



# ESTATE SUCCESSION CHALLENGES OF UNBORN CHILDREN IN NIGERIA

by Bolaji Ramos

## INTRODUCTION

Prior to the year 2003, the Nigerian jurisprudence did not directly confer any clear estate succession rights on unborn children whose parents died prior to their birth. The Wills Act and the respective Wills Laws of the states in Nigeria recognize estate succession rights of children that were born and living at the time of demise of the parents. For instance, section 2 of the Wills Law of Lagos State (LSS 2015) recognizes the succession right of children of a testator to apply to court for redistribution of their parents' estate where the wills made by their deceased parents did not make reasonable financial provision for them. The Administration of Estate Laws in the respective states in Nigeria also do not have clear and direct provisions relating to intestate succession rights of unborn children. The Child's Rights Act 2003 is the first enactment in Nigeria that directly recognizes estate succession right of unborn children.

## CONCEPT DISAMBIGUATION:

The term 'unborn child' in the context of estate succession discourse should ordinarily be understood as '*en ventre sa mere*'— that is, a child in the mother's womb. However, the estate succession rights of the unborn children recognized under Section 17 of the Child's Rights Act is wider in scope than *en ventre sa mere*. Medical Science has shown that what appears to be first step in the journey of human person to existence is the 'zygote stage'. This usually occurs after fertilization of the both male and female gametes in the fallopian tube. This is followed by implantation of the zygote in the lining of the uterus. Implantation occurs in the womb.

THE CHILD'S RIGHTS ACT 2003 IS THE FIRST ENACTMENT IN NIGERIA THAT DIRECTLY RECOGNIZES ESTATE SUCCESSION RIGHT OF UNBORN CHILDREN.

In essence, the conception of the human child occurs in two major organs or parts of the female reproductive system— the fallopian tube and the womb. The term ‘unborn child’, therefore, especially under section 17 of the Child’s Rights Act, covers both a developing human person in the fallopian tube (zygote) on the one hand and en ventre sa mere (embryo/foetus) on the other hand.

### SUCCINCT ANALYSES OF SECTION 17 CRA 2003:

Section 17 provides that

***(2.) Where the father of an unborn child dies intestate, the unborn child is entitled, if he was conceived during the lifetime of his father, to be considered in the distribution of the estate of the deceased father.***

***(3.) Where the mother of an unborn child dies intestate before the child is delivered, the unborn child is entitled, if he survives his mother, to be considered in the distribution of the estate of the deceased mother.***

The major conditions for the entitlement for unborn children to share in the estate of their deceased parents in that the children must have— (i) in the case of their fathers, been conceived during the lifetime of their fathers; and (ii) in the case of their mothers, survived the mother. Once these conditions are respectively met, the children’s estate succession rights will materialize.

One critical challenge with the provisions of section 17 that may confront unborn children is the fact that the section gives succession right in respect of intestacy only, and it is completely silent on testacy. There are two major problems with this that go to the root of estate succession rights of unborn children:

(a)The first is that where wills made by testators of unborn children fail to take the unborn children into consideration, they will forfeit the rights to inherit any of their parents’ properties, and provisions like section 2 of the Wills Law of Lagos State (LSS 2015) will not be sufficient for them to come under, as it only covers children that were alive at the time of their parents’ demise.

(b)The second problem is that non-extension of section 17 to testacy in respect of unborn children may crystalise into discrimination. This is because an unborn child may be denied of inheriting his/her parents’ estate just because the child was not born during the lifetime of his/her parents, whereas a child born during the lifetime of the parents is allowed to inherit the estate.

Posthumously conceived children (PCC) may most likely not meet the requirements in section 17(2) & (3), and may, therefore, be disqualified from inheriting their biological parents’ estate. This is especially so where the children were conceived without the knowledge and consent of their deceased father and mothers.

## CONCLUSION

To effectively cater for unborn children that fall into the categories of challenges highlighted and briefly discussed above, there must be amendment to relevant laws, starting with the CRA itself. Pending the time this is done, legal practitioners in the field of estate succession can effectively work with testators/parents to come up with trusteeship documents and other legal documents that will ensure the estate succession rights of unborn children are taken care of.

## END NOTES

This is the second article in the series relating to the estate succession and the rights of the child. The first article is titled Estate Succession Challenges of Children of Posthumous Conception and Birth, and it can be found [here](#)

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