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Canonical Presumption of Spousal Paternity: A Perspective from the Nigerian Context

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Abstract
The presumption of paternity in the 1983 Code of Canon Law (canon 1138) states that the father of a child is the one identified through a lawful marriage, unless clear evidence proves the contrary. However, cases of contested paternity, such as a presumed father discovering he is not the biological father due to circumstances like extended absence or DNA evidence, pose significant pastoral challenges. These situations can devastate families, threatening marriage stability and family peace. This article explores the Church's teachings on marriage, paternity, and family, offering a canonical-pastoral approach to support parties in affected marriages. It provides guidance for pastors and counsellors navigating these complex situations, emphasizing compassion, truth, and the indissolubility of marriage.

Keywords: Paternity Presumption, Canon Law, Marriage Stability, Canonical Pastoral Approach

Introduction
The marriage covenant by which a man and a woman establish between themselves a partnership of their whole life, when celebrated between the baptised is a sacrament (cf. can. 1055 §1). Marriage as such is essentially characterised by unity and indissolubility. A valid marriage is one whereby consent has been expressed lawfully by two legally capable parties (cf. can. 1057 §1); it is putative if it was celebrated in good faith by at least one party although in fact it was invalid (cf. can. 1061 §3). The juridical effects of both types of marriage are identical insofar as they refer to the children born of them: such children are always regarded as legitimate, and the paternity presumably assured. This is a matter which causes some concern to parties seeking a declaration of the

nullity of their marriage; they must be assured that, should their marriage be declared invalid, the status of the children born of that marriage is in no way affected.

Presumption in canon law is a probable conjecture or guess about something which is uncertain and which allows a proof to the contrary (cf. can. 1584). The Presumption of law is that probable conjecture which the legislator stated in law. It originates from the legislator himself or the law itself (Nwabude, 2008, 179). It is a rule of law that courts and judges shall draw a particular inference / conclusion / conjecture from a particular fact, or from particular evidence unless and until the truth of such inference is disproved (Burke, 2004, 372). For instance, there is a presumption of law regarding paternity and legitimacy of children (cf. *CIC* 1983can. 1138), as we shall develop below.

The Pertinent canon: can. 1138

The central canon of the study is *CIC* 1983 can. 1138. The words of the canon read as follows:

> §1 The father is he who is identified by a lawful marriage, unless by clear arguments the contrary is proven. §2 Children are presumed legitimate who are born at least 180 days after the date the marriage was celebrated, or within 300 days from the date of the dissolution of conjugal life.
>
> *CIC* 1983 can. 1138 reproduces without change the prescripts of the Pio-Benedictine norm on paternity (*CIC* 1917 can. 1115 §1):
>
> *CIC* 1983 can. 1138 §1: «Pater is est, quem iustae nuptiae demonstrant, nisi evidentibus argumentis contrarium probetur".
>
> *CIC* 1917 can. 1115 §1: «Pater is est quem iustae nuptiae demonstrant, nisi evidentibus argumentis contrarium probetur».

The discussion of can. 334 of *Schema de Sacramentis* (from which *CIC* 1983 can. 1138 was developed), was held on the 21 October 1977, where it was noted that §1 (on paternity) did not occasion comment, because its stipulations were already settled in canon law (*communicationes*, 10, 106). Thus the provisions of that canon went through subsequent studies and schema and emerged unaltered (*communicationes*, 15, 1983, p. 240).

Definition of Terms

Presumption of spousal paternity: This is the presumption that the father of a given child is the one indicated at the wedding of his / her mother.

The "false paternity" phenomenon: The "false paternity" phenomenon, as it is called, describes a situation where a man thought to be the father of a given child / children is shown not to be so. Findings of "false paternity" rest on the ability of scientific testing to establish beyond plausible doubt that a given man is or is not the father of a given child, regardless of whether that same man is legally presumed to be the father as a result of his marriage to the mother in question. Verifications of "false paternity" obviously occasion sensitive pastoral issues (Peters, 2006, pp. 310-311).

