WRONGFUL LIFE: CAN A CHILD SUE FOR BEING BORN?

THE NIGERIAN LEGAL PERSPECTIVE

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Abstract

This article examines the controversial concept of wrongful life, where a claimant alleges that negligence led to their birth into a life of severe suffering, and evaluates its viability under Nigerian law. It aims to determine whether such claims can or should be recognised, situating the discussion within broader global jurisprudence. The study adopts a doctrinal and comparative methodology, analysing case law, statutes, and scholarly works from Nigeria and selected jurisdictions, including England and Wales, Australia, the United States, and the Netherlands. The article finds that traditional wrongful life claims seeking damages for the injury of being born are unlikely to succeed in Nigeria. This is due to the strong influence of English common law rejecting such claims, the difficulty of assessing damages, restrictive abortion laws affecting causation, and public policy considerations grounded in the sanctity of life. However, it identifies a narrow potential pathway under Section 17(1) of the Child's Rights Act 2003, which may allow limited claims based on pre-conception negligence, particularly for recovery of extraordinary medical and care costs. The study recommends that Nigerian courts reject general wrongful life claims but remain open to awarding special damages in clear cases of pre-conception negligence. It also calls for legislative clarification and public health reforms. Overall, while wrongful life claims largely conflict with Nigerian legal principles, a limited compensatory approach focused on economic loss may be viable.

Keywords: Wrongful life, Pre-conception negligence, Nigerian legal system, Comparative jurisprudence, Child's Rights Act 2003

1.0 Introduction

The concept of a wrongful life lawsuit is one of the most ethically and legally controversial issues in modern law. It challenges established legal ideas about what amounts to injury, how damages should be assessed, and how the law values human life[191]. A wrongful life claim is a civil action brought on behalf of a minor, usually through a guardian or next friend, who argues that they have suffered harm simply by being born. Unlike claims based on injuries sustained during pregnancy or childbirth, this action is based on the condition of the child's life itself. The child contends that their life is so severely burdened by congenital disabilities or serious genetic disorders that nonexistence would have been preferable to a life of constant suffering.[192]

The foundation of a wrongful life claim is the allegation of negligence, most commonly against medical practitioners.[193] It is argued that if healthcare providers had properly diagnosed fetal abnormalities, adequately informed the parents of the associated risks, or offered lawful options to prevent the birth, the child would not have been born into a life marked by extreme hardship.[194] The claim therefore rests on the assertion that the defendant's failure directly resulted in the child's existence in an impaired state, which is presented as the injury for which compensation is sought. Wrongful life claims are distinct from the more widely recognised action for wrongful birth. In wrongful birth cases, it is the parents who bring the claim, seeking damages for the financial and emotional costs of raising a child with disabilities.[5] Such claims are based on the argument that negligent prenatal care or genetic counselling deprived the parents of the opportunity to avoid conception or terminate the pregnancy. In contrast, wrongful life actions focus entirely on the child's own experience and suffering, rather than on the parents' loss of choice.

[191] Billauer BP, 'The Sperminator as a Public Nuisance: Redressing Wrongful Life and Birth Claims in New Ways (AKA New Tricks for Old Torts)' (2019) 42 UALR L Rev 1 <https://lawrepository.ualr.edu/lawreview/vol42/iss1/1/> accessed 2 February 2026.

[192] Billauer BP, 'Wrongful Life in the Age of CRISPR-CAS: Using the Legal Fiction of "The Conceptual Being" to Redress Wrongful Gamete Manipulation' (2019) 124 Penn St L Rev 435 <https://heinonline.org/HOL/P?h=hein.journals/dlr124&i=451> accessed 2 February 2026.

[193] Caldwell N, 'Wrongful Life' [2010] NZ Law Students' J 267 <https://nzlsj.com/nzlsj-vol-2-no-2-2010/> accessed 2 February 2026.

[194] Billauer BP, 'Wrongful Life in the Age of CRISPR-CAS: Using the Legal Fiction of "The Conceptual Being" to Redress Wrongful Gamete Manipulation' (2019) 124 Penn St L Rev 435 <https://heinonline.org/HOL/P?h=hein.journals/dlr124&i=451> accessed 2 February 2026.

A wrongful life claim requires the court to engage in an exceptionally difficult moral and legal exercise. The court is asked to compare a life lived with severe disabilities to the alternative of never having existed and to place a monetary value on that comparison. This task raises serious concerns about the measurement of damages and the implications of suggesting that a life, however impaired, is less valuable than non-existence. For these reasons, courts in many jurisdictions have approached such claims with caution and have largely rejected them. The dominant reasons for this rejection include public policy considerations, the practical impossibility of calculating damages, and a strong philosophical resistance to declaring that any human life is not worth living.

