

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

Scan, file & Upload # 1
NO. FA 128 of 2015
17/05/16

IN THE MATTER OF **The Guardianship Act 2004**
AND
IN THE MATTER OF an application by **Tavite Fononga** and **Rachel**
Fononga for a Legal Guardianship Order.
AND
IN THE MATTER OF **Master Tavite Jonathan Fononga Moala,**
male child, born on **28 April 2012**

Hearing: 18 May 2016
Decision: 18 May 2016

Counsel. Mrs L Sefokuli for the applicants
Ms M Tu'inukuafe for the Guardian ad Litem

R U L I N G

1. On 3 December 2015 I made a Legal Guardianship Order in favor of the applicants in respect of the child Master Tavite Jonathan Fononga Moala.
2. It appears that subsequent to the making of that Legal Guardianship Order the applicants have been unable to take the child to live with them in the United States because the Order is not recognized by the US Citizenship and Immigration Service.
3. The applicants have applied to this Court to vary the Legal Guardian Order to declare the child an orphan. On this basis they would then file an Orphans Petition to the US Citizenship and Immigration Service to legally adopt the child.
4. I am satisfied that there is no basis for the Court to make the Order sought. This child is not an orphan. There is no statutory or case law basis for the application and the Court shall not make declarations

recd 19/05/16
tlc

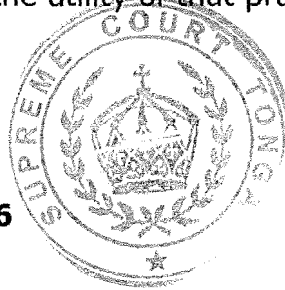
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which are false or have the effect of circumventing the laws of Tonga or any other country.

5. For that reason the application is dismissed.
6. I would add that in recent times this Court has required inter-country applications for Legal Guardianship Orders to be accompanied by proof that the making of such an order will allow the subject child to enter and remain in the country to which it is intended to remove him/her. This case demonstrates the utility of that practice.

NUKU'ALOFA: 18 MAY 2016



A handwritten signature in black ink, appearing to read "O.G. Paulsen".

**O.G. Paulsen
LORD CHIEF JUSTICE**