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Legal Implications of Blood Transfusion on Minors and Parental Responsibility issues in Nigeria

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***Abstract*— Minors indeed cannot make healthcare choice by themselves as they are physically and mentally incapable of making sound decisions; hence parents hold the right to decide for their child's healthcare. Making the right healthcare decision for minors is a crucial and fundamental right for the minor. When minors have good health, they are better able to enjoy all other human rights.Blood is indispensable to life, but using blood products as treatment from research has implications especially for minors. However there has been repeated dispute between the parent and State on who should have absolute legal right to choose course of treatment for the minor. In Nigeria, a recent Supreme Court authority decided to the effect that in cases of emergency where there is parental refusal of medical treatment for the minor based on religious belief, that the State has absolute right to take over the minor and administer blood transfusion treatment without parental consent. To this end, this article shall make a case for parental responsibility of minor's healthcare, it shall further critically appraise the case ofEsabunor and compare it with verdict from international jurisdictions. The procedure appraised was the use of exparte application at the Magistrate Court to transfuse blood product on the minor without the court hearing from the parents or considering the parent's alternative treatment choice or calling for independent medical expert analysis before making the aforesaid order. The article recommended that the State should not override the rights of loving, caring and attentive parent's in shouldering their parental obligations and making healthcare decision for their minors and the State should not seize children from their natural parents without complying with the eight conditions precedents prescribed for State intervention.**

***Index Terms*— Health, Healthcare Decision, Parental Responsibility, Parental Refusal, Blood Transfusion.**

I. INTRODUCTION

Every parent desire their children to have the best medical treatment, grow up in the family cherished environment and live a healthy life, but minors with ailments sometimes are seized from their parents. The reasons for the separation may include being placed in alternative care due to parents' refusal to take blood product as treatment for the child's ailments. In Nigeria, there are cases where the issuance of emergency protection orders by the State takes away the children from their parents into the hands of people other than the children's parents to be given medical treatment. The quality of alternative care of a minor is critical to child's well-being most especially if the child is below the age of three years. From various researches, it is now evident that children in long term residential care are at risk of developing brain problem; they do not have active social life and show slow emotional development. There arises a need for the closest person to the child: the child's parent to shoulder parental responsibility.

It is believed that usually parents have the capacity and wisdom to make accurate and informed decisions that affect their children's life. This is premised on the fact that in most cases parents bear the longtime consequences of choice of treatment on behalf of their children. Parents desire what is best for their minors and it is on this premise that they take the lead to make decisions that are beneficial in short and long term basis for their minors. In spite of the rights of parents to take decision on behalf of minors, it is contended that parents do not have the legal right to solely make decisions regarding some healthcare procedures as well as choosing for the minor the right to die for parents' faith. The argument implies that parents' right to make decisions on behalf of their children is not inviolable.

This article shall discuss the need for a minor to access qualitative healthcare services, the right of parents to make healthcare decision for their minors, the need for children's healthcare providers to evaluate what treatment will be in all ramifications good for the child, and specifically, circumstances that will warrant the State or a court to issue order of takeover of a child. The article proposal is that parents play a major role in the creation, formulation and molding of a child's life and that parental care positively assists a child's physical, intellectual, emotional, spiritual and social behaviour and overall well-being hence parents should have substantial right to make healthcare decision for their minors.

1.1 Conceptual Clarification of Keywords

(a) Health

Tayloropined that in strict term, health is a state of well-being and recess from disease, illness or injury affecting one's mental, emotional, physical or psychological mode. In a similar vein, the prelude to the World health Constitution adduced that health is a state of total bodily, mind, intellectual and social wellness not just the dearth of ailment or frailty. A child is a human being and a child's health includes his mental, social, and physical well-being.

In the view of Mecikalski, he agreed that right to health is a fundamental human right. He however expanded the scope of health to encompass a situation where adults and minors have admission to healthcare services they need, when and where they need them, not dependent on their financial power.

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Paulius and Egle agreed with the view of Mecikalski to the extent that healthcare is one of the indispensable human rights and without wellness a person will not be able to be stay refreshed. Healthcare is the prevention and treatment of diseases through medical and professional services.

(b) Healthcare Decision

Healthcare decision-making therefore means choosing diagnostic or therapeutic procedure by patient or parent as the case may be, after thorough understanding of procedures involved, reasoning on same and possession of a set of values and goals. Healthcare Decision making also includes researching medical condition and treatment options, talking with the medical team and planning for the future of the minor. Healthcare decisions may be influenced by parents' lifestyle, culture, religion or personal ethics. Where the right to refuse medical treatment goes against religious beliefs it is pertinent for the parents to discuss these concerns with the doctor so that this factor can be taken into account and alternative therapy can be researched.

Ford acknowledged that children live, grow and develop in a society that requires constant negotiation for autonomy of their right for their well-being and survival between guardians and the State which claims them as citizens. This implies that conflict exists between the State and parents for autonomy to exercise the right of the child. This delicate situation leaves minors vulnerable and entitles them to special care and support.

The Regional Children's Charter provides to the effect that every child shall have the right to enjoy the best attainable condition of corporeal, intellectual and spiritual health. This implies that children must be given the best healthcare. Article 3(3) of the CRC provides: "The State parties to the Convention should assure that healthcare institutions comply with international standard and have on hand competent staff and personnel."

The section put healthcare right into the hands of competent healthcare institutions who are to work side by side with the minor's parents. To make qualitative healthcare decision, parents need to be informed by health professionals the child's medical condition and the parents shall be allowed to make informed healthcare choice after assessment of medical records. The medical record in contemplation includes medical practitioner's note, medical test results and other relevant information pertaining a child's state of health, the benefits, risks, cost and consequences associated with treatment options. A medical doctor is obliged to discuss a child's health condition with his guardian no matter how critical it is; the explanation should be in simple medical terms.

