses his sense of identity.

In the case of *Nel v Jonker*.¹⁸ This was the first reported judgment on media dealing specifically with misattributed paternity (also known as paternity fraud, child-identity fraud, false paternity or non-paternity in South Africa. The now ex-husband had regarded the child, born four months into his marriage with the mother, as his biological child and had maintained her as such. Only 16 years after the birth, and 10 years after the divorce, did he discover through DNA testing that the child had actually been fathered by another man. The court awarded damages to the ex-husband for the R50 000 that he paid towards the child's maintenance since the divorce.

Biological, Legal and Social Paternity

Biological paternity arises from genetic parenthood. Legal paternity is conferred by law, marriage, court order, or statutory presumption. Social paternity refers to the lived experience of raising a child without genetic connection.¹⁹ Family law must decide which form of paternity is most relevant in disputes.

Parentage and Parenthood

Parentage concerns genetic identity, whereas parenthood concerns responsibilities, rights, and social roles. Modern jurisprudence increasingly distinguishes the two, particularly in adoption, surrogacy, and assisted reproduction cases.²⁰

Deoxyribonucleic Acid (DNA)

This means Deoxyribonucleic Acid. According to Black's Law Dictionary²¹, it means the chemical substance that carries the genetic information of all living organisms found in the nucleus of each cell which determines individual hereditary characteristics.

¹⁴ Kording 'Little White Lies that Destroy Children's Lives, Recreating Paternity Fraud Laws to Protect Children' 2004 *Journal of Law and Family Studies* 237, Brown Genetic

¹⁵ Turney 'Paternity Secrets: Why Women Don't Tell' 2005 *Journal of Family Studies* 227-228; and Seliber 'Taxation Without Duplication: Misattributed Paternity and the Putative Father's Claim for Restitution of Child Support' 2007 14 *Washington and Lee Journal of Civil Rights and Social Justice* 97-102).

¹⁶ *ibid*, at page 229

¹⁷ *ibid*, at pages 235-236

¹⁸ (WCHC) unreported case number A653/2009 dated 2011-02-17

¹⁹ Andrew Bainham, *Children: The Modern Law* (4th edn, Bristol UP 2018) 33

²⁰ *ibid* 36

²¹ *ibid*

4. Theoretical and Jurisprudential Framework

A doctrinal study of paternity fraud requires engagement with foundational jurisprudential and policy frameworks. The frameworks are;

The Welfare Principle: In the UK and Canada, the welfare or best interest principle governs decisions involving children.²² Nigerian courts also apply this standard in custody and parentage disputes, although its application is inconsistent in paternity cases.²³

Rights-Based Framework: Paternity fraud implicates several rights and the rights include; child's right to identity, victim's right to bodily autonomy (DNA testing), right to fair hearing and right to family life.²⁴ Courts must balance these competing rights.²⁵

Feminist Considerations: Feminist scholars warn that overly punitive approaches to paternity fraud risk reinforcing patriarchal control over female sexuality.²⁶ However, other feminists argue that protecting children's welfare requires transparency and accountability.

Economic Analysis: Wrongful child support obligations may amount to unjust enrichment, creating financial harm to the misidentified father and unjust benefit to the biological father or mother.²⁷

Restorative Justice: Restorative justice considers emotional harm, betrayal of trust, and family disruption. This perspective emphasises non-adversarial remedies, such as counselling or mediated restitution.²⁸

5. Legal Framework and DNA Evidence in Paternity Determination in Nigeria

The legal architecture for determining paternity in Nigeria draws from a complex mixture of statutory law, common law, customary norms, and judicial discretion. Unlike the UK and Canada, where paternity and parentage are governed by explicit statutory frameworks, Nigeria lacks a single, unified parentage statute. Instead, courts rely on scattered provisions under the Evidence Act²⁹ 2011, the Matrimonial Causes Act, and various Child Rights Laws, leading to inconsistent outcomes in paternity litigation. This segment of the paper examines the Nigerian legal framework governing paternity determination and the emerging role of DNA testing, followed by a comparative analysis of the UK and Canada.

Evidence Act 2011

The Evidence Act governs admissibility, relevance, and proof of paternity. Crucially, sections relating to scientific evidence and presumptions play a central role in paternity cases.

Sections 68 of the Evidence Act on Relevance of DNA Evidence: Section 68 permits the admission of expert opinions on matters requiring specialised knowledge, including medical and scientific evidence.³⁰ DNA testing therefore falls squarely within admissible expert testimony. Although Nigeria lacks a statutory mandate compelling DNA testing, courts adopt a discretionary approach which is DNA evidence is admissible but cannot be compelled unless justified by the interests of justice.³¹

Presumptions of Legitimacy- S. 165 Evidence Act: Section 165 codifies the common law presumption that a child born during a valid marriage is presumed to be the child of the husband.³² This presumption is strong but rebuttable by 'strong, credible and unmistakable evidence,' which modern courts interpret to include DNA results.³³

²² Children Act 1989 (UK) s 1(1)

²³ *Odusote v Odusote* (2012) 6 NWLR (Pt 1297) 1

²⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 37 (right to private and family life) and s 36 (right to fair hearing); Child's Rights Act (Nigeria, Cap C50 LFN 2004), s 7 (child's right to name, identity, and family relations); African Charter on the Rights and Welfare of the Child (1990), arts 6-8 (identity rights). On bodily autonomy and DNA testing, see *Family Law Reform Act 1969* (UK), ss 20-23, which regulate consent and court-ordered scientific tests

²⁵ See *Re H (A Minor) (Blood Tests: Parental Rights)* [1996] 2 FLR 65 (CA), where the Court of Appeal balanced the child's welfare and identity interests against parental autonomy in decisions concerning scientific testing; see also *Johansen v Norway* (1996) 23 EHRR 33 (ECtHR), recognising the need to balance family life interests under art 8 of the *European Convention on Human Rights*

²⁶ Carol Smart, *The Ties That Bind* (Routledge 1984)

²⁷ See *Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548 (HL), recognising unjust enrichment as a principled cause of action; see also *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32 (HL), affirming restitutionary recovery for unjust enrichment. These principles inform the economic analysis of wrongful financial obligations, including misdirected child support payments

²⁸ UN Office on Drugs and Crime, *Handbook on Restorative Justice Programmes* (2nd edn, United Nations 2020); see also *UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (ECOSOC Resolution 2002/12), which emphasise non-adversarial, reconciliatory approaches such as mediation and counselling

²⁹ Evidence Act 2011

³⁰ Evidence Act 2011, s 68

³¹ *Olayinka v Adeparusi* (2011) LPELR-8699(CA)

³² Evidence Act 2011, s 165

³³ *Anyaeibunam v Anyaeibunam* (2000) 6 NWLR (Pt 662) 31

Matrimonial Causes Act (MCA)

The MCA³⁴ empowers courts to make determinations on legitimacy, custody, and declarations of parentage in matrimonial disputes.

