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**NOTE: PURSUANT TO S 22A OF THE ADOPTION ACT 1955, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTP://WWW.JUSTICE.GOVT.NZ/FAMILY-JUSTICE/ABOUT-US/ABOUT-THE-FAMILY-COURT/LEGISLATION/RESTRICTION-ON-PUBLISHING-JUDGMENTS](http://WWW.JUSTICE.GOVT.NZ/FAMILY-JUSTICE/ABOUT-US/ABOUT-THE-FAMILY-COURT/LEGISLATION/RESTRICTION-ON-PUBLISHING-JUDGMENTS).**

**IN THE FAMILY COURT  
AT WELLINGTON**

**FAM-2015-085-006446  
FAM-2015-085-006447  
FAM-2015-085-006449  
FAM-2015-085-006450  
[2016] NZFC 6076**

IN THE MATTER OF                   THE ADOPTION ACT 1955

BETWEEN                           FIDDA NAGI  
   Applicant

AND                                 CHIEF EXECUTIVE OF THE MINISTRY OF  
   SOCIAL DEVELOPMENT  
   Respondent

AND                                 ATIYA DARZI  
   Other Party/Person

AND                                 NASIRA DARZI  
   born on [date deleted] 2005  
                                       MAHIR DARZI  
   born on [date deleted] 2007  
                                       HATIM DARZI  
   born on [date deleted] 2008  
                                       TAWFIQ DARZI  
   born on [date deleted] 2010  
   Children in respect of whom the Application is  
   made

Hearing:                         23 June 2016 and 15 July 2016

Appearances:                   M Powell for the Applicant  
   K Knowles for the Chief Executive  
   A Gray as Lawyer to Assist

Judgment:                      15 July 2016

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## ORAL JUDGMENT OF JUDGE P WHITEHEAD

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[1] I intend to deliver an oral decision today after hearing evidence over half a day on 23 June and again today, which is perhaps rather unusual in an adoption application.

[2] But this is not the usual type of adoption application. It has been heard with the assistance of a Somali interpreter, and that, of course, has slowed the proceeding down. It involves four children and is brought by Fidda Nagi to adopt Nasira Darzi, born on [date deleted] 2005, and thus 10 years of age; Mahir Darzi, born on [date deleted] 2007, thus eight years of age; Hatim Darzi, born on [date deleted] 2008, thus seven; and Tawfiq Darzi, born on [date deleted] 2010, thus aged five.

[3] The applicant is stated to be the maternal grandmother, and I say that because there, in fact, is no true evidence linking the maternal grandmother to the children. The children have all been born in Somalia. [Details deleted] The grandmother escaped from Somalia as a refugee [date deleted] and then, as a refugee, came to New Zealand [date deleted] together with [number of siblings deleted]. They have established themselves in New Zealand, with one [sibling gender deleted], I believe, in Australia. They are not a financially well off family, but they are, it would appear, relatively close knit.

[4] The grandmother cares for her daughter's children, or at least assists in their care and, in the event that the children came to New Zealand, she would require her own accommodation. She currently is working as a [occupation details deleted] which, as one can imagine in New Zealand, does not provide great wealth – in fact, is one of the lower paid occupations in New Zealand.

[5] The children are the children of the grandmother's daughter. She, in giving birth to Tawfiq, died. The father of the children appears to have deserted the children. The children have remained in [location deleted] Somalia, under the care

of a neighbour who has cared for them for six years with financial assistance from the applicant, Fidda Nagi. It is not known exactly how much is provided, but her evidence is that she has sent over \$300 per month. Whether that has reached the children or not is unknown. It is also unknown what the caregiver's circumstances are, other than that in May of this year the applicant received an email via Malaysia that the children and she were at risk, the house next door had been bombed and, as a result they had fled into the surrounding countryside, and out of [location deleted]. The grandmother has only heard from them once since, when they were able to borrow a cellphone and ring, and it was clear that the neighbour has reached the position where she believes that she is no longer able to care for the children.

[6] [Details deleted]. The difficulty is that the area of [location deleted] is under control, it would appear, of Al-Shabaab, although it is said that the African Union troops have tactfully withdrawn from that area as at [date deleted]. So, Al-Shabaab have been in control of the area, it seems, for some time. News reports would indicate their brutality, and the citizens of the area are clearly at risk

[7] I have said earlier that other members of the Nagi family, or Darzi family, are resident in [location deleted] part of Somalia , some many hours away, and have taken absolutely no steps to assist in the care of these children. Therefore, the children have no family of which they are a practical part, and nor have they had any family supporting them for the last six years.