In Nigeria the Medical Code adduced that before a Doctor or healthcare professional will administer treatment to a minor, relevant approval must be obtained from the parents or relations whether the treatment is diagnostic, surgery or non-invasive. Consent forms should be given to the minors' parent to sign before commencement of treatment. Failure to obtain written consent before treatment constitutes a violation of right to privacy.

(c) Parent and Parental Responsibility

Parent in Latin is called Parentem. It means caregiver of the offspring. A parent may be biological or adoptive. Parental responsibility has been conceded to imply the totality of rights exercisable by parent in respect of their children or children's body. Ordinarily, each of the parents of a child under 18 has parental responsibility for the child regarding religious and cultural upbringing, health, current and future education and name. Parents have custody, power to control, instruct, make choice of healthcare treatment that will be worthwhile to the child and they also inculcate in them their moral and ethical heritage.

Parental responsibility owes its origin to the Locke's theory propounded in the 17th century. The theory is to the effect that biological parents have parental rights and responsibilities over a child by virtue of the fact that they are the ones that gave life to the child. The Court held to the effect that the motivation of parent in caring, and raising their children is the oldest foundational sovereignty. The Court stated that the family is the natural and fundamental unit and basis of the society as ordained by natural law, and that it possesses a private realm which the State should caution itself from trespassing.

John Locke said that:

Human generation came from Adam and Eve and that it was from them God implanted the world. He assigned to them duty of being parents. Hence they became parent by the law of nature with the role of preserving, educating and nourishing their God given children. They were to show tenderness, love and care to the children and use wisdom from God to exercise all their affairs.

The concept of parental responsibility was enshrined in the ACRWC. The Charter has given the primary assignment and function of maintaining minors to parents. It directs that every child shall by law enjoy parental care and protection and must be live with both parents. A child can only be denied these endowed rights in exceptional circumstances where the judicial authority so decides. Parental responsibility is the right of parents to direct the upbringing of the child. It is a crucial civil liberty. It includes parental direction of the child's education, healthcare, religious upbringing, lifestyle and discipline.

In US parental responsibility is highly valued in their Constitution. From birth parents are given leeway to bring up their minors in ways they think fit. Horwitz posits that the intimacy of the family provides the parents with deep and tacit knowledge of each minor and that parents are in the best position to inculcate social, cultural, educational and religious values and norms in their children. He further states that other institutions like the church, school, and civil society enhance parental responsibility which God ordained. He advocates that placing the stewardship responsibility of child upbringing in the hands of parents translate to allowing those with superlative wisdom, strength and love for the child to make requisite and relevant decisions in their behalf. He argued that where task of raising a child delegated to the State; it will tantamount to giving a stranger with insufficient knowledge or incentive to raise a child. Biblical evidence is also in support of parental care of children within families rather than foster institutions. Parents are a minor's first

teachers holding the superior responsibility to ensure the child is secured and grow into a well-developed adult.

Beauchamp and James are of the view that right to consent to medical care is exercised as part of parental responsibility on behalf of minors as minors are generally considered incompetent to provide legally binding consent with regards to healthcare delivery. Buchanan and Broch concurred with Beauchamp's view that the law has respected parental right to make decision for minors' healthcare but differed by including exception to the general rule to the effect that where parents' right places the child's health or well-being in jeopardy, their parental right shall be curtailed. Are there situations that can make parents to refuse medical treatment for minors?

(d) Parental Responsibility and the Scope of Parental Refusal to Healthcare Treatment of Their Minors.

According to Talati parental refusal is the right of parents to refuse vaccines, medication, treatment plans or blood transfusion for their children on the grounds of medical, philosophical, cultural or religious objections. The law is to the effect that when a medical practitioner gives a child a blood transfusion against the express wishes of the parent; he/she has not committed a criminal offence. It however added that the transfusion must be treatment for a condition the child has and without the transfusion the child is likely to die. When blood transfusion is called for and there is no imminent or immediate risk of harm or death courts in other countries have ruled that parents have a right to refuse and did not medically neglect the child. Thomas said that in South Africa Parents are obliged to choose or reject healthcare treatment. However such rejection will be weighed and if reasonable it is allowed to stand.

Section 37 of the Nigerian Constitution provides for privacy of family life. Thus the State ought to respect these private rights of the family. Privacy here is the freedom of each parent to make choices. Woolley agrees that parents have constitutional right of refusal but that these rights are not absolute and exist only to promote the welfare of the child. American Academy of Pediatrics recommends that where there is parental refusal, all those entrusted with the care of the minor should show sensitivity and flexibility towards religious beliefs of the family.

Many at times when parents do not approve a particular medical treatment, it appears that that they are guilty of medical neglect. But is this necessarily so?

(e) Does Parental Refusal of Medical Treatment of Their Minors on Conscientious Grounds amount to Medical Neglect?

Medical neglect is derived from the Latin words neglectus or neglegeremeaning to disregard, not to pick up or to treat carelessly or omit by carelessness. The first known use of the concept was in 1671. Medical neglect in the context of the article is the refusal by parents to give or consent to healthcare therapy prescribed for minors who are seriously sick. Actions that reveal parents have medically neglected a child may include not taking a minor critically sick to hospital; not paying minor's healthcare expenses, not applying Doctor's healthcare advice or willful refusal to give prescribed medicine to the minor.

