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AN EXAMINATION OF THE SUPREME COURT CASE OF TEGA ESABUNNOR & ANOR V DR. TUNDE FAWEYA & ORS AND THE IMPACT OF A PARENT'S RELIGIOUS BELIEF ON DECISIONS AFFECTING THE HEALTH OF A CHILD

BY

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Abstract

There has always been a struggle for ascendancy between states and parents over who can make final decisions in respect of a child; especially in life threatening situations. The law generally allows parents to exercise their discretion in almost all aspects of life of their children, parental decisions in the area of religion is one of the most respected areas of parental discretion. Notwithstanding the above, the law often gives states the power to intervene and override the decisions of parents in the best interest of their children especially in medical emergencies. Parents hardly agree that states should interfere with their discretion especially when it is based on religious grounds. This Paper examines the decision of the Supreme Court of Nigeria in the case of *Tega Esabunnor & Anor v. Dr. Tunde Faweya & Ors* (2019) LPELR – 46961(SC) and how the Supreme Court handled the above issues. The paper argues that there are some underlying issues which the court did not address which could make it impracticable to apply the decision in changing situations. The paper also makes great recommendations for a proper balancing of medical practice, religion, parental obligations and state authority in the best interest of a child.

Introduction

The dilemma faced by medical practitioners when trying to save the life of a child whose parents are clearly opposed to, and actually refuse, the only available medical procedures to save the life of a child on religious grounds, is a global challenge.² Whereas there are variations on the age definition of a child, it is pertinent from this outset to state that a child is any person who is below the age of 18 years.³ Although, religious beliefs have a universal appeal, the case of religious beliefs in Africa seems to have a peculiar dimension in the everyday life of the people that they treat religion as what could be described as a do or die affair. Gyekye captures the impact of religion in Africa as follows:

To be born into African society is to be born into a culture that is intensely and persuasively religious and that means, and requires, participating in the religious beliefs and rituals of the community.⁴ Religious belief is thus diffused in all sphere of

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(2019) LPELR – 46961(SC)

² Francis Acquah, "The impact of African Traditional Religious Beliefs and Cultural Values on Christians", available at <https://ore.exeter.ac.uk/repository/bitstream/handle/10036/3473/Acquahf.pdf?sequence=3&isAllowed=y>, accessed 10th June, 2021

³ Article 2 of the *African Charter on the Rights and Welfare of the Child*, adopted in Ethiopia in July 1990 (Hereafter called *African Children's Charter*).

⁴ Kwame Gyekye, *African Cultural Values: An Introduction* (Accra: Sankofa Publishing Company, 1996), p 4.

life filling them with meaning and significance.⁵

One strong area where religion plays a role is in the area of parenting. The religion of parents has an unimaginable impact on the health, education, feeding, vocation and general upbringing of a child in Africa.⁶ The law generally rally places the duty to take decisions affecting the welfare of child primarily on the parents and in many aspects, the law respects the religion of parents when decisions are to be taken about a child.⁷ Legally speaking, except in an emergency, parental consent is necessary to perform any medical procedure on a child.⁸ The problem arises when, in a bid to hold tenaciously to religious beliefs, parents allow the lives of their children to be at risk. Sadly, many children have died because their parents, on the basis of religious beliefs, would not consent to medical interventions. For instance, in 2012, a young infant was admitted to a London Hospital, having been found unresponsive in his cot by his parents. A post-mortem examination showed that the child had died of florid rickets caused by several vitamin deficiency. The parents, strict vegans with strong religious beliefs, had refused any medical intervention which could have saved the child.⁹ Many countries have laws affecting this area of medical practice and jurisprudence and courts have made several pronouncements in this regard.¹⁰

This paper focuses on the decision of the Supreme Court of Nigeria in the case of *Tega Esabunnor & Anor v. Dr. Tunde Faweya & Ors*¹¹ as it affects refusal of parental consent to medical procedures when the life of a child is at risk. The facts of the above case and the various pronouncements of the Supreme Court raise core issues which lawyers, judicial officers, medical practitioners, parents and policy makers need to pay close attention to in order to avoid injustice. The paper summarily reviews the case and argues strongly that there is an urgent need for fundamental reforms and proactive steps to be taken if the judgment is to survive as a reckonable precedent.

