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16/07/14

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

NO. FD 61 of 2014

BETWEEN: LISITA TELEVAVE - Petitioner

AND : 'OFA HAFOKA - Respondent

Mrs F. Vaihu for the Petitioner
Respondent in person

JUDGMENT

- [1] The petition, filed in May 2014, was grounded on separation by consent for not less than two years, since 2007. Three children of the family were named in the petition now aged 14, 9 and nearly 7.
- [2] The petition was undefended and was heard on 19 August. I granted a decree nisi but adjourned the petitioner's application for custody and maintenance to 2 October when I heard both parties.
- [3] It is important to remember that section 11 of the Divorce Act prevents the decree being made absolute unless the Court is satisfied with the financial arrangements made for the wife and

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children or declares that such arrangements need not be made.

- [4] The Petitioner told me that she is a computer operator at Vaiola Hospital. She brings home about \$400 per fortnight. She is living in the former matrimonial home which is adjacent to the Respondent's parents' home which is where he lives.
- [5] The Petitioner told me that the former matrimonial home was built with the help of a mortgage which she alone is repaying at the rate of \$190 per month. After paying for the mortgage she is left with \$210 per fortnight or \$105 per week to meet all the expenses of herself and the three children. The Petitioner was seeking custody of the three children and maintenance of \$30 each per week. She was not seeking maintenance for herself.
- [6] The Respondent told me that he left school without qualifications. He is now aged 40. He last worked in 2008 when he was employed as an engineer and also as a clerk with Tonga Water Board. Until his redundancy the parties used to pay the mortgage together. Since 2008 he has been partially dependent on his brother and his parents. His father is a clergyman who is serving in New Zealand.
- [7] The Respondent told me that when the Petition was presented he stopped paying the electricity and water bills for the former matrimonial home "so that it could all be sorted out in court". As for the Petitioner's claim for maintenance "I am not employed and cannot provide the maintenance she is seeking".

- [8] The Respondent's plan for looking after the children is quite different from the Petitioner's. Although he had not filed an Answer he was in fact seeking the custody of the two boys for himself. His daughter could remain with her mother.
- [9] In view of the fact that the Respondent's parents were living overseas and that he is unemployed I wondered how he would be able to look after the boys whom he had told me he was unable to support. The Respondent explained that his parents regularly sent him money for their grandchildren. His brother also helped by sending a container to Tonga from time to time. The Respondent also explained that he was running a kava export business. He bought the kava locally, took it to New Zealand and then supplied it to members of the church there. He could buy it for TOP \$25 per Kg and sell it in New Zealand for NZD \$40 per Kilogram. With these various sources of income in cash and in kind he would be able to support the two boys.
- [10] While explaining his circumstances the Respondent conceded that he had formed an adulterous relationship and that he had a 7 year old son by the woman in question. It was the Petitioner's inability to accept this situation which had led to the breakdown of the marriage.
- [11] I regret to say that I was not very impressed by the Respondent's approach to the family's problems. Whether or not he could find the means to help supporting his 3 young children seemed to depend on whether or not he had custody. If the children remained with their mother then he could not afford to support them. If, on the other hand

they were awarded to him then he would have more than adequate funds at his disposal to devote to their welfare. That is not the correct way to look at the situation.

- [12] Children need to be housed, educated, looked after, clothed and fed whether or not their parents' marriage breaks down. They are entitled to look for support both from their father and their mother. They are also entitled to have access to the parent who is not awarded custody unless there are very good reasons not to allow that access to take place.
- [13] In the present case the Petitioner has been left on her own to care for the children and to provide the roof over their heads by servicing the mortgage without the Respondent's assistance. It is only right that he should make a contribution to them.
- [14] I am satisfied that these young children should stay together in their mother's care at the former matrimonial home. I am also satisfied that the Petitioner, having met the mortgage payments on her own, has acquired the right to remain in this home until further order of the court. The Respondent told me he would have no difficulty in finding \$50 each for the two boys were their custody will be awarded to him. Instead of custody he will be awarded reasonable access but he must make the reasonable contribution to the children's maintenance which I am satisfied he can afford.

Result: (1) Decree Nisi.

(2) Custody of the three children of the family to the Petitioner; reasonable access (including staying access, to the Respondent).

(3) The Respondent is to pay \$30 each (total \$90) each week for the support of the three children. These payments are to be made into the Supreme Court and the first payment is to be made on 15 October 2014. Thereafter payments are to be made monthly on the 15th of each month.

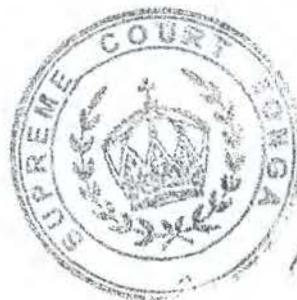
(4) There will be liberty to apply. In the event that these orders are not obeyed or are frustrated they will be reviewed by the Court. The children will only benefit to the full extent possible if there is cooperation between the parties.

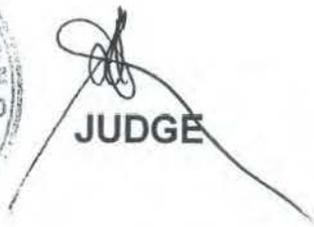
(5) S 11(1) (a) certificate.

NUKU'ALOFA: 10 October 2014

E. Takataka

7 October 2014




JUDGE