But is parental refusal synonymous with medical neglect? Adelaide and others in their view asserted that in Italy both parents reserve the right to grant or refuse accord to medical treatment of their children including consenting to blood transfusion. They posited that the parent exercise this responsibility by mutual agreement with due consideration for the child's natural inclinations and aspirations, that where child's health is not in danger, the parents are endorsed to exercise their right of parental refusal but the reverse position is the case when the minor's life is at stake, the Doctors are duty bound to apply for court orders.

Beauchamp dissented that it is legal to overrule this parental refusal of treatment because the refusal does constitute a form of child abuse, child endangerment, child neglect or inattention to the rights of the child. The Article disputes the view of the renowned author to the extent that parental refusal does not translate to child abuse but it is the insistence by parents on qualitative alternative treatment that will not have far reaching negative consequences against their child's well-being.

Hortwitz quoting from Rothbard also differed in view from Beauchamp when he opined that:

The actions of parents who neglect their children may be immoral but definitely not illegal. Where the State compels parents to make a different healthcare choice it is a violation of human rights.

Medical neglect varies from parental refusal in the sense that while parental refusal is a form of constitutional right, medical neglect has serious legal consequences. Ross proclaimed that parents should assert their responsibility over their children in making choice of healthcare treatment and but where parental refusal places the child at high risk of suffering and death, State intervention is justified to prevent future medical neglect.

1.2 Theoretical Framework for Parental Healthcare Decision Making.

(a) Natural Law Theory and its Relevance to Parental Healthcare Decision making

It is the Natural Law that governs the behaviour and determines standard that is just and humane. Natural law was given an illuminating summary by Blackstone:

This law of nature being co-oval with mankind and dictated

By God himself is of course superior in obligation to any other law

It is binding over all globe, in all countries and at all times; No human

Laws are of any efficacy if adversarial to it.

The Natural Law doctrine provides that parents have the fundamental right to direct the medical, mental, moral, physical, educational upbringing of their children. Parents are the best caretakers of their children unless proven unfit. It thus supports the right to parent to make healthcare decision for their children.

In Meyer v Nebraska the US Supreme Court held that it is the natural duty of parents to bring up their children in the way they think fit and according to their station of life.

It is respectfully submitted that the natural law theory of

parental liberty allows families to flourish, gives parents autonomy to make medical decisions in line with their Bible trained conscience.

(b) The Realist Theory (ParensPatriae)

The Realist Theory of law was propounded for by Oliver Wendell Holmes. He declared that law is the prophecy of what the court will do or say and nothing more pretentious. Under its purview the legal doctrine of parenspatriae was derived. The etymology of Parenspatriae is Parent of the Country or Parent of Fatherland. The theory gives the State or the court to intervene and seize children from the natural parent especially when the latter is unable or unwilling to meet the parental responsibility.

Under the guise of exercising this responsibility the governments always have absolute power to forcefully remove children from their homes and place them under the care of the State or foster institutions. In Nebraska case, the Supreme Court held that parent right to raise their children is a fundamental right. Thus if the government genuine aim is to meddle with family unit to secure the wellness of the children, it must scarcely design its intervention to achieve that goal. If it does not, the government will at the end succeed in disabling family union and in the long term the intellectual and health of a developing minor.

The doctrine was conceived as a benevolent intercession by the government to protect young ones in need of care and protection. However, because the doctrine permits the intrusion of the rights of natural parents and legal guardians, it has generated conflict with respects to its enormous powers. It is apparent that there are challenges to the State's ability to intercede in juvenile matters. There has been lack of due process, inconsistency in defining juvenile ailments that requires intervention.

The State has been unable to prove that its intervention has resulted in the greatest advantage for the children. This has complicated the delicate balance of protecting children and respecting family privacy. The State has not been able to manage properly the children that are taken from their parents to foster care system as there are so many faults leveled against that system. It is submitted that government must reconcile its special responsibility to protect the children with the parent's unique interest in raising their children.

(c) The Harm Principle: Threshold for Healthcare Decision making

John Stuart Mill devised the harm principle in 1859. The doctrine modifies the Best Interest Principle. The principle is summarised as follows: Power should be rightfully used to prevent harm to others.

Wing noted that the Government intervention in minors' health arises fundamentally to safeguard the child's health, wellness and safety. The ethical basis for the exercise of governmental power lies in what has become known as the harm principle. Feinberg corroborated the harm principle with modification contending that for the harm to justify restriction of an individual's freedom, it must be effective at preventing the harm in question and no option that would be less intrusive to individual liberty would be effective at preventing the harm.

Not all harms should trigger State intervention. State intervention should be limited to cases in which children are placed at the level of real, imminent harm. Ross argues that such instances include a parental refusal that places the child at high risk of death. Other writers have come to similar conclusions regarding the threshold of harm for State intervention. They further elaborate on what constitutes serious harm to include loss of life, loss of health, and loss of major interest and deprivation of basic needs. Feinberg adduced that serious harm include injury to life and limb, accident leading minors to comma, or disfigurement.

1.3 Conditions for State Intervention to Require Medical Treatment of Children over Parental Objection

Minors should not be seized from their parents without sufficient reasons and there must be guiding parameters for court or State intervention. Diekama identifies them as follows:

1. Will the child be in great danger because the parents refused to agree to blood transfusion as a treatment?
2. Is the danger that will accrue from parental refusal of State's treatment be so grave demanding State to act?
3. Will the alternative treatment plan of the parent prevent the looming danger?
4. Is the choice of treatment by the State tested and proven and likely to save the minor's life?
5. Will the choice of treatment by the State have more advantages over disadvantages if a parent's alternative treatment is allowed?
6. Is there any other treatment option available apart from blood transfusion that will be less meddlesome to parental autonomy?
7. Can the State choice of treatment be used at all times for all other minors who are in the same circumstance?
8. Will other guardians and parents agree that the state choice of treatment was fair?

