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airjournals@gmail.com; editor@airjournal.org

A Critical Analysis of the Meeting Point of Law, Medicine and Religion in Contemporary African Jurisprudence: The Nigerian Supreme Court's Decision in Tega Esabunor & Anor v. Dr Tunde Faweya & Ors. in Focus

Prof. Enwo, J. J.

University of South Australia

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Abstract

The Supreme Court decision Tega Esabunor & Anor v Dr Tunde Faweya & Ors address an interesting issue of the right of a Minor to accept or reject certain medical treatment on the basis of religious conviction, especially with regards to that which involves the life of the child in question. In the case at hand, the line of medical treatment involved was blood transfusion. Nevertheless, when it comes to the constitutionally guaranteed right to practice one religion, there is no doubt that an adult can chose which medical treatment to take and not to take, different consideration applies when minor is involved. This article argues that when it comes to the right of a minor, the parents ought to have a say in the choices of medical treatment to be administered to their child especially when such line of treatment contradicts the religious beliefs of the parents. What is more, particularly with blood transfusion, failure of the Court to take into consideration recent scientific and alternative to blood transfusion will lead to a situation of boxing a certain group to the corner. The aim of this article, among others, is to proffer solutions to this growing problem that can be created if the Supreme Court decision in the Tega case is applied to the latter without regard to the recent development in science when it comes to treatment that has to do with blood transfusion. This article also provides proven alternative to blood transfusion which, over the years, has proven to be worthwhile in application. This article finally concludes that if the decision of the Supreme Court is applied, without taking into cognizance the recent development in the fields of medicine and science, it could to working great injustice on ground.

Keywords: Meeting Point of Law; Tega Esabunor; Constitution; Contemporary African Jurisprudence

1.1 Introduction

Intimate relations between law and religion have been comprised and continually changed from the beginning of time. According to natural religious law – a law driven from a faith in God or in divine forces – morality and legality are embedded in religion. Nigeria comprises of more than 250 ethnic groups with different traditions and values. There are three predominant religions: Christianity, Islam and the African traditional religions. The religion and societies of the different people groups control the lives and exchanges of the different ethnic groups. Nigerian law is based on English common law, customary law and Islam-based Sharia law. Medical ethics in Nigeria came into focus and existence in the 1960s after Nigeria got her independence, this was when the Medical and Dental Council of Nigeria (MDCN) was established to monitor, regulate and direct the way practice of medicine and dentistry was to be done in Nigeria. The law that established and set up the Medical and Dental Council was later updated in 1990, under the Medical and Dental Practitioners Act, Cap 221, laws of the Federal Republic of Nigeria. Medical ethics in Nigeria is based on the core principles of the Hippocratic oath, and the Nigerian code of medical ethics was revised in 1990 and 2004. However, the core principles remain the same[1]. The law, religion and culture of the Nigerian people appear to be in accordance with the code of medical ethics as it relates to certain subjects b such as abortion and euthanasia etc. It is essential to take note that the Nigerian penal code regards euthanasia as murder. It is also necessary to take note that under the Nigerian legislation, Abortion, except done in order to save the life of the mother, remains a criminal offence as enshrined under the criminal code. However, litigations against those who are guilty of commiting abortion are still yet to be entertained and noticed in the Nigerian courts.it is very essential to take note of the fact that this relationship between law, religion, culture and medical ethics, however, does not apply to the medical practices of organ transplantation, assisted conception and its related practices, and limb amputations. The Nigerian Supreme Court's Decision in Tega Esabunor & Anor v. Dr Tunde Faweya & Ors deals extensively with the relationship between law, medicine and religion. The 1999 constitution of the government republic of Nigeria by virtue of section 38 has made express arrangement for opportunity practice any religion. In any case, the code of clinical ethics in Nigeria is additionally a perceived enactment in Nigeria. On account of Tega Esabunor and Anor v. Dr Tunde Faweya and Ors, there was a major conflict between the clinical morals enactment which provides that a clinical specialist acts inside the best of his capacity to save lives and furthermore the tenet of the Jehovah witness which restricts blood transfusion. This was a major conflict among medication and religion and this was the place where law came in. The law will step in to ensure any child where his/her benefits are excused. For the exemplification of law is to ensure life and

[1] O.J Odia, the relation between Law, Culture and medical Ethics in Nigeria, https://www.tandfonline.com/doi/full/10.1080/11287462.2014.937949 (Accessed 5th May 2021)

property and set up environment for individuals to continue with an appeased and respectable life." For the situation of Tega Esabunor and Anor v. Dr Tunde Faweya and Ors the court came in to give an interpretation to the law when it deals with freedom to practice religion. There was a clash among these various subject matters and a very important question is which of these will superseded the other during times of clash. This is why this research work is very important because it gives an answer to all these questions which has not been answered. This paper examines in detail the polemics and harsh elements of emerging ethical controversies and it goes further to proffers suggestions for a way forward, in order to obviate possible ethical conundrums.

