Centre for Child Law v Director-General: Department of Home Affairs and Others (319/2018) [2020] ZAECGHC 43 (19 May 2020) – **Reportable**

Court: Eastern Cape High Court, Grahamstown

Case No: 319/2018

Date(s) heard: 2 March 2020

Delivered: 19 May 2020

Judge: Rugunanan, J

DESCRIPTION

Appeal concerning the constitutional validity of section 10 of the Births and Death Registration Act - Discriminated against unmarried fathers of children born out of wedlock - Not in best interests of the child - Reading-in allowed to remedy unconstitutionality

SUMMARY

(Par 1) This appeal concerns a challenge to the constitutional validity of section 10 of the Births and Death Registration Act, 51 of 1992 (**the Act**). (Par 2) The matter before the court *a quo* was an order sought by the current third and fourth respondents (then the first and second applicants) to review and set aside the first respondent's refusal to register the birth of their minor child. (Par 3) The appellant sought leave to intervene as it had numerous child cases where registration of birth was refused on the same grounds.

(Par 8) The issue on appeal was that in essence, the provisions of sections 10(1)(a), 10(1)(b) and section 10(2) of the Act result in the notification process for a child born out of wedlock having a dominant preference for the surname of the mother. The effect of these sections is that the provisions above require the mother's presence, or her consent, to give notice of a child's birth under the child's mother's surname. The implication of this is that an unmarried father of a child born out of wedlock is implicitly barred from giving notice of a child's birth under his surname if the mother is absent.

(Par 4) A child who is not recognised by the civil birth registration system runs the risk of being excluded from key systems rendering them unable to progress socio-economically, and this potentially exacerbates marginalisation. (Par 5) Section 10 of the Act arbitrarily discriminates against unmarried fathers, and therefore violates such a father's right to equality in section 9(3) of the Constitution. By extension, the child of such a father may be denied a birth certificate, which is contrary to their best interests.

(Par 8) The remedy proposed in the court *a quo* was the reading-in of wording in section 10(2) (substituting the first "mother" for "father"), which the court of appeal deemed an insufficient way to remove the prohibition created by section 10 because it remained limited in scope. (Par 11) Furthermore, this approach relied on a strained interpretation of the legislation which failed to recognize that any child born alive was subject to the provisions of section 10, which regulates the surname of a child born out of wedlock. (Par 18) This legislation still failed any child whose mother was absent in such instances, as an unmarried father may give notice of a child born out of wedlock.(Par 20) Accordingly, the court found these provisions to be unconstitutional and therefore invalid to the extent that they discriminated against unmarried fathers as contemplated above.

(Par 21) In instances where a law is invalid and unconstitutional, an order that is just, equitable and provides appropriate relief may be made. (Par 19) The appellant had proposed the reading-in of wording under section 10(1) that would allow a father to give notice of the child's birth under his surname. The court of appeal satisfied itself that the appellant's proposed reading-in for section 10(1)(b) aimed to remedy unconstitutionality and under-inclusiveness. (Par 22) Accordingly, it was found to be an appropriate remedy to be adopted, and it was deemed to be constitutionally

permissible to follow this course of action. In observing the doctrine of the separation powers, the court of appeal built a suspensive component into the order, which deferred to the Legislature to amend the legislation.

The order was as follows: (1) the appeal was upheld; (2) the provisions of section 10 of the Act that disallowed unmarried fathers to give notice of the birth of their child under their surname in the absence of the mother, were deemed to be unconstitutional; (3) the prescribed remedy was the reading-in of certain wording that provided an unmarried father with the same rights as the mother regarding notice of their child's birth; (4) Legislature was given 24 months to remedy section 10 of the Act to ensure constitutional validity; and (5) the order was referred to the Constitutional Court in order for constitutional invalidity to be confirmed.