Facts of the Case and Relevant Issue for Determination

The 1st appellant, a child of one month old was rushed to the Chevron Clinic by his mother, the 2nd appellant. Dr Faweya, the 1st respondent, examined him and found that the child was suffering from severe infection and anemia (lack of blood).

⁵ Christopher Ejizu, "Emergent Key Issues in the Study of African Traditional Religion" available at <http://www.africaworld.net/afrel/ejizu.htm>, accessed 10th June, 2021.

⁶ Joan E. Grusec and Anya Danyliuk, "Parents' Attitudes and Beliefs: Their Impact on Children's Development", available at <https://www.child-encyclopedia.com/parenting-skills/according-experts/parents-attitudes-and-beliefs-their-impact-childrens-development>, accessed 10th June, 2021

⁷ For example, in the area of education, Section 38 (2) of the *Constitution of the Federal Republic of Nigeria, 1999*, requires that "No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian".

⁸ S. Wooley, "Children of Jehovah's Witnesses and Adolescent Jehovah's witnesses: What are their Rights?", available at <https://adc.bmj.com/content/90/7/715>, accessed 10th June 2021.

⁹ Peter Sidebotham, "Parental Beliefs and Child Protection", available at <http://onlinelibrary.wiley.com/doi/full/10.1002/car.2425>, accessed 10th June, 2021

¹⁰ Ibid

¹¹ (2019) LPELR – 46961(SC)

Antibiotics were administered on the child to help fight the infection. In the morning of the next day, Dr Faweya observed that the child was in very bad shape with poor colour, was convulsing and had poor breathing. The child was immediately placed on oxygen therapy. According to Dr Faweya, it became increasingly obvious to him that the child desperately needed a blood transfusion to remain alive. The child's mother bluntly refused blood transfusion for her child. She made it clear that because of her religious beliefs, being a member of the Jehovah Witness Sect, she cannot consent to her child receiving blood. Acts 15:29 in the Bible says in part: "Keep abstaining from blood..." Jehovah Witnesses believe that the Bible commands that they do not ingest blood included through transfusion. The next day, the learned counsel for the Commissioner of Police, Lagos State moved an Originating Motion Ex parte before the Chief Magistrate pursuant to Section 27 (1) and (30) of the *Children and Young Person's Law Cap 25 of Lagos State* that the medical authorities of the Clinic of Chevron Nigeria Limited Lekki Peninsula Lagos be allowed and are hereby permitted to do all and anything necessary for the protection of the life and health of the child TEGA ESABUNOR and for such further order or orders as the Court may deem fit to make in the circumstances." After hearing counsel, the Chief Magistrate granted the application under its inherent jurisdiction.

On receipt of the Order of the Chief Magistrate, blood transfusion was administered on the 1st appellant by the 1st respondent on the same day. (i.e. 12 May, 1997). The 1st appellant got well and was discharged. His mother took him home. On 15 May, 1997 the 2nd appellant filed an application on notice wherein she sought for the setting aside of the order made on 12 May, 1997. The application was unsuccessful. It was dismissed on 21 May, 1997.

The appellants were dissatisfied with the proceedings before the Chief Magistrate, so they approached the High Court for a certiorari order and damages. In a considered Ruling delivered on 28 May, 2001 the learned trial judge refused their prayers and claims. The appellants' were not satisfied with the Ruling of the High Court. They filed an appeal. It was heard by the Court of Appeal, Lagos Division and was dismissed and they appealed to the Supreme Court. Several issues were placed before the Supreme Court, but the one germane to this discourse was "Whether the Court of Appeal was correct in holding that the 2nd Appellants' refusal to give consent to blood transfusion amounted to an attempt to commit a crime or to allow the 1st Appellant to die."