What is law?

Law is an arrangement of rules made and implemented through friendly or legislative organizations to control conduct, with its exact definition a matter of longstanding discussion. It has been differently depicted as a science and the specialty of equity. State-implemented laws can be made by a gathering lawmaking body or by a solitary administrator, bringing about rules; by the chief through declarations and guidelines; or set up by decided through point of reference, ordinarily in precedent-based law wards. Private people may make lawfully official agreements, including intervention arrangements that embrace elective methods of settling debates to standard court suit. The production of laws themselves might be impacted by a constitution, composed or unsaid, and the rights encoded in that. The law shapes governmental issues, financial matters, history and society differently and fills in as a middle person of relations between individuals. Overall sets of laws shift between nations, with their disparities dissected in similar law. In common law wards, a council or other focal body arranges and merges the law. In custom-based law frameworks, passes judgment on present restricting defense law through point of reference, albeit once in a while this might be upset by a higher court or the lawmaking body. Generally, strict law affected regular issue, is at this point used in some severe organizations. Sharia law reliant upon Islamic guidelines is used as the fundamental general set of laws in a couple of countries, including Iran and Saudi Arabia.

What is science? Science (from the Latin word scientia, signifying "information") is a deliberate undertaking that forms and sorts out information as testable clarifications and forecasts about the universe. The soonest underlying foundations of science can be followed to Ancient Egypt and Mesopotamia in around 3000 to 1200 BCE. Their commitments to arithmetic, space science, and medication entered and molded Greek regular way of thinking of traditional relic, whereby formal endeavors were made to give clarifications of occasions in the actual world dependent on common causes. "In essence, science is a perpetual search for an intelligent and integrated comprehension of the world we live in." - Cornelius Bernardus Van Niel (1897-1985), U. S. microbiologist.

What is religion? The meaning of religion is a dubious and confounded subject in strict examinations with researchers neglecting to concur on any one definition. Oxford Dictionaries characterizes religion as the confidence in and love of a superhuman controlling force, particularly an individual God or divine beings. Others, like Wilfred Cantwell Smith, have attempted to address an apparent Judeo-Christian and Western predisposition in the definition and investigation of religion. Scholars, for example, Daniel Dubuisson have questioned if the term religion has any importance outside of western societies, while others, for example, Ernst Feil even uncertainty that it has a particular, general significance even there. Scholars have failed to agree on a specific meaning of religion. There are anyway two general definition frameworks: the sociological/practical and the phenomenological/philosophical. Emile Durkheim characterized religion as "a brought together arrangement of convictions and practices comparative with consecrated things, in other words things put aside and prohibited - convictions and practices which join into one single good local area called a congregation, each one of the individuals who stick to them. A few jurisdictions will not arrange explicit religions as religions, contending that they are rather apostasies, regardless of whether they are generally seen as a religion in the scholastic world. Religion is a cutting-edge Western idea. Equal ideas are not found in numerous current and past societies; there is no identical term for religion in numerous dialects. Scholars have thought that it was hard to build up a steady definition, with some abandoning the chance of a definition. Others contend that paying little mind to its definition, it does apply to non-Western societies. An expanding number of scholars have communicated misgivings about truly characterizing the embodiment of religion. They see that the manner in which we utilize the idea today is an especially current development that would not have been perceived through a lot of history and in numerous societies outside the West (or even in the West until after the Peace of Westphalia). The MacMillan Encyclopedia of Religions states: Friedrich Schleiermacher in the late 18th century defined religion as “das schlechthinnige Abhängigkeitsgefühl”, commonly translated as "the feeling of absolute dependence". His contemporary, Georg Wilhelm Friedrich Hegel differ altogether, characterizing religion as "the Divine Spirit becoming conscious of Himself through the finite spirit". Edward Burnett Tylor characterized religion in 1871 as "the belief in spiritual beings". He contended that narrowing the definition to mean the belief in a supreme deity or judgment after death or idolatry and so on, would avoid numerous people groups from the class of strict, and along these lines "has the flaw of distinguishing religion preferably with specific improvements over with the more profound rationale which underlies them". He additionally contended that the faith in profound creatures exists in completely known social orders. At the point when religion is found regarding hallowed, heavenly, concentrated esteeming, or extreme concern, at that point it is feasible to comprehend why logical discoveries and philosophical reactions (e.g., those made by Richard Dawkins) don't really upset its disciples. Nigeria is the most crowded country in Africa and among the 10 most crowded nations of the world. It was established in 1914 by the British after the combination of the British Northern and Southern protectorates. It turned into a free country in 1960. In 1963, it turned into a republic. Nigeria is a multi-ethnic, multi-strict and multi-social country. It has more than 250 ethnic groups, with varied native dialects and social qualities. The predominant ethnic groups are the Hausas, the Ibos and the Yorubas. There are a day and a half

