

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

FA 152 of 2010

**IN THE MATTER OF LOLO MANA'IA FUNGANITAO a male child born
on 6 November 2008.**

Ms Kautoke for the Crown

Mr Kaufusi for the Applicants

RULING

1. This is an application for adoption. The child was born in Auckland, New Zealand. His mother was born in Tonga in 1992. The applicants are the mother's parents.
2. From the papers before me it emerges that the male applicant is aged 58 while the female applicant is 63. The male applicant emigrated to New Zealand in 1973. He and his wife married in New Zealand in 1988. They are permanent residents and own the house in which they are living. Their only child is the natural mother.
3. The natural mother is now 20 and when interviewed was a student. She lives with her parents, the applicants.
4. After hearing the application, which was forcefully supported by Mr Kaufusi I indicated that I would not make the order sought. I now state my reasons.

5. Although the applicants, the natural mother and the child are all Tongan citizens it is plain to me that they are permanently resident in New Zealand. In my opinion, therefore, it is more appropriate for any adoption or guardianship application to be made within that jurisdiction.
6. Secondly, the courts have frowned on applications for adoption by grandparents and it has been said that such application should not be granted save in exceptional circumstances (*Re AB (an infant)* [1949] 1 All ER 709 and see also *Parker v Pearce* (1985) 4 NZFLR 150).
7. Thirdly, the female applicant is 60 years older than the child and her husband is only slightly younger. It appears that neither of the applicants is working and that they are dependent on welfare benefits. Where there is a very great age gap between the child and the applicants there must be concern that adoption is not really in the best interests of the child. Perhaps a guardianship order may be a more suitable alternative.
8. Mr Kaufusi several times emphasised that the parties were Tongan; therefore, be submitted, they had a right to make this application. In my view however although this Court's jurisdiction is not excluded by the applicant's residence, the reality of their residential status and the nature of the relationship between the child and the applicants suggest that the order as sought not be made.

DATED: 27 October 2011.

M.D. Scott
CHIEF JUSTICE

N. Tu'uholoaki
27/10/11

