

IN THE SUPREME COURT OF TONGA
APPELLATE JURISDICTION
NUKU'ALOFA REGISTRY

AM 1 of 2017
(MC CV 42 of 2016)

Solicitor General

26/05/17

Scan, email &
File

BETWEEN: PASALONA TUI

Appellant

AND : WILEON FONG

Respondent

BEFORE LORD CHIEF JUSTICE PAULSEN

Counsel: Mr L. Niu SC for the appellant
Ms L. Tonga for the respondent

Hearing: 22 May 2017

Date of Ruling: 23 May 2017

RULING

[1] This is an appeal from orders made by Magistrate Tuita on 25 November 2016 in proceedings in which the appellant sought an affiliation order and maintenance in respect of the parties' child.

[2] The Magistrate's orders were:

That Mr Wileon Fong of Pili is the father of the child of Ms Pasalona Tui a single Woman residing at Haveluloto in Tongatapu.

rec'd 26/05/17
HK

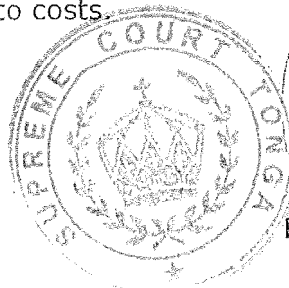
The said Wileon Fong do pay unto the said Pasalona Tui or her representative the sum of \$150 per week until 16th day of May 2019 for maintenance of the child named Joshua Yuen Fong of which the said Wileon Fong is the father.

- [3] The Magistrate did not provide any reasons for the orders that he made. My own enquiries reveal that the Magistrate intended to issue reasons but then did not do so because an appeal was filed. Both parties are dissatisfied with the orders made.
- [4] I have previously commented on the Magistrates' duty to give reasons for their decisions which is a fundamental requirement of due process (*Pohiva v Magistrates' Court anor* [2015] Tonga LR 275). It is entirely unacceptable that no reasons were given by the Magistrate in this case. On rare occasions in contested proceedings (usually involving urgency) the Court may issue orders with reasons to follow but if this is necessary the reasons must be provided at the first available opportunity. In this case over 6 months have elapsed and that is unacceptable.
- [5] In a case such as this where the result very much depends upon the Court's view of the facts and its assessment of the credibility of the witnesses I would have difficulty in dealing with this matter fairly on appeal in the absence of reasons for the Magistrate's ruling.
- [6] I have thought about requiring the Magistrate to provide his reasons but Counsel are of the view that the better course is that the appeal be allowed and remitted back to be heard again before another Magistrate and I agree. The parties could be forgiven for regarding with scepticism reasons provided so long after the hearing and in the face of a challenge to the orders made.

Result

- [7] The appeal is allowed. The orders made by Magistrate Tuita on 25 November 2016 are set aside.
- [8] The case is remitted to the Magistrates' Court for rehearing before another Magistrate. The Chief Magistrate is to allocate the first available date of hearing.
- [9] There shall be no order as to costs.

NUKU'ALOFA: 23 May 2017.



O.G. Paulsen
LORD CHIEF JUSTICE