in Nigeria with a capital region territory. The Hausas are primarily in the Northern piece of Nigeria, while the Ibos are in the South East. The South West comprises of the Yorubas. Nonetheless, other ethnic and semantic groups additionally advocate for themselves in Nigeria. These remember the Kanuris for the North East, and the Edos, Ibibio, Ijaws and Efiks in the South of Nigeria.[2] The medical rights of minors are of paramount importance. This is because these sets of persons constitute a group who, under the law, are incapable of making informed decisions. Generally, actions are usually taken for and on behalf of minors under the law, either by their guardians, or those in *loco parentis*.

One of the important areas where decisions can also be taken for and on behalf of minors is in the area of the medical procedure to be adopted with regards to the said minor, especially in a life – threatening situation. The medical procedure that readily comes to mind when the Tega case is mentioned is blood transfusion. Who deicides whether or not a minor should take this medical procedure for saving its life? Is it the State or the parents of the minor? The issue becomes interesting when the parents of the minor bring in their Constitutional right to freedom to express their religion viz-a -viz the right to choose a form of life–saving medical treatment for the minor involved. Placed side by side with modern science and medicine, it is not hard to see that several alternatives to blood transfusion have evolved. The alternative methods have been proven to survive the test of time and are continually been applied to cases where it was found that a patient – minor or not – does not want blood transfusion, whether on safety ground, religious ground or otherwise. The major problem which this research work seeks to address is to critically examine the conflict between law and religion and also medicine and this will be narrowed down to the celebrated case of Tega Esabunor & Anor v. Dr Tunde Faweya & Ors. Law, science and religion are different subjects entirely, but somehow have ways of affecting the society because the society cannot possibly survive without them. They are very important in the society and they are for the benefit of the society, it is essential to note that they sometimes clash and this is where this research work is bothered on.

Brief Facts of the case or Tega Esabunor v Dr Tunde Faweya & Ors

Mrs. Rita Esabunor (referred to hereafter as the '2nd appellant') is the mother of the Tega Esabunor (referred to as the '1st Appellant'). The 2nd Appellant gave birth to the 1st Appellant on April 19, 1997 at the Chevron Clinic, Lekki Peninsula in Lagos. Within a month of his birth the 1st Appellant fell gravely ill. The 2nd Appellant, took him back to the Chevron Clinic on 11 May, 1997 for urgent treatment. It was Dr Tunde Faweya (referred to hereafter as the 1st respondent) who treated the 1st appellant. He found that the 1st appellant urgently needed blood transfusion. The 2nd Appellant and her husband made it abundantly clear to the 1st respondent that on no account should the 1st appellant be given blood transfusion. Their reason being that there were several hazards that follows blood transfusion such as contracting Aids, Hepatitis and that as members of the Jehovah witness sect, blood transfusion was forbidden by their Religion. The 1st respondent remained unyielding. The next day, the learned counsel for the Commissioner of Police, Lagos State moved an Originating Motion Ex-parte before the Chief Magistrate Grade 1, Lagos State. The motion was brought under Section 27 (1) and (30) of the Children and Young Person's Law Cap 25 of Lagos State. The Motion asked that the medical authorities of the Clinic of Chevron Nigeria Limited Lekki Peninsula Lagos be allowed and 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 delivered a Ruling, granting the prayers sought in the Motion, thereby allowing the 1st Respondent to do all thing necessary to save the life of the 1st Appellant. Subsequently, blood transfusion was administered on the 1st Appellant; he got well and was discharged. The 2nd appellant filed an application on notice wherein she sought for the setting aside of the order that allowed blood transfusion to be administered on the 1st Appellant. The application was unsuccessful. The 2nd Appellant appealed to the High Court by way of Judicial Review to quash the proceedings and Orders which led to the administration of blood transfusion on her son. This move was unsuccessful up to the Apex Court. The apex court, in dismissing the Appeal considered several issues and rendered several *ratio decidendi* but of interest is the aspect that deals with the application of blood transfusion to an infant and how such outweighs the religious conviction of the parents of the child involved. The Apex Court observed, Coram Okoro JSC, stated that the law exists primarily to protect life and preserve the fundamental right of its citizens inclusive of infants. According to the Court, the law would not override the decision of a competent mature adult who refuses medical treatment that may prolong his life but would readily intervene in the case of a child who lacks the competence to make decisions for himself. Relying on the relevant legislation and decide cases, the court noted that the Child's Right Act, LFN 2003 is replete with judicial powers to ascertain the survival and total well-being of the child. The court held the view that it might have added up to an incredible unfairness to the youngster if the Court had held on and watched the kid being denied of fundamental treatment to save his life based on the strict conviction of his parent. 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.