Summarised by: Simone Gregor (Admitted Attorney of the High Court of South Africa)

IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GRAHAMSTOWN)

CASE NO. CA 319/2018

Reportable

Date heard: 02 March 2020

Date Delivered: 19 May 2020

In the matter between:

CENTRE FOR CHILD LAW Appellant

and

DIRECTOR-GENERAL:
DEPARTMENT OF HOME AFFAIRS First Respondent

THE MINISTER OF HOME AFFAIRS Second Respondent

MENZILE LAWRENCE NAKI Third Respondent

DIMITRILA MARIE NDOVYA Fourth Respondent

JUDGMENT

RUGUNANAN, J:

[1] Before us is an appeal, with the leave of the Court *a quo,* in which section 10 of the Births and Death Registration Act [1] ("the Act") is laid at the centre of a challenge to its constitutional validity which Bodlani AJ dismissed in a judgment handed down on 9 July 2018. The appellant is a Law Clinic based in the Law Faculty of the University of Pretoria. It is an institutional applicant

[1] Act No. 51 of 1992, as amended

and its involvement in this matter stems from acting in the public interest in accordance with the Constitution of the Republic of South Africa.[2]

[2] The appellant's participation initially derived from an application in the Court *a quo* where it sought leave to intervene[3] as third applicant in proceedings launched by the third and fourth respondents (as first and second applicants) in which they sought an order[4] reviewing and setting aside the first respondent's refusal to register the birth of their minor child. Since the judgment *a quo* renders sufficient factual context it is unnecessary to elucidate the background to the matter as this appeal concerns a legal issue that arises from the interpretation and implementation of section 10 of the Act.

[3] Referring to the founding papers of the appellant, it is only necessary to state that its involvement in the matter was triggered by the multitude of child cases,[5] all of which are similar to the refusal that confronted the third and fourth respondents. Although the appeal is unopposed it is regrettable that this Court has not had the benefit of submissions from the first and second respondents on an issue affecting vulnerable members of society, more particularly unregistered children born to unmarried fathers.

THE BEST INTERESTS OF THE CHILD

[4] The registration of the birth of a child commences with the act of giving notice of the child's birth.[6] The process culminates in the issuing of a birth certificate[7] reflecting the child's legal name containing a forename and surname, the date of birth and place of birth. Children without birth

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[2] Section 38 provides in the relevant part: "Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are- (a) …; (b) …; (c) …; (d) anyone acting in the public interest;
[3] Such leave was granted on 29 August 2017
[4] the order was granted on 4 April 2017
[5] Founding affidavit: Anjuli Leila Maistry, Record pages 86-98, paragraphs [32]-[43]
[6] Sections 9 and 10 of Births and Death Registration Act No. 51 of 1992, as amended ("the Act")
[7] See section 9(7) read with section 5 of the Act

certificates are "invisible".[8] Their lack of recognition in the civil birth registration system exposes them to the risk of being excluded from the education system and from accessing social assistance and healthcare. They are effectively denied support and assistance considered necessary for their positive growth and development.[9] The numerous child cases, (among them, those labouring under generational statelessness[10]) in the appellant's papers evokes empathy if one comprehends the extent to which lack of birth registration exacerbates marginalisation and potentially underscores inability to participate in development strategies aimed at socio-economic advancement for the achievement of productive and fulfilling lives. There is undoubtedly a disproportionate severity of such consequences for children from indigent families.

[5] The appellant's case demonstrates that section 10 poses a bar that is discriminatory on the basis of the marital status of the father of a child born out of wedlock. This directly violates the affected father's right to equality in section 9(3) of the Constitution[11] and is tantamount to unlawfully discriminating against him. By extension, the bar has the effect of denying children, with a legitimate claim to a nationality from birth,[12] a birth certificate; and in this manner it discriminates against children born to unmarried fathers on grounds that are arbitrary. A law that engenders discrimination with the potential for consequences of the enormity shown, cannot be said to be in the best interests of a child. This is the normative standard recognised by the Constitution as paramount in every matter

[8] and will remain as such notwithstanding acquiring citizenship status in terms of section 2 of the South African Citizenship Act No. 88 of 1995, as amended. The relevant section in the Citizenship Act does not purge section 10 of the BDRA. Where the Citizenship Act does make provision for citizenship by birth, it is still dependant on birth registration.

[9] ***Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development*** *2014 (2) SA 168 (CC) at paragraph [1]*

[10] This occurs when an undocumented child, having attained majority, cannot give notice of the birth of his newborn child because he (or she) is undocumented. Thus the cycle of generational statelessness is repeated with the newborn child

[11] Act 108 of 1996, as amended

[12] Section 28(1)(a) of the Constitution

concerning a child[13] notwithstanding, in my view, the marital status of the child's parents. This expanded connotation of the best interests standard permits the protection of children in matters extending beyond the realm of the rights enumerated in section 28(1) of the Constitution.[14]

THE ISSUE ON APPEAL

[6] Section 10 of the Act provides: [15]

"10. ***Notice of birth of child born out of wedlock***

(1) Notice of birth of a child born out of wedlock shall be given -

(a) under the surname of the mother; or

(b) at the joint request of the mother and of the person who in the presence of the person to whom the notice of birth was given acknowledges himself in writing to be the father of the child and enters the prescribed particulars regarding himself upon the notice of birth, under the surname of the person who has so acknowledged.