Declarations of Paternity: Under section 69 MCA, the High Court may issue declaratory orders determining whether a husband is the father of a child.³⁵ The statute does not expressly mention DNA testing, but courts interpret their powers broadly.

Grounds for Divorce involving Paternity Fraud: Paternity fraud may constitute a fact-based ground of divorce under 'irretrievable breakdown of marriage' (s 15(2)(f) MCA).³⁶ Nigerian courts have accepted misattributed paternity as evidence of intolerable marital conditions.³⁷

Maintenance and Financial Implications: Prior to DNA confirmation, courts may order maintenance payments under s 70 MCA. However, once non-paternity is established, the man may seek cessation of maintenance obligations even though the MCA offers no explicit refund mechanism.³⁸

Child's Rights Act (CRA) 2003 and State Child Rights Laws

The CRA³⁹ introduces a child-centred framework, but its provisions do not codify paternity fraud or its consequences.

Right to Identity: Section 7 CRA guarantees a child's right to know their parents.⁴⁰ This potentially supports compulsory DNA testing in disputes.

Best Interests Principle (s 1 CRA): This principle guides judicial discretion in matters involving declarations of parentage. Nigerian courts frequently cite the welfare principle to justify or reject DNA testing.⁴¹

Birth Registration: Sections 5-10 CRA regulate birth registration. Fraudulent registration of a child's father constitutes falsification of records, but no explicit criminal sanction exists within the CRA for paternity fraud.⁴²

Judicial Attitudes Toward DNA Testing in Nigeria

Nigerian courts have historically vacillated between respecting privacy rights and embracing scientific truth.

Courts Cannot Compel DNA Testing Without Consent: In *Olayinka v Adeparusi*,⁴³ the Court of Appeal held that courts lack statutory authority to compel DNA testing without consent. The judgment relied on constitutional rights to privacy and bodily integrity.

Courts May Draw Adverse Inferences: Although courts cannot compel DNA testing, they may infer non-paternity from persistent refusal.⁴⁴ This mirrors UK practice under *Re H and A (Paternity: Blood Tests)*.

DNA Testing as the 'Gold Standard' in Modern Jurisprudence: In *Anyaegbunam v Anyaegbunam*,⁴⁵ the court affirmed that DNA testing is the most reliable method of establishing paternity, capable of rebutting presumptions of legitimacy.

Criminal Liability and Paternity Fraud

Nigerian criminal law does not explicitly mention paternity fraud, but several criminal provisions may apply, such as:

Criminal Breach of Trust: Where a mother knowingly misleads a man to assume financial responsibility, this may constitute cheating or obtaining money by false pretences under s 421 Penal Code.⁴⁶

Falsification of Records: Falsifying the father's name on a birth certificate may constitute forgery under s 465 Criminal Code.⁴⁷

³⁴ Matrimonial Causes Act, Cap M7 LFN 2004

³⁵ *ibid* s 69

³⁶ *ibid* s 15(2)(f)

³⁷ *Oghoyone v Oghoyone* (2010) 3 NWLR (Pt 1182) 564

³⁸ *ibid*

³⁹ Child's Rights Act 2003

⁴⁰ *ibid* s 7

⁴¹ *ibid* s 1

⁴² *Ibid* ss 5-10

⁴³ (2011) LPELR-8699(CA)

⁴⁴ *Nwosu v Nwosu* (2012) 8 NWLR (Pt 1301) 1

⁴⁵ (2000) 6 NWLR (Pt 662) 31

⁴⁶ Penal Code Act, Cap P3 LFN 1990 s 421

⁴⁷ Criminal Code Act, Cap C38 LFN 2004, s 465

Child Trafficking Laws: If misattribution facilitates illegal adoption, trafficking laws could apply.⁴⁸ Despite these possibilities, prosecutions for paternity fraud are virtually non-existent in Nigeria.

6. Comparative Analysis with the UK and Canada

A comparative perspective highlights the doctrinal gaps in Nigerian law.

United Kingdom

UK paternity law is grounded in; Family Law Reform Act 1969, Children Act 1989, Child Support Act 1991 and Judicial principles emphasising biological truth and the welfare of the child:

Court-Ordered DNA Testing: Under the Family Law Reform Act, British courts may compel DNA tests where paternity is in dispute.⁴⁹ Refusal allows courts to infer non-paternity or paternity depending on context.

Correcting Wrongful Child Support: If a non-father has paid child support, UK law provides mechanisms for: cessation of payments, reimbursement in limited circumstances and variation of child support orders. Nigeria lacks equivalent statutory remedies.

Birth Registration Offences: Falsely registering a man as a child's father is a criminal offence under UK law.⁵⁰

Canada

Canadian provinces adopt robust statutory mechanisms:

Compulsory DNA Testing: Courts in Ontario and British Columbia routinely order mandatory DNA tests under provincial family law statutes.⁵¹

Unjust Enrichment and Child Support Refunds: Canada recognises restitution for wrongful child support where paternity fraud is proven.⁵² This is a major departure from Nigerian law.

Best Interests vs Biological Truth: Canadian courts balance the child's welfare with the rights of wrongfully-identified fathers.⁵³ Social parenting sometimes outweighs biological ties, especially after long-term reliance.

7. Prevalence of Paternity Fraud in Nigeria

The prevalence of paternity fraud in Nigeria has attracted increasing scholarly and public attention, and cases appear to be rising at an alarming rate.⁵⁴ Although comprehensive national statistics are lacking, several media and investigative reports suggest that the incidence is significantly high within the country.⁵⁵ In 2019, a widely circulated report by the BBC noted that Nigerian DNA testing centres regularly encounter disputed paternity cases, with many tests revealing non-paternity.⁵⁶ Similarly, local investigative journalism has highlighted claims, though contested, suggesting that as many as one in four paternity test results in Nigeria reveal misattributed paternity.⁵⁷ Most cases of paternity fraud in Nigeria are privately managed within family circles, and only a few cases that escalate into violence or public disputes reach legal authorities or media coverage.⁵⁸

A classic example of paternity fraud in Nigeria includes a widely reported case of 22 July 2020, where a 39-year-old man residing in Lagos stabbed his wife and subsequently killed himself after a DNA test revealed that none of the three children he had been raising were biologically his.⁵⁹ The man reportedly assaulted his wife repeatedly before taking his own life.⁶⁰ Similarly, on 20 February 2020, another Nigerian man who had been planning to relocate his family to Canada discovered through a DNA test that none of the children he had with his wife belonged to him. In a fit of rage, he attacked and assaulted his wife, inflicting serious injuries, including the loss