Today's advancement in science and genetic manipulations have made room for possibilities which before were unavailable. Possible disownment of paternity can be proven biologically through a DNA test. The situation however, is not all resolved. In the past, it was always certain who the mother of a child is/was. Today it is not so certain. With the technological advancements, even maternity is disputable. Who is the true mother of a child? Is it the woman who conceived the foetus, or the one who bore the child through delivery, or the surrogate mother (substitute mother)?

Presumptions of law as contained in can. 1138

Two closely related presumptions of law are contained in can. 1138. These are to be used in cases where the legitimacy of a child is doubtful or in question. Firstly, the law presumes that the husband of a woman who has a child is in fact the father of that child. Of course, this presumption may be overturned by evidence to the contrary, e.g. if the couple never had sexual intercourse, or if the husband was sterile or had been away at the material time, etc. This presumption does not apply if the couple had not been lawfully married, even though they may have cohabited. The second presumption provides a means of deciding whether or not a child, in a particular case, may be accepted as the legitimate child of a married couple. Thus, if the child was born within 180 days of the celebration of the marriage, it is presumed to be legitimate; similarly, if the child was born within 300 days of the termination of conjugal life, it is also presumed legitimate. The times mentioned in the canon are identical to those of can.1115 §2 of the 1917 Code, although that referred to months rather than days. Commentators on that Code made it clear that these terms are not so absolute that the legitimacy of a child born within them cannot be impugned. If the first presumption should fall due to contrary evidence, the second presumption cannot be invoked.

The presumption of spousal paternity presented in can. 1138 §1 serves the same values and goals that spousal paternity presumptions served in earlier canon law, and are clearly recognized as a *praesumptio tantum iuris* (presumption of law only). Consequent to being presumptions of law, they are susceptible to evidentiary challenge (cf. cann. 1584-1586).

E. Peters retains that can. 1138 §2, should be modified, or authentically interpreted, to hold that children born less than 180 days after the wedding, or more than 300 after the cessation of Conjugal life, enjoy neither the presumption of legitimacy (to the degree that such has any canonical significance anymore) nor of spousal paternity (which does have canonical significance). The canonical effects arising from the presumption of legitimacy and spousal paternity may be imputed to a child born less than 180 days after the wedding upon affirmation to this effect made by husband and wife. The competent ecclesiastical authority may determine the conditions under which such affirmations should be made and accepted (for example, should it be offered in writing or before witnesses, under oath, supported by relevant documentation, and so on). Once such an affirmation is made and accepted, the presumption of legitimacy and paternity attach, but only to the same degree that any *praesumptio iuris* applies (Peters, p. 310).

Distinction between Legitimacy and Paternity

Another canon closely related to can. 1138 is can. 1137 which states as follows: "Children who are conceived or born of a valid or of a putative marriage are legitimate".

The *CIC* 1983 makes a clear distinction between the notion of legitimacy of a child, just defined above, and the proof of legitimacy, which will only be approached when the later is disputed or unknown. The period for presuming legitimacy given in can. 1138 will be applicable, so that a possible rectification can be made of the designation given according to can. 1137.

The two terms paternity and legitimacy need to be clarified from the onset. First, while "paternity" and "maternity" are biologically-determined qualities in a man or woman in regard to a specific child, "legitimacy" is a legal category into which a given child is generally placed if those sharing in that child's paternity and maternity are married. Maternity is supposed to be easily established, while paternity has always been more difficult to establish since the consequences arising from paternity are so significant and the juridic methods for establishing paternity are necessary (Peters, pp. 311-312).

The notion of legitimacy provided by can. 1137 shows two characteristics: 1) it applies whether the marriage is valid or putative; 2) lawful filiation exists not only when the child is conceived within the marriage, but also when the child was born within the marriage. Here are, therefore, legitimate children *concepti aut nati* (conceived or born). These terms are complementary, since those conceived during marriage may be born after it has been dissolved. And those born during marriage may have been conceived before it took place. Thus, those children will be legitimate, either by conception or by birth, who: 1) were conceived before and born within the marriage; 2) were conceived and born during marriage, that is, in the period between the celebration of the marriage and the dissolution of conjugal life; 3) who were conceived within marriage, but born after the dissolution of the marriage or of conjugal life.