(2) Notwithstanding the provisions of subsection (1), the notice of birth may be given under the surname of the mother if the person mentioned in subsection (1)(b), with the consent of the mother, acknowledges himself in writing to be the father of the child and enters particulars regarding himself on upon the notice of birth."

(my own underlining)

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[13] Section 28(2) provides: "A child's best interests are of paramount importance in every matter concerning the child." See also ***S v M (Centre for Child Law as Amicus Curiae)*** *2008 (3) SA 232 (CC) at paragraph [12]*

[14] See ***Minister for Welfare and Population Development v Fitzpatrick and Others*** *2000 (3) SA 422 (CC) at paragraph [17]*

[15] The section was amended by the Births and Deaths Registration Amendment Act 40 of 1996 – Gazette No.17412, dated 5 September 1996. Commencement date: 5 September 1996

[7] In summary, the section makes provision for the notification of the birth of a child born out of wedlock and contemplates three scenarios in which this is achieved, namely:

(i) giving notice under the surname of the mother (section 10(1)(a));

(ii) under the surname of a person who acknowledges himself in writing to be the father but at the joint request of him and the mother (section 10(1)(b)); or

(iii) under the surname of the mother if the person mentioned in section 10(1)(b), with the consent of the mother, acknowledges in writing that he is the father (section 10(2)).

[8] What can be extrapolated from the above is that the notification process for a child born out of wedlock has a dominant preference for the surname of the mother. Moreover, in all three scenarios it is manifest that the involvement of the mother is required whether through presence (section 10(1)(a) and (b)) or by giving her consent (section 10(2)). In its present form **section 10 in its entirety implicitly bars the unmarried father of a child born out of wedlock from giving notice of the child's birth under his surname if the mother is absent.** The limited effect of the reading-in or substitution of wording proposed by the Court *a quo* in section 10(2)[16] did not, as will become evident later in this judgment, expunge the bar presented by section 10. This is the substantial issue in terms of which this appeal is grounded in the appellant's challenge to the constitutionality of the impugned provision.

THE APPROACH OF THE COURT *A QUO*

[16] i.e. the first "mother" by the word "father"

[9] Mindful of a purposive interpretation that renders a statute constitutionally compliant so that it promotes the spirit, purport and objects of the Bill of Rights, the Court *a quo* had regard to the appropriate prescripts for reading legislation in the context of a constitutional challenge. In summary, courts are enjoined to interpret legislation in conformity with the Constitution so far as this is reasonably possible and subject to the caution that the interpretation should not be unduly strained. [17] While the soundness of these prescripts is not doubted it will become apparent from the ensuing discussion that the Court *a quo* erred in their application. This resulted a strained interpretation of the legislation and effectively did not address the issue.

[10] In dealing with the issue, the starting point for the Court *a quo* was section 9 of the Act. The section (in the form in which it appears in the judgment) provides:[18]

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[17] ***Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others*** *2001 (1) SA 545 (CC) at page 599E*

[18] In its current form the section reads:

> "9. **Notice of Birth**
> (1) In the case of any child born alive, any one of his or her parents, or if the parents are deceased, any of the prescribed persons, shall, within 30 days after the birth of such child, give notice thereof in the prescribed manner, and in compliance with the prescribed requirements, to any person contemplated in section 4.
> (1A) …
> (2) Subject to the provisions of section 10, the notice of birth referred to in subsection (1) of this section shall be given under the surname of either the father or the mother of the child concerned or the surnames of both the father and mother joined together as a double barrelled surname.
> (3) …
> (3A) Where the notice of a birth is given after the expiration of 30 days from the date of birth, the birth shall not be registered, unless the notice of the birth complies with the prescribed requirements for a late registration of birth.
> (4) No registration of birth shall be done of a person who dies before notice of his or her birth has been given in terms of subsection (1).
> (5) The person to whom notice of birth was given in terms of subsection (1), shall furnish the person who gave that notice with a birth certificate, or an acknowledgement of receipt of the notice of birth in the prescribed form, as the Director-General may determine.
> (6) No person's birth shall be registered unless a forename and a surname have been assigned to him or her.
> (7) The Director-General may on application in the prescribed manner issue a prescribed birth certificate from the population register.
> (8) An original birth certificate issued in terms of subsection (7) shall in all courts of law be on the face of it evidence of the particulars set forth therein."

