

DELICTS IN NATIVE LAW

C3.33

SEDUCTION : EVIDENCE OF GIRL MUST BE CORROBORATED

"The plaintiff's uncorroborated evidence is regarded as insufficient to enable the Court to find in her favour. Her evidence that she has been seduced is afforded the strongest possible corroboration by the birth of a child to her of which she has sworn that defendant is the father. If there is no evidence to rebut this, then there is sufficient evidence on which a reasonable man might give judgment for plaintiff.

The rule of law is that in paternity cases, where defendant denies the intercourse, his oath is to be preferred to the woman's unless there is evidence alwende to corroborate her. This does not mean that defendant can deny intercourse in his plea, and when he feels that plaintiff has no evidence beside her own as to the actual act of seduction, ask for a judgment in his favour. His denial of the seduction must be on oath and the other side must be given an opportunity to cross-examine him.... The grant of absolution for the instance at the close of the plaintiff's case was premature".

Ella Makuto vs Phenae Tiba (1936 N.A.C. (C.S.O) 14.

SEDUCTION — AMOUNT OF DAMAGES AMONG HUSB.

"The facts of the case having been put to the Native Amens they state:

The Huli custom in a case such as this is that when a girl has been seduced and pregnancy follows, a fee of one head of cattle or horse is payable. Under the original Huli custom... In regard to what the young man paid, that he was man's wife of his intended to marry, he should have paid more than one head, for we regard the horse as having been paid for the elopement so we call it "the feet of the young man". This statement of Huli custom is in agreement with that given in the case of Indwell Kasa vs Dutiba Ndiba, 1935 N.A.C. (C.S.O) 64.

MAGWANYA QUNTA vs RALARALA TATAYI, 1936 N.A.C. (C.S.O) 157.

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SEDUCTION — CLAIM OF CHILD BY NATURAL FATHER.

"The point was settled in the case of Tsoli Ngubentombi vs Cunegi Mnene, 4.N.A.C. 49 in which the position was similar to this. Plaintiff claimed custody of a girl of whom he was the natural father, and the defendant pleaded that as plaintiff had not paid "sondlo" he was estopped by his acts or conduct from making any claim to her. The plaintiff's attorney then tendered an "isondlo" beast and the magistrate entered judgment that plaintiff was entitled to the girl on payment of the sondlo beast, but as he had made no previous tender of that beast he advised him to pay costs of suit. On appeal the Division of the Native Appeal Court said: "Appellant having accepted fine for the pregnancy of his sister well knew that defendant respondent could claim the child at any time by paying me more beast as sondlo or maintenance. The Court knows of no rule of law which precludes a party to a suit making a tender after the close of pleadings. The fact that he has not made a tender earlier merely affects the question of costs....."

It is only necessary to refer to the cases cited by the Assistant Native Commissioner in his reasons for judgment, viz : Tsoli Ngubentombi vs Cunegi Mnene 4.N.A.C. 49, Mgunguwa hypolito vs Sefambu Tonga 4.N.A.C. 51 and Ntshwana vs Kebone 2.N.A.C. 37, which clearly show that a tender before action is not essential to enable plaintiff to obtain delivery of the child.

DENIAL OF PATERNITY & ITS EFFECT ON CLAIM FOR CHILD

"This Court is unable to appreciate why, because a man has denied paternity in the first instance but on judgment being given against him had paid the customary fine, he should not be entitled to the child born of the seduction nor has its attention been directed to any such custom among the natives."

DATE OF CLAIM FOR CHILD

This Court knows of no custom by which intimation that the natural father is going to claim the child must be made within a reasonable time. If no arrangement is made when the fine is paid as to the ownership of the child, then the natural father's right to it under Native custom is clear (Tatayi vs Mzamabala 1.N.A.C. 121). Even where the full fine is not paid in the first instance the

putative father may claim the child by paying the full fine and this may be done at any time (Mpete v Nkumanda, 1 N.A.C. 43). The payment of the full fine ipso facto gives the putative father the right to the child in the absence of any agreement to the contrary at the time the fine is paid. According to custom the child belongs to him, when there is the necessity for giving notice that he is going to claim it?

It is not unusual to have an illegitimate girl at her mother's people's house until she marries before any claim is made in regard to her or her baby.

RIGHT OF MOTHER'S HUSBAND TO ^{by} ILLEGITIMATE CHILD

"The custom in this matter is laid down in the case of Ntela Ntlongola v Spara Tanti (3 N.A.C. 126) which followed a similar decision in Nwata v Afri 1 N.A.C. 98. From these cases it is clear that, provided a fine for the reduction of pregnancy has been paid, the subsequent marriage to and payment of dowry by another man does not entitle the latter to the illegitimate child. The rights in that child vested in the natural father at the time of payment of fine and any later marriage could not affect those rights.

WHO MUST BE SUED FOR CHILD

"It may be as well, however, to refer to the case of Ntakwane v Kebene 2 N.A.C. 37 wherein it was laid down that according to Native custom the person who claimed and received the damages for the reduction and pregnancy is the proper person to be sued for the custody of the child, and if he lets the child out of his custody he is not released from responsibility to the payor of the fine.

NYANI MATINISE v SAVU MAROTE, 1936 N.A.C.(C.S.) 121

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SEDUCTION — RIGHT TO SUE FOR DAMAGES.

"The case was tried under Native law & custom and under that custom a woman has not the right to sue for damages for the seduction of her daughter. The proper person to sue is the heir of the girl's father, or if he is a minor, his guardian." The Native Commissioner in his reasons for judgment stated that the law is made by "that being so, neither he nor his mother had any claim stands and the proper person to sue was Johanna Bongani, the head of the family."

HENE & SAMUEL MKWANE v JANE & RICHARD BANGANI (1936 NAC.(Civ)185.