Core Decisions of the Supreme Court on the Subject

The Supreme Court in unanimously dismissing the appeal specifically held as follows:

In the circumstance of the case the Court could have even acted on verbal application to prevent what was obviously a crime that was to be committed. For the essence of law is to preserve life and property and create environment for human beings to live a contented and dignified life." Section 214 (2)(b) of the Constitution provides that the Nigeria Police shall have such powers and duties as may be conferred upon them by law. Section 4 of the Police Act, 2004 states that the Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, etc while Section 33 of the Constitution provides that every person has a right to life and no one shall be deprived intentionally of his life except in

execution of the sentence of a Court in respect of a criminal offence of which he has been found guilty. After examining the proceedings at the Chief Magistrate's Court, it is so obvious that the intention of the Commissioner of Police was to prevent the commission of a Criminal Offence. When such an action is brought before a Chief Magistrate he has inherent jurisdiction to prevent the commission of a criminal offence.

Another critical decision by the Supreme Court on the subject was as follows:

This issue involves a convergence of religion medicine and law. It is long settled that an adult who is conscious and in full control of his mental capacity, and of sound mind has the right to either accept or refuse blood (medical treatment). The hospital has no choice but to respect their patients wishes. All adults have that liberty of choice. This freedom has been exercised in accordance with the rule of law (see Section 45 (1) (b) of the Constitution). All adults have the inalienable right to make any choice they may decide to make and to assume the consequences. When it involves a child different considerations apply and this is so because a child is incapable of making decisions for himself and the law is duty bound to protect such a person from abuse of his rights as he may grow up and disregard those religious beliefs. It makes no difference if the decision to deny him blood transfusion is made by his parents. See *M.D.P.D.T. v Okonkwo* (2001) 7NWLR (Pt.711) p.206. When a competent parent or one in loco parentis refuses blood transfusion or medical treatment for her child on religious grounds, the Court should step in, consider the baby's welfare, i.e. saving the life and the best interest of the child, before a decision is taken. These considerations outweigh religious beliefs of the Jehovah Witness Sect. The decision should be to allow the administration of blood transfusion especially in life threatening situations.¹²

Concurring with the lead judgment, Justice John Inyang Okoro, of the Supreme Court added the following:

I hold the view that it could have amounted to a great injustice to the child if the Court had stood by and watched the child being denied of basic treatment to save his life on the basis of the religious conviction of his parent. He probably would not be alive today. I agree with my learned brother that in a life-threatening situation, such as the 1st Appellant was in as a child, the consideration to save his life by application of blood transfusion greatly outweighs whatever religious beliefs one may hold, especially where the patient is a child.¹³

¹² Ibid

¹³ Ibid

Legal Background

At the international and local levels, the law in recent years places a high premium on the rights and interests of children in a lot of critical areas- even when there are clashes with the rights or interests of parents.¹⁴ On a general note, parents are primarily vested with the duty to take decisions as it affects their child and all governments, persons and authorities are duty bound to respect this general duty except in overriding special instances or circumstances.¹⁵ The challenge has been when it can be considered justifiable to strip parents of the duty to have a final say on issues pertaining to their children. International, regional and national law-making institutions, judicial bodies and other executive policy makers have tried to tackle this dicey issue. It may be apposite to consider some examples so as to appreciate what the Supreme Court of Nigeria dealt with, or was expected to deal with, in the case under consideration. Article 9 (1) - (3) of the *African Children's Charter* states as follows:

1. Every child shall have the to freedom of thought, conscience and religion.
2. Parents, and where applicable. Legal guardians shall have a duty to provide guidance and direction in the exercise of these rights having regards to the evolving capacities, and best interests of the child.
3. State parties shall respect the duty of parents and, where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.

The above provision is largely reproduced in Nigeria; except that in Nigeria the phrase "subject to the national laws and policies" is removed and a subsection 4 is also added. Thus, section 7 of the *Child's Rights Act of Nigeria*¹⁶ provides as follows:

- 7.(1) Every child has a right to freedom of thought, conscience and religion.
- (2) Parents and, where applicable, legal guardians shall provide guidance and direction in the exercise of these rights having regard to the evolving capacities and best interest of the child.
- (3) The duty of the parents and, where applicable, legal guardians to provide guidance and direction in the enjoyment of the right in subsection (1) of this section by their child or ward shall be respected by all persons, bodies, institutions and authorities.
- (4) Whenever the fostering, custody, guardianship or adoption of a child is in issue, the right of the child to be brought up in and to practice his religion shall be a paramount consideration.