*"**9. Notice of Birth***

(1) In the case of any child born alive anyone of his or her parents or, if neither of his or her parents is able to do so, the person having charge of the child or a person requested to do so by the parents of the said person, shall within 30 days after the birth give notice thereof in the prescribed manner to any person contemplated in section 4.

(2) Subject to the provisions of section 10, the notice of birth referred to in subsection (1) of this section shall be given under the surname of the father of the child concerned.

(3) Where the notice of a birth is given after the expiration of 30 days from the date of the birth, the Director-General may demand that the reasons for the late notice be furnished and that the fingerprints be taken of the person whose notice of birth is given.

(4) No registration of birth shall be done of a person who dies before notice of his birth has been given in terms of subsection (1).

(5) The person to whom notice of birth was given in terms of subsection (1), shall furnish the person who gave that notice with a birth certificate, or an acknowledgement of receipt of the notice of birth in the prescribed form, as the Director-General may determine.

(6) No person's birth shall be registered unless a forename and a surname have been assigned to him."

[11] Having applied the aforementioned prescripts for reading legislation, the reasoning of the Court *a quo* is that nowhere does section 9 indicate that the

notification of birth may only be given by married parents. Consequently, any one or both parents of a child enjoys the right to give notice of the child's birth regardless of the parents' marital status. The rationale for advancing this interpretation arose from the wording *"any child born alive"* which meant any child born alive regardless of the marital status of the child's parents. Accordingly, in the opinion of the Court *a quo,* section 9 did not differentiate between married and / or unmarried parents.[19]

[12] Dealing specifically with section 10, this is what the judgment (quoting only where relevant) states:[20]

(my own emphasis is in bold)

> *"Section 9(6) of the Act which prescribes that no person's birth shall be registered unless a forename and a surname have been assigned to him. Despite the rubric to the section* [i.e. section 10]*, section* ***10 of the BDRA does not deal with the notification of a child's birth****. On a proper construction* ***the section deals with the assignment of a surname to a child during the process of notification of their birth, which is dealt with in section 9*** *of the BDRA. An analysis of this section in its current form shows that the first "mother" in subsection (2) was intended to be "father". … on their current formulation* ***sections 9 and 10 of the BDRA do not forbid unmarried fathers to register the births of their children in the absence of the mother who gave birth to such children. The requirement is that such children must have been born alive, in which event any one of the parents, regardless of their marital status, would be able to give notice of their birth.*** *This interpretation is not only faithful to the actual wording of the statute,*

[19] Judgment, paragraphs [24] and [26]
[20] At paragraph [27]

it also leaves the statute constitutionally compliant inasmuch as it does not strain the meaning of the words employed therein."

ANALYSIS

[13] Section 9 regulates the notification of all births by any one of the parents of a child born alive, and incorporates provision to the effect that no person's birth shall be registered unless a forename and a surname has been assigned to that person (*per* section 9(6)). Evident from the reasoning employed by the Court *a quo* is that section 9 heralds section 10 because it does not differentiate between married and unmarried parents. The corollary to such reasoning is that the child of an unmarried father may be notified under the surname of the father. For reasons that will become apparent below, I am unable to agree that the approach charted by the judgment *a quo* cures section 10 of the issue occasioning this appeal. This is because the interpretation of section 9 achieved a strained effect by excluding from consideration that the notification of any child born alive is subject to the provisions of section 10 which deals with the notification of birth of a child born out of wedlock.