This article examines wrongful life claims from the Nigerian legal perspective. It situates the discussion within the broader international debate and considers whether Nigerian common law principles, constitutional protections, or changing social attitudes could support the recognition of such a claim. It also explores whether Nigerian courts are more likely to follow the prevailing global position, which emphasises the sanctity of human life and rejects wrongful life actions as incompatible with fundamental legal and moral values.

2.0 Definition of Wrongful life

The legal concept of wrongful life refers to a civil claim, usually founded in tort, brought by or on behalf of a child who is born with severe disabilities against a party whose negligence allegedly led to the child's birth. In most cases, the defendant is a healthcare professional or medical institution.[6] The claim is based on the assertion that a duty of care was breached through the failure to properly diagnose a fetal abnormality, adequately inform the parents of the risks involved, or present lawful options that could have prevented the birth. As a result of this negligence, the child argues that they were born into a life marked by extreme suffering and serious hardship, which would not have occurred but for the defendant's conduct.

3.0 A Comparative Analysis of the Recognition and Enforcement of Wrongful Life Action In some Notable jurisdictions

The central legal and philosophical difficulty of wrongful life claims lies in what the plaintiff asks the court to do. The court is required to compare a life affected by serious impairment with the state of never having been born and to assign a monetary value to that comparison. This effectively

treats life itself as a compensable legal injury. For this reason, courts in most jurisdictions have rejected wrongful life claims on public policy grounds. Jurisdictions such as England and Wales, Australia, and the majority of states in the United States have refused to recognise the claim, citing the impossibility of making such a comparison and a deep reluctance to declare that any human life is not worth living.[195]

Despite this general rejection, a small number of jurisdictions have recognised wrongful life claims in a limited form. Courts in places such as California, New Jersey, and the Netherlands have allowed such actions, but they usually restrict the damages that can be awarded.[196] Rather than compensating for pain and suffering or placing a value on life itself, these courts limit recovery to specific and measurable economic losses, such as the cost of lifelong medical treatment and custodial care required as a result of the disability. This section examines how different legal systems have approached wrongful life actions, the key cases that shaped their development, and the legal and academic responses that followed.

3.1 The Recognition and Enforcement of Wrongful Life Actions in England and Wales

The legal position in England and Wales has traditionally been one of firm rejection of wrongful life claims. This position was established by the Court of Appeal and remained dominant for decades. However, a recent High Court decision has introduced a narrow exception, limited to cases involving negligence that occurred before conception.[197] The leading authority rejecting wrongful life claims is *McKay v. Essex Area Health Authority*[198] *(1982)*. In that case, the claimant was born with serious disabilities caused by congenital rubella syndrome. She argued that her mother's doctors were negligent in failing to diagnose the rubella infection and that, as a result, her mother was denied the opportunity to lawfully terminate the pregnancy. The claimant therefore maintained that she was born into a life of suffering because of the doctors' negligence. The Court of Appeal unanimously struck out the claim, holding that it disclosed no reasonable cause of action. The judgments of Stephenson and Ackner LJJ set out the core reasons for rejecting wrongful life

[195] Giesen I, 'The Use and Influence of Comparative Law in "Wrongful Life" Cases' (2012) 8 Utrecht L Rev 35 <https://doi.org/10.18352/ulr.194> accessed 2 February 2026.
[196] Ibid
[197] Scott R, 'Reconsidering "Wrongful Life" in England after Thirty Years: Legislative Mistakes and Unjustifiable Anomalies' (2013) 72 CLJ 115 <https://doi.org/10.1017/S000819731300005X> accessed 2 February 2026.
[198] [1982] 1 QB 1166.

claims, which later influenced courts in many other common law jurisdictions. First, the court held that a doctor does not owe a duty of care to a fetus to advise the mother to terminate the pregnancy. Recognising such a duty would, in the court's view, undermine the sanctity of human life and would be contrary to public policy. Secondly, the court emphasised the impossibility of assessing damages. Ackner LJ explained that compensation would require a comparison between the value of non-existence and the value of existence in a disabled state. Since non-existence cannot be evaluated, no legally recognisable damage could be established. Thirdly, the court referred to the Congenital Disabilities (Civil Liability) Act 1976, noting that the statute assumed that, but for negligence, the child would have been born healthy, not that the child would not have been born at all. This interpretation was taken as statutory confirmation that wrongful life claims were not intended to be recognised.[199]