Constitutional framework for Freedom of Religion in relevance to The Nigerian Supreme Court's Decision in Tega Esabunor & Anor v. Dr Tunde Faweya & Ors

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) covers the right to freedom of thought, conscience and religion of every person in Nigeria. This right is one of the fundamental rights provided in Chapter four of the Constitution. The

[2] ibid(2)

Constitutional provision on freedom of thought conscience and religion is to the effect that that 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 private) to manifest and propagate his religion or belief in worship, teaching, practice, and observance. Fundamental rights are defined as the basic human freedoms that everyone, by virtue of his or her humanity, is entitled to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens irrespective of race, tribe, religion, gender or place of birth.[3] The significant importance of this constitutional provision, it has been rightly observed, lies in arming every Nigerian citizen with the protection of his fundamental right to his psychological and religious interests. Given the diverse cultural and religious nature of the Nigerian people, If the different groups making up the country are to coexist peacefully, then the freedom of each to propagate his religion or to express his psychological freedom must be protected and guaranteed.[4]

When it comes to full adult of sound mind and capacity, the constitutional provision relating to freedom of conscience and religion poses no difficulty. The above constitutional framework for expression of freedom of religion does not apply in the case of minors; this is because, under the law, minors are considered incapable of making decisions, especially medical decisions. Decisions are made for them by their guardian. Hence, by a flat understanding of the above constitutional provision and the law relation to the decision making of minors, it is the minor's direct that is armed or supposed to be armed with the decision-making relation to a minor, even when such is religiously based and bothers on life threatening medical situations.

In the celebrated case of Tega Esabunor & Anor v. Dr Tunde Faweya & Ors, the appellants relied on the constitutional provision of Section 38[5] which expressly established freedom to practice their various religion. Everybody is free to practice his or her own religion as provided constitutionally but this is only to the extent permitted. It must not be inconsistent with any provision of the constitution as provided under the grundnorm by virtue of Section 1(1)(2)(3) which provides

I. This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.
II. The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in the accordance with the provisions of this Constitution.
III. If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be null and void.

This provision is in pari materia with the ratio decidendi in the supreme court case of FAWEHINMI AND ors v BABANGIDA (RTD) and ors[6] and the same was also see in the obita dictum in subsequent judicial precedent where the court upheld the provision of the constitution regarding constitutional supremacy. This then brings us to constitutional supremacy which posits that the law must be considered first before any religion doctrine. In each given human culture, there is consistently a preeminent substance whose arrangements or directs are conclusive. This specific element is the epitome of power around there. In the pre – pilgrim times, it was generally the Gods of the land (in the South) or the arrangements of the Holy Q'uran (in the North). In contemporary Great Britain, the parliament is viewed as preeminent while in Nigeria, the constitution is viewed as incomparable. Supremacy can be characterized as "The situation of having the unrivaled or most prominent force or authority". The constitution can likewise be characterized as "The key and natural law of a country or express that builds up the organizations and contraption of government, characterizes the extent of legislative sovereign powers, and ensures individual social equality and common freedoms". From the previous, it tends to be seen that constitutional supremacy is the situation of the constitution having the unrivaled or most prominent force or authority. Because of the way that in accordance with S.2 of the Nigerian Constitution 1999 (as amended), Nigeria is a government republic, it along these lines has a composed constitution. The overall show is that a composed constitution is incomparable, the Nigerian constitution accommodates its supremacy in a portion of its arrangements. These arrangements will be consequently featured. The principal part of the 1999 constitution that manages the supremacy of the constitution is S.1(1[7]). It gives along these lines: "This constitution is incomparable and its arrangements will have restricting power on all specialists and people all through the Federal republic of Nigeria" This part implies that the arrangements of the constitution are restricting on all people regardless of how high or low. Indeed, even the main resident of the country, the President, is limited by the constitution. There are various case law in which the activities of the president were pronounced unconstitutional and of no impact at all. One famous case is AG Lagos v AG Federation.[8] For this situation, it was announced that the activities of the president in retaining the government allotment to Lagos state was as opposed to S.162(5) of the constitution, along these lines