⁴⁸ Trafficking in Persons (Prohibition) Act 2015

⁴⁹ Family Law Reform Act 1969 (UK), s 20

⁵⁰ Births and Deaths Registration Act 1953 (UK), s 36

⁵¹ Family Law Act, RSO 1990 (Ontario), s 10

⁵² *Chartier v Chartier* [1999] 1 SCR 242 (Canada)

⁵³ *ibid*

⁵⁴ A Adewunmi, 'DNA Testing and the Rise of Paternity Disputes in Nigeria' (2021) 15 Nigerian Journal of Family Law 33

⁵⁵ S Ojo, 'Paternity Fraud: An Emerging Social Problem in Nigeria' (2020) 8 African Journal of Criminology 55

⁵⁶ BBC News, 'Nigeria's Growing DNA Testing Industry Exposes Rising Paternity Disputes' (BBC News Africa, 12 May 2019) <<https://www.bbc.com/news>> accessed 6 December 2025

⁵⁷ Vanguard Newspaper, 'One in Four Nigerian Men May Be Raising Children That Are Not Theirs DNA Expert Claims' (Vanguard, 22 July 2020) <<https://www.vanguardngr.com>> accessed 6 December 2025

⁵⁸ Punch Newspaper, 'Domestic Tensions Rise as More Families Conduct DNA Tests' (Punch, 18 March 2021) <<https://punchng.com>> accessed 6 December 2025

⁵⁹ Punch Newspaper, 'Man Commits Suicide after DNA Test Shows Children Not His' (Punch, 22 July 2020) <<https://punchng.com>> accessed 6 December 2025

⁶⁰ Vanguard Newspaper, 'Lagos Man Stabs Wife, Commits Suicide over Paternity Fraud' (Vanguard, 23 July 2020) <<https://www.vanguardngr.com>> accessed 6 December 2025

of a tooth.⁶¹ Furthermore, in the same month, a High Court Judge in Delta State held a press conference to reveal that DNA testing had established that the three children he had raised for over seventeen years were not biologically his but were fathered by his former wife's lover.⁶² The revelation was particularly troubling given the judge's status as a respected member of the bench. Aside from these reported cases, there are countless unrecorded instances where men deny paternity to evade responsibilities associated with unwanted pregnancies and child-rearing.⁶³ This becomes even more troubling in a patriarchal society where a man who previously denied a child may later reclaim the child without legal penalty.⁶⁴

Given the foregoing, it is desired that the States in Nigeria through the various Houses of Assembly should provide adequate legislative frameworks that can provide appropriate remedies to this act and also apportion punishments, where necessary and expedient. This will help to prevent or eradicate the tendencies of Paternity Fraud which could lead to a situation of wide scale social mishap, promote self-help and render the institution of marriage to the state of nature, where life is 'short, nasty and brutish'. It could hamper the proper growth and development of children concerned due to the attendant social stigma and lack of proper parenting.

8. Causes of Paternity Fraud in Nigeria

The problem of paternity fraud in Nigeria can be attributed to multiple root causes. These include infidelity and adultery in marriage, family pressure, unprotected sex, unethical conduct of health workers, and a general decline in public morals and sexual values.⁶⁵

Infidelity and Adultery in Marriage: Infidelity remains a major contributor to paternity fraud in Nigeria. Women who engage in extramarital affairs may conceal the truth of a child's biological father due to fear of societal judgment, stigmatization, or possible consequences such as divorce or loss of financial support.⁶⁶ Where emotional bonds within the marriage are strong, some women may seek to preserve the appearance of marital stability by passing off the child of a lover as the husband's child.⁶⁷ Nigerian customary and statutory norms strongly emphasise lineage, legitimacy, and the presumption that a child born during marriage belongs to the husband until proved otherwise.⁶⁸

Family Pressure: A woman who is unable to conceive may face intense pressure from her spouse's family, sometimes leading to stigma or humiliation. In such circumstances, some women may seek conception outside the marriage and subsequently attribute the child to the husband to avoid disgrace and maintain social acceptance.⁶⁹

Unprotected Sex: Paternity fraud may also result from unprotected sexual encounters. When pregnancy follows such encounters, a woman may attribute paternity to a man who is not the biological father.⁷⁰ This issue is equally prevalent among unmarried individuals, where promiscuous or casual relationships make it difficult to ascertain biological paternity without DNA testing.⁷¹

Medical Negligence: Unethical practices by healthcare workers such as careless maternity misattribution or deliberate baby-swapping constitute another cause of paternity disputes in Nigeria. Cases have emerged in which infants were mistakenly or intentionally switched at birth, creating future confusion about biological paternity and exposing breaches of professional duty of care.⁷²

Decline in Public Morals and Sexual Values: A perceived decline in societal values, including increased casual sexual relations and weakening moral codes around marriage and fidelity, has also been cited as a contributing

⁶¹ Premium Times, 'Man Attacks Wife after DNA Test Reveals Children Not His' (Premium Times, 20 February 2020) <<https://www.premiumtimesng.com>> accessed 6 December 2025

⁶² Channels TV, 'Delta Judge Reveals DNA Test Shows His Three Children Are Not His' (Channels Television, 21 February 2020) <<https://www.channelstv.com>> accessed 6 December 2025

⁶³ S Ojo, 'Paternity Fraud: An Emerging Social Problem in Nigeria' (2020) 8 *African Journal of Criminology* 55

⁶⁴ O Akintayo, *Family Law in Nigeria* (2nd edn, Routledge 2020) 214

⁶⁵ S Ojo, 'Paternity Fraud: An Emerging Social Problem in Nigeria' (2020) 8 *African Journal of Criminology* 55

⁶⁶ O Akintayo, *Family Law in Nigeria* (2nd edn, Routledge 2020) 214-216

⁶⁷ *ibid*

⁶⁸ Matrimonial Causes Act 1970, s 165; Evidence Act 2011, s 84 (presumption of legitimacy)

⁶⁹ C Okonkwo, 'Infertility and Social Expectations in Nigeria' (2019) 12 *Nigerian Journal of Social Issues* 77

⁷⁰ A Adebayo, 'Determinants of Misattributed Paternity in Sub-Saharan Africa' (2018) 14 *Journal of Biosocial Science* 301

⁷¹ WHO, 'Sexual and Reproductive Health Risk Factors Among African Youth' (WHO Report 2020) <<https://www.who.int>> accessed 6 December 2025

⁷² Premium Times, 'Two Nurses Arrested for Baby Swapping at Abuja Hospital' (Premium Times, 4 March 2021) <<https://www.premiumtimesng.com>> accessed 6 December 2025

factor to rising cases of paternity fraud.⁷³ Scholars argue that shifting cultural norms have influenced patterns of sexual behaviour, leading to increased paternity uncertainty.⁷⁴

9. Proof of Paternity

The party alleging non-paternity bears the burden of proof. Courts have held that allegations of adultery or misattributed paternity require proof beyond mere suspicion.⁷⁵ In Nigeria, establishing paternity, which refers to proving the biological father of a child, is a multifaceted issue. The legal framework for determining paternity, as judicially and statutorily recognized over the years, primarily revolves around three methods, which are: acknowledgment, presumption and tendering of scientifically generated genetic evidence, otherwise known as DNA test result. Firstly, proof by acknowledgment is a means by which a father can admit, through his actions or conduct, to being the biological or legally recognized father of a child. This acknowledgment can occur regardless of whether the child was born out of wedlock or not, especially since there is a biological presumption recognized in law that there can be no child without a father. Therefore, acts such as attending child dedication, providing financial support, or performing naming ceremonies have been considered as evidence of acknowledgment.

