

Mr. Sisa

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In any publication of this judgment, the applicant shall be referred to as M.

IN THE SUPREME COURT OF TONGA

FAMILY JURISDICTION

NUKU'ALOFA REGISTRY

FA 228 of 2015

IN THE MATTER OF

***The Maintenance of
Illegitimate Children Act***

AND IN THE MATTER OF

***an application by Ms
Mavaetangi Manavahetau for
Letters of Adoption***

AND IN THE MATTER OF

***A Male Child born on the 17th
September, 2015***

BEFORE THE HONOURABLE JUSTICE CATO

JUDGMENT

1. This application for adoption was brought by the Applicant, M, who was divorced and had no children of her own. She is aged 43. She has been self employed in a professional capacity since 1998 and derives a reasonable income from her practice. She resides in her family home which is a large house and easily able to accommodate the child. Although I approved the application for adoption and change of name of the child on the 18th December, 2015, because there were aspects of the application that were unusual, I have supplemented my orders with a judgment recording my reasons for granting the application.

2. The Applicant and the child's natural mother had been friendly for about two years and the natural mother, who had been previously married, had five children of her own. After she had been divorced, the natural mother gave birth to the child the subject of this application. The natural mother described herself as close to the Applicant and as being like sisters. The child had been given to the Applicant by the natural mother at about 3 weeks of age. The child is now about three months old and has been living with the Applicant. The natural mother consents to the adoption. She is unemployed and performs domestic duties.

3. The Guardian Ad Litem report stated that the natural mother was still in a relationship with the natural father after being divorced. I was concerned about this application for a number of reasons. First, because the applicant would be a sole parent, and secondly, because the natural parents of the child were said to be still in a relationship. Whilst I had no doubt that the Applicant firmly wanted to adopt the child and was otherwise a suitable applicant to adopt him, my concern was also as to who would act as caregiver when, as was inevitable, the applicant was active in her practice. Further, I was concerned as to who would take over the parental role should the Applicant die, prematurely. The Guardian Ad Litem report did not cover these matters, so I adjourned the Application for a short time and requested a supplementary report.

4. Mr Kefu, who had not appeared initially, appeared on the application when the hearing resumed and a supplementary report was filed. In this report, the Applicant explained that when she was working her elder sister, aged 57 and retired, would look after the child, and her own hours were flexible enabling her to go home for lunch and from work at 3pm to enable her to be with the child. She had discussed the question of her passing prematurely and her sister and extended family had all

agreed to support the child. Further, the natural father also gave his consent to the adoption. Mr Kefu explained that the couple were not living together and the relationship was unstable. The natural mother and family were poor, and the view of the extended family was one of concern that the natural mother had given birth to this child, in these circumstances.

5. Although, adoptions are generally brought by couples, in Butterworth's Family Law, 13th edition, 2007, NZ, at pg 1124, it is stated;

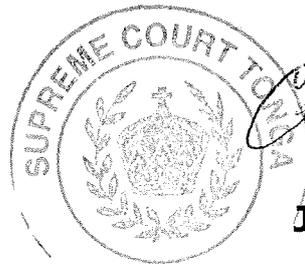
"Traditionally, there was some judicial reluctance to allow adoption by a person who would become a single parent. Today, it is possible that applications by such persons are more favorably viewed by the Courts and there are now a number of cases where such an application has been successful."

In support, a number of cases were cited including Re Adoption Application 034/001/90 where an adoption order was made in favor of a man who had care of a child over a five year period and with whom he had bonded, the applicant having ample support and assistance, and Re H (adoption) (1994) 12 FRNZ 375 where the child had been in the care of the applicant since birth, the natural parents consented and had little continuing relationship, the adoption again acknowledging the reality of the situation.

6. On the basis of the additional information, I considered that it was in the best interests of this child that this application be granted. The Applicant was well able to care for the child in every respect being a mature woman and still young, and gainfully self employed. I was satisfied that she has ample support from her extended family and friends to enable her to work; and also would assume a parental role should the Applicant die prematurely. It was plain to me she had a close bond with

the baby who was very well presented at the hearing. Both natural parents' consented, and with five other children by her first marriage, the natural mother would have enough to cope with in providing for them, no doubt with assistance of her extended family. Further, I was told the mother's relationship between her and the child's father is not one where the parties were cohabiting and, in that sense, is of uncertain duration. Having received this additional information from Mr Kefu, I considered that it was in the best interests of this child that his future be settled and this application granted. I also approved the change of name sought.

DATED: 4th JANUARY 2016



C. J. S.

J U D G E