



Because of the urgency of the applicants' circumstances I am going to state my reasons for my decision only briefly.

- [2] John's natural mother is married with seven children of her marriage. John is not a child of the marriage. He was conceived and born during a period that his mother was separated from her husband and was registered as illegitimate. His natural mother and her husband are now reunited. There is no place for John in the family as the husband will not accept him.
- [3] John was given up to the applicants at birth and they have provided for his needs since then. I understand that John's natural father has had no involvement whatsoever in providing for his needs and has no interest in this application.
- [4] The male applicant is 69 years old and a qualified engineer. He is Tongan but has American citizenship. The female applicant is 48 years old and is also Tongan. She tells me that she did at one time obtain a Green Card to work in America but that has lapsed. The applicants presently live at Fua'amotu. The couple married in January 2009 but have four children ranging from 27 to 10 years of age, although I understand one of these children is the daughter of

the female applicant's brother and will soon return to him. They also have the care of John.

[5] The male applicant is very ill. I have been provided with a medical certificate from his Doctor and do not need to go into the details of his illnesses except to say that they are chronic and serious. He needs medical treatment and fulltime care. He has medical insurance in America and must travel to America for treatment.

[6] I have been told that the medical insurance will pay for the male applicant's treatment, housing for the family and also for the female applicant to be her husband's full-time carer. The applicants want to leave Tonga as soon as possible but as they wish to take John with them they are awaiting the outcome of this application before finalising their travel plans. For this reason the application has been processed with urgency both by Crown Law and the Court.

[7] 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.

[8] There were a number of aspects of this application that concerned me namely the age of the male applicant, his very poor health, the applicants' intention to remove John from Tonga, on what I understand will be a permanent basis, and whether the applicants have the ability to support the family (including John) in America. It is necessary for me to briefly refer to these matters.

[9] I would rarely consider it appropriate that a 69 year old man with serious health concerns be granted Letters of Adoption in respect of a very young child. Every case must be decided on its merits however and this view needs to be balanced against a number of countervailing factors. John has been in the care of the applicants since birth. They are the only parents he has ever known. He appears to be healthy and happy. The female applicant is much younger than the male applicant and the applicants have raised four other children, the youngest of which is only 8 years older than John and lives with them at the present time.

[10] It appears that the financial needs of the family in America will be largely provided by the insurance benefits that the male applicant enjoys. I was told that the family is entitled also to, what appears to be, significant social security benefits as a result of the male

applicant's citizenship and the female applicant will have employment as her husband's full time carer.

[11] In relation to my concern that the application was being made so that the applicants can remove John from Tonga on a permanent basis, I note the principles in Article 21 of the United Nations Convention on the Rights of the Child and *Saavedra v Solicitor General* [2013] TOCA 7 which seem to me to have some relevance despite the fact that the applicants presently reside in Tonga.

[12] This is a very different case from those which often come before this Court where Letters of Adoption are applied for in reliance upon perceived educational and lifestyle benefits available to a child overseas. These applicants are in the very difficult position. They must leave Tonga so that the male applicant can get medical treatment. The treatment he requires is not available to him here. They will not be able to take John with them unless Letters of Adoption are granted. It would be very detrimental to John if he was to be separated from the only family he has known. That, it appears to me, is the inevitable consequence of me refusing this application.

[13] Furthermore, having closely questioned the female applicant and the natural mother I am satisfied that if the applicants do not take John with them to America there are no other means of caring for him in Tonga

**The result**

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

NUKU'ALOFA: 18 June 2015.



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

O.G. Paulsen  
CHIEF JUSTICE

N. 'Inafo  
18/06/2015