The position of the law under this section of the Act suggests that as regards the issue of the practice of the religion of their child, the duty of parents to have the final say is seemingly absolute or, at least, not made expressly subject to any law. However, sections 1 and 2 of the aforesaid *Child's Rights Act* seems to lay great emphasis on the best interest of a Child on one hand and the rights and duties of the child's parents on the other hand. The sections provide as follows:

1. In every action concerning a child, whether undertaken by

¹⁴ For example In cases of Separation or Divorce, the law states that the interest of the Child is paramount. See Article 7(c) of the *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*. Adopted in July 2003 at Maputo.

¹⁵ For example Article 9 of the *African Children's Charter*. ... 2003, Laws of the Federation of Nigeria, 2004.

an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be primary consideration.

2. (1) A child shall be given such protection and care as is necessary for the well-being of the child, taking into account the rights and duties of the child's parents, legal guardians, or other individuals, institutions, services, agencies, organisations, or bodies legally responsible for the child.

The Constitution of the Federal Republic of Nigeria, 1999, guarantees the Right to Freedom of Religion.¹⁷ Section 38 of the said Constitution provides as follows:

(1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian. (Emphasis added)

From the above provision it is not in doubt that the Nigerian Constitution suggests that the consent or approval of the parents is paramount on issues of the religion or religious indoctrination of a child. However, section 33 (1) which deals with the issue of life states: "Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria". The issue faced by the Supreme Court revolved around whether to take the duty of the parents to provide religious guidance into account when it may, apparently, not be in the best interest of the life of a child medically speaking. Notably, the law criminalizes any action of a parent or guardian which tends to suggest a refusal to take steps to secure medical help for a child who may be in great danger affecting his health.¹⁸

Analysis of the Decision

The decision of the Supreme Court in the subject case is quite enlightening on one

¹⁷ Constitution of the Federal Republic of Nigeria, 1999, (As Amended). The Constitution has actually undergone series of Amendments but the Chapter on Fundamental Rights has remained untouched.

¹⁸ Legal Match, "Medical Neglect of a Child", available at <https://www.legalmatch.com/library/article/medical-neglect-of-a-child.html>, accessed 12th June 2021

hand, but it also raises so many troubling concerns, or issues, that are worth considering for purposes of developing the law. The polemics of the decision will be considered under the following sub-headings which are italicized for emphasis:

The right of a child to have life must never be compromised even if the parents are involved.

The Supreme Court relied heavily on the right to life as provided for under the constitution and refused to allow the parent's decision to deprive the child of a life-saving treatment. The decision is consistent with the decision of the United States in the case of *Wallace et al. v Labrenz et al.*,¹⁹ In that case, the parents of a child with erythroblastosis fetalis refused to authorize a blood transfusion, adamant in their beliefs that God's law prohibited blood. The parents of the child maintained that "We feel that we would be breaking God's commandment, also destroying the baby's life for future, not only this life, in case the baby should die and breaks the commandment, not only destroys our chances but also the baby's chances for future life. We feel it is more important than this life."²⁰ An initial court order had granted custody to the probative service who gave consent for the blood transfusion; however the parents appealed against it. The court had held that if parental religious belief placed the life of the child in danger, then the state can intervene and protect the child, as there is no guarantee that the child upon attainment of maturity will follow the parental religion.²¹ Notwithstanding the above, care must also be taken with incautiously following the decision of the Supreme Court, especially when there could be alternative medical procedures that could still save a life. As it has been noted by reputable scholars: "Where there is more than one medically reasonable alternative, the choices of parents are to be respected, unless the decision for their child poses a significant risk of serious harm...."²²

