

## Rights of a Child to Maintenance Under the Nigerian Legal System

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**Abstract.** This work examined the right of a child to maintenance under the Nigerian legal system. The significant concern in the rise of matrimonial disputes is made manifest by the enormous and rigorous procedures in dissolving a marriage without adequate concern for the emotional health of the children of the marriage. Most times divorce matters are left lingering in court, appeals upon appeals on interlocutory matters without any concern for the main substance of the subject of dispute. The doctrinal approach is therefore employed by wide consultation of books, articles in journals, articles from the internet by renowned scholars in the area of child's right to examine the nature of the rights of a child and the extent to which a child can enforce his right to maintenance; particularly in matrimonial causes. It is observed that the position of Matrimonial Causes Act and the Child Rights Act 2003 seems hazy to the effect that a child cannot enforce his right of maintenance before the determination of the matrimonial proceedings, but the child can however lay claim to this right and enforce same under the ambience of the Child Rights Act. It is concluded that the right of a child to maintenance is inalienable, thus can be enforced even before the determination of the proceedings. It is also recommended that awareness, legislative amendments and full institutionalization of the Family Court amongst

other things would properly advance the cause of enforcing the rights of a child particularly his right to maintenance even during matrimonial proceedings.

### 1. Introduction

There is no gainsaying that the last few decades in the development of legal concepts; the idea of rights has been so well developed to the extent that it has gained universal recognition both within a country and in international conventions. A legal right in the general sense is either the liberty (protected by law) of acting or abstaining from acting in a certain manner, or the power (enforced by law) of compelling a specific person to do or abstain from doing a particular thing. Accordingly, every right involves a person invested with the right, or the person entitled, a person or persons on whom that right imposes a correlative duty or obligation, and of course the power to compel a person to do or abstain from doing a particular thing. There are several rights in existence, but the mainframe of this research is focusing on the right of a child to maintenance during the pendency of matrimonial proceedings. The consequential hardship and challenges existing in many marriages today violently push the edges of the enclosing envelope of survival of most marriages, leading to greater number of

cases of separations or outright divorce. Invariably, issues relating to the dissolution of marriage generally, and the ancillary reliefs of custody and maintenance of the children (if any) of such failed marriages have once again been pushed to the front burner of legal discourse. The major question which this research focuses on finding a long lasting solution to is whether or not a child should be entitled to maintenance during the pendency of a matrimonial suit. This is hinged on the very long and stringent procedures of court before the final dissolution of a marriage; more so, there might be instances where an interlocutory appeal may come up at an appellate court thus making the substantive matter to be on hold pending the determination. Even though maintenance is an ancillary relief under the Matrimonial Causes Act that is only heard after the determination of the main suit, the writer however opines that the child can enforce his right even without matrimonial proceedings as provided under the Child Rights Act 2003. This research shall inter alia attempt the legal definition of a child, the various rights of a child both under statutory municipal legislations and international conventions and the right of a child to maintenance as it relates to matrimonial proceedings.

## **2. Who is a Child?**

There are several perspectives to the definition and conceptualization of who a child is. Particularly, within Nigeria and many other African countries where much attention is given to cultural origin and history, it has become necessary and pertinent that an all-encompassing analysis be given to who a child is; with proper respect to all the angles from which the concept of a child can be viewed. It must be noted that the definition of a child is yet hazy as there is no uniform definition of who a child is. However, this research shall examine the various definitions of different scholars, international conventions and statutory provisions as relating to who a child is. Generally speaking, a child is believed to be product of a lawful marriage that is still subject to the control and direction of the parents. According to the Merriam Webster dictionary, a child is defined as a young person especially between infancy and youth. The Black's Law dictionary defines a child as a

person under the age of majority. Section 2 of the Children and Young Persons Act 1993, defines a child to mean a person under the age of fourteen years and a young person means a person who has attained the age of seventeen years. At common law, a child is a person who has not yet attained the age of fourteen. However, Section 2 of the Family Allowances Act 1965 defines a child as "anyone under the age of nineteen who is an apprentice or attending full time at a school". Also, The United Nations Convention on the Rights of the Child 1989 and the Organisation of African Unity Charter on the Rights and Welfare of the Child 1991 both of which Nigeria is signatory to; by virtue of Article II of the latter, a child means every human being below the age of 18 years. Also, under Article I of the U.N. Convention, a child is every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier. All of these definitions go to the effect that there is no universally accepted legal definition of a child and the word child may depend on the context in which it appears. There are many statutes concerning children which contain relevant definitions of the word child or cognate expressions like children but in the absence of a general definition provided by a statute of interpretation, it might be unwise to choose one as the acceptable definition of a child. However, for the sake of this research, the operational definition of a child shall only cover a person who is below the age of eighteen years.

