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ATTORNEYS & CONVEYANCERS

Can You Be Compelled to Take a Paternity Test?

You and your girlfriend are intimate during the period of the conception of the baby. Having been served with legal documents requiring you to attend at Court, as you are being sued for maintenance, your gut feeling is that you are not the father of her child. Can you refuse to take a paternity test as you are sure that this is not your child?

Sections 36 and 37 the Children's Act, 38 of 2005 are relevant.

Section 36 - Presumption of paternity in respect of child born out of wedlock
"If in any legal proceedings in which it is necessary to prove that any particular person is the father of a child born out of wedlock it is proved that that person had sexual intercourse with the mother of the child at any time when that child could have been conceived, that person is, in the absence of evidence to the contrary which raises a reasonable doubt, presumed to be the biological father of the child".

Section 37 - Refusal to submit to taking of blood samples
"If a party to any legal proceedings in which the paternity of a child has been placed in issue has refused to submit himself or herself, or the child, to the taking of a blood sample in order to carry out scientific tests relating to the paternity of the child, the court must warn such party of the effect which such refusal might have on the credibility of that party".

In summary, you cannot be compelled to take the paternity test. However, as per Section 36, in the absence of evidence to the contrary, you may be presumed to be the biological father of the child. Further, in terms of Section 37, should you not take the test, the Court may decide that you are the father by drawing a negative inference on your credibility.

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