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

FA 146 of 2015

IN THE MATTER OF THE GUARDIANSHIP ACT 2004

AND
IN THE MATTER OF an application by Ritisha Rita Geaumb
for a Legal Guardianship Order.

AND
IN THE MATTER OF the child named *Tyron Ethan Geaumb*
Ma'u, male, born on *26th October 2014*.

BEFORE LORD CHIEF JUSTICE PAULSEN

HEARING: 9 February 2016

APPEARANCES: Mrs J. Latui for the Guardian ad Litem
The applicant in person

RULING

1. This is an application by Ritisha Rita Geaumb for a Legal Guardianship Order in respect of Tyron Ethan Geaumb Ma'u (Tyron).

2. The applicant is a 40 year old single woman who was born in Papua New Guinea but is a permanent resident in New Zealand. She first went to New Zealand to study and settled there. If a Legal Guardianship Order is made in her favour the applicant intends to take Tyron to live with her in New Zealand.

3. The applicant is a member of the Seventh Day Adventist Church and lives in Kerikeri, Northland where she is in well paid employment. She has no children. She is in a relationship but her partner, who is Serbian, has been away from New Zealand with his work but is likely to return to New Zealand and stay for a few months in the near future. She advises me that the relationship is a permanent one and that marriage is a possibility but clearly the applicant's partner is absent from New Zealand a good deal of the time.

4. The applicant met Tyron's parents during a visit to Tonga in 2014 while the mother was carrying Tyron. She saw their personal circumstances and said that her heart went out to them. She asked if she could adopt Tyron and the parents

agreed. It will be observed that one of Tyron's middle names is Geaumb, which reflects the understanding that was reached. The applicant has financially supporting the family since and I am told that Tyron stayed with her for a short time here in Tonga after he was born. The parents told me that this stay was for seven months but the applicant said it was for a couple of weeks only.

5. I have no doubt that the applicant is genuine in her application and wishes to provide as best as she can for Tyron's future. She believes he will have a better future if he lives with her in New Zealand than if he remains in Tonga. She mentioned to me the opportunities for a better education that exist in New Zealand and she emphasised that she would bring Tyron up in a safe and spiritual environment consistent with her personal beliefs.
6. Tyron is fifteen months old. I observed him in my Chambers. He appears an active and healthy child and is clearly, as one would expect, closely bonded to his mother.
7. The father is 44 years old and the mother is 35 years old. They were married in 2001 at Tongatapu and have six

children of their marriage. The children are aged 16, 14, 12, 10, 7 and 15 months. The father supports the family by farming and undertaking some engineering work. The mother has no paid employment. Both support the application because the applicant has helped them financially and because they love her.

8. There is no suggestion that the parents are not able to properly raise and care for Tyron, as they have their other children. The financial means of the family may be modest but it was not suggested to me that the family is any worse off than a great number of families living in Tonga.
9. The Guardian ad Litem's report states that it is left to the discretion of the Court as to whether it is in the best interests of Tyron to grant the application. However, Mrs Latui, who appeared before me for the Guardian ad Litem, advises me with proper and commendable frankness that she could not support the application and believes that it is in the best interests of Tyron to remain here in Tonga and to be raised within his own family.

10. At the conclusion of the hearing I advised Ms. Geaumb that I would not grant her application. My reasons are as follows.
11. If the application was granted Tyron would be separated from his family and from Tonga on a permanent basis in circumstances where there is no evidence that his parents are unable to provide for him. A similar issue was considered by the Court of Appeal in *Saavedra v Solicitor General* [2013] Tonga. LR, 60 where the Court of Appeal in a very clear statement of principle said:

Consequently, inter-country adoption should be approved only when all others means of caring for a child in Tonga have been exhausted. It is a measure that the Committee on the Rights of the Child has described as "a measure of last resort."

12. Although this is not an application for Letters of Adoption, in all matters relating to the care of children the interests of the child are the paramount consideration. This Court has stated on a number of occasions that where a Legal Guardianship Order is sought to remove a child

permanently from Tonga the principle in *Saavedra* is to apply. (See for instance *Re Fonua* (unreported, Supreme Court, FA 137 of 2015, 4th July 2016, Cato J))

13. This is an insurmountable barrier to this application but there are other factors that lead me to the firm view that it is not in Tyron's best interests to grant the application.
14. There is nothing before me to confirm that New Zealand Immigration will allow Tyron to live in New Zealand on a permanent basis should I grant the application. As a matter of principle, where an applicant for a Legal Guardianship Order or Letters of Adoption intends to remove a child from Tonga to another country on a permanent basis this Court will require evidence as to the child's prospects of successfully gaining entry and remaining in that other country.
15. It has also long been the practice that before granting Letters of Adoption there should be evidence that the applicant has lived with the child for a reasonable period so as to allow a proper assessment to be made of the relationship between the applicant and the child. Again, whilst this is not an application for Letters of Adoption, in the circumstances of

this case the same principle should apply. Whilst the requirement that the applicant and child live together for a reasonable period of time is not an inflexible rule, particularly in the case of very young children, it is a concern that Tyron has lived with the applicant for just a few weeks and even then in very close proximity to his parents. He is clearly bonded to his parents and Mrs Latui expressed concern as to how he might now adjust to being separated from his home and his parents and siblings and moved to an environment that is very different from what he has known up to now.

16. Whilst she has visited Tonga on a number of occasions the applicant has no significant links with this country. She is not Tongan, she does not speak the Tongan language and it was not suggested to me that she is part of the Tongan community in New Zealand. She is not of the same faith as the parents, who are of the Bahai faith. Despite the applicant's best intentions it appears to me that if I was to grant the application I would be largely, if not completely, separating Tyron not only from his parents and siblings but also his country, heritage and his culture which are his birthright.

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17. Finally, the applicant advises me that she has friends in New Zealand but no family. Her partner clearly spends a large amount of time out of the country. She works a full time job and long hours and whilst she has said she would reduce her hours I am not satisfied that the support systems in place for her in New Zealand are ideal for Tyron's care.

Result

18. I do not believe that it is in Tyron's best interests to grant the application and it is refused.



Nuku'alofa : 10 February 2016. LORD CHIEF JUSTICE