



PATERNITY DISPUTES

In a recent article in the *New Era* newspaper, Women's Action for Development reported that in 2016, out of 182 cases of disputed paternity, DNA tests indicated that there had been false claims of paternity in 70 cases. While this may seem high, it must be remembered that paternity tests are generally requested only in instances where there is already some doubt or uncertainty.

Concerns have also been raised that Namibians from poor backgrounds are unable to carry out paternity tests as they cannot afford to pay the costs involved – and, as a result, they may find themselves stuck with children that are falsely forced on them by the mothers.

The Children's Status Act defines a "putative father" as a man who claims, or is alleged to be, the father of a person in a situation where paternity has not yet been established.

A "putative mother" is similarly defined as a woman who claims, or is alleged to be, the mother of a person where maternity has not yet been established.

Proceedings to establish parentage (paternity or maternity) may be brought by the mother or putative mother, the father or putative father, the person whose parentage is in question, a primary caretaker or someone authorized in writing by the Minister (such as a social worker). Proof of balance of probabilities is required in order to establish parentage.

The child's best interest must be considered and protected at all times, even during a paternity dispute. It must also be kept in mind that children have a constitutional right to know their parents.

In terms of the Maintenance Act 9 of 2003, a man can request a paternity test if he is asked to pay maintenance for a child but believes that he is not actually the child's father. This test requires some blood or saliva from the child and the parent in question.

Paternity tests can cost up to N\$1900 if done with the father and the child alone and N\$2550 if mother also needs to present her DNA (which is very uncommon). The mother must sign a consent form for a blood test involving a child under the age of 16. The test is done in South Africa and it can take three to four weeks for the result to be received. Medical aid schemes do not cover the cost.

If one or both of the parties involved is unable to pay for the costs of the paternity test, the maintenance officer can ask the magistrate to have a small enquiry into the question of costs. The magistrate will consider information about the financial situation of the parties involved and any other relevant circumstances. Then the magistrate will decide who should pay the costs of the paternity test.

The magistrate might decide that the costs should be shared, or that the government should pay all

or part of the costs. The magistrate can reconsider the preliminary decision on the costs of the test at the time of the final decision on the maintenance order.

This approach to costs is expected to be adopted for paternity tests for other purposes when the Child Care and Protection Act replaces the Children's Status Act next year.

Paternity tests should not be misused. If a man asked for a paternity test when there was no doubt about who was the father of the child, then he is likely to be asked to contribute towards the costs of the test. Likewise, if a woman names a man as the father of the child when she knows that this is not possible, she is likely to be asked to contribute towards the costs of the test.

There are also certain assumptions which are made by courts whenever there are paternity disputes, with the intention of reducing the need for expensive tests where there is other relevant evidence.

A man will be assumed to be a child's father if he was married to or living with the mother when the child was conceived or born. The same is true if he is registered as the father on the child's birth certificate (which cannot happen without his permission), if both he and the mother acknowledge that he is the child's father or if there is evidence that he had sexual intercourse with the mother around the relevant time. If any of these situations applies, the putative father has the duty to prove that he is NOT the biological father.

The law also says that the court will assume that anyone who refuses to have the test done (or to allow the test to be done on a child in their care) must be trying to hide the truth. These rules are intended to prevent people from abusing paternity tests to cause unnecessary delays when there is no real question about paternity.

What should a man do if he discovers that he has been deceived or wrongly named as the father of a child?

If he was falsely named, the woman who did this can be criminally charged. Knowingly providing false information to the court about parentage is a criminal offence and can result in a fine of up to N\$4000 or imprisonment for up to 12 months. A man who supported a child when he had no legal duty to do so could try to recover the amounts he contributed in a civil lawsuit. He will certainly have no further legal obligations towards the child once paternity is disproved.

Courts need to be strict with irresponsible parents who misuse legal processes to side-step obligations towards their children, and also with those who knowingly try to saddle someone with a child who is not theirs. Remember that the truth will almost always be revealed.

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