[3] Nancy Flowers, *A Short History of Human Rights, available at http://hrlibrary.umm.edu/edumat/hreduseries/hereandnow/Part-1/short. (accessed on July 25, 2017).*

[4] EOC Obidimma, 'Fundamental Rights to Freedom of Thought, Conscience and Religion and the Right to refuse Medical treatment on religious grounds under Nigerian Law' *African Journal of Constitutional and Administrative Law* (2017) (1) 39

[5] 1999 Constitution of the Federal Republic of Nigeria, (as amended)

[6] SC 360/2001

[7] 1999 Constitution of the Federal Republic of Nigeria, (as amended)

[8] (2004) SC 70/2004

they were unconstitutional, invalid and void. Another case is that of Inakoju v Adeleke.[9] For this situation, a few individuals from the Oyo state place of gathering suspected to eliminate the Governor of the state. Nonetheless, they didn't follow the full arrangements of S.188 of the Constitution. Because of this, the Supreme court, through a main Judgment by Tobi JSC proclaimed their activities unconstitutional, invalid and void. From the prior cases, it very well may be seen that acts which contradict the arrangements of the constitution will be announced invalid and void on the grounds that the constitution is incomparable and will have restricting power on all people and specialists all through Nigeria. Another arrangement of the constitution that verges on Supremacy of the constitution is S.1(3). It gives subsequently: " If any law is conflicting with the arrangements of this constitution, this constitution will win, and that other law will to the degree of the irregularity be void." This arrangement is clear as crystal, it implies that any law that clashes with the arrangement of the constitution will be irrelevant to the degree of its irregularity. This is otherwise called the blue pencil rule. The court of Appeal, on account of Inspector General of Police v ANPP and Ors[10], applied this arrangement of the constitution. It pronounced the arrangements of the Public Order Act which given that a grant is required from the lead representative before individuals can collect in open in opposition to the arrangement of the principal basic liberties of opportunity of articulation and affiliation which is contained in SS.39 and 40 of the 1999 constitution. Consequently, those arrangements of the public request act were pronounced unconstitutional, invalid and void to the degree of their irregularities. The ramifications of the supremacy of the Nigerian constitution is that individuals are sovereign. S.14(2)(a) CFRN 1999 (as changed) gives that sway has a place with individuals from which government infers it power through the constitution. It implies that each force in the nation be it leader, administrative or legal responses to individuals through the arrangements of the constitution as set somewhere around individuals. Additionally, the supremacy of the constitution makes it the preeminent rule that everyone must follow against which every conflicting establishment and behaviors are invalid and void. It is the terrific law and authority base of the nation got from individuals, the force base of the country. It is the preeminent law by which each and every other law and lead are tried for constitutionality and maintained from one perspective and pronounced unconstitutional and invalid and void and of no impact, then again. There is the requirement for concordance among law and medical ethics in Nigeria, to block moral problems. The MDCN[11] needs to work with other medical expert bodies and update the nation's code of medical ethics, particularly as it identifies with arising issues like assisted conception, organ transfers and stem cell therapies. The MDCN ought to likewise liaise with the Senate and House Committees on Health to draft bills on organ transfers, assisted conception and related practices. The public legislative assembly ought to thus organize formal reviews of such bills, with wide partner inclusion (common social orders, strict and social pioneers, ladies' affiliations, and so on) to have strong contribution to the draft bills. Assisted conception and organ transplantations require clear, unambiguous laws that will oversee their training in Nigeria. European laws could be counseled, not with the end goal of receiving them discount, but rather with the end goal of adjusting their great perspectives. The laws and code of ethics in these fields ought to be socially adequate to everybody. The laws ought to be proactive and expect provisos that can without much of a stretch be misused by corrupt specialists. The law on euthanasia ought to likewise be better characterized for clearness. The current absence of any unmistakable laws on euthanasia and the shortfall of obvious mandates on detached and dynamic euthanasia under the 2004 Nigerian Medical and Dental Code of Ethics, ought to be audited and adjusted. Students of history of science and of religion, logicians, scholars, researchers, and others from different topographical areas and societies have tended to various parts of the connection among religion and science. Despite the fact that the antiquated and middle age universes didn't have originations taking after the cutting-edge understandings of "science" or of "religion", certain components of present-day thoughts regarding the matter repeat since forever. The pair-organized expressions "religion and science" and "science and religion" first arose in the writing in the nineteenth century. This agreed with the refining of "science" (from the investigations of "characteristic way of thinking") and of "religion" as unmistakable ideas in the previous few centuries—somewhat because of professionalization of the sciences, the Protestant Reformation, colonization, and globalization. From that point forward the connection among science and religion has been described regarding 'struggle', 'agreement', 'intricacy', and 'common freedom', among others. in Tega Esabunor & Anor v. Dr Tunde Faweya & Ors., the second Appellant is the mother of the first Appellant. She brought forth him on April 19, 1997 at the Chevron Clinic, Lekki Peninsula in Lagos. Inside a month of his introduction to the world (for example on 11 May, 1997) he fell seriously sick and he was returned to the Chevron Clinic for critical therapy by his mom. The first Respondent who treated the first Appellant found that he direly required blood transfusion. The second Appellant and her significant other made it completely clear to the first Respondent that under no circumstances should their child be given blood transfusion reason being that there were a few risks that follows blood transfusion, for example, contracting Aids, Hepatitis and so on and that as individuals from the Jehovah witness faction, blood transfusion was taboo by their Religion. The following day, the learned direction for the Commissioner of Police, Lagos State, moved an Originating Motion Exparte before the fifth Respondent which motion was brought under Section 27 (1) and (30) of the Children and Young Person's Law Cap 25 of Lagos State. Giving the petition looked for, the Magistrates' court requested that: "The clinical specialists of the Clinic of Chevron Nigeria Limited Lekki Peninsula Lagos are thusly approved to do all and whatever might be required for the insurance of the life and soundness of the child TEGA ESABUNOR. It is additionally requested that the said clinical specialists do return to this Court to report their consistence with this request which will forthwith be served on them."