The Law cannot force an adult to choose a life-saving medical option

The Supreme Court also based her decision on its earlier case of *M.D.P.D.T. v Okonkwo*.²³ In that case an adult patient and her husband actually refused blood transfusion. After some days the doctor released her to go upon filling the form that she declined the medical procedure of transfusion. Another doctor tried to treat her without transfusion and she died thereafter. In an action against the former doctor, which ultimately got to the Supreme Court, the Supreme Court said:

If a competent adult patient exercising his right to reject life-saving treatment on religious grounds, thereby chooses a path that may ultimately lead to his death, in the absence of judicial intervention overriding the patient's decision, what meaningful option is the

¹⁹ 104 N.E.2d 769 (IL 1952).

²⁰ Ibid

²¹ E. El-Hamamy and D. S. Newman, "Jehovah's Witnesses and those who refuse blood transfusion" available at http://www.glowm.com/pdf/PPH_2nd_edn_Chap-72.pdf accessed on 11/6/2021.

²² Helen Turnham, Anella Brink and Dominic Wilkinson, "Minority Report: Can Minor Parents Refuse Treatment for Their Child?", available at <https://jme.bmg.com/content/46/6/355#ref-10>, accessed April 30, 2021.

²³ (2001) 7NWLR (Pt.711) p.206.

practitioner left with, other, per¹.aps than to give the patient comfort? In several cases the Courts have refused to override the patient's decision, in others, they have found ways round the problem of the paramountcy of the patient's consent. What is important is that in no case has the decision to override the patient's decision been left with the medical practitioner or the hospital.²⁴

It is obvious that the Supreme Court distinguished the above case of Okonkwo, which involved an adult patient, with the case of Esabunor, which it had at hand, because the patient was a child. Thus, where a child is concerned he or she will be incapable of making an informed decision. This is consistent with the United States case of *Jehovah's Witnesses v King County Hospital*,²⁵ where the court relied on earlier precedents to hold that "the right to practice religion freely does not include liberty to expose...the child...to ill health or death"²⁶. It is noteworthy, that, even in cases involving adults, where the choice to decline live saving medical treatment is predicated on undue influence or the patient has lost control of its senses in appropriate cases the court may permit that the decision be revisited in favour of such an adult.²⁷

A parent may be convicted for a crime if by his or her actions of neglect or refusal to give proper consent a child suffers life threatening conditions.

The Supreme Court in her judgment endorsed the decisions of the lower courts and tacitly professed to the whole world that refusal of a parent to do everything necessary to save the life of his or her child amounts to a crime. A portion of the Judgment read as follows:

In a Ruling, the 5th respondent reasoned as follows: "If Mrs Rita Esabunor is allowed to prevent her child being transfused an offence under Section 339 or 341 of the Criminal Code would have been committed. If the child eventually dies the said Mrs Rita Esabunor would have committed the offence of murder as defined by Section 311 of the Criminal CodeThe procedure adopted at the Chief Magistrate's Court may be inelegant but it was so done by the Police in order to prevent a commission of crime. It's a procedure that is based on criminal law and the essence was to invoke the jurisdiction of the Court. In the circumstance of the case the Court could have even acted on verbal application to prevent what was obviously a crime that was to be committed. For the essence of law is to preserve life and property and create environment for human beings to live a contented and dignified life....The 5th respondent in the circumstances has jurisdiction to preside as he did and make the orders he made. The High Court was correct not to quash those orders and the Court of Appeal was right in affirming the decision of the

²⁴ Ibid

²⁵ 278 F. Supp. 504

²⁶ *Jehovah's Witnesses v King County Hospital* 278 F. Supp. 504

²⁷ *Re T* [1993] Fam. 95, available at <https://www.globalhealthrights.org/wp-content/uploads/2013/03/EWCA-1992-In-re-T-adult-refusal-of-medical-treatment> accessed on 11th 6 2021 where the English court actually set aside the declination for transfusion made, because the patient was not in here right frame of mind at the material time.

High Court.