For many years, McKay represented a complete barrier to wrongful life claims in England and Wales. However, this position was revisited in *Evie Toombes v. Dr. Philip Mitchell*[200]. In that case, the claimant was born with a serious spinal condition. Before conception, her mother had consulted her general practitioner for advice on folic acid supplementation. The doctor negligently failed to give appropriate advice, and the mother conceived shortly afterwards. The claimant argued that if proper advice had been given, her mother would have delayed conception, and a different, healthy child would have been born. As a result, the claimant herself would never have been conceived. The defendant argued that the claim was effectively a wrongful life action and should be barred by McKay. Mrs. Justice Lambert rejected this argument and drew an important distinction between negligence occurring before conception and negligence occurring after conception. She explained that McKay was concerned primarily with post-conception negligence, where recognising a duty of care would amount to imposing a duty to abort the fetus, which the law does not accept. By contrast, pre-conception negligence fell [201]within section 1(2)(a) of the Congenital Disabilities (Civil Liability) Act 1976, which allows a child to sue where a wrongful act affected a parent's ability to have a healthy child. The court held that the negligent advice given to the mother

[199] Teff H, 'The Action for "Wrongful Life" in England and the United States' (1985) 34 ICLQ 423 <https://doi.org/10.1093/iclqaj/34.3.423> accessed 2 February 2026.
[200] [2020] EWHC 3506 (QB)
[201] Congenital Disabilities (Civil Liability) Act 1976

constituted such an occurrence. As a result, the claim was allowed to proceed, subject to a strict requirement that the claimant prove a direct causal link between the circumstances of conception and the disability.[202]

The Toombes decision has generated significant debate. Some commentators regard it as a limited revival of wrongful life claims, arguing that it promotes fairness by allowing the child to recover the costs of lifelong care, particularly where the negligence occurred before conception. Others criticise the decision, suggesting that the distinction between pre- and post-conception negligence is artificial and that the same policy objections identified in McKay still apply.[203] In practical terms, the decision allows a disabled child in pre-conception cases to bring an independent claim for lifelong care costs, rather than relying solely on a parent's wrongful birth claim. The long-term significance of this development depends on whether higher courts will approve this interpretation.

3.2 The Recognition and Enforcement of Wrongful Life Actions in Australia

Australia has adopted one of the strongest judicial rejections of wrongful life claims, closely aligning itself with the traditional English position. The issue was conclusively settled by the High Court of Australia in *Harriton v. Stephens*[204]**.** The claimant was born with severe disabilities caused by congenital rubella.[205] She alleged that her mother's doctor negligently failed to diagnose the rubella infection and thereby deprived her mother of the opportunity to terminate the pregnancy. As a result, she claimed that she was born into a life of profound suffering. By a majority of six to one, the High Court dismissed the claim. The joint judgment emphasised two main reasons for rejection. First, the court held that a doctor does not owe a duty of care to an unborn child to advise the mother in a way that would lead to the child's abortion. Recognising such a duty was said to be inconsistent with community values.[206] Secondly, the court found that the law of negligence

[202] Ruda A, 'I Didn't Ask to Be Born: Wrongful Life from a Comparative Perspective' (2010) 1 J Euro Tort L 204 <https://doi.org/10.1515/jetl.2010.1.2.204> accessed 2 February 2026.

[203] Schuster WR, 'Rights Gone Wrong: A Case against Wrongful Life' (2015) 57 Wm & Mary L Rev 2329 <https://scholarship.law.wm.edu/wmlr/vol57/iss6/7/> accessed 2 February 2026.

[204] (2006) 226 CLR 52.

[205] Stretton D, '*Harriton v Stephens, Waller v James*: Wrongful Life and the Logic of Non-Existence' (2007) 30 Melb U L Rev 972 <https://law.unimelb.edu.au/__data/assets/pdf_file/0008/1707911/30_3_11.pdf> accessed 2 February 2026.

[206] Grey A, '*Harriton v Stephens*: Life, Logic and Legal Fictions' (2006) 28 Syd L Rev 545 <https://www.researchgate.net/publication/265240538_Harriton_v_Stephens_Life_Logic_and_Legal_Fictions> accessed 2 February 2026.

was incapable of assessing damages in a wrongful life claim, because it requires a comparison between life with disabilities and non-existence, which the court considered logically impossible. Justice Kirby dissented, arguing that the law should adapt to address a real and serious harm. He suggested that damages could be limited to the additional costs associated with the disability, thereby avoiding the need to compare life with non-life. Despite this dissent, the majority decision provided clear legal certainty that wrongful life claims are not recognised under Australian common law.[207] The judgment attracted considerable commentary. Some critics argued that the court failed to reflect modern medical realities, where negligence can directly lead to the birth of a severely disabled child. Academic commentators described the decision as a firm rejection that left no room for future development unless courts fundamentally reconsidered the ethical and moral issues involved. The decision has had the effect of directing all related claims in Australia towards wrongful birth actions brought by parents.