These conditions will be expatiated upon. To justify State's involvement parental decision must place the child on risk of grave danger. Where the parental refusal to medical treatment does not place a child at significant risk of danger, the State does not need to interfere at this stage but they need to form a synergy with the child's parent or guardian in a peaceful way to resolve this issue. On the third point the State should consider the parent's alternative treatment plan. They should carry out research on it and discover whether it has proven efficacious for other children.

Fourthly all suggested treatment alternatives of parents must have been experimented and exhausted first and if they are not advantageous then the State can interfere. Fifthly the State interference with parental decision must be of immense benefit to the child. The harm the State seeks to remedy must be bigger than the harm that will result by interfering with parental choice. Put simply the benefit of State interference must over-weigh its burdens. On the sixth point, the extent of the State's exercise of authority in enforcing its treatment choice should be less meddlesome. The total removal of the child from home away from loved ones will not be necessary; health services can be provided in the home while the child is still in the loving arms of the parents especially when parents are cooperative.

On the seventh point, pursuit of State intervention should

be manifestly seen to be just, fair, impartial and applicable to all citizens without reservations. Families of a certain religion should not be a target. The State should not be prejudiced; their key objective should be saving the children's life from real danger. The State should not ignore the freedom of religion as guaranteed in the Constitution.

Finally State intervention must pass the publicity test. The guiding principle for State to take over the healthcare of minors is that the State must act in accordance with the best interests, safety, and well-being of children.

1.4 Appraisal of the Supreme Court case of Esabunor.

The facts of Esabunor&Anor v Faweya& 3 ors are briefly as follows: 2nd appellant is the mother of the 1st appellant. Within a month of his birth he took ill. The 2nd appellant took him to the Clinic for medical treatment. The 1st respondent is the medical doctor who treated the baby and concluded that the baby urgently needed blood transfusion. The 2nd appellant and her husband withheld consent on the grounds that the Holy Scriptures commands abstention from blood. They further contended that there were several hazards that follow blood transfusion such as contracting AIDS, hepatitis amongst others. Instead, they opted for non-blood medical management of their baby and the 1st respondent was unyielding, and went ahead to file an originating Motion Ex parte before the 5th respondent (a Chief Magistrate). The motion brought under the Statute sought that the medical authorities of the clinic be allowed and be permitted to do all and anything necessary for the protection of the life and health of the baby and for such other or orders as the court deems fit. After hearing counsel, the court without notice to the Appellants who were at all material times at the clinic and without investigation granted the relief as prayed.

The Respondents, acting on the order of the Chief Magistrate, forcibly took custody of the 1st Appellant and transfused blood on the baby. Following this development, the 2nd appellant went to High Court and applied for the review of the Magistrate court proceedings, setting aside of the order and damages for infringement of parental responsibility. The case was dismissed. The appellant further appealed to Court of Appeal who held that the issues in the case were academic. Undeterred, the appellants appealed to the Supreme Court, where the issues formulated included: whether the Magistrate's Court proceedings was conducted in breach of appellants' right to fair hearing; whether the refusal of blood transfusion amounted to attempt to commit a crime or to allow 1st appellant to die. Whether the lower court was right to save the life of the minor and ignored the parental refusal based on grounds of their religion and conscience.

The appellant's Counsel argued that the Chief Magistrate's Court exceeded its jurisdiction and that there were fundamental errors of law on the face of the record which the High Court failed to examine, and that the Court of Appeal instead of determining the Chief Magistrate's jurisdiction went on to determine the duty of Police to prevent commission of crime. He further argue that the refusal of the Court of Appeal to pronounce on jurisdiction amounted to misdirection by non-direction and that since the 2nd appellant was not heard before the originating motion ex parte, the proceedings were null and void. He contended that no matter how well conducted a proceeding is, everything done is invalid when there is no service on the party affected by the proceedings. He argued that to constitute fair hearing a person accused of a crime should know what is alleged against him, be present when every evidence against him is tendered and be given a fair opportunity to correct or contradict such evidence. He noted that 2nd Appellant was never invited for questioning by the Police at any time and that the Court did not hear from the 2nd Appellant before making such a weighty order. On the right of a parent to consent, he said that the right to give or refuse consent to medical treatment has been recognized worldwide as an inalienable right. He contended that 2nd appellant's different opinion as to method of treatment cannot amount to commission of crime or an attempt to commit one. He placed reliance on Okonkwo's case, and submitted that the consent of parents on behalf of their minor is mandatory before any treatment can be embarked upon.

The Learned Counsel for the 5th Respondent submitted that Chief Magistrate was empowered to prevent commission of a crime. She observed that the right of fair hearing of 2nd appellant in the hearing of ex parte application had not come up for determination, but that what was at play was investigation of probable violation of the civil right of the child in respect of which 2nd appellant was a suspect. On what the court should do when confronted with having to balance the right of a child to life against the right of his parent to veto such right in vindication of religious conscience, she contended that the overriding consideration should be what is in the best interest of a child. Counsel for 5th respondent submitted that a child is incapable of personally exercising right to life and right to privacy hence the State intervenes through the Criminal Code to protect the vulnerable persons from the abuse of its rights by those in loco parentis over them.

The Supreme Court held that the Court of Appeal did not abandon the issue of Chief Magistrate's jurisdiction. In the record of appeal the Justices of the Court of Appeal held: "I find nothing wrong with the processes at the Chief Magistrate Court since they conveyed to the court the notice of the fact that a crime was about to be committed. The purpose for which they were filed was accomplished; they were processes in criminal law." The Supreme Court held that the Magistrate's Court had jurisdiction.

