

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2024

BEFORE HER HONOR: SIE-A-NYENE G. YUOHCHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE
BEFORE HER HONOR: CEANEH D. CLINTON JOHNSON.....ASSOCIATE JUSTICE

Attorney Lamii Kpargoi of the City of Monrovia, Liberia)
.....Appellant))
Versus) APPEAL

His Honor Scheaplor R. Dunbar, Judge, Monthly and)
Probate Court for Montserrado County, Republic of)
Liberia, and Yatta Walker, Emmanuel Hoff and Runetta)
P. Scott, of the City of Monrovia, Liberia.....Appellee)

GROWING OUT OF THE CASE:) PETITION FOR
) LEGITIMIZATION

IN RE: The Petition of Attorney Lamii Kpargoi, Petitioner)
Praying this honorable court decree of legitimization of)
Tenneh F. Kpargoi, born on April 17, 2013 in the City of)
Monrovia, Montserrado County, Republic of Liberia)

HEARD: NOVEMBER 18, 2024

DECIDED: FEBRUARY 17, 2025

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

The facts as culled from the records reveal that Attorney Lamii Kpargoi, appellant herein, filed a petition for legitimization of Tenneh F. Kpargoi, a minor who he claims to be his child in the monthly and probate court for Montserrado County, seeking to legitimize the child as his for all legal and beneficial intents and purposes. The child's mother, Miss Beatrice Kemokai, appellee herein, filed an objection to the said petition for legitimization by and thru her attorneys-in-fact, Yatta Walker, Emmanuel Hoff and Runetta P. Scott because she is out of the bailiwick of Liberia.

The appellant in his petition alleged that he is the father of the minor child born out of wedlock with the appellee and that he has been supporting the child all along and that he is financially capable to take good care of the child and he wants his child to benefit from him and his estate and that the only way is through legitimization since he is the biological father of the child.

The appellee filed her returns arguing that the appellant is not the biological father of the child, that she was married before she and the appellant friendship started before she got her divorce and that the child was conceived with her estranged husband.

The appellant resisted the appellee's returns and prayed the court to order a DNA testing to determine the true father of the child.

The trial judge heard arguments and ruled denying the petition of the appellant. We reproduce the trial judge's ruling for clarity of this Opinion:

"This petition was filed by the petitioner for court decree of legitimization of Tenneh Kpargoi who was born on April 17, 2003, in the city of Monrovia. In a five-count petition, petitioner alleged that he is the father of Tenneh F. Kpargoi who was born out of wedlock. Petitioner also give notice that the natural mother of the child who is presently residing in Canada. Petitioner says that the filing for the petition is done in order to protect the future rights of his daughter and also to be protected. Petitioner says that he is gainfully employed as a natural born Liberian. Respondent through her counsel filed her returns in which she categorically denied petitioner of being the natural father of the little child, Tenneh F. Kpargoi. This court notes that prior to the filing of this proceeding before this court, during the argument before this court, the petitioner informed the court that in order to prove his paternity of the child, a DNA test should be taken.

In the mind of the court, the issue is, can a court proceed in the face of strong opposition from the mother that the petitioner is not the father? The answer is no.

The respondent has claimed that she was pregnant before she met the petitioner. This court says that under our mandate in this jurisdiction, the father who wants to legitimize a child born out of wedlock should proceed to get the consent of the mother, but this is not the case as the parties had been at logger heads and because of this, this court cannot grant the petition and the prayer therein. Accordingly, the petition for the legitimization of little Tenneh F. Kpargoi is hereby denied for reasons stated above.

Given under my hands and seal THIS 3RD Day of March, A.D. 2022

Scheaplor R. Dunbar

Assigned Judge, Monthly and Probate Court for Montserrado County

The appellant discontented with this ruling of the trial judge excepted and announced this appeal. The appellant in his bill of exceptions has argued that the trial judge erred when he said in his ruling that it is the law that a person who wants to legitimize his child must obtain the consent of the mother as there law doesn't say so; that the judge erred when he ruled

that the mother's objection is definitive on the matter of legitimization sought under section 4.92 of the Domestic Relations Law; that the judge erred when he ignore the numerous evidence that was filed to sow that the child was his (appellant) biological child but relied only upon objection from the child's mother.

This issue we must decide is: whether the paternity of a child conceived by a married woman can be challenged by a third party? We answer in the affirmative.

Our law provides that the husband is strongly presumed to be the father of a child born to his wife, that is, there is a strong presumption regarding the paternity of a child conceived in wedlock. This presumption, however, can be overcome only by evidence precluding any procreative role of the husband, such as by showing that the husband and wife had no access to each other at the relevant time of possible conception. In the absence of such showing, the husband's paternity is conclusive.