3.3 The Recognition and Enforcement of Wrongful Life Actions in the United States

The position in the United States is fragmented, as each state determines its own approach. Nevertheless, the majority of states reject wrongful life claims, relying on public policy considerations, the sanctity of life, and the impossibility of comparing existence with nonexistence. States such as New York, Pennsylvania, and Illinois are among those that have refused to recognise the cause of action.[208]

California was the first jurisdiction to recognise wrongful life claims in a limited form, most notably in *Turpin v. Sortini*[209]. In that case, the claimant was born deaf due to a hereditary condition. Her parents had been negligently advised that the condition affecting their first child was not hereditary. Relying on that advice, they conceived another child.[210] The claimant argued that if her parents had been properly informed, she would not have been conceived. The California Supreme Court acknowledged the difficulty of the claim and accepted that general damages for

[207] Watson P, '*Edwards v Blomeley; Harriton v Stephens; Waller v James*: Wrongful Life Actions in Australia' (2002) 26 Melb U L Rev 736 <https://search.informit.org/doi/10.3316/agis_archive.20031780> accessed 2 February 2026.
[208] Strasser M, 'Wrongful Life, Wrongful Birth, Wrongful Death, and the Right to Refuse Treatment: Can Reasonable Jurisdictions Recognize All But One?' (1999) 64 Mo L Rev 29 <https://scholarship.law.missouri.edu/mlr/vol64/iss1/3/> accessed 2 February 2026.
[209] (1982) 31 Cal.3d 220.
[210] Teff, H. (1985). The action for "wrongful life" in England and the United States. *International & Comparative Law Quarterly*, 34(3), 423–441. <https://doi.org/10.1093/iclqaj/34.3.423

being born impaired rather than not born at all could not be rationally assessed.[211] However, the court drew a distinction between general damages and special damages. While it rejected claims for pain and suffering or loss of enjoyment of life, it allowed the child to recover special damages for the extraordinary medical and care expenses resulting from the disability.[212][213] These costs were considered measurable economic losses directly attributable to the negligence. This approach narrowed the broader position previously taken in *Curlender v. Bio-Science Laboratories.*[25]

The Turpin decision has been both influential and controversial. Supporters see it as a practical compromise that avoids philosophical difficulties while ensuring that the child can recover the costs of lifelong care. Critics argue that the approach is conceptually inconsistent, since it allows damages even though the court refuses to recognise being born as a legal injury. Despite this debate, few states have followed California's example.[214]

New Jersey adopted a similar approach in [215]*Procanik v. Cillo*[27]. The New Jersey Supreme Court rejected claims for general damages but allowed recovery for extraordinary medical and related expenses caused by congenital disabilities.[216] This position has been reaffirmed in later cases, firmly establishing New Jersey as a jurisdiction that recognises wrongful life claims only to the extent of special damages.[217]

[211] Preston GW, '*Curlender v Bio-Science Laboratories* and *Turpin v Sortini*: The Rise and Fall of Wrongful-Life in California' (1982) 13 Sw U L Rev 369 <https://heinonline.org/HOL/P?h=hein.journals/swulr13&i=385> accessed 2 February 2026.
[212] Ledvina P, 'Damages: *Curlender v Bio-Science Laboratories*: A Rational Step Toward Judicial Recognition of Wrongful Life' (1981) 34 Okla L Rev 614 <https://heinonline.org/HOL/P?h=hein.journals/oklr34&i=634> accessed 2 February 2026.
[213] Cal. App. 3d 811, 165 Cal. Rptr. 477 (Cal. App. 1980)

[214] Pelletier PE, 'On Determining Liability for Wrongful Life: *Curlender v Bio-Science Laboratories*—A Step in the Right Direction' (1981) 17 New Eng L Rev 213 <https://heinonline.org/HOL/P?h=hein.journals/newlr17&i=225> accessed 2 February 2026.
[215] N.J. 339, 478 A.2d 755 (1984)

[216] Tani KM, 'When a Wrong Creates a Life: Tort Responses to Children Born from Institutional Sexual Violence' (2024) 73 DePaul L Rev 617 <https://ssrn.com/abstract=4758391> accessed 2 February 2026.
[217] Moutos CP and Phelps JY, 'Wrongful Birth and Wrongful Life Lawsuits in Obstetrics and Gynecology' (2024) 231 Am J Obstetrics & Gynecology 611 <https://doi.org/10.1016/j.ajog.2024.06.043> accessed 2 February 2026. [30] Nys HFL and Dute JCJ, 'A Wrongful Existence in the Netherlands' (2004) 30 J Med Ethics 393 <https://doi.org/10.1136/jme.2003.004150> accessed 2 February 2026.