## **3. General Legal Rights of a Child**

The general rights of every Nigerian are contained in sections 33-46 of the 1999 Constitution of the Federal Republic of Nigeria. It must be noted that the rights of a person are inalienable, constitutionally provided and guaranteed; thus no person shall be discriminated upon or deprived from the exercise of these rights either due to circumstance of birth, ethnic origin, sex, religion or political opinion amongst others. Also, where a person alleges that his right has been, is being or likely to be contravened; he may apply to the High Court for redress. Some of these rights includes; right to life, right to dignity of human

person, right to personal liberty, right to fair hearing, right to private family life, freedom of thought, conscience and religion, freedom of movement, expression and the press.

Nigeria's attempt to comply with the standards set by the United Nation's Convention on the Rights of the Child finally culminated in the enactment of the Child Rights Act in the year 2003. This all-encompassing legislation covered a wide range of issues including the legal age of marriage, maintenance, custody of children, property rights, education, fostering, adoption, sexual abuse, trafficking and other exploitation of children, child labour, and child justice administration and so on. However, since the major focus of this research is to examine the right of a child to maintenance as it relates to dissolution of marriage, it would be necessary to examine the provision of the Act and other provisions on maintenance.

#### **4. Right of a Child to Maintenance**

In modern times, the object of maintenance is to ensure the financial security of all the parties both during and after the marriage, and also safeguard the welfare and wellbeing of the children of the marriage. It is, generally seen as an amount of money which the court grants a party to the marriage to take care of the basic needs of that party. Maintenance, sometimes also referred to as Child's support in some jurisdictions such as the USA, is defined by Black's law dictionary as, "financial support given by one person to another, usually paid as a result of a legal separation or divorce." Wikipedia gives a more comprehensive definition of maintenance to wit it is defined as: An on-going periodic payment made by a parent for the financial benefit of a child (or parent, caregiver, guardian, or state) following the end of a marriage or other relationships. Child maintenance is paid directly or indirectly by an obligor to an obligee for the care and support of children of a relationship that has been terminated or in some cases never existed. Often the obligor is a non-custodial parent. The obligee is typically a custodial parent, a guardian or the state.

Under English Law, the husband has the legal and moral duty to maintain and provide necessaries for the family while the wife has a corresponding duty to take care of the home and children. This principle was established in the English case of *Price v. Price*, where the appellate court upheld the decision of the trial court that it is the duty of the husband to maintain the wife. However, under Nigerian Law, it is not only the husband that has a duty of maintenance but the wife also has a duty to maintain the husband and the children particular where she has a higher means than her husband. It must however be noted that in the Nigerian society, what is obtainable, practicable and reasonable is that the man is responsible for the maintenance and welfare of the child.

Under the Matrimonial Causes Act, maintenance is one of the ancillary reliefs that can be sought from the dissolution of a marriage or separation. Section 70 which regulates the regime of maintenance in matrimonial causes provides that:

- Subject to this section, the court may, in proceedings with respect to the maintenance of a party to a marriage, or of the children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.
- Subject to this section and to the rule of court, the court may, in proceedings for an order of maintenance of a party to the marriage, or of the children of the marriage, pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.
- The court may make an order for the maintenance of a party notwithstanding that a decree is or has been made against that party in the proceedings to which

the proceedings with respect to maintenance are related.

The power of the court to make an order with respect to the maintenance of children of the marriage shall not be exercised for the benefit of a child who has attained the age of 21 years unless the court is of opinion that there are special circumstances that justify the making of such an order for the benefit of that child.

A combined reading of Section 70(1) and (2) reveal that an order for maintenance can only arise at the end of the major proceeding and it cannot be instituted without proceedings for a matrimonial cause. This however may hinder the cause and access to justice because of the peculiar nature of matrimonial causes particularly divorce where the matter may take extremely long time before reaching a judgement for dissolution of marriage or where in some other instances there might be an interlocutory appeal and then the substantive matter is left unattended to; thus delaying the entire duration of the proceedings which in effect inhibits the enforcement of the right of a child to maintenance. Also, it is noticed that the use of the word “may”, particularly in the first two subsections makes the right to maintenance merely discretionary and of persuasive effect rather than of binding effect.

Under the Child Rights Act 2003, a child is entitled to right of maintenance under Section 14 (2) by his parent or guardian which can be enforced by the child in the Family court whether or not there is proceeding for a matrimonial cause. It must be noted that orders for maintenance when made may not last beyond the child’s eighteenth birthday.