It further held that the Chief Magistrate Court procedure may be inelegant but it was so done by police in order to prevent commission of crime, a procedure that is based on criminal law and the essence was to invoke the jurisdiction of the court. The Supreme Court relied on the Constitution to state that the police shall have such powers and duties as may be conferred upon them by law. The Court further relied on section 4 of the Police Act 2004 and stated that while every person has a right to life, the police are to protect right to life and prevent acts leading to loss of life.

On whether there was lack of fair hearing, the Court conceded that natural justice demands that a party must be heard before the case against him is determined, but went on

to say that the Magistrate's orders were interim orders made ex parte due to the urgency of the matter. That the purpose of the order was to stop 2nd appellant from committing offence/crime. That her civil rights/obligations including right to fair hearing would come up only when she is charged to court for an offence. It is only then that she is entitled to fair hearing and not before or at an interim stage or when still in the investigation stage and not charged with an offence.

On what consideration the court should take on issues involving religion, medicine and law, the court held to the effect that Adults have the full right to accept or reject medical treatment and the healthcare professionals are duty bound to respect the freedom of choice. But that when it involves a child, a different law shall apply and this is so because a child is incapable of making decisions for himself and the law is duty bound to protect minors from abuse of his rights as he may grow up and disregard parental religious belief. The court further held that when a parent or guardian refuses blood transfusion or medical treatment for her child on religious grounds, the court should step in to consider the baby's welfare (saving life) and the best interest of the child before a decision is taken and that these considerations over-weighs any religious beliefs and the administration of blood transfusion especially in life threatening situations should be allowed.

1.5 Critical Analysis of Esabunor'sCase

In this case, the State responsibility to the child's healthcare was paramount; the State acted timeously to save the life of the child in line with provisions of the criminal law that empowers the State to prevent commission of a crime. It is important to state that at the time the case started the CRA was not yet domesticated in Nigeria. Presently it is the provisions of the CRA that will empower the State to issue protection orders in favour of the child. But there are critical issues arising from this case for meticulous analysis to wit:

a. The 2nd appellant was not interrogated by the Magistrate of the reason of her refusal to accept blood transfusion for her baby before the order of transfusion was made by the Chief Magistrate. (Breach of Fair Hearing)

b. There was gross violation of parental right (Abuse of Parental Autonomy)

c. Inconclusive Decision on whether Parental Refusal amount to Crime

d. The need for Court to make genuine findings before issuance of the Ex parte/Emergency orders

e. Qualifications for Emergencies and the Parameters for State Intervention not utilized in Esabunor's case.

(a) Breach of Fair Hearing

Fair hearing means hearing from both parties before taking a decision. The judge is an impartial umpire that is obligated to hear from both parties, make research before pronouncement of his decision. UNICEF advocates that before decisions are taken on a child by parties other than the child's parents there must be engagement in a democratic manner that respects and takes in consideration the families' knowledge and experience in the upbringing of their child.

The 5th respondent did not hear from the 2nd appellant (the child's mother) her reason for objecting blood transfusion and as to whether she had an alternative treatment for the child. He believed completely the one side complaint laid by the 1st respondent. In Georgetown College case, the Judge in the case, called the husband of the woman whom the clinic sought to administer blood transfusion. The Judge heard his religious objection. He gave him fair hearing before taking a critical decision.

This element of fair hearing is lacking in Esabunor's case. The court's view that the right to fair hearing had not come up puts the law upside down. The Court's reason for making an order for blood transfusion was to prevent an attempt to commit a crime by 2nd Appellant. The imputation of the commission of a crime is a very serious matter. The right of the 2nd Appellant to be heard before such imputation can be made cannot be overemphasized. There was actually no evidence that the 2nd appellant was ever invited for questioning or investigation by the police. The court did not hear from her before making such a weighty and fundamental imputation of crime against the 2nd appellant. The right to be heard is a fundamental and indispensable requirement of any judicial decision. The judge cannot assume an answer as was done in the instant case without a hearing.

(b) Violation of Parental Right (Abuse of Parental Autonomy).

Parental autonomy right is a natural right and is also given a statutory support in the CRA. Section 7 of the Act provides that parents shall provide guidance and direction in the exercise of the child's right to freedom of religion and conscience while having regard to the evolving capacities and best interest of the child. Section 7 (3) provides that the duty of parents to dictate the child's religion shall be respected by persons, bodies, institutions and authorities. Section 8 provides for parental right of supervision and control of their children in the family and Section 20 corroborate the same point.

In the instance case there was violation of the parental right to choose child's healthcare when the court ordered blood transfusion without fair hearing. In line with Natural law, parents are the best caretakers of their children unless proven unfit. In the case under analysis, the 2nd appellant was not proven unfit to care for her baby. She had taken care of the child from birth, she was a dutiful mother, she breastfed the baby from birth, performed all other domestic needs for the child. She noticed the baby was sick and took him to the hospital, she did not try home medication; she believed the clinic had professionals who are capable of taking care of the child. She had high regard for the training and abilities of the healthcare providers. She sincerely appreciated the doctor who had used his skill to deliver her of the 1st appellant. The only issue she differed and which also is her fundamental medical right was the mode of treatment which was contrary to her religious conscience and belief.

