

Social and legal implications of child adoption in Nigeria

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Abstract

Child adoption does not take place in a vacuum. It also does not occur adventitiously or by serendipity. The decision to adopt a child is a very important one. It is usually preceded by a rational, well thought out evaluation, due consultations and painstaking environmental impact assessment of that decision. For both the adopted child and the adoptive parents, child adoption is a fundamental and life changing experience. When child adoption is perfected through the issuance of adoption order, the question of the social and legal implications of the act become relevant. The paper highlights the socio-legal implications of child adoption as it relates to inheritance, change of name, birth certificate, ordinal position, sexual relations legitimacy and presentation to kinsmen. The paper also examines the procedure for child adoption in Nigeria. The paper concluded by asserting that child adoption which, heretofore, was abominable in most societies in Nigeria, is gradually becoming fashionable.

Keywords: Social, Legal, Child, Adoption, Nigeria

Introduction

Until recently, child adoption was alien to most African societies, including the Igbo of South Eastern Nigeria. As Nwaoga (2013) ^[14] points out, in Igbo land adopting an unknown child is generally unacceptable. This trend is, however, changing. Omeire (2015) ^[15] reports that child adoption is gradually gaining acceptance among the Igbo.

In contemporary Nigeria, awareness of child adoption has increased as an alternative for children who are unable to remain in the family environment. Omosun and Kofoworola (2011) ^[16] and Ezugwu, Obi, and Onah (2002) ^[5] in their separate studies confirmed the enhanced awareness of child adoption. However, a thorny issue of the social and legal implication of child adoption continues to agitate the minds of stake holders in the adoption enterprise, adoptive parents, adoptees, and social workers. For example, the issue of what becomes of the child at the point the adoption order is issued is a concern. Also, the question arises as to the social and legal issues that follow the adoption order. Another germane question is: how is the adopted child linked to the society by his social parents? These are the major issues addressed in this study.

Theoretical Framework

The symbolic interaction theory is concerned with explaining social action in terms of the meaning which individuals give to them. George Mead (1962) is generally regarded as the founder of symbolic interaction theory. Haralambos and Holborn (2008) ^[6] points out that in Mead's view, humans through experiences and conduct are essentially social and owe their nature to the fact that people interact in terms of symbols with language as the most important symbol. Mead maintains that symbols impose particular meanings on objects and events and without symbols there would be no human interaction and no human society. In order to survive people must socially construct their reality and live within a world of meaning.

Ritzer (2008:365) ^[17] identifies the basic principles of

symbolic interaction theory to include the following:

- Human beings, unlike lower animals, are endowed with the capacity for thought.
- The capacity for thought is shaped by social interaction.
- In social interaction people learn the meanings and symbols that allow them to exercise their distinctively human capacity for thought.
- Meanings and symbols allow people to carry out their distinctively human action and interaction.
- People are able to modify or alter the meanings and symbols that they use in action and interaction on the basis of their interpretation of the situation.
- People are able to make these modifications and alterations because of their ability to interact with themselves, which allow them to examine possible courses of action, assess their relative advantages and disadvantages, and then choose one.
- The intertwined patterns of actions and interaction make up groups and societies.

Arising from the fact that child adoption is not autochthonous in many African societies (Nwaoga, 2013) ^[14], various cultures evolved patterned reaction, developed languages and imposed social restrictions on the adopted child. The adopted child and adoptive parents do not operate in a cocoon or social isolation. They live in the midst of the extended family, kinsmen, community and larger societies. They must necessarily relate with people around them. If the symbols (coded in languages and gestures) the adopted children and parents get from their social milieu is one of derision and rejection, they are likely to interpret these symbols and respond negatively towards society.

Symbolic interaction theory which is concerned with the impact of meaning and symbols on human action and interaction is therefore germane to this study As Ritzer (2008) ^[17] points out, in the process of social interaction, people symbolically communicate meanings to the others involved in the engagement. The others interpret those symbols and orient their responding action on the basis of their interpretation. In other words in social interactions, actors engage in mutual

influence. Christopher (2001) ^[3] refers to this social interaction as a “dance” that partners engage in.