It is apropos to beam a searchlight on sections 339, 341 and 311 of the Criminal Code Act of Nigeria²⁸ relied upon by the Supreme Court to substantiate her judgment. The sections are reproduced as follows:

339. Failure to supply necessaries

Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other is or is likely to be endangered, or his health is or is likely to be permanently injured, is guilty of a felony and liable to imprisonment for three years....

341. Abandoning or exposing children

Any person who unlawfully abandons or exposes a child under the age of seven years, in such a manner that any grievous harm is likely to be caused to it, is guilty of a felony and is liable to imprisonment for five years....

311. Acceleration of death

A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission is made, is labouring under some disorder or disease arising from another cause, is deemed to have killed that other person.

The bar of parental responsibility was indeed raised by the Supreme Court. especially when the life of a child is at risk. The challenge there is that these are offences. Parents are primarily presumed innocent until proven guilty, because for an offence to be committed under the Nigerian law, the Prosecution has a duty to prove beyond reasonable doubt that a person has committed an offence.²⁹ In a situation where there is a mere suspicion that such offence will likely be committed and the Court proceeds to issue an *ex parte* order enabling the state to act, albeit, to the chagrin or stigmatization of the parents, then there is cause for concerns. On the other hand, if one is to wait to hear out parents and follow all due processes, a child, whose life may be hanging on a balance, may die on the altar of technicality or justice. The decision of the Supreme Court, therefore does not seem to focus more on the offence by the parents, but it places higher premium on taking expedient actions to save a child!

The stand of the Supreme Court can be justified to the extent that the law generally allows, and indeed places a duty on, the government to take proactive steps to prevent a parent from committing a crime in relation to the child. As noted by a scholar: "Society is morally and legally justified to interfere with parenthood of parents who harm their children."³⁰

²⁸ Laws of the Federation of Nigeria, 2004

²⁹ *State v Musa* (2019) LPELR-47541(SC)

³⁰ *M D P.D.T. v Okonkwo* Supra n.

Whereas the right to freedom of religion is sacred and fundamental, in appropriate circumstances the state may interfere.

Religion is one strong factor that has always stood against state interest all over the world! The Supreme Court in dealing with the issue of religion against state interest held as follows:

The right to freedom of thought, conscience or religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not to be coerced into acting contrary to one's religious belief. The limits of these freedoms, as in all cases, are where they impinge on the rights of others or where they put the welfare of society or public health in jeopardy. The sum total of the rights of privacy and of freedom of thought, conscience or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life, unless a clear and compelling overriding state interest justifies the contrary. Law's role is to ensure the fullness of liberty when there is no danger to public interest.³¹

Fortified by the above precedent the Supreme Court decided that, especially where the life of a child is at risk, the defence of religion would not avail a parent, or bar, state or governmental interference with parental discretion. In the United Kingdom the State primarily defers to parental discretion on religious grounds except in life threatening situations. Thus, in the cases of *Re O*,³² *Re S*,³³ and *Re R*³⁴ permission for transfusion was granted.

It is worthy to note that, from the Supreme Court decision, states do not only interfere in religious extremism in life threatening situations involving children, but would as a matter of duty interfere with religious practices that radically endanger the rights of others. It is on the basis of this that the actions of radical religious extremists who kill supposed infidels, engage in child marriages and female genital mutilation and other vices are usually checked in sane societies.³⁵

³¹ *Re O (A Minor) (Medical Treatment)* [1993] 1 FCR 925, [1993] 2 FLR 149.

³² *Re O (A Minor) (Medical Treatment)* [1993] 1 FCR 925, [1993] 2 FLR 149.

³³ *Re S (A Minor) (Medical Treatment)* [1993] 1 FLR 376.

³⁴ *Re R (A Minor) (Blood Transfusion)* [1993] 2 FCR 544.

³⁵ Laurence R. Iannaccone and Eli Berman "Religious Extremism: The Good, the Bad, and the Deadly." *Public Choice*, vol. 128, no. 1/2, 2006, pp. 109–129. [JSTOR. www.jstor.org/stable/30026636](https://www.jstor.org/stable/30026636). Accessed 2 July 2021. See also Article 21 of the African Children's Charter which Protects Children against harmful Social and Cultural Practices.