Parental responsibility has judicial support in the case of Meyer v Nebraska. In this case, the US Supreme Court upheld a parent's power to supervise their child in the way that is fair and according to their financial stance. The case is an authority for parents to make decisions concerning any subject matter affecting their minors. It is submitted that when the parents are concerned, loving, caring and are well informed of healthcare choices the Doctor must give a leeway

to make a choice. Dr. Kelly wrote that parents of minors and the next of kin of unconscious patients have in their power the obligation to interpret the will of the patient – physicians should accept and respects their wishes; that he did not admire the moot court assembled to remove a child from his parent's custody.

It is a common practice by physicians that if parents do not consent for the transfusion of blood product for their child, court order is always procured. According to an author, this position however lacks fundamental consistency and harmony, he stated that the court cannot by taking away the right of parents to make medical decision for their children in consonance with their religious belief assign a different religion to the children, as children always follow the religion of their parents

Commenting on the implications of the State or Court authorized medical treatment that forcibly takes away the right of parental responsibility, a College Lecturer wrote with regard to forcing transfusions on adults and children:

Where State invalidates the parents' obligation to make healthcare decision for their children, it slowly becomes despotic. It was indeed by the taking-over of the German children into the Hitler Youth movement that freedom and privacy were finally suppressed in Nazi Germany. This is not mere fanciful speculation. Freedom is a precious and comparatively rare possession, to be jealously guarded in those countries where it exists. Any one encroachment on individual liberty is one too many.

The principle of choice in medical treatment is better than forced blood transfusions. Even where the doctor sincerely believes a child needs a blood transfusion does not translate to the fact that other alternate medical treatment will not cure the child. He may argue that transfusion offers more likelihood than alternative therapies. In this wise, the Council of Judges in the United States directed: "Where a physician prescribe a medical treatment having probability of success and the parent reject same and proposes another which has lesser probability of success, the physician must take the parent's choice."

The Judges categorically affirmed and warned that health science is not one hundred percent accurate to state which treatment will be perfect for the patient and which patient will survive or perish. They recommended that a patient's wishes should be alternative treatment if there is risk associated with the standard treatment.

(c) Inconclusive Decision on whether Parental Refusal amounts to a Crimevis a vis Legal Implication of Blood Transfusion on Minors.

Most times educated parents are already aware of the medical risks involved in the choice of blood transfusion and may reject it. Where a parent has refused a particular treatment plan and chooses another, this can never by any stretch of interpretation amount to attempt to commit crime or murder. For crime to be complete there must be actusreusand mensrea. A parent that takes a child to clinic does not intend to kill him but intends to save his life with the best medical treatment. Parental refusal differs from parental neglect. The 2nd appellant did not neglect the 1st appellant in the house to die. When the 1st respondent administered the antibiotics on the child on the first day and the 2nd appellant did not object to it.

Blood products are prescribed when the patient has lost so much blood in accident, after delivery, or during surgical complications, blood is infused in a bid to save life, so it so difficult when it is heard that someone refuses a blood transfusion most people will feel anyone who reject blood product is digging a grave. Suicide is seeking to take one's life. It is an attempt at self-destruction. Parents with religious belief do not have in mind self-destruction for themselves or for their children. Though they refuse blood transfusions, they welcome alternative medical assistance. The American Surgeon correctly commented: "The rejection of a particular form of therapy of treatment does not translate to suicide. Parents with religious belief seek medical treatment of their children; they want best medical care without future repercussions".

The 2nd appellant wanted the 1st appellant to live that was why she sought medical care at the earliest opportunity but she did not want to violate her deep-seated Bible-based religious convictions. Most people may reason that refusal of parent to accept blood product as treatment for their minors may lead to death and is a breach of minor's right to health: A more logical approach will be to peruse what medical experts have said about using blood product as treatment. They said blood is ripe with complexities that even within blood types there exist some fifteen to nineteen known blood group systems. When Rh blood group system is dissected, nearly 300 different Rh types may theoretically be recognized. And that even when the blood is screened, not all the impurities can be removed as such impurities may not immediately manifest.

Another unique feature of blood is the diverse antibodies it contains. A group of English criminologists in Zurich stated that each person antibody is unique and distinct. A blood of one person differs from another, Dr. Silver also corroborated that considering only those blood factors for which tests can be performed, and there is less than 1 in 100,000 chance of giving a person blood exactly like his own. The textbook lists reactions to blood transfusion to include hemolytic, transmission of serum hepatitis, malaria, syphilis, infection, cardiac overload, citrate intoxication, potassium intoxication, abnormal bleeding, thromphlebitis, and air embolism.

Advantages of Bloodless Treatment to Child's Health and Risks of Blood Transfusion

Medical researchindicates that minors who were not treated with blood transfusion recover rapidly and do not have health complications. Bloodless surgery eliminates germs from passing into a minor's bloodstream. These pathogens include microbes, bacteria, viruses, parasites. It reduces the risk altering the minor's immune system. The immune system of the child is always on alert for the infiltration of foreign bodies. Immune responses set in motion when blood is transfused can cause minor damage and also fatal reaction that can lead to an infant's death.

Bloodless treatment option eliminates the risk that a patient will be given the wrong type of blood. Blood mismatches can be caused by minor differences between blood sub-types.

Others are due to rare cases of human error. Due to large scale donation of blood, a unit of blood can be wrongly labeled or mistakenly used. Treating a minor without blood eliminates the risk of overloading the child's circulatory system with too much blood. This condition leads to Transfusion Associated Circulatory Overload (TACO). TACO causes sudden death in minors. Medical experts have found out that because children have less blood than adults, the risk of stressing their system is greater.