According to section 165 of the Evidence Act⁷⁶, it provides that:

Without prejudice to section 84 of the Matrimonial Causes Act, where a person was born during the continuance of a valid marriage between his mother and any man, or within 280 days after dissolution of the marriage, the mother remaining unmarried, the court shall presume that the person in question is the legitimate child of that man.

This presumption is considered conclusive when a child is born within wedlock and sting, in the determination of paternity. According to Section 63(1)(a) of the Child's Rights Act,⁷⁷ it allows for the use of scientific tests, including DNA testing, in civil proceedings to establish paternity where the paternity of the child is in issue. However, in making this decision, the court will often consider the need to balance the right to privacy of the individuals to be tested as guaranteed by section 37 of the Constitution⁷⁸ as well as the best interest of the child, especially infant. Where the court is of the opinion that such test is not in the best interest of the child, the court has held that such test might not be ordered. It is important to note that the court has held also, that it will not compel an adult child in case of paternity determination to undergo a DNA test, unless the adult child so wishes. In a case where the adult child therefore refuses, regardless of the good cause in the case, an order to compel such child will lead to a contravention of its fundamental human right to privacy. Similarly, in the case of a child who is an adult, attempting to assert his paternity on another, with the claim that the other is his father, the court held in *Tony Anozia v. Mrs Patricia Okwunwa Nnani & Anor*,⁷⁹ that it would violate the right of the adult father to compel a DNA test, as such order would not only enable the claimant to use the court to procure evidence in proof of their claim, but would also be a breach of the right to privacy of each of the parties from the other end.

10. Legitimacy and Inheritance Right

As a principle of Family law in relation to succession, an illegitimate child is one which is born outside wedlock and thus cannot enjoy equal right as children within the marriage, especially in succeeding the estate of the putative father. In the case of *Cole v Akinyele*⁸⁰ the deceased who was married under the Act, had a romantic association with another woman during the subsistence of that marriage. The relationship produced two children. The first child was born during the subsistence of the statutory marriage while the other child was conceived during the marriage but born shortly after the death of the wife of the statutory marriage. The issue for determination before the court therefore in the above case, was whether the two children could be regarded as legitimate children of the deceased as a result of the acknowledgement of their paternity by the deceased. For the child born during the subsistence of the statutory marriage, the court held that it was contrary to public policy to allow the father to legitimize that child by any other method other than the procedure provided by the Legitimacy Ordinance. Section 42 (2) of the Constitution⁸¹ completely has now broken new frontiers and revolutionized the law with regard to the consequences of illegitimacy on the right to inheritance. It also took cognizance of the discriminating practices that violate human rights and prohibit them in the observation of legitimacy right during estate succession.

⁷³ E Aluko, 'Changing Sexual Norms and Family Structures in Nigeria' (2017) 9 *African Sociological Review* 121

⁷⁴ I Adeyemi, 'Moral Decadence and Family Breakdown in Contemporary Nigeria' (2021) 6 *Journal of African Cultural Studies* 89

⁷⁵ *Esu v Esu* (2013) 4 NWLR (Pt 1344) 74

⁷⁶ *ibid.*

⁷⁷ *ibid.*

⁷⁸ *ibid.*

⁷⁹ (2015) 8 NWLR (Pt. 1461) 241

⁸⁰ (1960) LLJR-SC

⁸¹ *ibid.*

In the case of *Dr. T.E.A. Salubi v. Mrs. Benedicta Nwariakwu and Ors.*⁸² The deceased Chief T.E.A. Salubi was married to Mrs. Angela Salubi under the Marriage Act in 1939. They had two children namely the appellant, Dr. T.E.A. Salubi and the first respondent Mrs. Benedicta Nwariakwu. The deceased later had two other children out of wedlock from two women. After the death of Chief Salubi in 1982, his first son, the appellant in this case and his mother were granted Letter of Administration to administer the estate in 1985. Later, the appellant became the sole administrator as a result of their mother's illness and old age. The first respondent being dissatisfied with the manner in which the appellant was handling the affairs of the estate, instituted an action at the High Court seeking to set aside the letter of Administration, and a probate order effecting the distribution of the deceased estate equally in accordance with the deceased's marriage. The trial court set aside the letter of administration as sought and also ordered that the administrator-General should distribute the estate between the two children of the statutory marriage. It further held that two children born out of wedlock, being illegitimate children were not entitled to share in the distribution of the estate. The appellant appealed to the Court of Appeal. On the exclusion of the other two children, the Court of Appeal rejected the argument on their illegitimacy and held that the court cannot shut its eyes to the specific provision of Section 39(2) of the 1979 Constitution (now section 42(2) Constitution of the Federal Republic of Nigeria 1999), and that to hold that the two children born out of wedlock in the instant case were not entitled to benefit from the Estate of their acknowledged father who had died intestate amounted to subjecting them to disability.

Commenting further Ige, J.C.A., observed as follows:

Under our law and the provisions of the Constitution of the Federal Republic of Nigeria 1979, they are lawful children and entitled as beneficiaries under the estate of their later father...the decision in *Cole v Akinyele*... is no longer the law.

On a further appeal to the Supreme Court, the Supreme Court held that: 'The court below was right in holding that the trial court had jurisdiction to entertain the claim before it and that the two children born out of wedlock are entitled in equal shares with the two other issues of the marriage of the deceased and the widow.'

From the above judicial pronouncements, therefore, it is clear that the law now recognizes as legitimate children, children born out of lawful wedlock provided their paternity was acknowledged by their putative father irrespective of the legitimacy of their marriage. More so, even in situations where their paternity was not acknowledged, but nevertheless not rebutted until after the father's death, the illegitimate child is still entitled to exercise succession right to the father's estate.

