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Matric Number: 15/Law01/204

Course: Health Law

Answer:

Legal Issue:

1. Whether it is possible for Charity to have a lawful abortion in accordance to the penal laws of Nigeria (Criminal Code Act) i.e. what are the grounds for a lawful termination of pregnancy?
2. Whether the potential father has any legal rights in the decision of Mrs Charity?

Abortion is an artificial induced termination of pregnancy with the intention (either express or implied) of bringing about the death of the foetus. Usually, this intention is achieved. Abortion in Nigeria is illegal and carries a heavy jail sentence of up to 14 years’ imprisonment unless it is performed to save the life of the pregnant woman. Nevertheless, a large number of clandestine abortions continue to be carried out regularly, often with dire consequences for the lives and health of the women involved. In Nigeria, the practice of abortion is governed by the Criminal Code which applies to the Southern States and the Penal Code, which applies to the Northern States.[[1]](#footnote-1)

Section 228 and 229 of the Criminal Code provide that;

Any person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses force of any kind, or uses any other means whatever is guilty of a felony and is liable to imprisonment for fourteen years.

Any woman who with intent to procure own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing, or uses force of any kind or uses any other means whatever, or permits any such thing or means to be administered or used to her is guilty of a felony and is liable to imprisonment for seven years.

1. **Abortion is generally illegal in Nigeria, however; there is no general rule without an exception in law. There are limited grounds provided in the criminal code upon which abortion maybe carried out lawfully they include;**
2. Where the continued pregnancy would endanger the life of the woman as provided in Section 297 of the Criminal Code

‘*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 patients’ state at the time and to all the circumstances of the case’.* This shows that abortion is only legal when performed to save a woman’s life. The preservation of the mother’s life takes precedence over the unborn child.

1. Where the child when born would be seriously handicapped.
2. Where the pregnancy is a result of rape or incest
3. When a pregnancy is terminated by a registered medical practitioner
4. When two registered medical practitioners are of the opinion formed in good faith:
* That the pregnancy has not exceeded its 20th week and the continuing of the pregnancy would involve risk greater than if the pregnancy were terminated.
* That the termination of the pregnancy is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman
* That the continuance of the pregnancy would involve risk to the life of the pregnant woman greater than if the pregnancy were terminated
* That there is a substantial risk that if the child were born it would suffer from physical or mental abnormalities as to be seriously handicapped
1. Generally, every adult person of competent mind has the right to make decisions regarding their bodies without external undue influence, that is the right of autonomy.

One of the aims of Health law which is well known is to preserve the patient’s rights to make informed decisions about their treatment options in line with their preferences and values without interference or hindrance of any form. This right can be said to also form part of the reproductive right as a person has a choice to decide whether or not to have children. [[2]](#footnote-2)

There are several arguments about whether an expectant father has the right to his unborn child when the mother decides to abort it. Proponents of this argument are of the opinion that the father’s rights ought to be protected and the equality of the man’s right to have children to that of the woman. In *Paton v Trustees of the British Pregnancy Advisory Service,[[3]](#footnote-3)* a husband sought injunctive relief to restrain the defendants from terminating his estranged wife’s pregnancy. The court per Sir George Baker P held that the father had no right under the Abortion Act to be consulted in respect of the termination of the pregnancy. His argument that he sought to secure the injunction under the right to respect for his private and family life in *Paton v United Kingdom[[4]](#footnote-4)* was dismissed and described as ‘manifestly ill-founded’. The court found that his estranged wife’s right to respect for her private and family life prevailed. Also in the prevalent case of *Kelly v Kelly,[[5]](#footnote-5)*a Scottish man sought an injunction to prevent his wife from having an abortion in 1997. This injunction was withdrawn by a higher court.

Following from the decisions of the aforementioned cases, if Mrs Charity’ reasons for agreeing to an abortion falls under any of the aforementioned lawful grounds, then she has every right to have one irrespective of her husband’s opinion.

The father does not have any potential legal rights in the decision, being that

* It is Mrs Charity’s body and she has the right to do whatever she wants; she cannot be forced to carry a baby to term when her reason for removal is lawful
* Mrs Charity has the right to reproductive autonomy which should be respected.

In conclusion, the father has no legal rights in the mother’s decision to terminate the pregnancy.

1. O.Isabella, ‘Pregnancy Termination and the Law in Nigeria’ (1990) 21(4) *Studies in Family Planning* <http://www.jstor.org> accessed 17th April, 2020. [↑](#footnote-ref-1)
2. ‘Abortion in Nigeria’, (Guttmacher Institute, October 2015), <http://www.guttmacher.org/fact-sheet/abortion-nigeria> accessed 17th April, 2020. [↑](#footnote-ref-2)
3. (1979) QB 276 [↑](#footnote-ref-3)
4. (1980) 3 EHRR 408 [↑](#footnote-ref-4)
5. (1997) ScotCS CSIH\_2 [↑](#footnote-ref-5)