Methodology

This work is essentially a qualitative research which aimed at providing clarity and deeper understanding of the social and legal implications of child adoption in Nigeria. The study was desk/ library based and did not embark on any field work. It relied on secondary sources of data from books, journals, unpublished works, newspapers and the internet for the conduct of its analysis and conclusion.

The Process of Child Adoption in Nigeria

The starting point during child adoption in Nigeria is that prospective adoptive parents are required to apply to the state government’s ministry or agency that handles such matters. In Imo State, it is handled by the Ministry of Women and Social Affairs. Subsequently, the applicants are invited for interaction with the Schedule Officer in the Ministry to ascertain their genuine interest in child adoption and capability to rear the child. Those that cross this preliminary hurdle are shown a list of Government approved orphanages or registered Homes and asked to make contact with any of them in pursuit of their desire.

When a suitable child is identified both the Home and the prospective parents apply to the Ministry for approval to give out the baby and permission to receive the child for fostering. In the absence of any impediment, the Ministry replies granting the approvals sought by both parties. Thereafter the adoptive parents apply to the ministry and obtain approval to proceed with the legalization of the adoption in a Magistrate court in the area where the adoption will take place. The Commissioner or Permanent Secretary writes to the Chief Magistrate authorizing him/her to process the adoption. (Imo State Ministry of Women and Social Development).

According to the Adoption Procedure Notice from the Imo State Ministry of Women and Social Development (2014) ^[7], before the Ministry grants authority for the court to process adoption, it requires the following from the applicant:

1. Two copies of birth certificate of baby and the adoptive parents
2. Two copies of marriage certificate of the adoptive parents
3. Two copies of medical certificate of fitness of both baby and the adoptive parents
4. Two copies of consent letter from the parents of the baby or referral from the home
5. Two copies of letter from the prospective adoptive parent’s employer or statement of his/her bank account.
6. Two copies of consent letter from any of the adoptive parents that will not be present in court
7. Two passport photographs of the baby and the adoptive parents.
8. Death certificate of the child’s parents if the child is an orphan.
9. Two file jackets
10. Authority from the Home to give out the baby.

According to the Imo State Ministry of Women and Social Development (2014) ^[7], in most States in Nigeria, the legalization of adoption begins when an application for an adoption order is made and submitted to the Registrar of the competent court. The court then assigns a guardian ad litem who will serve as the child’s representative for the duration of

the adoption proceedings. The guardian ad litem, usually the Social Welfare Officer in charge of the area where the child resides, is expected to visit the home of the adoptive parents regularly, monitor the treatment of the child and write a report. The Magistrate or Judge questions the prospective parents to confirm their suitability or otherwise. Thereafter the adoption order will be issued or denied. Once an adoption order is issued, the child becomes the legal child of the adoptive parents and is entitled to all rights and privileges pertaining thereto.

It might be pertinent to indicate that non-Nigerians are not allowed to adopt Nigerian children. In Imo, Akwa Ibom, Anambra, Bayelsa, Cross River, Ebonyi, Enugu and Rivers States, adoptive parents must be at least twenty five years of age and twenty one years older than the child. For married couples at least one parent must meet the age requirement. In most states both single individuals and married couples may adopt. In Imo State only spinsters (as opposed to bachelors) who meet the age requirement are allowed to adopt. In many states, married couples are required to adopt jointly. In some states single parents are not allowed to adopt a child of the opposite sex, except in extraordinary circumstances.

With respect to time frame, the adoption process in Nigeria may last from three months to one year or beyond. As Njoku (2005) ^[13] points out, in Nigeria the law requires that a parent child relationship be established before the court can legalize the adoption. Worthy of note is the fact that during the period of fostering, though the child resides with the adoptive parents, that child does not legally belong to them. Consequently, prior to the issuance of adoption order, the biological mother or parents can lay claim to the child. In a sense, therefore, the adoption order severs the legal umbilical cord between the biological mother and the adopted child. As Minett (2000) ^[12] asserts, once the adoption order is issued the biological mother or natural parents no longer has any claim to the child.