There are no restrictions in the *CIC*/83 as to the methods used for the proof of legitimacy; neither were there in the *CIC* 1917 nor in the pre-*CIC* 1917 legislation. Biological proof may be used, therefore, and the presumptions regarding time for paternity in can. 1138 are maintained, but as *iuris tantum*. The proof of the maternity of the wife is obtained by demonstrating the fact of the delivery and the identity of the child. Proof of birth during marriage should not give rise to any great problems. It is more difficult to verify that conception took place during marriage, owing to the uncertainty of this moment. Consequently, the *CIC* 1983 indicates in can. 1138, § 2, a presumption connecting conception and birth. For the proof of paternity, can. 1138. §1 takes up a Roman law saying that the father of the child is the man who is the husband of the woman when the child is born or conceived. Can. 1138, § 1, itself adds that if the paternity is disputed, the contrary must be demonstrated with clear arguments. Doctrine refrains from giving a general rule and merely proposes clear examples of proof: the absence of the husband during the estimated time of conception, other circumstances which make one to be certain that the husband was unable to have sexual

relations with his wife at that time, impotence, adultery followed by pregnancy and concealed birth, etc.

Some goods / values of the spousal paternity presumption

E. Peters highlights some goods or values promoted by the canonical presumption that paternity rests with the husband of a wife as follows (Peters, pp. 314-326; cf. Durowaa-Boateng, 2025, 222).

First, because the spousal paternity presumption attaches to males *only* within the context of marriage (and not from any other sort of relationship) the presumption underscores that *marriage* is that institution directly ordered to the begetting, bearing, and raising up of children (*CIC* 1983 can. 1055 and *CIC* 1917 can. 1013 §1). Second, as it is generally accepted that children born to married persons typically fare better (financially, emotionally, educationally, and so on) than do those born outside of wedlock, the presumption of spousal paternity helps assure that children who were born under such favourable circumstances in fact reap the benefits thereof, at least to the degree that law can promote that expectation. Third, the presumption of spousal paternity protects the rights of women by requiring those who would claim that their offspring were engendered by males not their husbands to prove their allegations by "very stringent proofs". Fourth, the presumption of spousal paternity serves an admonitory role by reminding married men that, as law and society will regard them as the fathers of their wives' children, they should strive to conduct themselves in accord with that honor and responsibility and not seek to shirk it.

Peters with reference to various Pio-Benedictine authors, gives a detailed explanation of the above goods and values of spousal paternity presumption he has delineated.

First, Paternity, like maternity, entails serious obligations by natural, canon, and civil law. The *loca* of maternal obligations is, of course, very easy to identify. Pregnancy, in all but rare circumstances, causes easily recognizable changes in the appearance and behaviour of a woman over a period of several months. Moreover, «because the birth of a child usually takes place in the presence of others, maternity can also be proven by the testimony of others, hence the maxim, the *mother is known*. It is otherwise with the father [...] for conception is a hidden process». Indeed, the mother can be proved by the birth of a child, whereas the father's cooperation is hidden in obscurity, [so] the law must *suppose* the child to be a lawful issue. Peters reporting Schmalzgrueber wrote:

Proof of filiation comes in two forms, one resting on the truth, the other on a presumption. The truth arises with certainty only with the mother [...] regarding the father, filiation can only be demonstrated by presumption. The reason is, that the mother is always certain, but not so with father. Thus, conjectures and presumption must be called upon for assistance (cf. Peters, p. 318).

On the legal presumption of paternity placed on a husband, and not on any other male consort Petrovits writes:

> The first effect of the conjugal bond is the establishment of a distinct family under the supervision and guardianship of the husband and wife

> ... The conjugal bond constitutes the two contracting parties [as] a principle of generation and invests their offspring with all the prerogatives of [civil] and canonical legitimacy (Petrovits, 1921, pp. 380-381).
>
> Canon law (can. 1055 §l), reposes only on a husband, the presumption of paternity of any children born to his wife. This is because a husband has freely and demonstrably assumed the obligations of married life and because marriage is fundamentally «ordered to the good of the spouses *and the procreation and education of offspring*» (cf. Peters, p. 320).

