

- [3] The father has an uncle named Phillip Aeava who was married to a Tongan woman named Solaite. They were also living in Papua New Guinea. Solaite has a sister, Sela. Sela is married to Taniela Fa'u. They are both Tongan and they have always lived in Tonga. They have been married since 21 September 2000 but they have no children of their own and they wanted to adopt some child as their own.
- [4] Phillip and Solaite became aware of that wish and they informed Phillip's nephew, Nathan Aeava, and his "wife" Michelle. When Michelle became pregnant with the child, they conveyed their consent to Taniela and Sela that they could have their child as theirs and Taniela and Sela accepted and it was agreed that if the child was a boy, he was to be named Taniela and if he was a girl, she was to be named Sela.
- [5] The child was a boy and he was accordingly named Taniela Aeava and he was given into the care of Solaite and Phillip to look after until Sela was able to come and bring him from Papua New Guinea. She was able to do that and she brought the child to Tonga in about June 2010 and she and Taniela have raised him as their son up to now. They have indeed customarily adopted him as their son already.
- [6] Subsequent to the birth of their son, Taniela Aeava, and Michelle Oa, lawfully married each other in Papua New Guinea, under the Marriage Act, on 17 November 2011.
- [7] If those circumstances were to occur in Tonga, the position would be clear : the marriage would automatically, by operation of law render the child legitimate and no letters of adoption could be issued in respect of it under the Maintenance of Illegitimate Children Act. But in the present case, the birth of the child and the marriage of the parents occurred outside of Tonga and I was not sure whether the same thing applied. I therefore adjourned the application to consider the matter and to give my decision on Monday morning, 29 July 2019.
- [8] Now having considered the relevant law, the matter is clear.
- [9] The relevant law is the Legitimacy Act. It provides that if at the time of the subsequent marriage of the father and mother of the child the father was domiciled in Tonga, the child is rendered by the marriage a legitimate child of the father and mother. S. 3(1) provides as follows:

“3.(1) Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in Tonga, render that person, if living legitimate from the commencement of this Act, or from the date of the marriage, whichever last happens”.

- [10] From the facts which I have outlined above, there is no doubt that the father of the child was not domiciled in Tonga when he was married to the child’s mother on 17 November 2011. There is no evidence that he was domiciled in Tonga on that date or at any time at all.
- [11] Accordingly, the legitimation provision of the Legitimacy Act has no application and cannot be applied to legitimate the child, Taniela Aeava, and his status remains illegitimate, and he can be lawfully adopted under the provisions of the Maintenance of Illegitimate Children Act by issue of Letters of Adoption to the applicants.
- [12] I have consider the circumstances of this application and am satisfied that it is in the best interests of the child that Letters of Adoption be granted to the applicants and I so order. I also order that the birth of the child be entered in the Tongan Register of Births with the name of the child as: Taniela Fa’u and her parents being the names of the applicants. To remove any doubt, I order that the nationality of the child is Tongan, such as that of the male applicant, as provided in S. 18 of the Maintenance of the Illegitimate Children Act.

Nuku’alofa: 29 July 2019



A handwritten signature in blue ink, appearing to be "L. M. Niu J", written in a cursive style.

L. M. Niu J
JUDGE