[8] The adoption has come before this Court and has created some considerable difficulty for the social worker because she has been unable to find any information that would, firstly, establish that Ms Nagi is biologically related to the children. But on the evidence, with respect, it is clear to me that the grandmother has been endeavouring, by either moving Immigration or making application for adoption, to try to get these children to New Zealand, since 2012 at least. Immigration has indicated that it would support one child coming into the country, but the applicant does not seek to divide the children; she seeks that all the children be brought to New Zealand so that she can care for them. As a result, she has made application for an adoption order.

[9] The situation is so rife in [location deleted], Somalia, that there are no social workers, really, to provide any reports. There does not appear to be much of any infrastructure at all. To obtain a report, the Court is told by the social worker, Ms Evans, it would be necessary to employ security to accompany the social worker to undertake an assessment on the children, and that could bring unwanted attention upon the children and put their lives at greater risk. The fact is that no one actually knows where these children are at the present time, other than they appear to have gone bush with their neighbour caregiver.

[10] I believe that the last heard from the children was with the telephone call from a borrowed cellphone in early June, and there is no way possible for anyone in New Zealand to contact the children directly. Similar difficulties appear to apply to the extended family. The brother, I believe, has 10 children of his own and would be unlikely to care for these four children.

[11] The only person who has put up his or her hand is the applicant, Fidda Nagi, and for that she has to be congratulated. She has her own difficulties. She is assisting in the raising of her sister's children. She is working eight hours a day for four or five days a week, and her financial circumstances are slim. The social worker indicates some real concerns that she would be able to care for four extra children if they came into her care. The Court would reflect that, although it is clear that there are benefits available to her as she has New Zealand citizenship and, as a New Zealand citizen, can access financial assistance in that regard.

[12] I accept that there is no information on these children and/or their needs, but any child's needs are to be provided with stability, security, family (if possible), education, and health. None of those appear to be available to the children at the present time. All of those would be available to the children if they were resident in New Zealand.

[13] It is necessary to balance safety issues and, in that regard, is it safer for the children to remain in an area overrun by terrorists , or is it safer to try and remove them from that country to bring them to New Zealand? That, in itself, could bring about certain risks. What are the risks for the children if they are in New Zealand,

unable to speak English, initially without full accommodation and financial support? In balancing those factors, the latter must nevertheless be an option that is more suitable than the others, or at least the first.

[14] In terms of the law, it is necessary in terms of the Adoption Act 1955 to consider s 11 of that Act. The fact is that the Adoption (Intercountry) Act 1997 does not apply, simply because Somalia [name of country deleted] is not a ratifying country. But it is accepted by all counsel that the general principles involved in intercountry adoption in terms of that Act should be considered.

[15] In terms of s 11 of the Act, the criteria necessary to be considered and satisfied are, firstly, whether the applicant is a fit and proper person to have the role of providing day-to-day care of the children and has sufficient ability to raise the children. I have referred in part to this above, but the applicant, in effect, mothered her [number deleted] siblings when they first came to New Zealand and appears to have successfully brought about their rise to independence. She is aged, she believes, approximately [age deleted], although her birth records would indicate [age deleted]; that is reflective of the chaos in Somalia [name of country deleted]. But both she and her doctor are of the belief that she would be [age deleted] years.

[16] There is, in that regard, some suggestion that she is suffering from post-traumatic distress disorder, but she nevertheless appears to hold down a full-time job [occupation details deleted] and still assists in caring for her sister's children.

[17] The financial aspects are another matter altogether, but she does state that her family in New Zealand and the small Somalian [ethnicity deleted] community would assist her in any way possible to raise the children. She would also, as a New Zealand citizen, as I have said, be entitled to receive benefits to care for them.

[18] Secondly, whether the welfare and interests of the children would be promoted by the adoption, with consideration being given to the wishes of the children, having regard to their age and understanding. I have touched upon this above, and I am satisfied that the welfare and interests of the children, despite their inability to speak English and despite the fact that they will be taken from their

country of origin to New Zealand, will be promoted by the adoption. I am, of course, unable to consider their wishes, having regard to their age and understanding, as they have not been contacted at all and, indeed, they have not met their grandmother. I am satisfied, however, that their family in New Zealand will enfold them in familial love.

[19] Thirdly, whether there is any condition imposed by the parents in respect of religion. That is not relevant; it would appear that the children and the grandmother are Islamic.

