

NOT ON PAGE 11

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

FA 65 of 2011

IN THE MATTER OF : THE MAINTENANCE OF ILLEGITIMATE
CHILDREN ACT ;

AND

IN THE MATTER OF : an application for adoption of child *K. by Mr and Mrs J.*

RULING

1. On 5 June 2011 the applicants filed an application notice seeking the grant of letters of adoption in respect of the child K. As is usual the Solicitor General was appointed Guardian ad litem.
2. On 25 January 2012 the Guardian ad litem report was filed. After reviewing all the circumstances including the fact that the child, now aged just under 10, has resided with the applicants since 2005, it was recommended, without hesitation, that the order for Adoption should be granted.
3. On 14 June 2012 I met the applicants and the child. I explained that I had only one reservation about making the order. Section 15(1) of the Maintenance of Illegitimate Children Act (Cap 30) reads :

"An illegitimate child under the age of 21 years may, with the consent of its mother, be adopted by another person".

In this case the natural mother of the child is the female applicant.

4. I adjourned the application and invited Mrs Tupou, who appeared for the applicants, to file submissions and on 14 August the submissions were filed.

5. Today the matter was called for further mention. Mr Kefu appeared and advised me that he had considered the submissions filed by Mrs Tupou and supported them.
6. In Mrs Tupou's submission, once the mother of an illegitimate child marries a man who is not the father of the child her status changes. She is no longer a femme sole who, under the provisions of Section 4 of the Guardianship Act 2004 is the sole guardian of the child. Now that she is a married woman the child has in fact become part of a new family. In these circumstances the adoption is not simply by "another person" but is by the mother and step-father jointly.
7. As I, see it, there is everything to be said in favour of this type of application which should be encouraged. In my view it cannot have been the legislature's intention to prevent such an obviously beneficial arrangement. I agree with the interpretation advanced by Mrs Tupou and supported by the Solicitor-General.
8. I order that letters of adoption in respect of the child be granted as prayed and I also order that the child shall henceforth bear the set out in full in paragraph 47 of the Guardian ad Litem's report.

Dated: 24 August 2012.




CHIEF JUSTICE