[9] (2007) SC 272/2006
[10] (2007) 18 NWLR (pt. 1066) 457 CA
[11] Medical and dental counsel of Nigeria

On receipt of the Order of the Chief Magistrate, blood transfusion was regulated on the first Appellant by the first Respondent around the same time. The first Appellant recovered and was released. The second Appellant recorded an application on notice at the High Court wherein she looked for the saving of the request made which was dismissed. The Appellants' were not happy with the Ruling of the High Court and recorded an appeal at the Court of Appeal which certified the choice of the preliminary Court consequently, this appeal. I want to see that states in Nigeria that have not trained the Child's Rights Act, 2003 do as such, and that the Federal Government and the States focus closer on the issues of children since it is significant and fundamental. The way that in any issue influencing a child, the wellbeing of the child is the principal thought can't be overemphasized. Since nobody was given the advantage or option to pick the guardians through whom he/she went to the world, NO CHILD ought to be rebuffed by disregard for acts/oversight of his/her folks regardless of how reckless they are. Hence, NO CHILD ought to be abandoned. I will jump at the chance to stress this 'wellbeing' guideline by comparing two choices of the Supreme Court of Nigeria on to some degree related realities yet various contemplations with respect to the freedom the law gives an individual to either acknowledge or dismiss clinical treatment. Prior in Medical and Dental Practitioners Disciplinary Tribunal v Dr. John Emewulu Nicholas Okonkwo where a patient being an individual from the Jehovah Witness Sect denied blood bonding on strict ground, the Supreme Court held that a patient is allowed to choose whether or not to submit to treatment suggested by a specialist. In the event that the specialist making a decent judgment encourages a patient to submit to an activity, the patient is qualified for reject the guidance for reason which are objective or silly or for reasons unknown. Nonetheless, in an ensuing choice by a similar Supreme Court in Tega Esabunor and Anor v Dr. Tunde Faweya and Ors this rule was 'changed' to ensure a child. In this last case, a child was wiped out and the specialist prompted that the child required blood bonding to remain alive, yet his folks (individuals from Jehovah Witness Sect) denied that blood bonding be done to their child on the ground that blood bonding is illegal in the Bible (Acts 15: 29). Thusly, a request was looked for at the Magistrate's Court to empower the specialist bond blood to the child to save his life and same was conceded. Blood was bonded to the child and the child was well, however the guardians actually tested the Magistrate's Court request up to the Supreme Court on certain grounds including ward and infringement of parental rights. Readily the Supreme Court made a qualification between the freedom of a grown-up to deny a medicine and a situation where a grown-up is declining same prescription for the benefit of his/her child or ward. As per the Court "… a grown-up who is cognizant and in full control of his intellectual ability, and of sound brain has the option to either acknowledge or decline blood (clinical treatment). All grown-ups have the basic option to settle on any decision they may choose to make and to expect the outcomes. At the point when it includes a child various contemplation apply and this is so on the grounds that a child is unequipped for settling on choices for himself and the law is compelled by a sense of honor to shield such an individual from maltreatment of his privileges as he may grow up and dismiss those strict convictions. It has no effect if the choice to deny him blood is made by his folks… When an equipped parent or one in loco parentis declines blood bonding or clinical treatment for her child on strict grounds, the court should step in, think about the infant's government assistance, i.e saving the life and the wellbeing of the child, before a choice is taken. These contemplations exceed strict convictions of the Jehovah Witness faction… "(underlining mine). In this way guardians or watchmen, the public authority and its organizations and the general public everywhere should remember that in any activity or oversight to be taken in regard of a child, the fundamental thought is the 'wellbeing' of that child which will be resolved dependent on singular cases and conditions. The law will step in to ensure any child where his/her privileges are disregarded. For the essence of law is to preserve life and property and create environment for human beings to live a contented and dignified life."