3.4 The Recognition and Enforcement of Wrongful Life Actions in The Netherlands

Among civil law jurisdictions, the Netherlands stands out for explicitly recognising a wrongful life claim. In a landmark decision in 2005, the Dutch Supreme Court allowed a claim brought by a severely disabled child who was born following a failed sterilisation procedure.[30] The court reasoned that the doctor's negligence directly resulted in the child being born into a life of serious and unavoidable suffering. Unlike common law courts, the Dutch court did not treat the difficulty of comparison as an insurmountable barrier. It accepted that the child's damage consisted of the non-pecuniary loss associated with living in such a condition and awarded damages for pain and suffering. This decision sparked intense debate across Europe. Supporters viewed it as a compassionate recognition of the child's lived experience, while critics argued that it crossed a fundamental ethical boundary by legally suggesting that a life was not worth living. The Dutch position remains a rare exception in comparative law.

3.5 Conclusion of the Comparative Analysis on wrongful life in the selected jurisdictions

The comparative analysis shows that wrongful life claims face strong resistance across most legal systems. Jurisdictions such as England and Wales, Australia, and the majority of U.S. states reject the claim on grounds of public policy, the sanctity of human life, and the impossibility of judicially comparing life with non-existence. However, this rejection is not absolute. Limited forms of recognition have emerged in response to the serious financial consequences associated with severe disability.[218]

The approaches adopted in California and New Jersey allow recovery for extraordinary expenses, providing a practical solution without engaging directly with the metaphysical question of whether non-existence is preferable to life. The Dutch approach goes further by awarding damages for suffering, while the English decision in Toombes creates a narrow statutory pathway for preconception negligence claims. These developments reveal an ongoing tension between the law's commitment to the inherent value of human life and its responsibility to provide remedies for serious harm caused by professional negligence. As medical technology advances and social attitudes evolve, courts will continue to grapple with these competing principles.[219]

[218] Kashi, J. S. (1976). The case of the unwanted blessing: Wrongful life. *University of Miami Law Review*, 31(5), 1409–1447. <https://repository.law.miami.edu/umlr/vol31/iss5/5

[219] Kashi JS, 'The Case of the Unwanted Blessing: Wrongful Life' [1976] U Miami L Rev 1409 <https://repository.law.miami.edu/umlr/vol31/iss5/5/> accessed 2 February 2026.

4.0 Legality of Wrongful Life Action from Nigerian Perspective

At present, there is no reported Nigerian judicial decision that expressly recognises or rejects a wrongful life cause of action. As a result, wrongful life remains a theoretical concept within Nigerian law and has not yet been tested before the courts.[220] This absence of precedent does not automatically mean that such a claim is legally impossible. Rather, it raises the question of how Nigerian courts would respond if confronted with such an action in the future. Addressing this question requires a careful examination of Nigeria's legal framework, including its common law foundations, statutory developments, constitutional provisions, and deeply rooted social, cultural, and religious values. While prevailing authority and policy considerations strongly oppose the recognition of a traditional wrongful life claim, where a child seeks damages for the alleged injury of being born, there may be a narrow possibility for recovering extraordinary economic losses arising from pre-conception negligence. This possibility largely stems from the wording of Section 17(1) of the Child's Rights Act.[34]

The section establishes legal protections and rights for unborn children. It provides that a child has the right to bring an action for damages for harm or injury suffered at any stage; before, during, or after birth where such harm results from willful, reckless, or negligent conduct. It also recognises the inheritance rights of unborn children, allowing them to benefit from the estate of a deceased parent who dies intestate, provided the child was conceived during the parent's lifetime and is subsequently born alive.

Nigerian tort law is largely derived from English common law, and Nigerian courts frequently rely on English judicial decisions, particularly in areas where domestic authority is lacking. As a result, the English case of *McKay v. Essex Area Health Authority*[221] remains useful in assessing the viability of wrongful life claims in Nigeria. In McKay, the English Court of Appeal unanimously rejected a wrongful life claim on the basis that it disclosed no reasonable cause of action.[222] The court's reasoning rested on three main grounds. First, it held that a doctor does not owe a duty of

[220] Onuegbulam MC, 'Legal Protection of the Unborn Child Towards Attaining a Sustainable and Healthy Human Development' in JO Ogbodo (ed), *University-Led Knowledge and Innovation for Sustainable Development* (Pearls & Gold Integrated Services 2021) 351 <https://www.researchgate.net/publication/349426799_UniversityLed_Knowledge_and_Innovation_for_Sustainable_Development> accessed 2 February 2026. [34] 2003

[221] (1982)