Another advantage is the riddance of acute lung injury. This is a medical condition in which the lungs are filled with fluid potentially causing respiratory failure. Hopkins a medical expert added that risks of blood transfusion in infants include allergic reaction, fever, and destruction of red blood cells by the body, too much iron in the body (a condition known as iron overload) transmission of HIV or Hepatitis. Finally abstinence from blood transfusion eliminates the potential medium-term and long-term effects of blood transfusion. It has been confirmed that pediatrics patients who are not exposed to blood products during surgery or treatment from illness enjoy shorter time in Intensive Care Unit and spend less time on ventilators most likely due to the reduced risk of bronchial infection. They recover more quickly from surgery due to the use of small incisions and few stitches.

A frank appraisal of the facts proves that blood transfusion may honestly be regarded as a procedure involving considerable danger and even potentially lethal for a patient minor. An expert commented that a bottle of blood may be a time bomb for the patient. A time bomb is hidden danger that when it explodes can be deadly. A US government article on dangers of blood transfusion states: transfusion of blood from one person to another may be liken to a rifle on an unprepared person… Like the rifle, there is a safety lever or button, also in blood transfusions, there are screening done on blood products, but how many persons have died from gunshot wounds as a result of believing the safety lever in the Riffle was on safe? Logically in the same manner, blood transfusions kill at least 3,500 Americans each year and injure 50,000. According to Holness and others from 1997- 2002, 58 percent minors who received blood transfusion died from transfusion related acute lung injury. In recent times precisely 2019, SHOT annual medical summaries of England reported a case of a preterm baby who had a medical condition called bowel perforation. In a bid to cure the ailment the baby received two red blood transfusions for anaemia. Around 2 hours after starting the transfusion, the baby developed increasing nasogastric aspirates and worsening abdominal distension. The baby died 24 hours later from multi-organ failure. Another case of a male infant over 6 months of age who fell down the stairs and was rushed to the hospital. The baby was first given fresh frozen plasma transfusion. After 24 hours of admission, the infant received three transfusions again. The minor was subsequently diagnosed with severe haemophilia A. He died of blood coagulation. There was a newborn who received blood from an adult and was subsequently found to be cytomegalovirus (CMV)- positive. The child died from complications from the transfusion.

From the above cited cases the Article is of the view that while blood transfusion is seen as a lifesaving treatment for the minor, it may also carry in its arsenal deadly pangs which may manifest sooner or later in life of the minor. It is further submitted that considering the complications surrounding the use of blood transfusion as lifesaving treatment, the refusal of blood transfusion should not be considered as an attempt to commit murder or any other crime, but it will serve the interest of a child over long range of time.

(d) Need for Court to make Genuine findings before issuing Exparte/Emergency orders.

Interim means in the meantime or temporary. Interim order is made pending the hearing of the substantive suit on merit. It not granted for the asking but it is discretionary and there are condition precedents to be clearly expatiated before its grant. It has seven days life span. The work submits that in Esabunor's case no facts were proven or investigated and the exparte order was not seven days but was final.

In a Nigerian case, conditions precedent for grant of interim order was extensively discussed. An interim order made pursuant to a motion ex parte violates the rule ofaudialterampartem which is an age-old settled principle of law that provides that the fundamental requisite of due process and procedural fairness should be observed. Fair hearing requires giving equal treatment, facilities, opportunity and consideration to all parties involved in a case. In Kotoye's case the court held that an interim order should be granted sparingly; caution should be exercised. In the instant case it is submitted that the order the Magistrate made was not temporary but final and did not give the affected party right of reply.

(e) Absence of Qualifications for Emergencies and the Parameters for State Intervention in Esabunor's case.

A life-threatening exigency is a critical wound or sickness that presents an instant crisis to a minor's life or long-term health, sometimes referred to as a health condition risking life or limb. Pediatric emergency extends to and includes severe allergic reactions, seizures, dehydration, severe infections, persistent fever, breathing difficulty, head or eye or nose injuries resulting from accident or serious falls, poisonings, overdose of drugs, severe complications of asthma, diabetes, sickle cell disease, animal bites and investigation of foreign bodies etc. The above cited illnesses may lead to respiratory distress, shock, seizure or altered consciousness. Infections are caused by viruses that invade human cells, take over the cell's machinery to reproduce. As they grow in number, they can cause illness, some of them are life threatening.

What is the court or State required to do when a minor faces life threatening sickness? Should a court rush into making a decision relying on the opinion of one expert or relying on blood transfusion as the only remedy? From the in-depth discussion we have seen that there are many risks lurked with the use of blood product as treatment in emergency cases, the researcher is of the view that the questions posed by the renounced author Diekama earlier cited should be analysed by the Doctors, State and Court hook, line and sinker before any decision is taken.

It is to be noted that none of the questions were utilized in the decision of Esabunor's case. There was no time for the

magistrate to make independent investigation before granting the ex parte order. The Police too did not make any investigation. Esabunor's case blows open areas that the Supreme Court will in future analyze in order to give children the best medical treatment devoid of future complications.

The Court had promptly acted to save the life of Esabunor first before any other consideration. The Court also acted to prevent crime from being committed as seen from the judgment. But are there lessons that can be learnt from other jurisdictions that relate to giving parent's fair hearing and parental responsibility?

(1.6) Lessons from other International Jurisdictions

There are lessons from the case laws of other jurisdictions that Nigerian courts can borrow a leaf from. Let us take Canadian jurisdiction as an instance. In an Alberta case, Baby M was born prematurely. He had health challenge and the Medical Director, Dr. McMillan, informed the parents that Baby M urgently required blood transfusion as the Baby had perforation in the bowel and there was risk the bowel contents may spill into abdomen which in turn could cause death by infection. Upon the parents' refusal, the doctor commenced a court proceeding that would lead to apprehension and treatment orders under Canadian Child Welfare Act. Relying on this application, the Court granted the order for blood product to be given to the baby for ten days.