Social and Legal Implications

Leavy and Weinberg (1979) ^[9] indicate that child adoption is a procedure which establishes the relationship of parent and child between persons not so related by nature. In a related definition, Minett (2000:297) ^[12] asserts that “adoption is a process by which adults become parents to children not born by them”. As Nwaogugu (2004) points out, in Nigeria the institution of child adoption is essentially a statutory creation. This arises from the fact that under the Common law, the legal relationship between a child and his natural parents is sacrosanct and cannot be severed, separated or dismembered. A pertinent question may be what are the social and legal implications of child adoption to the adoptee, the adoptive family and society in general. The implications include:

Potency of Adoption Order

As Njoku (2005) ^[13] indicates, in Nigeria once a court of competent jurisdiction (High Court or Magistrate Court) issues a court order on an adoption application, the adoptee becomes the child of the adopter in the eye of the law. The adoption order weaves a binding and inextricable thread between the adoptee and the adopter. An adoption order is not merely a marriage of convenience. Rather it is a binding commitment. Legally, an adoptive parent cannot simply return an adoptee to the foster home after the issuance of adoption order. Similarly,

an adoptee cannot just wake up one morning and decide to run away from the adoptive parents. As Njoku (2005:23) ^[13] puts it “once the adoption order has been given both the adopter and adopted are estopped from denying each other what is due”. Also the natural parents of the adoptee can no longer lay claim on the child after the adoption order had been issued.

An adoption order once issued can only be disrupted or dissolved by a court of competent jurisdiction. Adoption disruption refers to the termination of an adoption. The disruption process is usually initiated by adoptive parents through a court petition and is akin to divorce proceedings. It is a legal avenue unique to adoptive parents as disruption/dissolution does not apply to biological children (Wikipedia, 2013) ^[18].

Adoption disruption appears to be more common in America and Western societies than in Nigeria and Africa. According to the Child Welfare Information Gateway (2004) ^[2], studies carried out in America suggest that between 10-25 percent of adoptions disrupt before they are legally finalized and from 1-10 percent are dissolved after finalization. The study found that children adopted at older age are more prone to having their adoptions disrupted than those adopted as infants. The reason could be that older children may have been socialized in different environments or cultures and may resist new orientations from their adoptive parents. It is pertinent to indicate that adoption disruption takes place before the finalization of adoption, whereas adoption dissolution occurs after an adoption had been perfected. In Nigeria, the incidence of adoption disruption and dissolution are uncommon.

Change of Name

In Nigeria, as soon as adoption is legalized, the surname of the child has to be amended to reflect the new reality (Nwaogugu, 2004:53). This is particularly pertinent for non-infants who come to their new families with previously established identities. Bearing the surname of the adoptive parents, practically and legally implies that the adoptee is not a stranger or visitor to the home, but a proper and bonafide member of the family. However, in Islamic adoption the adoptee retains his surname.

Birth Certificate

Related to change of name, is the process of acquiring new birth certificate to avoid discrepancy in surname for non-infant adoptees. The new certificate will not by any means indicate that the child was adopted. The old birth certificate will be in the custody of the court and can only be opened by the order of the court (Nwaogugu 2004). In the case of infants, the same process of obtaining birth certificate for one’s biological child is followed.

Ordinal Position

In a situation where a couple with fertility challenge adopts a son and later the woman delivers a son, the issue may arise as to which of the two should be the bonafide first son. In the eye of the law, the adopted son is the indisputable first son of the family. This is so because as a legal child of the adoptive parents, the adopted child legally has the same right as a child born in lawful wedlock (Cole, 1985) ^[4]. This position may not be in tandem with the practice in some cultures where heirship and succession is based on bloodline.

Prohibition of Sexual Relation

The law views and treats an adoptee as an integral member of the adoptive family (Kendall, 2002). Consequently sexual relationship between an adoptee and any member of the adoptive family is regarded as incest and thus prohibited. Similarly, marriage cannot be contemplated between an adoptee and any member of the adoptive family. Islamic adoption provides exception as an adopted child can marry the biological child of his adoptive parents and vice versa. Also under Islamic law, a man may marry his adopted son’s ex-wife (Ahmad, 1999) ^[1].

