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MATRIC NUMBER: 15/LAW01/136

COURSE TITLE: HEALTH LAW II

COURSE CODE: LPB 514

QUESTION

A 30-year old lawyer, Charity, is happily married and has a good income. She has just discovered she is pregnant. She does not want children at some point but has also just been nominated for promotion at work. She knows she would not get the promotion if she told her boss she was pregnant.

She decides that at this time in her life, the promotion is more important to her than having a baby. She consults her general practitioner (GP) a few weeks later, having finally decided that she would like to have an abortion. She asks the GP about whether she has a right to an abortion.

1. What are the grounds for a lawful termination of pregnancy?
2. Does the potential father have any legal rights in this decision?

ANSWER

1. Generally, abortion is illegal in Nigeria and carries a heavy jail sentence of up to 14 years imprisonment unless performed to save the life of the pregnant woman. Abortion is governed by the Criminal Code in the southern states and the Penal code in the northern states. Abortion is an artificially induced termination of pregnancy with the intention either express or implied of bringing about the death of the foetus.

However, abortion becomes legal in the following situations:

* In a situation where the continued pregnancy would endanger the life of the woman, *section 297 of the criminal code act* provides that a person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother’s life, if the performance of the operation is reasonable, having regard to the patient’s state at the time and to all the circumstances of the case.
* In a situation where the pregnancy is a result of rape or incest.
* Where the child when born would be seriously handicapped.
* A person will not be guilty of the offence of abortion if the pregnancy is terminated by a registered medical practitioner.
* In a situation where the pregnancy has not exceeded its 20th week and the continuing of the pregnancy would invoke risk greater than if the pregnancy were terminated. It should be noted that this opinion should be from two registered medical practitioners and the opinion must be formed in good faith.
* In a situation where the termination of the pregnancy is necessary is necessary to prevent grave permanent injury to the physical and mental health of the pregnant woman.
* In a situation where the foetus or the unborn child is not capable of being born alive.

1. Generally, discussions about abortion often focus on the rights of a mother or unborn child, there have been efforts to elevate fathers’ rights in abortion decisions. After all, expectant fathers might oppose a pregnant woman’s decision to terminate a pregnancy or may not wish to assume the responsibilities of fatherhood and oppose the carrying of a pregnancy to term.

Courts have largely treated father’s rights in abortion decisions as secondary to those of the mother, in some cases, the father’s consent isn’t legally required. The legal reasoning for this is twofold, based on a woman’s right to privacy in her medical decisions and the fact that the mother is more directly affected by the pregnancy.

The Supreme Court has found laws requiring a spouse’s consent for an abortion to be unconstitutional. In *Planned Parenthood of Central Missouri v Danforth[[1]](#footnote-1)*, the Court reasoned that a husband’s refusal to consent would in effect veto a woman’s choice to terminate a pregnancy. While both the prospective father and pregnant woman have an interest in the decision, when the two disagree, only one partner’s position can prevail. According to the court, since the woman actually carries the pregnancy, “the balance weighs in her favor, preventing the husband from vetoing her choice.

In my humble opinion, Charity’s husband doesn’t have legal rights when it comes to determining the keeping or the termination of the pregnancy. The only thing that can be arranged is private agreement where both parties come together and discuss whether they are keeping or terminating the pregnancy.

In conclusion, Charity does not have a legal right to an abortion according to Nigerian law, her reason for procuring the abortion does not conform with the legal grounds for getting an abortion thus, Charity getting an abortion will be *prima facie* illegal.

1. [1976] 428 U.S. 52 [↑](#footnote-ref-1)