[14] What section 9(1) read with section 9(2) seeks to make provision for is that notice of a child's birth should be given immediately upon the birth of the child and not later than 30 days by either parent but *"Subject to the provisions of section 10"*. In the latter respect, the Court *a quo* overlooked the effect specifically of section 9(2).[21] It maintains a distinction between the overall functioning of section 9 and section 10. For clarification, section 9 serves to regulate the notification of all children's births by parents regardless of marital status, whereas section 10 regulates the surname of a child born out of wedlock. Thus section 10 constitutes the mechanism through which the content of the notice in section 9 is fulfilled. Put otherwise, section 10 regulates the surname under which a child born out of wedlock

[21] and this includes sub-section (2) as it appears in the amended section 9

will be notified under section 9. That surname is of paramount importance to a child's identity particularly where the child's mother is absent during the notification process. In its analysis of section 9 and 10, the Court *a quo* did not appreciate this distinction and its importance.

[15] Even though section 9 empowers an unmarried father to give notice of his child's birth, the exercise by an unmarried father of his right under section 9(1) is (by reason of section 9(2)) contingent on either the mother's presence (as *per* section 10(1)(b) or her consent (*per* section 10(2)). In the latter regard Counsel for the appellant pointed to section 26 of the Children's Act[22] which he correctly submitted did not provide a solution to the hurdle posed by section 10 of the BDRA, since its efficacy is similarly dependent on a mother's consent. In effect, despite an unmarried father being permitted to give notice of his child's birth in terms of section 9, section 10 presents a bar when it comes to notifying the birth of his child under his surname in the mother's absence. Conceivably, such absence (or want of consent) might be occasioned by any number of reasons: the mothers in question are not capable or willing to give their consent either because they are themselves undocumented, or they are unwilling, or perhaps have absconded, or died either during childbirth or later, or are unable to be located.

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[22] Act No. 38 of 2005, as amended. The relevant section reads:

26. Person claiming paternity

(1) A person who is not married to the mother of a child and who is or claims to be the biological father of the child may-
  (a) apply for an amendment to be effected to the registration of birth of the child in terms of section 11(4) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), identifying him as the father of the child, if the mother consents to such amendment; or
  (b) apply to a court for an order confirming his paternity of the child, if the mother-
    (i) refuses to consent to such amendment;
    (ii) is incompetent to give consent due to mental illness;
    (iii) cannot be located; or
    (iv) is deceased.

(2) This section does not apply to-
  (a) the biological father of a child conceived through the rape of or incest with the child's mother; or
  (b) any person who is biologically related to a child by reason only of being a gamete donor for purposes of artificial fertilisation.

[16] In addressing the impediment presented by section 10, the judgment *a quo* proposes a substitution of wording i.e. the first *"mother"* in section 10(2) by the word *"father"*. Differently stated, this constitutes a reading-in. The reading-in achieved a limited scope of application, in that, although notice of birth may be given under the surname of the father, section 10(2) still requires the consent of the child's mother (see paragraph 7(iii) above).

[17] In heads of argument counsel for the appellant correctly submitted that the reading-in of the word "*father*" in section 10(2) does not address the provisions of section 10(1) which prescribe that the notice of birth of a child born out of wedlock must be given under the surname of the mother, or at the joint request of a mother under the surname of the father where the father acknowledges paternity.

[18] Clearly, the reading-in exercise proposed by the Court *a quo* is inadequate particularly because it does not pertinently address the fundamental problem that section 10 (in its entirety) does not provide a mechanism for a child born out of wedlock to be notified in the surname of his or her father **where the mother is absent.** Somewhat ironically, the Court *a quo* appeared to recognise this bar in Regulation 12(1)[23] which states that *"a notice of birth of a child born out of wedlock shall be made by the mother of the child"*. Considering that the regulation is inextricably interwoven with section 10 and is defective in the same manner, the judgment *a quo* nonetheless reflects a finding that the regulation is unconstitutional because it does not provide for an unmarried father to give notice of his child born out of wedlock in the absence of the child's mother. In its judgment[24] the Court *a quo* corrected the defect in regulation 12(1) to include reference to a child's father. The effect of the inclusion is that notice may be made by either the mother or father of a child born out of wedlock.