Inheritance from Adoptive Family

Legally, an adopted child is regarded as a legitimate child and thus entitled to all rights and privileges accruing to biological children of the family, including the right of inheritance. As Nwaogugu (2004) points out, for administration of estates, if the couple jointly adopted the juvenile, the adopted child will be regarded as brother or sister of the whole blood. “Any general provision made for children in the will of an adoptive parent shall include the adopted child. Where a couple dies intestate, the adoptee and his siblings will inherit the family property”. Similarly, where an adoptee dies intestate, the adoptive parents will inherit him (Mellows, 2000) ^[11]. However, in Islamic adoption the adoptee inherits fully from his biological parents and may be given discretionary one third of the adoptive parent’s estate.

Disinheritance from birth Parents

Adoption legally terminates the cord, bond, affinity and relationship between a child and the birth parents. To ensure that there is no vacuum a new and permanent tie is established between the adoptee and the adoptive family. Consequently, an adopted child is not entitled to any inheritance from the birth parents. This is one of the striking differences between statutory adoption and customary adoption. In customary adoption, the adoptee is entitled to inheritance from both the adoptive family and his birth family (Nwaogugu, 2004).

As Njoku (2005) ^[13] points out, in Nigeria under customary law, very few customs recognized adoption. This is because the extended family system is so strong such that relatives took care of orphans and other vulnerable children. Furthermore, many customary law systems frowned upon adoption because the parent/child relationship is so sacred that parents are reluctant to permanently sever such relationships. Also in Islamic adoption, the adoptee inherits primarily from his biological parents.

Rights, Duties and Obligations

As soon as a court issues adoption order, all rights privileges, duties, obligations and liabilities of the birth parents vis-à-vis the child’s custody, education and welfare become nullified. As Nwaogugu (2004:28) puts it, in adoption “the legal relationship between a child and his natural parents is severed and re-established between the child and a third party”. The adoptive parents are thus under legal obligation to shelter, feed, educate, protect and ensure that the well-being of the adoptee is guaranteed.

Birth Song by Women

In Igbo land, whenever information is received that a child has been born in a family, any woman in the compound raises a

birth song locally referred to as “*Oro Nwa*”. Other women in the kindred will normally rush to the family and join in the song, as soon as they hear the joyful noise. The birth song by women is both an announcement of the entrance of a new member into society and a welcome for the new child. This cultural ritual is performed for a biological child and also for a properly adopted child. Other cultural groups in Nigeria have their own traditional mode of heralding the arrival of a new baby and ushering the child into society.

Child Dedication

Also, as part of the requirements for social integration, adoptive parent’s normally present adopted children for dedication in churches for those that are Christians. Those that are not Christians also observe the necessary traditional rites as they would for their biological children.

Legitimacy

A child whose adoption followed due process and was consummated by the issuance of adoption order by a court of competent jurisdiction becomes a bonafide and legitimate child of the adoptive parents (Kendall, 2002). It thus becomes offensive and illegal for anyone or group to refer to such a person as illegitimate or deny the individual any right or privilege due to children born in wedlock. This is the position of the law because legally adoption confers legitimacy on a child. This is also in line with the sociological fact that every child, as the product of intimacy between a man and a woman, has a father and thus legitimate. Furthermore, the adopted child has a social father whose responsibility it is to link such child to the society. The issue of illegitimacy does not arise for an adopted child.

Conclusion

The paper situated child adoption in Nigeria in social and legal context. It noted that child adoption is a social event that has far-reaching consequences in the family and social milieu where the adoption occurred. The paper examined the socio-legal implications of child adoption as it relates to inheritance, ordinal position, birth certificate, sexual relation, birth song by women, child dedication, legitimacy and rights, duties and obligations.

In conclusion, it can be asserted that when a child is adopted in line with prescribed legal and cultural processes, the child is guaranteed legal protection and social recognition. The adopted child in the eye of the law is equal in every respect with his biological counterpart. Being an adopted child does not in any way demean or debase an individual. In Nigeria, particularly in Igbo land, child adoption is gradually being accepted as an alternative care for children who due to unfavorable circumstances cannot remain in the family home of their biological parents.

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