[222] Jackson A, 'Action for Wrongful Life, Wrongful Pregnancy, and Wrongful Birth in the United States and England' (1994) 17 Loy LA Intl & Comp LJ 535 <https://digitalcommons.lmu.edu/ilr/vol17/iss3/6/> accessed 2 February 2026.

care to a fetus to advise its mother to terminate the pregnancy. Secondly, it found that it is logically impossible to assess damages by comparing life with disabilities to non-existence. Thirdly, it concluded that recognising such a claim would be contrary to public policy and the principle of the sanctity of human life.[223]

These arguments would likely carry significant weight before a Nigerian court. The logical and philosophical difficulties identified in McKay are not unique to England and apply equally within the Nigerian context. Nigerian courts are traditionally cautious about speculative assessments of damages, making the argument concerning the impossibility of assessment particularly persuasive. In addition, public policy considerations rooted in strong religious and cultural beliefs about the intrinsic value of human life would further discourage recognition of wrongful life claims. Consequently, in a typical post-conception negligence case, such as a failure to diagnose a fetal abnormality during pregnancy, a Nigerian court would most likely follow McKay and reject the claim.

The most significant challenge to the strict common law position arises from Section 17(1) of the Child's Rights Act 2003. This provision expressly grants a child the right to bring an action for damages for harm or injury caused before, during, or after birth, including harm resulting from negligence.[224] This statutory language represents a major development in Nigerian law, as it creates a direct right of action for a child in respect of pre-birth harm. Some scholars have argued that this provision effectively introduces the possibility of wrongful birth and wrongful life claims into Nigerian law by establishing a statutory duty owed to the unborn child, thereby avoiding the common law difficulty of establishing such a duty.

On a literal reading, a claimant could argue that a doctor's negligent failure to diagnose a genetic condition or provide adequate pre-conception counselling amounts to neglect before birth that caused injury to the child. The alleged injury would be the severe disability with which the child is born. On this basis, the claim would appear to fall within the scope of Section 17(1). However,

[223] Ibid
[224] Frati P and others, 'Preimplantation and Prenatal Diagnosis, Wrongful Birth and Wrongful Life: A Global View of Bioethical and Legal Controversies' (2017) 23 Hum Reprod Update 338 <https://doi.org/10.1093/humupd/dmw045> accessed 2 February 2026.

serious interpretive challenges remain. One major difficulty concerns causation. In most wrongful life cases, the negligence does not cause the disability itself, which is often genetic, but rather results in the birth of a child who already has that condition. The defendant could therefore argue that the disability existed independently of the negligence, and that the negligence merely led to the child's birth. This causation problem lies at the core of wrongful life claims and is not resolved by the statute.[225]

Another difficulty relates to the nature of the injury. The Child's Rights Act does not define what constitutes "injury." A court would need to determine whether being born with a severe disability qualifies as a legally recognisable injury, or whether recognising such a claim would amount to treating existence itself as harm. This returns the analysis to the same metaphysical question that courts in McKay and similar cases have refused to entertain.[40] The decision of the English High Court in [226]*Evie Toombes v. Dr. Philip Mitchell*[41] offers a useful analogy for how Nigerian courts might approach Section 17(1). In Toombes, the court distinguished between post-conception negligence and pre-conception negligence, allowing the latter to form the basis of a claim. The negligence in that case occurred before conception and affected the mother's ability to have a healthy child.[227] A Nigerian court could adopt similar reasoning. For example, if medical practitioners negligently fail to inform prospective parents that they both carry the sickle cell trait, and a child is subsequently born with sickle cell disease, the child could argue that the neglect before birth caused the injury. In this scenario, the causal link is clearer, as the negligence relates to the timing and circumstances of conception rather than a failure to terminate a pregnancy. This approach avoids the objection that the claim imposes a duty to abort and instead frames the duty as one of providing accurate information to prevent conception.

[225] McGivern B and Ellis E, 'The Wrongfulness or Rightfulness of Actions for Wrongful Life' (2007) 15 Tort L Rev 135 <https://research-repository.uwa.edu.au/files/1336155/3661_PID3661.pdf> accessed 2 February 2026. [40] Giesen I, 'Of Wrongful Birth, Wrongful Life, Comparative Law and the Politics of Tort Law Systems' (2009) 72 THRHR 257 <https://ssrn.com/abstract=1424901> accessed 2 February 2026.
[226]

[227] Loth MA, 'Courts in Search of Legitimacy: The Case of Wrongful Life' in MA Loth (ed), *Autonomy: In the Law* (Springer 2007) 73 <https://research.tilburguniversity.edu/files/62621783/artikelIusGentium.pdf> accessed 2 February 2026.