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[23] i.e the *Regulations on the Registration of Births and Deaths*, 2014 published in *Government Notice R128 in Government Gazette 37373 dated 26 February 2014. Commencement date: 1 March 2014.*
[24] At paragraph [35]

[19] Reverting to the Act, to overcome the bar presented by section 10 the appellant has proposed, as indicated by the underlined wording below, that section 10 be deemed to read as follows:

> *"10.* ***Notice of birth of child born out of wedlock***
>
> *(1) Notice of birth of a child born out of wedlock shall be given -*
>
> *(a) under the surname of the mother; or*
>
> *(b) under the surname of the father where the father is the person giving notice of the child's birth and acknowledges his paternity in writing under oath; or*
>
> *(c) at the joint request of the mother and of the person who in the presence of the person to whom the notice of birth was given acknowledges himself in writing to be the father of the child and enters the prescribed particulars regarding himself upon the notice of birth, under the surname of the person who has so acknowledged."*

[20] The Court *a quo* did not consider the practicality of the remedy proposed by the appellant as an expedient means of removing the bar against unmarried fathers, and by extension, their children. I am minded that the reading-in proposed by the appellant addresses the issue raised in this appeal by (i) removing the impediment confronting unmarried fathers, and (ii) removing the impediment affecting a specific class of children, in this case, children born out of wedlock. Against the background of what has been said in the preceding paragraphs of this judgment, I am satisfied that section 10 of the *BDRA* falls to be declared inconsistent with the Constitution and is invalid to the extent that it does not allow an unmarried father to register the birth of his child in the absence of the child's mother.

THE APPROPRIATE REMEDY

[21] Where any law is declared invalid and inconsistent with the Constitution a Court may make an order that is just and equitable [25] and which provides appropriate relief.[26] The appellant's proposal for section 10(1)(b) eliminates wording chosen by the Legislature which has been shown to be constitutionally non-compliant. The choice of reading-in proposed by the appellant serves a legitimate purpose and is premised on *"curing unconstitutionality based on under-inclusiveness"* of the impugned statutory provision *"that unjustifiably infringes the rights of identifiable groups that are excluded from certain benefits".*[27]

[22] I am satisfied that the present is an appropriate circumstance for this Court to adopt the course proposed by the appellant. It is constitutionally permissible for a court to read words into a statute to remedy unconstitutionality.[28] The doctrine of the separation of powers renders me cognisant that a reading-in should not easily be resorted to as it may constitute a possible encroachment onto legislative territory. For this reason, the order below incorporates a suspensive component in recognition of the Legislature's ultimate responsibility for amending legislation or devising other means as a legislative solution[29] while simultaneously ensuring effective redress for an identifiable group of fathers and their children.

[23] In the circumstances the following order issues:

1. The appeal is upheld.

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[25] Section 172(1)(b) of the Constitution
[26] Section 38 of The Constitution
[27] ***C and Others v Department of Health and Social Development, Gauteng and Others*** *2012 (2) SA208 (CC) at 231B*
[28] ***National Coalition for Gay and Lesbian Equality and Another v The Minister of Justice and Others 2000 (2) SA 1 (CC)*** *at paragraphs [69]-[73]*
[29] ***Gaertner and Others v Minister of Finance and Others*** *2014 (1) SA 442 (CC) at paragraph [84]*

2. It is further ordered in terms of section 172 of the Constitution of South Africa Act No. 108 of 1996, as amended:

2.1 Section 10 Births and Death Registration Act No 51 of 1992, as amended ("the Act") is, with effect from the date of this order, declared invalid and inconsistent with the Constitution to the extent that it does not allow unmarried fathers to give notice of the births of their children under the father's surname in the absence of the mothers of such children.

2.2 To remedy this defect section 10 of the Act shall be deemed to read as though it provides as follows:

"(1) Notice of birth of a child born out of wedlock shall be given:

(a) under the surname of the mother; or

(b) under the surname of the father where the father is the person giving notice of the child's birth and acknowledges his paternity in writing under oath;

(c) at the joint request of the mother and of the person who in the presence of the person to whom the notice of birth was given acknowledges himself in writing to be the father of the child and enters the prescribed particulars regarding himself upon the notice of birth, under the surname of the person who has so acknowledged.

2.3 The declaration in paragraphs (2.1 and 2.2) is suspended for 24 (twenty four) months to enable the Legislature opportunity

to amend section 10 of the Act or to devise means for ensuring that it is constitutionally compliant.

2.4 This order is referred to the Constitutional Court for confirmation of the order of constitutional invalidity.

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S. RUGUNANAN

JUDGE OF THE HIGH COURT

I agree. It is so ordered.

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E. REVELAS

JUDGE OF THE HIGH COURT

I agree. It is so ordered.

_____

S. X. MAPOMA

ACTING JUDGE OF THE HIGH COURT

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This judgment was handed down electronically by circulation to the abovementioned legal representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 19 May 2020.