Second, it is universally regarded as a basic good for the child "that the husband is presumed to have fathered the children born to his wife" and "that any remaining doubts about a husband's paternity, as would arise only on plausible but incomplete evidence of non-spousal paternity, must be resolved in favour of the child, which favour is regarded as a finding of legitimacy, that is, of spousal paternity". E. Peters, re-echoes other commentators as saying that the «Sound public policy demands that the honor and future welfare of the child be absolutely protected by the law of the Church, and the laws of the various states of our country follow the same policy». He notes that the idea that the presumption of spousal paternity favours the child since the presumption «admits of proofs to the contrary, only, they must be convincing ones, and the benefit of the doubt, if any remains, is given to the child. Hence, it is admitted that the child in question is eligible to assert and defend his right to be recognized legitimate (cf. Peters, pp. 322-323). Moreover, the presumption of spousal paternity works to protect the rights and reputation of the mother, and thus, without convincing proof, the wife must not be considered to have conceived a child through adulterous intercourse with another man, and her husband should be considered the father of the child. Reference could be made to a decree from the Sacred Consistorial Congregation, cited by Gasparri as a source for can. 1115 §1 *CIC* 1917:

> It is a long-standing presumption of law that (unless the contrary can be shown by manifest evidence such as prolonged absence or male impotence or some similar cause), the child is to be taken as being [fathered] by the spouse rather than to be have been begotten by an adulterer, even though it is certainly demonstrated that the mother frequently soiled herself with impure embraces (cf. Peters, 324).

Third, the presumption of spousal paternity stands even if the mother herself admits to committing adultery. It is clear that a wife's adulterous relations with one man does not, in and of itself, rule out the possibility of conjugal relations with her husband around the same time. This leaves open the possibility of spousal paternity of a subsequent child and with that the benefits to both mother and child as attached to spousal paternity. Peters affirms Gasparri in the following clear terms:

> The proof [of non-spousal paternity] is not had simply by the fact that the mother has committed adultery, for standing alone such information does not establish the adulterer instead of the husband to be the father of the child. Indeed, it is not sufficient proof even if the mother, eminently worthy of belief, dying, solemnly affirms it by oath, unless she offers such evidence that would suffice in the external forum, either because no case can rest on the testimony of a single witness, however legitimate, or because one alleging his own wrong-doing is not worth of belief (Peters, 326).

Fourth, the Christian tradition has long recognized that sound laws make it easier for people to do the right thing. By articulating a reasonable presumption about paternity among the married, canon law advises those preparing for marriage, especially men, about the expectations that civil and ecclesiastical society will make on them in regard to parenthood, and supports those already in marriage to conduct themselves in accord with common sense and Christian morality. The mere existence of a law does not, of course, create virtue in its subjects nor change the facts of people's actual choices, and thus the canonical presumption of spousal paternity is rebuttable. But surely one may find in the canonical presumption of paternity an expression of what Pope John Paul II taught was the fundamental purpose of all canon law, namely, «to create such an order in the ecclesial society that, while assigning the primacy to faith, grace and the charisms, it at the same time renders easier their organic development in the life both of the ecclesial society and of the individual persons who belong to it» (John Paul II, 1983, xi; Peters, 320).

Conditions where the spousal paternity presumption could be invoked

One may enquire when precisely the paternity presumption could arise. We need to examine first what kind of marriage supported the application of *CIC* 1917 can. 1115 §1, *CIC* 1983 can. 1138 §1. Even under the Pio-Benedictine discipline, the question of whether the marriage that would demonstrate paternity had to be valid or need only be putative was not decisive. The distinction between the presumption of legitimacy and the presumption of paternity was blurred. While some authors affirmed the validity of the marriage as a requirement for the presumption of spousal paternity to apply, others thought a putative marriage to be sufficient for the presumption to attach. In other words, remembering that the issue is striving to establish mere paternity, not legitimacy, it seems reasonable to expect the male in a putative marriage to be exclusively admitted to sexual relations by the female in such a relationship, precisely because "«not rarely both of them, and often at least *one* of them» (cf. Wernz-Vidal, p. 772) were acting in good faith in coming together in what they regarded as a marriage in the first place. To tie the *paternity* presumption to the validity of the marriage would be to introduce uncertainty about paternity where almost no one would say any exists. Moreover, this interpretation leaves open the possibility of withholding the presumption of spousal paternity from relationships that neither party entered in good faith, an arguably acceptable consequence

for unfortunate fact patterns that are not difficult to imagine. Finally, the option of DNA testing remains for disputed cases (Peters, p. 329).