This case before us presents a peculiar set of facts where the paternity of the child is claimed by a person who is not the husband of the child's mother and has filed a petition for legitimization of the child, but the mother of the child has resisted on ground that the appellant is not the father of the child.

Recourse to our laws shows that Section 4.92 of the Domestic Relations Law provides:

"Limited legitimization upon application of natural father. Upon an application made to the probate court by the natural father of a child born out of wedlock, such child may be legitimated with respect to such applicant and shall become for all purposes the legitimate child of such applicant and entitled to all the rights of legitimacy as if born during the lawful wedlock of the applicant. Upon receipt of such an application, the court shall issue a citation to the natural mother of the child who shall be served therewith together with a copy of the petition. She may serve and file an objection to the proposed legitimization, limited to the sole ground that the applicant is not the natural father of the child. After the hearing, if an objection has been filed and overruled, or if no objection has been filed, upon the return day of the citation, the court shall order the clerk of court to record the application, its date, the name of the applicant and the name and date of birth of the child, which record shall be admissible as full and sufficient evidence of the legitimacy of the child with respect to the applicant. The clerk shall also, prepare to the applicant a certified copy of such record."

This law provides that means by which children born out of wedlock can be legitimized by the biological father of the said child. The mother of the child can object to the legitimization of the child on only one ground, that the appellant is not the father of the child and as stated above, this appellee (mother of the child) has objected on this ground.

This puts a huge burden on the appellant who is claiming paternity of the child. For a party to convince a court or legal tribunal that he is the biological father of a child born by married woman for whom he is not the husband, he is under a duty to show that at around the time of conception of the minor child, the appellee had no physical contact with her husband and that they (appellant & appellee) were both cohabitating at the time of relevant possible conception of the child in order to reasonably question the paternity of a child conceived by a married woman.

In order to prove that the appellee and her husband had no access to each other at the time of the relevant possible conception of the child, the appellant has argued and provided evidence to show that the appellee was in an abusive relationship which caused her to move out of her marital home to a rented apartment; thereafter, she conceived and had to leave the apartment and move to another place, a place that belonged to a friend of the appellant, which was also arranged for by the appellant, the appellant even ended up fixing the said apartment so that she could be comfortable in the place and he continuously supported her through her pregnancy and supported the child after she was born. The child was even named by the appellant and is bearing the appellant's last name.

We also see from the records, affidavits from the appellee's pastor and from the Legal Aid Clinic at the Liberia National Bar Association to show that the appellee was in danger of being physically abused by her husband and because of this, she had to flee from her marital home and that she was also involved in a romantic relationship with the appellant, a fact that she has not denied. The records also show that the child is listed on the appellant's medical insurance and has attended the hospital based upon the appellant's insurance.

Any reasonable mind, based upon the facts of this case may conclude that the appellant is the father of the child, because one may wonder, why would the appellant take full support of a married woman who had issues with her then husband to the extent of supporting her pregnancy and the child since birth?

We hold that the appellant has provided sufficient evidence to challenge the appellee's denial of his paternity of the child and that to resolve this controversy justly and fairly, a DNA test is absolutely necessary.

Given the facts and circumstances of this case, the court's duty was to grant the application for a DNA Test, because this is the only scientific proof we can use to say with certainty that the appellant is the father of the child or not as courts must rely on evidence in order to

make a just and fair determination as it is only with evidence a court can with certainty make a fair decision. *Universal Printing Press, v. Blue Cross Insurance Company*, Supreme Court Opinion, March Term 2015.

From a review of the records, this Court is satisfied that the appellant has met the said requirement and that his challenge to the mother's denial of his paternity is reasonable.

The ruling of the trial judge, being inconsistent with the evidence presented and the facts and circumstances surrounding the case, is reversed.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the lower court is reversed and the judge presiding in the court below is to order the conduct of a DNA test to determine the paternity of the child in question. The Clerk of this Court is ordered to send a mandate to the lower court commanding the judge presiding therein to give effect to this Judgment. Costs are ruled against the appellee. IT IS HEREBY SO ORDERED

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLOR P. ALPHONSUS ZEON, KPOTO GIZZIE APPEARED FOR THE APPELLANT, COUNSELLOR LAMII KPARGOI APPEARED PRO SE. COUNSELLOR ALHAJI SWALIHO A. SESAY APPEARED FOR THE APPELLEE.

Remanded.