



children. There is the possibility that they will marry in the future. Uaniva is the eldest child. She has two brothers, aged 5 and 3 years. I am told that Uaniva is close to her siblings.

- [3] Funaki and Lesieli raised their children in a house at Fua'amotu which is owned by the male applicant. Funaki is the male applicant's nephew.
- [4] The male applicant is Tongan and the female application is Māori. They are both Australian residents. They are aged 58 and 62 years respectively and have been married for 33 years. They have one daughter of their marriage who is an adult and lives in Australia.
- [5] In 2016 the applicants decided to return to Tonga to retire. They have moved into the male applicant's house at Fua'amotu. They live there with Funaki and Lesieli and their three children, including Uaniva. They tell me that they have no plans to return to Australia.
- [6] The applicants are financially well off and of good character. However, they both suffer from diabetes and hypertension which is controlled by medication.
- [7] The applicants say that they have financially supported Funaki and Lesieli and will continue to do so. It would appear that Funaki and Lesieli may be financially dependent upon the applicants and the Guardian ad litem report stressed the financial support provided to date and that Lesieli works on the applicants' farm. The applicants are very close to Uaniva and they say that that she regards them, and not Funaki and Lesieli, as her parents. They say that they do everything for her and love her. They want to adopt her.

- [8] Lesieli consents to the adoption. There is nothing on the file that Funaki also consents but for present purposes I am proceeding on the basis that he does consent.
- [9] I questioned the applicants closely about the reasons they want to adopt Uaniva. There were a number of answers given. They say that they want to continue to support her financially and ensure that she has a good life. They said that there is no intention to take her out of Tonga but want to ensure that when she is older she has every opportunity available to her. Another reason given was that they want Uaniva to inherit their property upon their deaths. Another reason was that they have only one child and that they want their daughter in Australia to have a sister. Finally, they said that an adoption order would provide them with some security that Uaniva's parents would not leave and take Uaniva with them. The male applicant emotionally expressed his love for Uaniva and asked where it would leave them if she was taken from them. He said they had decided to come back to Tonga and want to look after Uaniva as much as they can. It does appear that Uaniva has become a singular focus of the applicants' affections and their lives.
- [10] I also asked Lesieli why she supported the application. She said that the applicants could offer Uaniva a better life. She understood that Uaniva would go to Australia and she would have the ability to take her brothers overseas also. She said that the applicants had told her that Uaniva would go overseas. She also said that Uaniva would miss her brothers but that she did not think Uaniva would miss her very much because she would be busy with her new life.

**Considering the application**

- [11] Adoption involves the total substitution of new parents for existing parents of a child. Applications are to be considered from the point of view of the child not the applicants.
- [12] The fundamental purpose of adoption is to provide a child who cannot or will not be provided for by his or her own parents with a permanent and secure family life. The Court must be careful not to commoditise children or to extinguish existing legal relations unless it is necessary to provide proper care for a child or where there are other alternatives, including customary or legal guardianship (as examples).
- [13] The paramount consideration for this Court is whether the granting of letters of adoption in favour of the applicants is in the best interest of Uaniva. Although I have absolutely no doubt that the applicants are genuine in their application I am equally in no doubt that the granting of letters of adoption is not in Uaniva's best interests.
- [14] Fundamentally, there is no reason to grant this application. The application gains Uaniva nothing while severing the legal relations she has with her own parents and her siblings. The reasons the applicants advance in support of the application primarily focus on their wishes and emotional needs which must necessarily be secondary to the interests of Uaniva.
- [15] Uaniva already has a family. It is by all accounts a stable family. She is clearly loved by her parents and her siblings. She is fortunate in that she benefits also from the love and financial support of the applicants and there is no reason why that should not continue. In so far as the applicants wish to provide financially for Uaniva, during their lifetimes

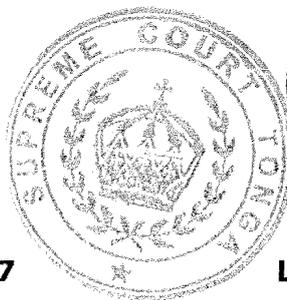
and following their deaths, they are able to do that without being granted letters of adoption.

[16] The applicants reject any suggestion that they intend to take or send Uaniva to Australia. However, given their long association with Australia and their continuing links with that country through their daughter, there is a prospect that Uaniva might go to Australia for her education. This was in the contemplation of Lesieli and a major reason for her support of the application. I cannot see that any educational or other advantages would outweigh the potential for harm resulting from Uaniva's removal from her family and home.

[17] The age and state of health of the applicants is another consideration. It is clearly possible that their existing conditions, whilst presently stable, may deteriorate making it difficult for them to care for Uaniva. There is also an increased risk that either or both might pass away leaving Uaniva without parents. At the present time her natural parents are both young and will most likely be able to support her to adulthood.

**Result**

[18] The application for letters of adoption is dismissed.



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

O.G. Paulsen

**NUKU'ALOFA: 21 February 2017**

**LORD CHIEF JUSTICE**