But regardless of where one comes down on the valid *versus* putative marriage question, the wider context in which the presumption of spousal paternity appears, even though "wider" only by one norm on either side of the paternity norm, complicates the ongoing discussion and needs to be addressed.

CIC 1983 can. 1137 preceding *CIC* 1983 can. 1138, according to which «children conceived or born of a valid or putative marriage are legitimate» (that is, *CIC* 1917 can. 1114) seems anomalous when compared to the next canon, according to which «children born at least 180 days after the day the marriage was celebrated [...] are presumed legitimate» (*CIC* 1983can. 1138 §2, repeating in substance *CIC* 1917 can. 1115 §2). Would a child born, say, two months after the wedding be considered legitimate, as *CIC* 1983 can. 1137 previous *CIC* 1917 can. 1114 would seem to assert, or would the child be illegitimate as *CIC* 1983 can. 1138 §2 previous *CIC* 1917 1115 §2 seem to state? Recalling that a man's natural paternity obligations to a child would not be prevented by the child's juridic illegitimacy, how would either answer impact on the presumption of paternity, itself an important question independently raised from questions about legitimacy of the child? The response to the complex situation is not yet reached.

E. Peters reporting Veermersch-Creusen wrote:

> There is no conflict between c. 1115 §2 and c. 1114. For Canon 1114 treats of children who are born *from* two *spouses*; but if a child is born before six months from the beginning of marriage, it cannot be claimed that he or she was conceived by a husband and wife, unless we presume the husband is also a fornicator. One may not do that, unless he admits it by silence (Peters, p. 330).

For Peters, this explanation is unsatisfying in several ways. He notes:

> First, and most obviously, it ignores the fact that *CIC* 1917 can. 1114 expressly allows for children who are *born* from a valid or putative marriage, not simply conceived in one, to attain legitimacy; second, it curiously focuses on the male as the only wrong-doer, making one wonder what the female's status in the relationship was to begin with; and third, it allows complicity in an objectively immoral action to be attributed to an individual based on his silence (*pace* St. Gerard Majella) in the face of questions that might not have even been posed to him!

Some other scholars, however, addressed the problem directly. Woywod, for example, admitted that

> There is some difficulty in determining whether a child is legitimate, if a married woman gives birth to a child within less than six months after her marriage. Some commentators apply the principle of Canon 1114 to the case

> and say that the child is legitimate because it is born in legitimate wedlock. If that rule of the Code decided the case, it was superfluous to add the second sentence to Canon 1115 (Woywood, 1948, p. 801).

But Coronata wrote in a more direct manner:

> The phrasing of the Code, *children conceived or born*, is misleadingly redundant and seems less than happy. It would have been sufficient and better simply to have said *conceived* from a valid or putative marriage, for birth itself informs the concept of legitimacy not at all; [birth] is not required nor per se sufficient to render a child legitimate. It is not required that a child be born of a mother who at time of the birth is bound by marriage, for a child can be born posthumously, that is, after the death of the father when the marriage no longer exists and still be legitimate as expressly set out in canon 1115 §2. [Birth] is not sufficient, because in order that a child be considered legitimate it is required that the birth be «at least six months from the day of the celebration of the marriage» as expressly set out in canon 1115 §2. Therefore, in order that a child be considered legitimate, one must show him to have been conceived from a valid or putative marriage, that is, by parents who at that time were bound in such marriage (Coronata, 1949, p. 699).

The Pio-Benedictine authors apparently did not arrive at the resolution of the problem. For Peters however, the words "or born" (*aut nati*) should be eliminated from can. 1137 *CIC* 1983. He asserts that their retention is confusing and no longer serves any purpose that cannot be better met by resort to biotechnological testing (Peters, p. 341). Today, "DNA testing can exclude a mistakenly proposed male from paternity of a given child with conclusive certainty, and it can confirm an actual (genetic) father with something approaching certainty" (Peters, p. 308).

