



Life sentence for HIV positive child rapist

A 37 year old HIV positive South African man was recently sentenced to life for raping an 8 year old girl by a Pretoria High Court Judge. This is widely regarded as an appropriate sentence for such an offense. In this case the man raped the girl knowing quite well that he was positive and he pleaded guilty and as such he indeed deserved a harsh sentence to send a strong message deterrent to would be offenders.

In Zimbabwe the number of cases of child sexual abuse is really high and if such deterrent sentences are passed, especially for those that involve HIV infection, then we might see a drop in the number of cases, notwithstanding the

difficulties in proving that the rapist knew that he was HIV positive at the time of the rape.

By raping an 8 year old girl and in the process infecting her with HIV, the man in question did not only traumatize the girl but he also cut short her life and sentenced her to death.

The children we interact with in the schools always call for stiffer penalties for child sexual offenders ranging from life imprisonment, death penalty and even castration.

Child rights activists have argued for stiffer sentences in cases where the victim is infected with HIV to have a deterrent effect to would be offenders.

Statistics from the Rotten

Row Criminal Magistrates Court show that 47 cases were brought between January to 5 May 2008. The highest sentence was 14 years imprisonment with 5 years suspended.

There is need for a concerted effort to lobby and advocate for the life sentence for rapists infecting the child with HIV. For the South African case **JUSTICE WAS NOT ONLY DONE BUT WAS SEEN TO HAVE BEEN DONE.**

It never rains: Children evicted from their deceased parents` house.

In the month of April we dealt with a case in which some children are being evicted from their deceased parents` house in a certain small town in Zimbabwe. The case has a lot of complexities which are quite interesting. The parents

died a few years ago leaving behind their six children but they did not leave a will spelling out how their estate was going to be administered. The six children then began staying together at the house. The second eldest son died in

2006. The remaining children got the shock of their lives when a man came and claimed that his late father had bought the house from their late brother.

They then started to receive eviction papers but they could not understand them.

Inside this issue:

Life sentence for child rapist	1
Children evicted from their late parents` house	1
The world family Day	2
Children caught in post election violence	3
The best interest of the child	3
Critique of the best interest doctrine	3

What we can learn from the story

- It is very important to write a will.
- It is important for children to have an understanding of legal issues.
- The demand for legal representation for children is very high.

It never rains: Children evicted from their deceased parents' house (Cont)

Later on they saw the name on the utility bills changed to the name of the claimant and this prompted them to visit the city council where they were told the house had been sold by their late brother. They then received eviction orders but they refused to vacate the house since they were not aware of such an arrangement.

As if that was not enough the police came and arrested the children for contempt of court and upon release they were told never to return to the house. To make matters worse the new owner of the house then sold it to another person.

The case presents many dilemmas that we face in trying to provide legal services to children in difficult circumstance. It raises several questions but very few satisfactory answers. All the key wit-

nesses to the case are not there and it is very difficult to come up with a lasting solution for the children.

However, the dynamic nature of this case shows us the importance of writing a will and knowledge of simple legal issues. JCT is working in various in various schools to raise awareness on legal issues that children face in their daily lives. If these children had the knowledge of inheritance matters they should have quickly acted to change ownership as soon as both parents had died. Knowledge of simple legal issues would have also helped them to take swift action as soon as they started to receive eviction letters and they could have fought through the justice delivery system.

As part of JCT's legal education cam-

paign children and members of the public are educated so that they have an understanding of such legal matters especially the ones that involve inheritance. These cases are on the increase due to the Aids pandemic.

The World Family day

"The family shall be the natural unit and basis of society . It shall enjoy the protection and support of the State for its establishment and development" - The African Charter on the Rights and Welfare of the Child.

The 15th of May is the International Day of Families. In our previous issue we highlighted that divorce and separation were at the centre stage of litigation in-

volving children. We also urged parents to consider the interests of their children when they cannot live together for whatever reason.

Several families are experiencing breakdown due to several factors ranging from the Aids pandemic to social issues like divorce and separation.

"The family shall be the natural unit and basis of society".

There are some children who have grown up at care institutions and have not managed to know their parents and relatives.

On the 15th of May we urge everyone to help children in these institutions by providing love, support and guidance. There is no substitute for the family.

Children caught in post election violence

Every child shall be entitled to the enjoyment of the rights and freedoms, irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status". – The African Charter on the

Rights and Welfare of the Child (Article 3).

Children have not been left out in the recent acts of post election violence as they find themselves caught in the crossfire. Any form of violence is detrimental to the growth of the child and

JCT condemns all acts of violence against children.

A parent or guardian's political opinion should not be a reason for a child's subjection to any act of violence.

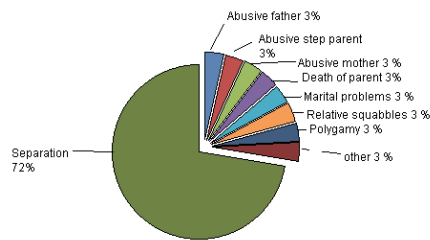
Children are a gift from above and the future leaders of this country so they must be treated as such.

Child Law Corner: The Doctrine of the best interest of the child

In cases involving children, the best interests of the children are always the decisive factor. It however not clear to many members of the community as to the meaning of this concept.

The best interests of the child is a doctrine used by the courts to determine many issues relating to the well being of a child. Upon divorce or separation of the children's parents, the doctrine is applied to decide on the following issues: Who will live with the children? How much access will be allowed to the

non custodian parent? How much child maintenance should be paid and by whom? As is depicted by the pie chart, 72% of cases of custody received by JCT in April 2008 mainly arose from separation of the parents of the children. The best interest of the child is sometimes used in cases where non par-



ents for example grand parents ask a court to stop a parent's access to a child.

Our courts apply the best interest of the child doctrine which is called the welfare principle in England. Our Children's Act is not specific as to what constitutes the

best interests of the child but the courts have equated this to the welfare principle. Accordingly, it is clear that the court must consider:

1. the wishes and feelings of each child concerned having regard to their age and understanding
2. The current and future educational needs of the child
3. The likely effect of any change in circumstances to the children
4. Any harm suffered or the risk of harm in the future
5. The capability of each parent in meeting the child's needs.

The consideration of the children's feelings ensures that the human rights of the

The doctrine of the best interest of the child (continued)

Child are at the forefront of consideration. The courts have been careful in balancing the claims and interests of parents with the interests of the child.

The application of the best interests of the child doctrine has historically tended to favour the mother of the children because many courts continue to give weight to

the traditional role of the mother as the primary caregiver. The courts will not readily deprive a mother of lawful custody without good cause; in this regard the mother enjoys a built in advantage.

In cases involving children, the best interests of the children are always the decisive factor

In deciding the best interests of the child, the court may order various investigations to be undertaken by the probation officers at the Social Welfare's department linking to the stability of the home environment provided by each of the child's parents.

Critique of the best interests of the child doctrine

The doctrine of the best interests of the child has not gone without being criticized. The critics have highlighted that joint custody is better in that it creates a presumption of 50/50 shared custody so that the children can spend equal time with both parents unless if there are reasons against this. Whether the best interests of the child resulting in sole custody actually causes parental conflict or the parental conflict is the one which caused

the development of the best interest of the child doctrine in awarding sole custody can be a question of the chick and egg puzzle.

What is clear is that custody arrangements and shared custody only work where there is little parental conflict.

Some people argue that the doctrine of

the best interest of the child should not be used at all where the cases involve third parties against natural fit parents because the latter have an inherent fundamental right to access.

If you have any interests in discussing the doctrine, do not hesitate to get in contact with us.

