

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

Solicitor-General.
24/03/15
scan, email
& file

FA 121 of 2013

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

**AND
IN THE MATTER OF** an application by Hopoate Tapui and Fine
Matafua'a Tapui for Letters of Adoption.

**AND
IN THE MATTER OF** the child named Fine Matafua'a Ve'a, a female
child born on 31 July 2013.

BEFORE LORD CHIEF JUSTICE PAULSEN

Heard : 18 and 19 March 2015

**Appearances : Ms P Taufaeteau for the applicants on 18 March
2015
Ms S Fineanganofu for the Guardian ad Litem**

RULING

- [1] The applicants are seeking to adopt Fine Matafua'a Ve'a, a 20 month old illegitimate Tongan child, born on 31 July 2013.
- [2] The female applicant is Fine's great aunt. The applicants reside in New Zealand. They are presently here in Tonga while their application to adopt Fine is considered. If their application is successful they will return to New Zealand on 24 March 2015 and intend to take Fine with them.

*Rad 23/03/15
JTB*

- [3] The application proceeded over two days. I heard from the applicants, their Counsel and the natural mother on 18 March 2015. I then required evidence from Fine's grandmother. She kindly appeared before me on 19 March 2015 and gave helpful evidence, which in the event has greatly assisted me to determine the application.
- [4] The Solicitor General was appointed Guardian ad Litem to represent Fine's interests. A report has been provided dated 10 February 2015 which had attached to it a very comprehensive report from the Ministry of Social Development (Child Youth and Family) in New Zealand dated 17 December 2014 assessing the applicants' home and their suitability to adopt. I have studied both reports closely.
- [5] The Guardian ad Litem took the position in its report that it was left to the discretion of the Court to decide whether to grant or deny the application. After hearing the evidence Ms Fineanganofu, who appeared for the Guardian ad Litem, submitted that the application should be refused and that Fine should remain in Tonga. Although I have come to a different view this decision was finely balanced and Ms Fineanganofu's assistance was most useful.

Assessment of the applicants

- [6] The applicants are in a stable and solid relationship. They are already successful parents of four children. They take pride in, and promote to their children, their Tongan heritage, Tongan language and culture, the benefits of education, the Church and respect for others.

- [7] Child Youth and Family noted, and I accept, that the applicants have the personal attributes to parent an adopted child and the support networks in New Zealand to do so.
- [8] The Child Youth and Family report also stated that the applicants are fit and proper people to adopt a child. I agree with that assessment.
- [9] Whilst the applicants are of modest financial means by New Zealand standards, there is no suggestion that they cannot afford to raise Fine. They have to date been able to provide money to support the mother during her pregnancy and Fine since her birth.
- [10] The male applicant has a number criminal convictions, which ordinarily would be a factor weighing against the application, but I note that the last conviction was entered over 10 years ago before the applicants married. There has been no offending of any kind since March 2004.
- [11] Despite the positive assessment of the applicants Child Youth and Family did not consider that the proposed adoption was in the best interests of Fine. This was principally because this was an inter-country adoption application which should only be an option "where there is no immediate or extended family to care for the child within the country of birth/country of abode, and all other options for permanent care of the child, in their own country, have been exhausted".
- [12] The Child Youth and Family report also stated that the applicants may not be prepared for issues around the separation that Fine would experience if taken from her mother's care.

[13] The report writer based these conclusions on an understanding that Fine presently lived with her mother and grandmother. She had no information about the mother's circumstances that would lead her to believe that Fine should be removed from her family of birth. As noted below I had more information before me.

Inter-country adoptions

[14] The paramount consideration in adoption cases is whether the proposed adoption is in the best interests of the child. *Hatch v Solicitor-General* [2010] Tonga LR 177 and *Saavedra v Solicitor General* [2013] TOCA 7.

[15] In Tonga, in cases of inter-country adoption, the law is as set out in *Saavedra v Solicitor General* where the Court of Appeal, in reliance upon Article 21 of the United Nations Convention on the Rights of the Child, stated at [5]:

Consequently, inter-country adoption should be approved only when all other 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" ...

Assessment of the application

[16] Since the Guardian ad Litem report was completed the circumstances of the mother have changed significantly. She has very recently married and she has moved to live in Vava'u with her husband. She is expecting her husband's child.

- [17] The mother's husband wants no contact with Fine. Sadly, he does not want the mother to have contact with Fine either. The mother will comply with her husband's wishes. She will not provide any day to day care for Fine nor will she provide money for Fine despite having recently qualified as a teacher and looking for employment.
- [18] Since birth Fine has been primarily under the care of her grandmother and grandfather. The grandmother is 52 years old. She struck me as an admirable and stoic woman. She has raised three generations of children in her family including the female applicant. Her husband is 57 years old. He is a farmer. The grandmother cares deeply for Fine but says that despite the financial support provided by the applicants she has not been able to provide for Fine's reasonable nutritional and material needs.
- [19] The grandmother told me that she supports the application for adoption so that Fine can have a better life overseas. If I refused the application she would look after Fine but she said that without money from the applicants she could not properly provide for Fine's needs. With the best will in the world it cannot be assumed that the applicants will continue to pay money for Fine's care if the adoption application is not granted.
- [20] The grandmother also made the point, and I consider it a valid one, that although presently in good health she and her husband are not young and if they were to pass away there would be nobody to care for Fine. She said Fine would be left desolate.


[21] The conclusion I draw from the grandmother's evidence is that if I refused the application for adoption Fine's grandparents would accept responsibility for Fine's care but it would be an unfair and unacceptable burden to impose upon them. They may not be able to provide adequately for her. Given the mother's unwillingness to take responsibility for Fine, to refuse the application would also put Fine at unacceptable risk in the event that one or both of her grandparents died or became incapable of caring for her

[22] As to the risk that Fine may suffer a sense of major upheaval, grief, loss and dislocation if adopted by the applicants, I accept that may be the case. However, Fine is very young. Her contact with her mother has not been consistent. It is the loss of contact with her grandmother that is likely to have the most profound effect upon her but she has spent time with the applicants. The grandmother, who knows Fine best, considers Fine will cope well with a move to New Zealand and that she has already bonded with applicants.

The result

[23] I am satisfied that it is in Fine's best interests to make the adoption order that is sought. The application for the issue of Letters of Adoption in respect of Fine is granted.




O.G. Paulsen
CHIEF JUSTICE

NUKU'ALOFA: 20 March 2015.

N. 'Inafo