Alternative Means to Blood Transfusion

Millions of people worldwide have taken note that the Jehovah's Witness faith, generally always refuse blood transfusion and other blood products, this includes preoperative autologous donation and the primary blood components – red cells, platelets, white cells and unfractionated plasma.[12] Jehovah's Witnesses are of the position that it is against the will of God to collect blood based on this, they always refuse transfusion of blood, even when it is their own blood. Nevertheless, minority of certain Jehovah's Witnesses are of a different position regarding the bible prohibiting blood transfusions, and as such, they accept blood transfusion. It is essential to take note that ICS[13] and PCS[14] in a preferable option to the Jehovah's Witnesses. Tranexamic acid (antifibrinolytic) is deemed safe and it reduces mortality in traumatic haemorrhage and is affordable. It decreases bleeding and transfusion and it is considered to be very effective in obstetric and gastrointestinal haemorrhage. It should be noted that ICS **(**Intraoperative cell salvage) also an effective means, it saves lives especially in times of emergency. It is also efficient in times of management of major haemorrhage. It should be noted that PCS (Postoperative cell salvage) and reinfusion can help to reduce the use of blood during scoliosis surgery and joint replacement. Certain principles involved in this approach basically include attention to blood-salvaging methods intraoperatively, optimization of hemoglobin levels preoperatively, and minimization of blood draws postoperatively. It should be noted that there is a certain new technological

[12] I.J Anaesth, ''Management of patients who refuse blood transfusion'' in https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4260316/ Accessed 1st May 2021

[13] Intraoperative cell salvage

[14] Postoperative cell salvage

advancement which is currently in existence as a transfusion alternative. This includes hemoglobin-based oxygen carriers. It should also be noted that recent improvement has been made in the field of hemoglobin-based oxygen carriers and synthetic blood alternatives, this basically leads to better-quality outcomes and provides other options for patients. The use of multiple prevention and mitigation means and strategies to optimize the supply of oxygen and also to to decrease oxygen demand will surly lead to a decreased in the incidence of critical anemia and ensuing improved mortality in Jehovah's Witness patients.[15] In the case of Tega Esabunor & Anor v Dr Tunde Faweya & Ors, the applicants stood firm on the position that blood transfusion was against their religion and as such alternative means of blood transfusion should be administered on their child. Weather the law coming in to give the medical doctors the go ahead to administer blood transfusion against the Jehovah witness doctrine has indirectly denied the applicants freedom to practice their religion as enshrined under the 1999 constitution as amended? This was a very vital question which was to be answered in the temple of justice.

In what circumstances can a parent decide for a child whether to take blood transfusion?

The Jehovah's Witnesses Society (JW), a fundamentalist Christian sect, is best known to laypersons and healthcare professionals for its refusal of blood products, even when such a refusal may result in death.[16] Blood ban was introduced in 1945 and ever since then, parents in the JW have not stopped fighting for the rights to refuse blood transfusion on behalf of their children, this is just based on their religious believe. They contend that they have the right to raise children as they see fit. In the case of *Prince v Massachusetts*[17] it was established that: *"Parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children''*[18] whether or not the child was in serious danger, the principle was to be applied, because it was a major belief that parents have the responsibility to make decisions in the child's best interests. In cases when parents refused blood transfusion based on religious belief, the court comes in and enforces or compels medical treatment[14] based on the avoidance of physical harm.[19] It is an offence to administer blood to a patient who has refused it.[20] This has basically led to various criminal proceedings in so many jurisdictions around the world in which Nigeria is inclusive. a very good example is the case of Tega Esabunor & Anor v Dr Tunde Faweya & Ors. A child's right to life is of utmost importance and must always be well-thought-out before the religious beliefs of his or her guardian. In the case of Jehovah's Witness parents' refusal of blood transfusion for their child, certain jurisdictions have adopted procedures that stops the parents from exercise their parental responsibility which will not be in the child's best interest. In cases where parents have refused blood transfusion, outside of emergency situations, exposes the child's health to serious risk, health workers have the duty to proceed by notifying the competent authority.[21] when it comes to refusal of blood transfusions for a child by his/her Jehovah's Witness parents, safeguarding the health of the child must be considered first as the guiding criteria in such cases "consideration should be given to [22]parental views and treatment moderated when possible but if conflict occurs, the child's interests always come first"[23]

Insignificance of blood transfusion when places side by side with the alternative means to blood transfusion.