Conclusion

The major task of this paper was to examine the decision of the Supreme Court of Nigeria in the case of *Tega Esabunnor & Anor v. Dr. Tunde Faweya & Ors*³⁶ as it affects refusal of parental consent to medical procedures when the life of a child is at risk. The paper has examined the facts of the case, the core decisions made by the Supreme Court of Nigeria on the subject and the legal background on the subject in Nigeria and other jurisdictions. The paper has, among other findings, unveiled the fact that the decision focused more on the interest of the child than the religious inclinations of the parents. The Supreme Court actually endorsed the fact that when the life of a child is at risk, a Chief Magistrate or a Court of law upon getting an application from the Police, even verbally, and based on medical expediency, may issue an order exparte to overrule the decisions of parents, even if based on religious grounds to save the life of a child.

The problem about the decision of the Supreme Court has been examined especially as it could open a floodgate to the criminalization of actions of parents and stigmatize them without opportunity to be heard while decisions are taken about their children. Another variant of the problem, is that issues of religion could be very dicey. Whereas a religious belief may look unreasonable to a skeptic doctor, police officer and magistrate or judge; there are countless testimonies and records, even from foremost medical practitioners, how parents got their children saved on religious grounds from risky and dangerous medical procedures and those children experienced healing.³⁷

There is a flip side to the foregoing issues, that is, where unreasonable religious or traditional beliefs have led to the death of patients. Furthermore, there is no one hundred percent guaranty that a certain prescribed medical procedure would always save a life – as many have also died yielding to medical advice.³⁸ Thus, where a police officer is informed by a zealous doctor, he could rush to get a court order to ensure that the particular doctor who may not be an expert in the field performs the risky procedure. In such a case would it be in the best interest of the child? Put another way, what if a court grants an order to an incompetent medical practitioner to perform a procedure, would the fact that a court ordered the procedure excuse him from an action for negligence or misconduct? What happens if a life-threatening condition arises that need an override of parental consent during non-court hours in Nigeria? In addressing the best interest of a child, a lot more may have to be considered by the courts.

There is need for proper legal orientation of all medical practitioners, lawyers, magistrates, judges and policy makers about the decision of the Supreme Court and the implications for possible implementation. In the absence of proper orientation, the blunders raised in this paper may continue unabated.

Doctors should carefully discuss all alternative methods of treatment and where there are treatment options that are consistent with the religious persuasions of patients and

³⁶ (2019) LPELR – 46961(SC)

³⁷ Robert Leslie, *Angels and Heroes* (Oregon: Harvest House Publishers, 2011) 13-283 where the author recounts countless experiences.

³⁸ J. G. Anderson and K. Abrahamson, "Your Health Care May Kill You: Medical Errors." *Stud Health Technol Inform.*, available at 2017;234:13-17. PMID: 28186008, accessed July 2, 2021.

their parents in appropriate cases. The Police and indeed magistrates and judges, who lack medical knowledge and skill, should seek a second medical opinion before rushing to seek or dole out orders to doctors, some of whom may not be in the best position to administer the most suitable treatment.

Certain trained magistrates across states should be designated to be on 24/7 stand-by to authorize emergency life - saving procedures, especially to children so that the ends of justice are not defeated because courts are not officially open. The laws in Nigeria need to be amended, to be in line with the international law which expressly subordinates parental power on religious grounds to overriding state interest.

There is a big need to re-examine existing religious beliefs, especially in a pluralistic nation like Nigeria so that constructive ways could be made to balance same with state interests in order to avoid unnecessary conflict. As an author stated, "The government should not prescribe which religious doctrine is right or true. Government has another vocation, and such entanglement often leads to advantages for certain denominations or certain currents of belief. From a religious point of view, it is also undesirable that the substance of a religion be dependent on political institutions and political decisions."³⁹

³⁹Aernout J. Nieuwenhuis, "State and religion, a multidimensional relationship: Some comparative law remarks," *International Journal of Constitutional Law*. Volume 10. Issue 1, January 2012, Pages 153-174, <https://doi.org/10.1093/icon/mos001>