Overruling the spousal paternity presumption

The next issue would be, to establish how the presumption of spousal paternity could be overturned when the presumption seems applicable in a given case? E. Peters reporting Gasparri notes that traditionally only three lines of argument could, when proven, result in overturning the presumption of spousal paternity: absence of the husband at the material time or his impotence. Quoting Gasparri he relates: «[...] there is evident proof that the husband is not the father of the child and that the wife is an adulterer if it is shown that the husband never had sexual relations with his wife due to a long absence or a period of impotence or some other similar cause» (Peters, p. 334; cf. Magdalena, 2024, 110).

Peters refers that under normal circumstances, human gestation is reckoned at approximately 40 weeks or nine months. Allowing for variations in pregnancy duration (at least variations that, depending on the quality of medical support available, tend to result in live births and hence occasion the practical need to address questions of paternity), and recalling that the

spousal paternity presumption fosters several goods (marriage, children, reputations, responsibility, and so on), canon law has adopted a biologically generous time frame in which a husband could be absent from his wife (or impotent), but still presumed to have fathered her child. He continues: "Sufficient proof of illegitimacy would be afforded if it could be shown that during the period of four months that lay between [the] beginning of the tenth and the sixth month respectively before the child's birth the father was either impotent or was prevented from having access to the mother". Thus the time of conception being estimated at nine months before the (normal) birth date, proof of the absence of the father for two months *before and after* that estimated time of conception would overturn the presumption that he was the father of his wife's child. The alleged absence of a husband at the material time must not simply be proven, but must be proven to have been complete, i.e., without even the briefest periods of private association between the spouse (Peters, p. 334-335; cf. Amuh, 2023, 80).

The second argument which could result in overturning the presumption of paternity is impotence of the husband at least at the material time. One can only imagine that impotence arguments would be especially difficult to prove because such questions, already complex in themselves, would arise either earlier in the marriage (thus more directly impugning the validity of the marriage, something presumed per can. 1060 *CIC* 1983 and can. 1014 *CIC* 1917), or later in the marriage when, as likely as not, other children might have already been born (Peters, p. 336).

To impotence should be added, however, sterility as a possible grounds for overturning the presumption of spousal paternity. Sterility is, of course, distinguishable biologically and canonically from impotence. Some commentators however, believe that there are only two ways to challenge the presumption of spousal paternity (a husband's alleged physical absence or impotence/sterility) where others see, more precisely, three (a husband's alleged absence, impotence, or sterility) (Peters, p. 337).

The importance of the canonical presumption of spousal paternity and the strictness by which any attempts to overcome that presumption are to be assessed, are encapsulated in an 1884 decree of Sacred Consistorial Congregation issued a few decades before the codification of canon law. In that case, the Congregation decreed that a child born to a married woman many years after her apparent separation from her husband must nevertheless be considered his child and thus legitimate. The Congregation, noting that travel between the two towns into which the spouses had moved would not have been difficult (though there was no evidence that such trips had been made by the parties), observed:

> [I]t must be appreciated that, such is the force of the presumption that the father is known by marriage, that none should consider departing from it unless the contrary, by the most conclusive arguments, is proven in fact, and indeed only (*taxative*) by the absence of the husband or his physical impotence, since all this concerns the sanctity of marriage, the good of society, and the tranquillity of families which, but for the crucial presumption of legitimate filiation, would be racked with deplorable turmoil (Sacra Consistorio, 1884, 668).

The Nigerian Context

Paternity is a strong parental role in the Nigerian - African context. Any man who marries a wife, and begets a child, fully assumes the responsibility of the father of the family, the *pater familias* (cf. Jiakponna, 2023, 17). He, thereby is honored with the state or condition of fatherhood: being with the family, caring for the wife and the child and providing for them. Situations have been encountered in the Nigerian context where the paternity of a child / children is disputed and the husband denies the paternity of the child borne to him by the wife. The instances could be that, the presumed father had travelled abroad for some months and returns to find the wife pregnant without his conjugal collaboration; a man claims not to be responsible for the pregnancy of the wife since they had not previously met sexually; for reasons of migration abroad the DNA tests of the family shows "false paternity", etc. We are aware of course, that today there is the possibility that irrefutable biotechnological evidence can conclusively eliminate a husband as the father of a given child born to his wife. Indeed, an adulterous conception can now be proven scientifically (cf. Nwachukwu, 2024, 60).