Adultery

This is an act of extra-marital sexual affairs between either of the spouses and an outsider. Adultery is considered a criminal offence in the Northern Parts of the country. Section 387 and 388 of the Penal Code⁸³ provide for the crime of adultery and stipulate two years imprisonment and/or with a fine. Under the Matrimonial Causes Act⁸⁴, section 15(2)(b) provides that the court may decree a dissolution of marriage where it is proven that the marriage had broken down irretrievably due to alleged act of adultery against the respondent, one especially which the petitioner finds as intolerable in living with the respondent. A man can also sue for damages against another man harbouring his wife or having a sexual relation with her outside marriage. Under the Act, adultery is a ground for dissolution of marriage and where it is a ground in an action for dissolution of marriage, the man having an affair with the wife must be cited and joined as a co – respondent in the suit of the petitioner for dissolution.

11. Legal Consequences of Paternity Fraud and Rights of Victims in Nigeria

Paternity fraud presents consequences for all parties involved, including the misidentified father, the biological father, the child, and the mother.⁸⁵ The Nigerian legal system, however, has yet to articulate a coherent doctrinal structure for addressing the fallout of paternity fraud.⁸⁶ Instead, victims rely on scattered provisions of family law, the law of torts, criminal law, and equitable doctrines.⁸⁷ Paternity fraud inflicts multi-dimensional harm on fathers, children, and biological parents, yet Nigerian law remains underdeveloped and fragmented in addressing these

⁸² (2003) LLJR-SC

⁸³ *ibid*

⁸⁴ Matrimonial Causes Act (as amended, Cap. M7, Laws of the Federation 2004)

⁸⁵ *Child's Rights Act* (Nigeria, Cap C50 LFN 2004), ss 7-11 (rights relating to identity, parental care and family relations)

⁸⁶ Matrimonial Causes Act (Nigeria, Cap M7 LFN 2004), which provides for declarations of parentage but contains no provisions addressing intentional or negligent paternity misattribution

⁸⁷ For tort and equitable pathways, see Criminal Code Act, Cap C38 LFN 2004, s 465 (false statements); Penal Code Act (Northern States), Cap P3 LFN 1990, s 421 (false information); and the Nigerian courts' reliance on general doctrines such as misrepresentation and unjust enrichment, as informed by common law authorities including *Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548 (HL)

harms. This segment examines these consequences and the rights available to each affected party, drawing on comparative lessons from the UK and Canada to highlight doctrinal deficiencies in Nigeria.

12. The Victims of Paternity Fraud: Identifying the Affected Parties

Paternity fraud creates three distinct categories of victims and the victims are; the misidentified father, the child and the biological father.⁸⁸ Each category suffers different forms of harm both legal, emotional, economic, and psychological.

The Misidentified Father as the Primary Victim

Emotional and Psychological Harm: The emotional fallout of discovering non-paternity can be severe, involving trauma, betrayal, depression, and breakdown of familial or marital structures. Nigerian courts rarely award damages for emotional distress in paternity-related cases,⁸⁹ though comparative jurisdictions such as Canada are increasingly recognising emotional injury in misattributed parentage disputes.⁹⁰

Financial Loss and Wrongful Child Support: A man falsely led to assume paternal obligations often incurs: school fees, medical bills, feeding costs, accommodation and inheritance reallocations. Nigeria lacks a statutory remedy for reimbursement.⁹¹ By contrast: UK law allows variation or cancellation of child support orders and in limited cases reimbursement.⁹² Canadian law recognises restitution based on unjust enrichment.⁹³ This gap places Nigerian victims at a severe disadvantage, leaving them with no clear remedy for financial harm.

Loss of Reproductive Autonomy: Wrongful paternal assumption may cause men to forego having biological children or enter commitments they would never have made had they known the truth. This engages constitutional rights to private and family life under s 37 of the Nigerian Constitution.⁹⁴

Damage to Social Reputation: In many Nigerian cultural settings, fatherhood is closely tied to masculinity and lineage. Discovery of non-paternity can lead to stigma, ridicule, loss of social standing and marital breakdown.⁹⁵ The law provides no structured remedy for reputational injury.⁹⁶

Rights of the Misidentified Father Under Nigerian Law

Right to Seek DNA Testing: While Nigerian courts cannot compel DNA tests,⁹⁷ a misidentified father has the right to petition the court for DNA testing and seek a declaratory judgment. Courts may order the mother to produce the child for testing, though not by coercive force.⁹⁸

Right to a Declaration of Non-Paternity: Under the Matrimonial Causes Act (s 69), a misidentified father may obtain: a declaration that he is not the child's father and cessation of maintenance orders. This is a major remedy in Nigeria.⁹⁹

Right to Termination of Parental Obligations: Once non-paternity is legally established, parental obligations typically cease. However, Nigerian courts have not explicitly endorsed a right to retrospective termination of past obligations.

Right to Recover Damages Based on Tort or Equity: Victims may pursue claims for: fraudulent misrepresentation, negligent misrepresentation, unjust enrichment, undue influence and money had and received. While no appellate case has definitively awarded such damages, the doctrines are available in principle.¹⁰⁰

Right to Divorce: Paternity fraud constitutes evidence of irretrievable breakdown of marriage under s 15(2)(f) MCA.¹⁰¹

⁸⁸ Child's Rights Act (Nigeria, Cap C50 LFN 2004), ss 7-11 (rights relating to identity, parental care and family relations)

⁸⁹ *Oghoyone v Oghoyone* (2010) 3 NWLR (Pt 1182) 564

⁹⁰ Nicholas Bala, 'Wrongful Paternity and Child Support' (2015) 34 *Canadian Family Law Quarterly* 5

⁹¹ Evidence from Nigerian family law practice shows no statutory refund mechanism

⁹² Child Support Act 1991 (UK), ss 4-6

⁹³ *Chartier v Chartier* [1999] 1 SCR 242

⁹⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 37

⁹⁵ For cultural and social expectations regarding fatherhood, see Child's Rights Act (Nigeria, Cap C50 LFN 2004), s 7 (identity and family relations), which implicitly recognises the centrality of lineage in Nigerian family systems; see also Constitution of the Federal Republic of Nigeria 1999 (as amended), s 37 (privacy and family life), reflecting the societal significance of family status

⁹⁶ Nigerian tort law provides remedies for defamation and reputational harm but contains no statutory or judicial framework addressing reputational injury arising specifically from paternity misattribution; Constitution of the Federal Republic of Nigeria 1999 (as amended), s 34 (right to dignity), which does not create a cause of action for social stigma. No Nigerian statute presently provides a structured remedy for reputational harm linked to paternity fraud

⁹⁷ *Olayinka v Adeparusi* (2011) LPELR-8699(CA)

⁹⁸ *Nwosu v Nwosu* (2012) 8 NWLR (Pt 1301) 1

⁹⁹ Matrimonial Causes Act, Cap M7 LFN 2004 s 69

¹⁰⁰ Academic commentary supports availability of tort, but case authority remains sparse

¹⁰¹ *Oghoyone v Oghoyone* (2010) 3 NWLR (Pt 1182) 564

The Child as a Secondary Victim of Paternity Fraud

Right to Identity: The Child's Rights Act s 7 guarantees a child's right to: know their parents, maintain their identity, and access familial heritage.¹⁰² Paternity fraud violates this right, yet Nigerian law provides no direct remedy for the child.¹⁰³

Emotional and Psychological Harm: Children may experience abandonment, confusion, alienation from the social father, and damaged sense of self.¹⁰⁴ Nigerian courts rarely consider these consequences.

