

Crown Law

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16/03/16
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**IN THE SUPREME COURT OF TONGA
FAMILY DIVORCE JURISDICTION
NUKU'ALOFA REGISTRY**

FD 61 of 2014

BETWEEN : LISITA TELEVAVE - Petitioner

AND : 'OFA HAFOKA - Respondent

BEFORE THE LORD CHIEF JUSTICE PAULSEN

**Counsel: Mr. 'O. Pouono for 'Ofa Hafoka (Applicant)
Mrs. L. Televave in person**

Hearing: 11 March 2016.

Decision: 11 March 2016 (written reasons 15 March 2015)

Ruling

1. This is an application by Mr. Hafoka to vary custody orders made by Scott LCJ on 9 October 2014 at the hearing of the divorce petition between these parties. The Lord Chief Justice granted custody of the three children of the marriage to Mrs. Televave reserving reasonable access to Mr. Hafoka.
2. Mr. Hafoka now applies for custody of the three children. He raises concern that the eldest child had been beaten by the respondent. There was evidence on the file that charges had been laid against Mrs.

Recd 16/03/16
[Signature]

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Televave but I understand they did not ultimately proceed to a hearing.

3. The Court ordered a Guardian ad Litem's report which was provided on 10 March 2016. It is a comprehensive document and recommends that: (1) Mr. Hafoka be granted custody of the eldest child of the marriage (Ma'u He 'Ofa Hafoka) with reasonable access reserved to Mrs. Televave and (2) that custody of the two other children of the marriage (Vika Nanasi Tou'anga He Lotu Hafoka and Graig Berry Hafoka) remain with Mrs. Televave with reasonable access being granted to Mr. Hafoka.
4. At the hearing I shared the Guardian ad Litem's recommendations with the parties. Mr. Hafoka, by his Counsel, advised that he would accept the recommendations. Mrs. Televave was given some more time to consider her position. When the case was recalled during the afternoon she advised that she would also accept the recommendations.
5. I consider the Guardian ad Litem's recommendations are entirely sensible. The status quo in relation to the two younger children is maintained. As to the eldest child, for whose safety Mr. Hafoka expressed concern, his relationship with his mother is strained, they are apparently often in conflict and he has a strong preference to live with his father. He is of an age where due weight should be given to his wishes. I therefore intend to make orders by consent in terms of the Guardian ad Litem recommendations.

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6. Mrs. Televave is worried about Mau's health and she is concerned that he gets medical treatment for a heart condition. I have explained to her that the orders made today are always subject to review and should circumstances change, or she is concerned for Ma'u's wellbeing, she can refer the matter back to this Court on an urgent basis.

7. The orders that I make are as follows;

[7.1] The orders made by Scott LCJ in this proceeding on 10 October 2014 in respect to the custody and access of the children of the marriage are varied to the extent that custody of the eldest child Ma'u He 'Ofa Hafoka, a male child born on 7 June 2000, is granted to Mr. 'Ofa Hafoka with reasonable access (including staying access) reserved for Mrs. Lisita Televave.

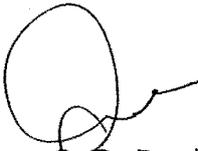
[7.2] There will be liberty to apply for both parties on 3 days' notice.

[7.3] There will be no order as to costs.

8. Finally I repeat what Scott LCJ said in his ruling that the children of this marriage will only benefit to the extent possible if there is cooperation between the parties. The parties should continue to bear this in mind in all their dealings with each other.

DATED: 15 March 2016.




O.G. Paulsen
LORD CHIEF JUSTICE