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

FA 344 of 2019

**IN THE MATTER OF The Maintenance of Illegitimate Children Act Cap.
30**

AND

**IN THE MATTER OF an application by Mr Kilifi Fetu'u'aho and Mrs Kamela
Fetu'u'aho for Letters of Adoption.**

AND

**IN THE MATTER OF Taiana Fetu'u'aho Moengangongo, female, born on 18
November 2001.**

BEFORE HON. JUSTICE NIU IN CHAMBERS

Counsel : Mr `Elisiva `Akau'ola for Guardian Ad Litem
Hearing : 30 July 2020
Ruling : 30 July 2020

RULING

[1] I make this brief ruling because the natural mother, Temaleti Moengangongo, has refused to give her consent to the adoption of her illegitimate daughter by the applicants. That is what Ms `Akau'ola has conveyed to me in her guardian ad litem report. She told me this morning that she had informed the mother of this hearing yesterday so that she could come to it, but that she told her that she would be busy because she would be going to tapa cloth making (koka'anga) today. She did not attend this hearing this morning.

[2] The applicants are Kilifi and Kamela Fetu'u'aho. They are aged 66 and 67 respectively. Kamela has an older sister who is the mother of Temaleti

Moengangongo. Kilifi and Kamela have 4 children themselves who are all adults. They customarily adopted the child some 18 years ago when the child was still a baby and they were still in their late 40s. They have provided for her and have raised her as their own daughter up to now. She is now in form 6 and will finish high school this year and will enroll at the Tonga Institute of Higher Education next year. She is happy and she only regards Kilifi and Kamela as her parents although she knows Temaleti is her natural mother. Kilifi and Kamela have been good parents to her as is evident from her present circumstances and disposition.

- [3] Kamela has told Ms 'Akau'ola that she is not on good terms with Temaleti because Temaleti has spread false rumours about her and so they are not talking to each other. Ms 'Akau'ola says that although Temaleti had confirmed her consent to this adoption application in her affidavit of 27 August 2019, she has informed her on the telephone on 19 May 2020 that she does not consent to the adoption anymore. She tells 'Akau'ola that she still wants to have legal parental rights to the child.
- [4] Ms 'Akau'ola has referred me in her report to S.15(d) of the Maintenance of Illegitimate Children Act which provides that "the Supreme Court may, in the interests of the child, dispense with the consent of the mother where the mother unreasonably withholds her consent". She says that in her view, as guardian ad litem, the natural mother (Temaleti) is unreasonably withholding her consent just because she is not on good terms with Kamela. In chambers this morning, she confirmed that I should, in the interests of the child, dispense with the mother's consent.
- [5] I agree with Ms 'Akau'ola. It is in the best interests of the child that Letters of Adoption be now granted to Kilifi and Kamela in respect of her. They are already her parents in every respect for the 18 years of her life. The letters should not now be withheld. The Act provides that Letters of Adoption may

be granted in respect of any child under 21 years of age, and she is still 18 years of age.

[6] Accordingly, I make the following orders:

1. Letters of Adoption are hereby granted to **Mr Kilifi Fetu'u'aho** and **Mrs Kamela Fetu'u'aho** in respect of the child, **Taiana Fetu'u'aho Moengangongo**, female, born on **18 November 2001**.
2. New birth certificate shall be issued in respect of the said child in the adopted form which shall show her name as **Taiana Fetu'u'aho** and which shall show the applicants as the parents of the said child.



A handwritten signature in black ink, appearing to be "Niu J", is written over the seal and extends to the right.

Niu J

J U D G E

Nuku'alofa: 30 July 2020