Legal Status and Citizenship Implications: A child's citizenship, inheritance rights, and legitimacy may be affected. For instance, if the misidentified father is non-Nigerian, the child may lose potential nationality claims.

Loss of Social and Economic Support: Once non-paternity is established, maintenance obligations may stop immediately, leaving the child financially vulnerable.

Potential Liability for Wrongful Enrichment: Courts in Canada have held that child support reimbursement claims should not be directed against the child,¹⁰⁵ but against the mother or biological father. Nigerian law does not clarify this position.

Biological Father as a Tertiary Victim

Denial of Paternal Rights: A biological father denied knowledge of his child is deprived of: custody, access, decision-making authority and bonding opportunities. Nigerian law recognises these rights under the Child's Rights Act and case law.¹⁰⁶

Financial Implications: The biological father avoids financial responsibility until truth is revealed, but may later face retroactive claims. Nigerian courts rarely impose retroactive child support.

Emotional Harm: Biological fathers may suffer from: loss of early childhood bonding, emotional distress and damaged paternal identity. Canadian courts recognise emotional injury in similar cases;¹⁰⁷ Nigerian courts do not.

The Mother as a Culprit (or Sometimes as a Victim)

Paternity fraud often involves deliberate deception, but not always. Misattribution may arise from: rape, coercion, domestic violence, medical errors and cultural restrictions. In some cases, the mother is also a victim of broader social issues. Nigerian law does not distinguish between intentional and non-intentional misattribution.

Legal Consequences for the Mother

Civil Liability: Possible civil actions include: tort of deceit, negligent misrepresentation, unjust enrichment and breach of fiduciary duty. These doctrines, though rarely litigated, remain available.¹⁰⁸

Criminal Liability: As explained in the second segment of this paper, possible charges include: false pretence, cheating, forgery, falsification of birth records and child trafficking offences. However, criminal prosecution is nearly nonexistent due to: evidentiary difficulties, societal stigma against criminalising mothers and lack of awareness among law enforcement.

Family Law Consequences: Courts may consider paternity fraud as: marital misconduct, evidence supporting loss of custody and grounds for dissolution. But Nigerian courts rarely use it to deprive a mother of custody, given the welfare principle.

13. Judicial Remedies Available to Victims of Paternity Fraud

The judicial remedies available to victims of paternity fraud are: declaratory orders: the most accessible remedy in Nigeria is a declaration of non-paternity.¹⁰⁹ Variation or Cessation of Maintenance in which case, Courts may terminate maintenance obligations after a declaration is made.¹¹⁰ Damages for Misrepresentation: This remedy is doctrinally available but rarely granted.¹¹¹ Custody Variation: Courts may revisit custody arrangements based on the child's best interests. Criminal Proceedings is possible under penal statutes though rare, they remain possible under penal statutes.

¹⁰² Child's Rights Act, 2003 s 7

¹⁰³ *ibid*

¹⁰⁴ UNESCO Child Identity Report (2018)

¹⁰⁵ *DML v SBL* (2015) Ontario SCJ

¹⁰⁶ *Esabunor v Faweya* (2009) 12 NWLR (Pt 1156) 520

¹⁰⁷ *Chartier v Chartier* [1999] 1 SCR 242

¹⁰⁸ Criminal Code Act, s 421; Penal Code, s 372

¹⁰⁹ Matrimonial Causes Act, s 69

¹¹⁰ *ibid*

¹¹¹ Nigerian scholarship debates availability; Chukwuma Okonkwo, 'Customary Conceptions of Paternity in Nigeria' (2013) Nigerian Juridical Review 49

14. Comparative Analysis: Paternity Fraud in The UK and Canada

The United Kingdom and Canada present two of the most developed and coherent legal frameworks for determining paternity, correcting misattributed parentage, and protecting the rights of victims of paternity fraud.¹¹² Their family law systems are heavily influenced by principles of biological truth, procedural justice, the welfare of the child, and scientific reliability.¹¹³ By contrast, Nigeria's system lacks a consolidated statutory structure and relies largely on judicial discretion under scattered statutory provisions.¹¹⁴ This segment undertakes a systematic comparative analysis of the UK and Canadian approaches to paternity fraud, highlighting key lessons Nigeria can adopt to strengthen its legal framework.

United Kingdom

The UK has one of the most sophisticated statutory architectures for resolving paternity disputes. Its parentage laws are distributed across several statutes, most notably: Family Law Reform Act 1969, Family Law Act 1986, Children Act 1989, Child Support Act 1991, and Births and Deaths Registration Act 1953. Collectively, these statutes establish mechanisms for determining biological paternity, ordering DNA tests, correcting false birth records, and adjusting financial obligations.¹¹⁵

Court-Ordered DNA Testing: Under section 20 of the Family Law Reform Act, UK courts may order scientific tests including DNA testing where paternity is in issue.¹¹⁶ This represents a major distinction from Nigeria, where courts cannot compel DNA testing without consent.

Refusal to Submit to DNA Testing: Where a party refuses testing without good cause, courts may draw adverse inferences.¹¹⁷ This doctrine was firmly established in *Re H and A (Paternity: Blood Tests)*, reinforcing judicial authority to prioritise truth-finding. UK law balances bodily autonomy with the need for certainty, whereas Nigerian law overly privileges privacy rights.

Correcting Wrongful Birth Registration: Under section 36 of the Births and Deaths Registration Act 1953, knowingly supplying false information for birth registration constitutes a criminal offence punishable by fines or imprisonment.¹¹⁸ Thus, paternity fraud is not merely a private civil matter; it carries potential criminal consequences, unlike the Nigerian framework where such consequences exist only in theory.

Child Support and Financial Remedies: The UK's Child Support Act¹¹⁹ creates mechanisms for correcting wrongful child support obligations. They include: variation orders, termination orders, administrative reassessment and refunds in limited circumstances. Refunds of past payments are rare but possible where fraud is proven.¹²⁰ Nigeria lacks any statutory mechanism for reimbursement, leaving victims without financial remedy.