[20] There is a decision of *K v Attorney-General* (2006) 25 FRNZ 413. In that regard, this involved adoption of children from Ethiopia and was a judgment of Judge Ullrich QC. That case was fully argued with the Attorney-General as a party and contains, as stated in counsel for the applicant's submissions, a useful summary of the principles to be considered.

[21] Judge Ullrich refers to a checklist of issues which have been gleaned from non-Convention cases, and they are as follows:

1. Are the natural parents alive? The mother died in childbirth of the youngest child. The father's whereabouts is unknown. He has not been seen nor heard of for the past six years.
2. Is there a suitable caregiver for the child in the home country (home country in this case being Somalia )? The answer appears to be "No"; in six years no family member has stepped forward to be a suitable caregiver, and the only caregiver, a neighbour, at the present time has indicated an unwillingness to continue.
3. Is the child already in New Zealand? No, and that creates somewhat a difficulty, as the social worker, Ms Evans, would have sought that there be a fully detailed safety plan for the removal of the children from Somalia . But, clearly, whatever plan is undertaken, that is

going to be on a wish and a whim, dependent upon the security circumstances existing in [location deleted] at that time.

4. How old is the child or children? They are aged 10 down to five.
5. How dependent is the child? One can only imagine that the children are relatively independent by the very nature of their living circumstances. But in New Zealand law, they would be totally dependent upon adult support.
6. Is there a blood relationship between the child and the applicants? The applicant states that she is the grandmother of the children, her daughter being the mother. There is no other evidence to the contrary. I accept the evidence that has been provided.
7. What is the situation in the home country? The latest information from the Ministry of Foreign Affairs and Trade would indicate that two million are displaced out of an estimated 10 million Somalis, three million are in need of emergency food and aid , and that Somalia has some of the worst social indicators in the world, including the third highest maternal mortality rate (which is established in this case), the third highest infant mortality rate, and the fifth worst ratio of underweight children. . The risk of infectious disease is high. Also, Al Shabaab is still present in the regions, including [location details deleted] and continue to launch attacks on government controlled towns and civilians. . There is also ongoing clan-based conflict in these regions, and that indicates the serious state for these children.

[22] In my determination, these children need genuine family and need to have them care for them. I accept that, in part, this may appear to be an application to provide immigration status for the children, because that was the first step taken by the applicant and, indeed, she succeeded. But the fact that she dispensed with that and proceeded to an adoption for all four children would indicate that she has the

children's best interests and welfare at heart and has made her application to keep the family together and safe.

[23] The social work report raised specific concerns:

1. Firstly, the ability to verify information, and I accept that. The case law that I have referred to above, *K v Attorney-General*, indicates that the lack of a full report on the children is not fatal to the application, and I accept that. I do, however, accept the social worker's concerns that there is a lack of identifying and verifying information. But, the Court is of the determination that any further delay to try and obtain such information will only be a further abuse of the children and will not necessarily result in any beneficial information.
2. That goes for the second issue of lack of information connecting Ms Nagi to the children and issue of compliance with international obligations. As far as is possible, it is clear that this is not a case of child abduction. The applicant has no basis in which to bring children from Somalia. All she is intent on doing is bringing her family to her.
3. Adoption at odds with Islamic law relates specifically to the change of name of the adoptive children, but in this case it is intended to continue their full names, and therefore Islamic law is not offended in that regard.
4. Issues of variance in information dates provided and background information. Again, I accept this is the case. It is not confirmed in part by birth certificate information received from Somalia, but that is because of the poor recordkeeping of that country.

[24] I am of the determination that Ms Nagi will cope with raising these children. It will throw further stresses upon her. She does, clearly, have a close relationship with her medical practitioner, seeing the doctor regularly, and I am sure that she will access medical assistance if required.

[25] I am of the determination that the two remaining issues, some concern about relationships within her family and lack of child study information about the paternal family, is, in my determination, considered above.

[26] In the end result, there are humanitarian grounds that have brought me to the conclusion that the only resolution of this matter is by way of an adoption order.

[27] There are exceptional circumstances where special circumstances only are required to make a final order. I accept that not all criteria have been met in terms of the adoption application, but the criteria that has been presented establishes for me the need for a final adoption order to be made.

[28] Further, I have considered the application to dispense with the father's consent.

[29] I make the following orders:

1. The father's consent is dispensed with accordingly.
2. In the exceptional circumstances of this case, there is a final adoption order in terms of the application made.

P Whitehead  
**Family Court Judge**