4.2 Constraining factors against Recognition and Enforcement of Wrongful Life Claims.

Nigerian laws, the Criminal Code under sections 228-230 and Penal Code under sections 232&233, are highly restrictive and generally permit abortion only to save the life of the pregnant woman under section 297 of the criminal code.[228] This legal reality has serious implications for wrongful life claims. In post-conception cases, a defendant doctor could argue that even if the fetal abnormality had been diagnosed and disclosed, the parents would not have had a lawful right to terminate the pregnancy. As a result, the child would have been born regardless of the negligence, breaking the chain of causation.[229] This limitation significantly reduces the practical viability of wrongful life claims in Nigeria and confines potential claims largely to cases of pre-conception negligence or to rare situations where termination would have been lawful to save the mother's life. In addition, several factors would weigh against recognising wrongful life claims. These include the strong cultural and religious emphasis on the sanctity of life, concerns about opening the floodgates to litigation, fears that such claims could encourage defensive medical practices inconsistent with Nigerian law and values, and the availability of alternative remedies such as wrongful birth claims by parents.[230]

4.3 Other Relevant Legal Frameworks

Additional legal frameworks may influence the analysis. The Sickle Cell Disease (Control and Eradication) Law of Anambra State 2019 reflects a legislative policy aimed at preventing the birth of children with severe genetic disorders.[231] While this law is primarily regulatory and does not itself create a private cause of action, it may support arguments that there is a recognised public duty to prevent such births. The 1999 Constitution of the Federal Republic of Nigeria also plays an important role. Section 33 guarantees the right to life, reinforcing the sanctity of life principle that would likely be invoked to oppose wrongful life claims. Conversely, Section 34 guarantees

[228] Okorie PC and Abayomi OA, 'Abortion Laws in Nigeria: A Case for Reform' (2019) 23 Ann Surv Intl & Comp L 165 <https://digitalcommons.law.ggu.edu/annlsurvey/vol23/iss1/9/> accessed 2 February 2026.

[229] Akande OW, Adenuga AT, Ejidike IC and Olufosoye AA, 'Unsafe Abortion Practices and the Law in Nigeria: Time for Change' (2020) 28 Sexual and Reproductive Health Matters 1758445 <https://doi.org/10.1080/26410397.2020.1758445> accessed 2 February 2026.

[230] Faunce TA, 'Abandoning the Common Law; Medical Negligence, Genetic Tests and Wrongful Life in the Australian High Court' (2007) 14 J L & Med 469 <https://ssrn.com/abstract=1409056> accessed 2 February 2026.

[231] Nnantah I, 'Rights of a Sickle Cell Child to a Wrongful Life Claim in Nigeria' (2025) 6 CIFILE J Intl L 107 <https://www.cifilejournal.com/article_195809_524a56af6cc4cc1ce56eadc8f0ff38aa.pdf> accessed 2 February 2026.

the right to dignity of the human person, which a claimant might rely on to argue that being subjected to a life of extreme suffering due to negligence undermines human dignity.[232]

4.4 Relevance of Tort Law Principles

Even with the statutory support of Section 17(1), a claimant must still satisfy the essential elements of negligence. The provision strongly suggests the existence of a statutory duty of care, particularly in pre-conception contexts.[233] Breach would be assessed by reference to the standard of a reasonably competent medical practitioner in Nigeria. Causation remains the most significant challenge, especially given restrictive abortion laws. The question of damage is the most contentious.[234] Nigerian courts would likely face the same options as courts in other jurisdictions, including outright rejection of the claim, limited recognition allowing recovery of special damages for extraordinary medical and care costs, or full recognition including general damages for pain and suffering.[235] Of these options, limited recognition is the most plausible, as it aligns with the compensatory function of tort law without requiring courts to value life against non-existence. Nigerian courts are generally cautious and attentive to policy implications. In summary, a traditional wrongful life claim seeking damages for the injury of being born is unlikely to succeed in Nigeria. The influence of common law precedent, the difficulty of assessing damages, restrictive abortion laws, and strong public policy considerations collectively create a formidable barrier.[236] Nevertheless, Section 17(1) of the Child's Rights Act 2003 introduces a narrow but significant possibility for limited claims based on pre-conception negligence. The most likely development in Nigerian law is continued rejection of general wrongful life claims, coupled with a cautious openness to awarding special damages for extraordinary care costs in appropriate pre-conception cases. Such an approach would provide practical support to severely disabled children without forcing courts to make an untenable comparison between life and non-existence. Ultimately, the resolution of this issue will depend on the Supreme Court of Nigeria, which will need to balance

[232] Ibid

[233] Ibid

[234] Lynch HF, Mathes M and Sawicki NN, 'Compliance with Advance Directives: Wrongful Living and Tort Law Incentives' (2008) 29 J Leg Med 133 <https://doi.org/10.1080/01947640802016888> accessed 2 February 2026.