Transfusion of blood can save the life of a patient it limits various complications associated with severe blood loss. Low hemoglobin level can come up as a result of lot of bleeding and cause damage to body organs as a result of lack of oxygen.[24] However blood transfusion according to different medical writers is termed insignificant when compared to other alternative means of blood transfusion.[25] There are a lot of disadvantages associated with blood transfusion which makes it risky. Getting many blood transfusions causes iron overload, making more iron to build up in the blood. Persons with blood disorder such as thalassemia, often require multiple transfusions, they fall at risk of iron overload. Iron overload causes damages to damage heart, liver and other body parts. Some people have allergic reactions to blood gotten through transfusion, even when given the

[15] M.Rashid, ''Blood transfusion and alternatives in Jehovah's Witness patients'' in https://journals.lww.com/co-anesthesiology/Abstract/2021/04000/Blood_transfusion_and_alternatives_in_Jehovah_s.11.aspx Accessed 1st May 2021
[16] S Woolley, 'Children of Jehovah's Witnesses and adolescent Jehovah's Witnesses: what are their rights?' in https://adc.bmj.com/content/90/7/715 Accessed 1st May 2021
[17] (1944) 321 US 158
[18] ibid
[19] *In re McCauley*, 565, N.E.2d 411 (Mass. 1991)
[20] Carlo Petrini, 'Ethical and legal aspects of refusal of blood transfusions by Jehovah's Witnesses, with particular reference to Italy' in https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3934270/ Accessed 1st May 2021
[21] ibid
[22] ibid
[23] Adelaide Conti,'' Blood Transfusion in Children: The Refusal of Jehovah's Witness Parents'' in https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5900417/ Accessed 1st May 2021
[24] J.C. Aneke and C.E. Okocha, 'Blood transfusion safety; current status and challenges in Nigeria' in https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5345273/ Accessed 1st May 2021

[25] C.H Baron, 'Alternatives to Blood Transfusion in Transfusion Medicine' in https://www.researchgate.net/publication/227987173_Alternatives_to_Blood_Transfusion_in_Transfusion_Medicine_Second_Edition_Second_Edition Accessed 1st March 2021

right blood type. Blood transfusion most times leads to Fever, Acute Immune Hemolytic Reaction [26]etc. Clinical research has recognized transfusion of blood as an independent risk factor for immediate and long-term adverse outcomes, this includes an increased risk of death, stroke, renal failure, myocardial infarction, infection and malignancy. Based on these various risk factors, it can be inferred that alternative means of blood transfusion should be considered first most times.[27]

Conclusion

The 1999 constitution of the federal republic of Nigeria by virtue of section 38 has made express provision for freedom practice any religion. However, the code of medical ethics in Nigeria is also a recognized legislation in Nigeria. In the case of Tega Esabunor & Anor v. Dr Tunde Faweya & Ors, there was a big clash between the medical ethics legislation and religion (Jehovah witness doctrine). The medical ethics code provides that a medical practitioner acts within the best of his ability for the purpose of saving lives while the doctrine of the Jehovah witness prohibits blood transfusion which sometimes is deemed necessary in saving lives. This was a big clash between medicine and religion and this was where law came in. By virtue of the judicial precedent which established that When a prepared parent or one in loco parentis decreases blood holding or clinical treatment for her youngster on severe grounds, the court should step in, consider the baby's administration help, i.e saving the life and the prosperity of the kid, before a decision is taken. These considerations surpass exacting feelings of the Jehovah Witness group… ". In this manner gatekeepers or guardians, the public position and its associations and the overall population wherever ought to recollect that in any movement or oversight to be taken in respect of a youngster, the central idea is the 'prosperity' of that kid which will be settled ward on particular cases and conditions. The law will step in to guarantee any kid where his/her advantages are dismissed. For the embodiment of law is to protect life and property and establish climate for people to carry on with a placated and honorable life." In the case of Tega Esabunor & Anor v. Dr Tunde Faweya & Ors the court came in to give an interpretation to the law when it deals with freedom to practice religion.

[26] L.A McDowell**, 'Iron Overload' in https://www.ncbi.nlm.nih.gov/books/NBK526131/** Accessed 1st February 2021
[27] Zuomin Yin**, 'Blood transfusion and mortality in myocardial infarction: an updated meta-analysis' in** https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5731951/ Accessed 1st May 2021