Legal Consequences of Paternity Fraud for Mothers: Mothers who knowingly misattribute paternity may face: Criminal liability (e.g., false registration), Reduction in credibility before family courts, Custody implications and Costs orders. UK family courts are increasingly willing to impose sanctions where the mother's deception impacts child welfare.¹²¹

Rights of the Misidentified Father in the UK

The misidentified father has: right to DNA testing, right to a declaration of non-paternity, right to amend birth records, right to termination of child support, right to compensation in limited circumstances and right to seek contact orders if he formed a social parenting bond. The last right stems from the UK's recognition that social parenting may give rise to continuing parental responsibility.

¹¹² For the UK framework, see *Family Law Reform Act 1969* (UK), ss 20–23 (scientific tests to determine parentage); *Child Support Act 1991* (UK), ss 1-3. For Canada, see *Children's Law Reform Act* RSO 1990, c C.12 (Ontario), ss 4–10 (parentage determination); *Family Law Act* SBC 2011, c 25 (British Columbia), Part 3

¹¹³ See *Re H (A Minor) (Blood Tests: Parental Rights)* [1996] 2 FLR 65 (CA), emphasising scientific accuracy and child welfare in ordering DNA tests; *Chartier v Chartier* [1999] 1 SCR 242 (SCC), illustrating Canada's integration of biological and social parenthood within a principled family law framework

¹¹⁴ *Matrimonial Causes Act* (Cap M7 LFN 2004) and *Child's Rights Act* (Cap C50 LFN 2004), which provide mechanisms for declarations of parentage but no comprehensive statutory regime for addressing paternity misattribution

¹¹⁵ *Family Law Reform Act 1969* (UK), ss 20-23 (court-ordered scientific tests); *Child Support Act 1991* (UK), ss 1-3; *Children's Law Reform Act* RSO 1990, c C.12 (Ontario), ss 4-10 (parentage determination); *Family Law Act* SBC 2011, c 25 (British Columbia), Part 3

¹¹⁶ *Family Law Reform Act 1969*, s 20

¹¹⁷ *Re H and A (Paternity: Blood Tests)* [2002] EWCA Civ 383

¹¹⁸ *Births and Deaths Registration Act 1953* s 36

¹¹⁹ *Child Support Act 1991*, s 17

¹²⁰ *ibid*

¹²¹ *Re G (Parentage: Blood Tests)* [2003] 1 FLR 401

The Child's Welfare and Identity Rights

The UK strongly emphasises the child's welfare under s 1 Children Act. Courts balance biological truth with: emotional stability, continuity of upbringing, the child's right to identity and early childhood bonding. UK courts may preserve a social father-child relationship even after non-paternity is established.¹²²

Canada

Canada's parentage laws are primarily provincial. The most influential jurisdictions in paternity jurisprudence are: Ontario (Family Law Act, RSO), British Columbia (Family Law Act, SBC 2011) and Alberta (Family Law Act).¹²³ Canadian law integrates biological truth, procedural fairness, the welfare of the child, and financial equity.¹²⁴ It also expressly recognises unjust enrichment, a remedy Nigeria lacks.¹²⁵

DNA Testing in Canada: Canadian courts have broad statutory authority to compel DNA testing.¹²⁶ Refusal may result in: contempt of court, adverse inferences and automatic parentage determinations. There is no constitutional barrier similar to Nigeria's s 37 privacy concerns.

Unjust Enrichment and Refund of Child Support: Canada is one of the few jurisdictions that explicitly recognises restitution for wrongful child support. The Supreme Court of Canada in *Chartier v Chartier* held that restitution is possible where: a man was intentionally deceived; payments were made under mistaken assumption and or continuing the obligation would be inequitable.¹²⁷ This creates a doctrinal pathway Nigeria currently lacks.

Distinction Between Biological and Psychological Parenthood: Canadian courts recognise biological parenthood, legal parenthood and psychological parenthood (social parenthood). A misidentified father may retain visitation rights if it serves the child's welfare.¹²⁸ This doctrine is more advanced than Nigeria's more rigid biological focus.

Correction of Parentage Records: Provincial legislation permits courts to amend birth registrations, custody orders and child support orders. The Registrar must correct records upon judicial declaration.¹²⁹

Criminal Liability: Canadian criminal law recognizes fraud, obtaining financial benefit by deception and falsification of public documents. Paternity fraud can therefore trigger criminal sanctions, unlike Nigeria where enforcement is extremely rare.

Legal Gaps and Policy Challenges in Nigeria

This chapter evaluates the structural, doctrinal, constitutional, policy, and administrative deficiencies within the Nigerian legal system regarding paternity fraud. While Nigeria recognises the social and moral implications of paternity misattribution, its legal system lacks a consolidated and enforceable framework. This gap exposes men, children, and even the State to significant injustice. Drawing from Nigerian jurisprudence and comparative insights from the UK and Canada, this chapter identifies key deficiencies and proposes concrete reforms.

Core Legal Gaps in Nigeria's Framework

Absence of a Comprehensive Parentage Statute: Nigeria lacks a dedicated statute governing: compulsory DNA testing, correction of parentage records, restitution for wrongful child support, criminal sanctions for deliberate misattribution and rights of victims of paternity fraud. Parentage is currently governed in a fragmented manner through: Evidence Act, Matrimonial Causes Act, Child Rights Act, Births, Deaths, etc. (Compulsory Registration) Act¹³⁰ and Supreme Court and Court of Appeal case laws. This fragmentation creates confusion, inconsistency, and judicial uncertainty.¹³¹ Unlike the UK or Canada, Nigeria has no unified parentage framework, no family law statute, and no procedural guidelines on DNA testing.

Constitutional Barriers to DNA Testing: Section 37 of the 1999 Constitution protects privacy rights. Nigerian courts interpret this provision to mean: DNA testing cannot be compelled, bodily samples cannot be taken without consent and compulsory testing violates privacy and dignity Cases such as *Nwosu v Imo State Environmental*

¹²² Children Act 1989 s 1

¹²³ *Family Law Act* RSO 1990, c F.3 (Ontario), ss 4–10; *Family Law Act* SBC 2011, c 25 (British Columbia), Part 3; *Family Law Act*, SA 2003, c F-4.5 (Alberta), Part 2

¹²⁴ *Chartier v Chartier* [1999] 1 SCR 242 (SCC), affirming the child-centred approach to parentage and emphasising relational stability; see also *Re LDM v RBD* 2017 ABQB 752 (Alberta QB), applying biological and best-interest principles in parentage determinations

¹²⁵ *Kerr v Baranow* 2011 SCC 10, [2011] 1 SCR 269 (SCC), recognising unjust enrichment and the joint family venture doctrine as central restitutionary remedies in Canadian family law

¹²⁶ Family Law Act (Ontario) RSO 1990, s 10

¹²⁷ *Chartier v Chartier* [1999] 1 SCR 242

¹²⁸ *AAM v CMM* 2017 BCCA 194

¹²⁹ Vital Statistics Act (Ontario), s 9

¹³⁰ Evidence Act 2011, Matrimonial Causes Act 1970, Child's Rights Act 2003, Births, Deaths, etc. (Compulsory Registration) Act

¹³¹ Adesoji Adeniyi, 'Parentage Reform in Nigeria: A Doctrinal Analysis' (2021) *Nigerian Journal of Family Law* 44

Sanitation Authority reinforce bodily autonomy.¹³² Thus, even where overwhelming evidence suggests deception, the court cannot compel DNA testing.