Some husbands in this context may feel humiliated and spited, and would denounce the wives as adulterous when the presumed paternity is falsified. Situations such as the above could be devastating to the family and could raise canonical and pastoral issues regarding the stability of the marriage bond, the disruption of peace in the family. This is so since many a Nigerian man may vehemently deny the paternity of the child and may denounce the evidence to the extended family. There are circumstances where the man would rupture conjugal life and demand a canonical declaration of nullity of the existing marital bond.

Extended-Family Involvement

Culturally, the situation of a falsified paternity would not be a communal or larger family issue unless the husband involved denounces it to the community. Indeed, in order to save the family name and respect, and in protection of the child conceived, the elders may advise the husband to forgive the wife, while some form of punishment would be meted out to the adulterous wife. David Ihenacho writing about the pre-colonial history of the Mbaise people of Nigeria described how the *Nze-na-Ozo* title elders would assemble together to decide disputes and punish crimes. He noted:

> The proceedings were generally short and in most cases the law of retaliation prevailed. Adultery however was sometimes punished with slavery or death. So sacred among them is the honor of the marriage bed and so jealous are they of the fidelity of their wives (Ihenacho, 2012, p. 582).

The man however remains the husband of the wife and the father of the child so long as he paid the dowry for the wife. Some couple may choose to relocate to a place far away from where they are known to save themselves the shame till the situation died down.

The situation begs the question, on the canonical-pastoral approach which could be taken in such a situation as threatening the indissolubility of the sacramental, matrimonial bond.

Canonical - Pastoral Provision for the Situation

Some canonical-pastoral steps could be taken in situations where paternity is falsified.

Pastoral Care, Counselling and Forgiveness

There is the indispensable need of the intervention and pastoral care of a priest or pastoral agent for the couple in the matrimonial crisis. The involvement of a priest would offer spiritual admonition and sacramental healing to the guilty as well as the innocent party. Pastoral counselling is as well vital in this situation of marital crisis. The Counsellor, a professional would lead the couple through the process of healing, supporting and accompanying them through the process of forgiveness with the hope of restoring love, friendship and conjugal love. Indeed the Church advises that pastoral means should be employed to achieve reconciliation between the couple whenever there is hope of reconciliation (cf. can. 1695). In line with this, the qualities of integrity, truthfulness and fidelity would be promoted in the family life.

Recourse to the Ecclesiastical Tribunal

In due course, when every pastoral means must have been exhausted, recourse could be had to the ecclesiastical tribunal. It is part of the work of the ecclesiastical tribunal to examine the status of a marriage and to investigate the marital situation of the couple, to vindicate the rights of persons, and to declare juridical facts (cf. can. 1400 §1, n. 1; cf. (Akinwale, 2023, 30).

Following the rotal jurisprudence on the issue of an intention against fidelity as a nullifying factor of marriage, "if the person was guilty only of a few isolated indiscretions, it is to be presumed that the person conceded the right to a faithful relationship but abused that right" (*coram* Funghini, 315-316, n.6). Indeed, a judicial sentence *coram* Sabattani affirms that an isolated case of adultery does not constitute sufficient proof of intention against the good of fidelity to nullify marriage (cf. *coram* Sabattani, *RRD* 51, 503, n. 4). In this case, the ecclesiastical tribunal may rule in favour of paternity even if the couple rejects it. Hence, the innocent party may still forgive the guilty party and re-establish conjugal life. However, when after all is said and done, and there is still no hope of reconciliation between the couple, the aggrieved party may then petition the competent ecclesiastical authority for conjugal separation.

Conjugal separation

The Catechism of the Catholic Church states, "[...] there are some situations in which living together becomes practically impossible for a variety of reasons. In such cases the Church permits the physical separation of the couple and their living apart" (*CCC*, n. 1649). In the same trend, can. 1152 §1 prescribes as follows:

> It is earnestly recommended that a spouse, motivated by Christian charity and solicitous for the good of the family, should not refuse to pardon an adulterous partner and should not sunder the conjugal life. Nevertheless, if that spouse has not either expressly or tacitly condoned the other's fault, he

> or she has the right to sever the common conjugal life, provided he or she has not consented to the adultery, nor been the cause of it, nor also committed adultery.