Baby M's parents took up the case to higher court challenging that Court order was given without fair hearing; The Higher Court after due investigation held that the Director of the clinic failed to disclose relevant information to the court which would have resulted in a different outcome. It condemned the attitude of lower court who failed to postpone proceedings to allow the parents to call medical expert who will furnish additional medical evidence contrary to the Director's opinion. The court caution against courts having the prejudiced mind or presuming that the doctor has always recommended the only acceptable treatment and that parents with religious belief are always wrong in denying their consent for treatment by way of blood products. That such paternalistic attitude impairs the parents' rights to choose medical treatment for their minors.

In the District Court of Florida premature Twins' health was hanging in the balance. They had difficulty breathing and medically it was recommended that blood transfusion will enhance their longevity. On religious grounds, the parents withheld consent to the attending physician to administer blood transfusion. The court ruled that blood product be administered to the newborn and the Twins be placed under temporary care, custody and control of guardian ad litem. On appeal, the parents questioned right of trial court to order the transfusions. The expert doctor who testified admitted that the twins' condition was not immediately life threatening. The court reversed the trial court's order and gave back custody to the parents. What is captivating in this case is the opportunity given to the twins' parent to be heard and the Court's reliance on expert medical opinion. The ruling presents cogent procedural principles which Nigerian legal system should follow.

In Cooper v Willey the parents of a minor child were reported to Department of Social Services for Child Maltreatment because they refused to consent to blood transfusion for their eight-month-old son at a time when he was ill with thrombocytopenia, a medical condition where there is acute shortage of blood. The child's blood count was at level 21 and falling. The danger point was at level 16. The parents had religious objections to blood transfusion. The social worker advised that the child could be taken to protective custody if hematocrit reached level 17. Since the child's blood count never fell to a point where blood transfusion was necessary, the court held that it cannot be said that the child's condition was impaired for lack of medical care or that the parents maltreated, abused or neglected the child. A lesson for Nigerian Court is that where the health condition of the minor has not deteriorated to the danger point, the need for State intervention has not arisen.

In the Italian case of Paul Etomasango, the parents of minor Richard were sued on the complaint that they did not fulfill their parental duty of care to a premature baby who had two episodes of staphylococcus infection followed by osteomyelitis treated with antibiotics: anemia, starting from when he was three weeks old, with hemoglobin gradually dropping. The medical directors recommended blood transfusion but the parents expressed their refusal to blood transfusion, however they asked for alternative treatment of erythropoietin. To overcome the parents' dissent the juvenile court was involved; once the court issued its order, the transfusion were carried out and the parents did not object any further. After thorough examination of the facts, the behaviour of the parents the court observed that the parents wanted their child to have the best medical treatment, they were cooperative and very concerned and their problem was only the religious belief they had when it came to blood transfusions. The court held that the parents' dissent was lawful and could not be considered a violation of their parental duty of assistance. A Lesson for our jurisdiction is to the effect that where parents' behavior toward the minor is loving, caring and lawful, the parents should be given ample opportunity to have access to their minors.

In the case of Re Eve the claimant brought action in court pleading for the court to authorize sterilization of her daughter (Eve) who was mentally retarded and suffered from a condition making it extremely difficult for her to communicate with others. The application for tubal ligation was denied and court held that its jurisdiction is to be exercised for the benefit of the person in need of protection and not for the benefit of others. The Lesson learnt is that before the Court orders for blood transfusion, it must analyze whether it will be for the immediate and future benefit of the minor.

II. Conclusion and Recommendations

In conclusion the article had meticulously discussed the following:

It sought to examine the weight of parental responsibility in making critical healthcare decisions for their children. It was discovered that natural law vests parental responsibility on the creator of the child in this case biological parent to

provide for the child according to standard of living. And it verified that parents care about their children, understand their unique needs, desire what is best for them and this leads them to make beneficial decisions, knowing the make-up of their children than outsiders. The article affirmed that it is the parents' constitutional right to participate in making healthcare decision making in behalf of their minors as they are natural trustees of their children. The right includes the natural obligation of the parents to refuse or discontinue treatments, even those that may be life-sustaining. It unraveled the hidden dangers of blood transfusions on minor.

The America Academy of Pediatrics in their technical report maintains that State intervention should be the last resort, employed only when treatment is likely to prevent substantial harm or suffering or death. They advocated on shared decision making to modify the harm principle. The shared decision making is dependent on collaborative communication and the exchange of information between the medical team and the family.

The following is proposed as recommendation:

1. Government should be disposed to accept parents' healthcare opinions and choices.

2. All cases involving minor's healthcare should be thoroughly analysed on a case by case basis with a view to ensuring the child safety and well-being it must be grounded in the best interests of a child and the need to prevent both imminent and future harm to the child total health.

3. Since the family is a fundamental group of the society and the natural environment for the growth, well-being and protection of children, Government should put efforts to enabling children to remain in or return to the care of their own parents or where appropriate other close family members.

4. Parents should not give in lock, stock and barrel to every physician's prescriptions of blood transfusion for their minors but however should refuse respectfully.

5. Any State's decision to remove a child against the will of a parent must be made by competent authorities in accordance with applicable law and procedures and subject to judicial review, the parents being assured the right to appeal and access to legal representation. It is further recommended that the State should be wary of taking over a minor 0-3 years as it is against its well-being and health.

6. Health and judicial institutions should not discriminate against parents who have religious beliefs. They should be tolerant and respect parents' religious beliefs in consonance with the national Constitution which provides for freedom of religion and conscience. They must be fair and just in all their actions and utterances.

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