[235] Mulder L, 'A Critical Analysis of the Viability of Wrongful Life Claims Under South African Law: A Stretch Too Far or a Simple Step Forward' (Master's dissertation, University of the Free State, 2023) <https://scholar.ufs.ac.za/handle/11660/12452> accessed 2 February 2026.

[236] Adejumo OA and Adejumo OA, 'Legal Perspectives on Liability for Medical Negligence and Malpractices in Nigeria' (2020) 35 Pan Afr Med J 1 <https://doi.org/10.11604/pamj.2020.35.1.211079> accessed 2 February 2026.

legal tradition, statutory innovation, moral values, and the need to provide remedies for serious professional negligence.

4.5 Recommendations

In light of the findings, this article makes the following recommendations:

First, Nigerian courts should firmly reject general wrongful life claims that seek damages for the mere fact of being born. Such claims are incompatible with existing common law principles, raise insurmountable challenges in the assessment of damages, and conflict with public policy considerations, particularly the sanctity of human life.

However, courts should adopt a more flexible and pragmatic approach in cases involving preconception negligence. In appropriate circumstances, judicial recognition should be given to limited claims for special damages, particularly where negligence results in foreseeable and quantifiable economic burdens, such as extraordinary medical and care expenses. This approach avoids philosophical dilemmas while ensuring that deserving claimants are not left without remedy.

Second, there is a need for legislative clarification of Section 17(1) of the Child's Rights Act 2003. The National Assembly should expressly define the scope of actionable claims relating to preconception harm, the categories of recoverable damages, and the conditions under which liability may arise. This would provide certainty and guide judicial interpretation.

Third, the government should strengthen public health and medical regulatory frameworks, particularly in areas such as genetic counselling, prenatal care, and reproductive health services. Preventive measures will reduce the incidence of avoidable disabilities and the circumstances giving rise to such claims.

Finally, further academic and judicial engagement with the concept of wrongful life is encouraged to ensure that Nigerian law evolves in a manner that balances legal coherence, ethical considerations, and social justice.

5.0 Conclusion

This article has examined the concept of wrongful life and considered whether a child can sue for being born within the Nigerian legal system. Wrongful life claims raise profound legal, moral, and philosophical questions, particularly because they challenge traditional understandings of injury, duty of care, and the value of human life. At the centre of the debate is the difficult argument that existence in a severely impaired condition can amount to a legally recognisable harm when compared to non-existence. Most legal systems have found this comparison unacceptable, both in principle and in practice.

The comparative analysis shows that the dominant global position is one of rejection of wrongful life claims. Jurisdictions such as England and Wales, Australia, and most states in the United States refuse to recognise the action, mainly on public policy grounds, the sanctity of human life, and the impossibility of assessing damages by comparing life with non-existence. Although a few jurisdictions, such as California, New Jersey, and the Netherlands, have adopted more flexible approaches, these remain limited or exceptional. Even where recognition exists, courts are generally cautious and often restrict recovery to specific economic losses, such as the cost of lifelong medical care, rather than treating life itself as a compensable injury.

From the Nigerian legal perspective, there is currently no judicial authority directly addressing wrongful life claims. However, Nigeria's strong reliance on English common law principles suggests that Nigerian courts could be heavily influenced by decisions such as *McKay v. Essex Area Health Authority*. The reasoning in that case aligns closely with Nigerian legal values, particularly the emphasis on public policy, judicial restraint in speculative damage assessments, and the deep cultural and religious commitment to the sanctity of human life. These factors make it highly unlikely that Nigerian courts would recognise a traditional wrongful life claim in which a child seeks damages solely for being born.

Nevertheless, the study suggests that there may be a narrow and developing area of possibility within Nigerian law. Statutory provisions such as Section 17(1) of the Child's Rights Act 2003, which emphasises the protection of the child from harm, could provide a limited basis for claims related to pre-conception negligence or the recovery of extraordinary economic costs associated

with severe disability. Such claims would not require courts to declare life itself as an injury but would instead focus on measurable harm arising from professional negligence.

In conclusion, while wrongful life claims remain largely incompatible with Nigerian legal principles as they currently stand, the issue is not entirely closed. Advances in medical science, increased awareness of genetic conditions, and evolving legal thought may continue to test the boundaries of existing doctrines. For now, however, the Nigerian legal system is more likely to maintain the prevailing global stance, prioritising the inherent value of human life while allowing remedies to be pursued through more established causes of action, such as wrongful birth or conventional negligence claims.