

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

NOTE: PURSUANT TO S 22A OF THE ADOPTION ACT 1955, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE <https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/>

**IN THE FAMILY COURT
AT MANUKAU**

**I TE KŌTI WHĀNAU
KI MANUKAU**

**FAM-2020-092-000269
[2021] NZFC 2966**

IN THE MATTER OF	THE ADOPTION ACT 1955
BETWEEN	[ENELE MALAITAI] [TAVA'ESINA MALAITAI] Applicants
AND	[APERAMO MALAITAI] Child or Young Person the application is about
AND	CHIEF EXECUTIVE OF ORANGA TAMARIKI – MINISTRY FOR CHILDREN Other Party

Hearing: 30 March 2021

Appearances: M Maplesden for the Applicants
C Boon for the Chief Executive

Judgment: 30 March 2021

ORAL JUDGMENT OF JUDGE I M MALOSI

[1] This is an application by [Tava'esina] and [Enele Malaitai] to adopt [Aperamo Malaitai] who was born on [date deleted] 2018, which means he is two years and eight

months old. They made their application to adopt him in February of last year, and a s 10 report from Oranga Tamariki was provided in December of last year.

[2] The social worker, Ms John, is here today along with Mr Boon for the Chief Executive. Ms Maplesden appears for the applicants who are supported today by Mrs [Malaitai]'s two sisters.

[3] [Aperamo] was born in Tonga where he has been since birth. His birth mother, [Atalia Tautu] and Mr [Malaitai] are brother and sister. The birth parents, [Atalia] and [Iuta Tautu], have two older sons. When Mrs [Tautu] was pregnant with [Aperamo], Mr and Mrs [Malaitai] approached them and asked if they could raise that child as their own. Mr and Mrs [Tautu] agreed to that but not if that third child was to be a girl. It just so happens it was a boy and as agreed, and as is very common in Pasifika cultures, that child was gifted to the applicants.

[4] I note that [Aperamo]'s surname has been changed already and he carries the family name of [Malaitai]. On 15 May 2019 the Supreme Court in Tonga appointed the applicants as legal guardians of this child, with the consent of the birth parents. I accept the advice to the Court that, because [Aperamo]'s birth parents are legally married, an adoption is not possible in Tonga.

[5] After [Aperamo]'s birth, Mrs [Malaitai] went to Tonga and stayed there for most of 2019; but thereafter needed to return to New Zealand. I suspect neither of the applicants understood that it would take so long for the adoption application to be dealt with by the Court.

[6] Significantly, [Aperamo] did not remain with his birth parents. He has lived with Mrs [Malaitai]'s brother and his wife. There is a child study report from Tonga which was unable to assess the birth father, because he was stuck here in New Zealand once the borders closed, but he was interviewed by Ms John in Auckland in July of last year.

[7] In short, the birth parents continue to support this adoption. I note that if an adoption order is not made by this Court, it is the intention of Mrs [Malaitai] to return to Tonga and care for [Aperamo] regardless.

[8] I take into account that through different mediums the applicants are having ongoing and regular contact with the caregivers in Tonga and with this young child.

[9] It is proposed that this be what we call an “open adoption”. So there will be no secrets around the birth family or his new family here in New Zealand. I have confidence, given the way that these families have been so open with one another to this point, that the Court need not be concerned at all about [Aperamo]’s understanding about his very special beginning in life.

[10] I agree with the Social Worker’s assessment that the applicants are fit and proper persons’, and meet the requirements under s 11(a) of the Adoption Act 1955.

[11] I have been persuaded by Ms Maplesden that, given the impact of COVID on travel arrangements, there are exceptional circumstances to make a final adoption order in the first instance. There is no doubt that there will be challenges for Mr and Mrs [Malaitai] in navigating the border restrictions, but a final adoption order will hopefully make that easier and ensure that they can be reunited with their son as quickly as that is possible.

[12] Today it is my privilege to make a final adoption order in favour of the applicants. That means a new birth certificate will issue for [Aperamo] which will name [Enele Malaitai] and [Tava’esina Malaitai] as his birth parents. His name on the birth certificate will remain the same because he already carries their family name.

[13] Mr and Mrs [Malaitai], congratulations to you, you are officially parents to this very, very special gift. I hope you will both be able to travel to Tonga to pick up your son and also to have that time with your sister and her husband, and with your brother and his wife. Because, together, your families have allowed this to all happen. So God bless you and your son, I hope he adjusts to life in New Zealand and that you take him back to Tonga a lot; that he is able to go back home a lot and to come to

New Zealand; and take all the good things from this country and all the good things from Tonga and grow into a great man for both countries.

Judge I M Malosi
Family Court Judge

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