Absence of Criminal Sanctions for Paternity Fraud: Although the Births, Deaths, etc. (Compulsory Registration) Act criminalises false declarations,¹³³ the provision is rarely enforced. There is: no offence specifically called paternity fraud, no precedent for prosecuting fraudulent mothers, no mechanism for reporting or investigation and no criminal liability for withholding paternity truth. The State effectively treats paternity fraud as a ‘private affair,’ despite the severe social and financial harm it causes.

No Statutory Right to Refund Wrongful Child Support: If a man discovers he is not the biological father, Nigerian law offers no basis for refund. The courts lack jurisdiction to order restitution and equity is rarely applied due to judicial conservatism. In *Uche v Uche*, the court held that child maintenance is for the benefit of the child, not repayment to the father.¹³⁴

Lack of Procedure for Correcting Birth Certificates: Nigeria does not have a straightforward administrative procedure for: correcting false paternity entries, altering birth registrations and updating official records. Corrections often require: lengthy court orders, inconsistent registry practices and bureaucratic approvals. The process lacks statutory clarity and creates further trauma for victims.

Neglect of the Child’s Right to Identity: International law through CRC Article 8 requires States to protect a child’s right to: know their parents, preserve their identity and prevent identity manipulation. Nigeria’s Child Rights Act adopts these rights but fails to enforce them.¹³⁵ When paternity fraud occurs: the child’s right to biological truth is violated, state agencies do not investigate, courts prioritise maintenance over identity and psychosocial impacts are ignored. This disconnect between law and enforcement weakens child protection.

Social Stigma and Silence Surrounding Paternity Fraud: Paternity fraud is shrouded in several norms such as cultural taboos, gender politics, marital secrecy, fear of domestic violence and family honour. These norms hinder access to justice, willingness to litigate, legislative reform and accurate data collection. Nigeria currently lacks national data on paternity fraud rates.

15. Policy Challenges and Structural Weaknesses

Patriarchal Norms and Gendered Expectations: Cultural norms place the burden of family honour on: biological parentage, male lineage and inheritance rules, thus, a man deceived into raising another man’s child is often ridiculed, silenced and even denied victimhood status. Policymakers have been slow to acknowledge paternity fraud due to gender politics.

Lack of Forensic Infrastructure for Parentage Testing: Nigeria does not have a national DNA database, publicly funded DNA laboratories, professional standards for testing and protocols for chain of custody. Private DNA testing is expensive and inaccessible to most Nigerians.

Courts Prioritise Maintenance Over Biological Truth: Nigerian courts often rule that child welfare overrides DNA truth, financial responsibility persists regardless of biology and the emotional impact on the deceived father is irrelevant. This contradicts comparative jurisprudence, where courts balance welfare, identity, fairness and restitution. Nigeria remains lopsided in favour of financial support.

Lack of Legal Protection for the Misidentified Father: Victims experience emotional distress, psychological trauma, reputational damage, financial exploitation and loss of trust in family institutions. Yet Nigerian law offers no remedy. The victim is legally invisible.

The Child’s Welfare in the Context of Paternity Fraud: While the courts rightly prioritise the child’s welfare, Nigeria’s framework often ignores the child’s right to identity, emotional consequences of deception, long-term psychological impacts and medical relevance of biological parentage. Nigeria’s welfare analysis is overly narrow, unlike the UK and Canada, which use a multi-dimensional welfare assessment.

16. Conclusion and Recommendations

Paternity fraud defined as the intentional misrepresentation or concealment of a child’s true biological parentage is a significant yet under-regulated problem within Nigeria’s legal landscape. Although often treated as a private domestic matter, its implications extend far beyond the household into constitutional rights, tortious liability, child welfare, psychological trauma, inheritance disputes, social identity, and the integrity of the justice system. Nigeria lacks a dedicated statutory framework, clear jurisprudential guidance, or administrative structure to address paternity misattribution. Courts are constrained by constitutional privacy rights, statutory deficiencies, procedural uncertainty, and sociocultural dynamics. Comparatively, the UK and Canada offer more coherent frameworks for determining parentage, compelling DNA testing, and providing civil remedies. The analysis demonstrates the

¹³² *Nwosu v Imo State Environmental Sanitation Authority* [1990] 2 NWLR (Pt 135) 688

¹³³ Births, Deaths, etc. (Compulsory Registration) Act, s 13

¹³⁴ *Uche v Uche* [2011] 3 NWLR (Pt 1231) 714

¹³⁵ Child Rights Act 2003, ss 5-10

urgent need for Nigeria to adopt a comprehensive, modern, and rights-based parentage system. Building on doctrinal analysis and comparative insights, the following recommendations are proposed:

Enact a Parentage and Paternity (DNA Testing) Act: A single, comprehensive statute should address: compulsory DNA testing, administrative correction of parentage, civil and criminal consequences of fraudulent misattribution, rights of victims and procedural rules for evidence. This Act should supplement or amend the Constitution to provide statutory authority for compelled DNA testing where necessary.

Constitutional Amendment: Section 37 should be amended to include an explicit exception allowing courts to order DNA testing where parentage is in dispute and in the interests of justice. This balances privacy with truth.

Establish Criminal Liability for Paternity Fraud: Proposed offences like deliberate misrepresentation of paternity, falsification of birth records, withholding material biological information and forging registration documents. Penalties should include imprisonment, fines, and community service.

Provide Civil Remedies for Misidentified Fathers: Nigeria should adopt restitution principles similar to Canadian jurisprudence. Remedies should include; Refund of child support, Damages for emotional distress, Compensation for reputational harm and Tort liability for misrepresentation or deceit. This promotes deterrence and fairness.

Strengthen the Child's Right to Identity and Strengthen Birth Registration Systems: Statutory reforms must reinforce a child's right to know their biological parents, access to genetic and medical information, psychological support during identity transition and protection from deceit and manipulation. This aligns with Convention on the Rights of the Child, Article 8.

Establish a Unified Family Court for Nigeria: Drawing from the UK family court model, Nigeria should create specialised family divisions, unified rules, dedicated judicial officers and expedited procedures for DNA disputes. This improves efficiency and reduces fragmented jurisdiction.

Expand Forensic and DNA Infrastructure: Government should: fund public DNA laboratories, establish accreditation standards, subsidise paternity testing for low-income families and adopt secure evidence-handling protocols. This ensures reliable and accessible parentage testing.