

FAMILY LAW

Children – Paternity – DNA test – Refusal to acknowledge child as son – Whether the court is empowered to order the defendant to undergo a DNA test – Federal Constitution, article 8 – Deoxyribonucleic Acid (DNA) Identification Act 2009, sections 12 and 13, – United Nations Convention on the Rights of the Child (UNCRC), article 7 – Births and Deaths Registration Act 1957, section 13

Lee Lai Cheng (suing as the next friend of Lim Chee Zheng and herself) v Lim Hooi Teik
[2017] 10 MLJ 331, High Court

Facts The plaintiff entered into a commercial contract with the defendant's company to sing and record albums. It was alleged that the relationship between the plaintiff and the defendant after the execution of the contract became close resembling that of a husband and wife which lasted for eight years. A conflict ensued between the parties when the plaintiff became pregnant and refused abortion at the request of the defendant. When the child ("the Child") was born, the defendant refused to acknowledge the Child as his son. The plaintiff brought an action as the next friend of the Child against the defendant claiming maintenance and a declaration compelling the defendant to undergo a DNA test to determine the paternity of the child.

Issue The main issue was whether the court is empowered to order the defendant to undergo a DNA test.

Held In dismissing the suit, the High Court held that the court has no power to order the defendant to undergo the DNA test as there is no law that empowers the court to do so. The court's inherent jurisdiction and power is also only limited to prevent injustice or to prevent abuse of the process of the court. Further, it was held that the Deoxyribonucleic Acid (DNA) Identification Act 2009 has no application to civil disputes and that article 8¹ of the Federal Constitution does not confer the 'right to pedigree' such as the right of the minor to know his or her true identity and to have the possibility of contact with each natural parent. Article 7² of the United Nations Convention on the Rights of the Child (UNCRC) must also be read together with section 13³ of the Births and Deaths Registration Act 1957 (BDRA) as although article 7 of UNCRC confers upon the child the right to know the identity of his/her father but section 13 of the BDRA exempts the father from giving any information concerning the birth of the child.

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¹ Equality

² "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents."

³ Provisions as to father of illegitimate child