First and foremost, the present Code earnestly recommends forgiveness from the innocent partner in the spirit of Christian charity. Commentators interpreting the delicate situation involved consider charity towards both the offender and the offended. Woestman recalls that in such a delicate matter involving the interpersonal relationship of husband and wife, it is necessary that charity transcends and outshines justice. Relating that no two cases are exactly alike, he set examples of two extremes, "on the one hand a single act in secret without notoriety and grave damage to the innocent party and children, and on the other repeated, notorious, promiscuous acts with grave damage to the innocent party and children" Woestman notes that the "demands of charity depend on the circumstances of the individual case: 'A truly innocent spouse is gravely offended by adultery and hence should not be made to bear the entire burden of trying to repair the rupture of the marital community'" (Woestman, 136).

Since the context deals with the restriction of the free exercise of right (*ius*), can. 18 demands that it be given a strict interpretation. Woestman analyses what is meant by adultery. This is in order to know when an innocent party has the right to perpetual separation and a guilty party has lost the right to cohabitation. He notes that the adultery must have been:

> a) formal, i.e., gravely sinful - knowingly and freely committed; b) consummated, i.e., a complete act of sexual intercourse, with a person of either sex or an animal; c) certain, i.e., there is no doubt that the act was actually committed, i.e., not probable adultery; d) not condoned, i.e., the innocent party did not forgive the adulterous spouse; e) not consented to, i.e., the other party did not approve or agree to his/her spouse's sinful behaviour; f) not caused by the other party, e.g., by the unjust refusal to maintain common life or to have conjugal relations; g) not compensated, the other party did not also commit adultery (Woestman, 135).

Furthermore, Nwabude relates what is involved in the conjugal separation. By conjugal separation, there is the suspension of common life and conjugal cohabitation of married couple, in line with conjugal rights and duties as they affect the spouses, while the marital bond or union remains. The rights over and duties towards the children is as well retained. This separation is temporary, and therefore, ceases as soon as the reason for it lapses. Thus, it is neither divorce nor a declaration of nullity of the marriage nor dissolution of marriage bond or union (Nwabude, 213).

All the same, Woestman states that, "In spite of the provision that the innocent party should bring suit for separation before the ecclesiastical authority, it is most rare that this happens. The exception would be if a concordat grants civil effects to the decisions of ecclesiastical courts in cases of separation of spouses" (Woestman, 137). Burke comments that ecclesiastical separation may not be a practicable proposition in Nigeria since the very fact of requesting for

separation might prejudice one's freedom of action in a civil case which may be taken later for merely civil effects. He relates:

> A formal ecclesiastical separation is not recognised as valid in a Nigerian civil court. In addition to that it is not easy to prove adultery in any case in a civil court, that being the very basis for the ecclesiastical separation and the subsequent request for one's civil rights in a civil divorce suit. The reason for this is to make secure the rights of any children born to the union and to secure one's own merely civil effects (Burke, 2000, p. 313).

Conclusion

In light of the complexities surrounding false paternity, the Church acknowledges the profound impact on families and the sacramental bond. The stability and indissolubility of marriage, cornerstone of family unity and societal well-being, are challenged by such revelations. While pastoral sensitivity and support are paramount, the Church advocates for exhaustive efforts towards reconciliation, reserving separation as a last resort, with the hope of healing and re-establishing conjugal life. Ultimately, the sanctity of marriage and the tranquillity of families remain core concerns, guiding pastoral responses to these delicate situations. As Pope Francis taught in one of his catechesis on paternal responsibility in the family: "Every family needs a father in order to transmit 'what truly counts in life, namely a wise heart'." ... "to be present in the family, to be close to his wife, to share in everything, joy and pain, burdens and hopes. And to be close to the children as they grow". The Pope concluded, "as, like St. Joseph, they are the indispensable guardians and mediators of the faith for new generations, in goodness, justice and God's protection"[10].

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