Worthy of note is that there are two angles from which these two legislations view the enforceability of a child’s right to maintenance. While under the MCA, the right to maintenance cannot be enforced unless and until there is an ongoing matrimonial cause; and of course the use of the word “may” further shows that maintenance could be persuasive rather than binding in nature and effect. However, under the Child Rights Act, a child is entitled to maintenance irrespective of whether or not there

is an ongoing matrimonial cause. Thus, his rights can be enforced in a Family Court to that effect. This obviously shows some lacuna in practice and procedure relating to the right of a child to maintenance, particularly during the pendency of an unending matrimonial cause. In a bid of reconciling this two perspectives, the big question now would be as to whether or not a child can enforce his right to maintenance during the pendency of a matrimonial cause, i.e. can a child enforce his right to maintenance while a matrimonial cause is still ongoing particularly where there is an interlocutory appeal which must be heard and determined before continuing the substantive matter or in a case of undue delay in hearing and determining a matrimonial cause. It is the opinion of the writer that since it is a trite principle that a person’s right are inalienable and are of utmost importance to him, with a proper consideration of the provisions of Section 14 of the Child Rights Act, a child is entitled to an order of maintenance which is enforceable at Law, he can fully exercise this right. In addition, the provisions of the MCA do not totally extinguish the opportunity of granting a child his right to maintenance, this window perfectly allows for the application of the provisions of the Child Rights Act.

In instances of Divorce or separation between Parents or where proceedings for divorce are ongoing, it is the duty of the courts to ensure that children in such marital union do not suffer from neglect. Hence S.70 of the Matrimonial causes Act states that:

Subject to this section, the court may, in proceedings with respect to the maintenance of a party to a marriage, or of children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

This duty on the court to ensure the wellbeing of children of the Union must be fulfilled either during proceedings for the divorce other than a

proceeding for an order of maintenance or pending the disposal of such proceedings.

With regard to protection and maintenance of the child, the Matrimonial Causes Act differs from the Child rights Act with regard to the age limit of Children who require such maintenance.

In instances where parents prove incapable of caring for an controlling a child and the court considers it expedient to “deal with the child” the court may make a corrective order in respect of the child or order the child to be placed for a specified period, not exceeding three years, under the supervision of an appropriate supervisory child development officer or of some other person appointed for the purpose by the court. Where this happens the courts also may order the Father, mother, step-Father or Step-Mother to make such contribution towards the maintenance of the child as it may think fit, having regard to all the circumstances of the case.

### **5. Problems of Enforcement of the Rights to Maintenance**

It must however be observed that the main problem affecting the general enforcement of the right of a child is that there is a gap the between law and practice resulting in gross inability of the child to realize these rights at present not to even talk about enforcing them. Corruption in government has robbed children of free access to justice whenever their rights are being trampled upon. Many parents are still abandoning their responsibilities towards their children despite these Laws. There is need for more political will and economic power on the part of the government to implement these laws in the interest of the Nigerian child.

### **6. Conclusion and Recommendations**

At this stage, after examining the nature and extent of the right of a child to maintenance, necessary recommendations shall be made which includes that:

It is highly recommended that there should be a general and universal definition of who a child is and the various Laws should be ad idem on the

statutory age of a child as opposed to the diverse ages contained in all the legislations pertaining to a child and their rights.

Also, the issue of maintenance in the opinion of this writer and based on the arguments canvassed above from Section 14(2) of the Child Rights Act, a child or any party to a matrimonial cause should be able to enforce his right to maintenance particularly where divorce litigation is taking too long a time and seems not to have a conclusive end. Also, the court can before final determination of the matrimonial cause gives a preliminary order of maintenance to the party which seems to be most affected by the entire proceedings, to wit, in this case would be the child. Also, this preliminary order can be eventually re visited and made to extensively cater for the needs for the child upon eventual determination of the matter.

Furthermore, a combine reading of the provisions of Section 70(1) & (2) of the MCA reveals that to properly enforce the right of a child to maintenance before the entire proceedings are completed, the word “may” should be substituted with “shall”; thus making right to maintenance during the pendency of litigation mandatory and not discretionary. This calls for proper statutory amendments.

Since the legal age of a child according to this research is eighteen years and below, under the Nigerian Legal System, a child has no legal capacity to act except by a guardian ad litem, the writer opines that both parents can create a joint account where money can be paid into, solely for the maintenance, welfare and upkeep of the child. This account shall be administered by the guardian ad litem for this sole purpose and it shall be subject to the supervision of the court.

In addition, the various institutional frameworks provided for under the Child Rights Act such as the Family Law Court, State Child Rights Implementation Committee and NGOs actively involved in promoting the welfare of the children must be fully institutionalized so as to ensure speedy access to justice and proper enforcements of the general rights of a child.

Recourse to Alternative Dispute Resolution (ADR) methods can also help in fast tracking the entire process of matrimonial proceedings. ADR methods are not only simple, less time consuming but also flexible in nature thus allowing for simple rules to guide the entire proceedings which is not as complex as the court rules and procedures. With this, all issues can be properly and conveniently discussed and a child can effectively claim his right to maintenance during the proceedings.

There must be a general, massive awareness and education as to the various rights of a child; particularly the right of a child to maintenance which can be enforced even without the institution of a matrimonial cause.

Finally, it is recommended that all stake holders must be properly educated and enlightened on these rights. Parents, children, families, and the Governments should be alert to their responsibilities under these laws and pay greater attention to their implementation.

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