

EDITORIAL NOTE: NAMES AND/OR DETAILS IN THIS JUDGMENT HAVE BEEN ANONYMISED.

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/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).

**IN THE FAMILY COURT
AT WAITAKERE**

**FAM-2015-090-000060
[2016] NZFC 4741**

IN THE MATTER OF THE ADOPTION ACT 1955

BETWEEN FALALA KOLOI
 Applicant

Hearing: 3 June 2016

Appearances: Applicant appears in Person

Judgment: 3 June 2016

ORAL JUDGMENT OF JUDGE B R PIDWELL

[1] This is an adoption application. The applicant, Falala Koloi, has applied to adopt a male child born on [date deleted] 2011. His name is Afah Koloi. He is known as Afah. He is present today. Ms Koloi is representing herself and has prepared the appropriate documents for the adoption application.

[2] In order to make an adoption order there are a number of matters which I must consider. The first is whether there is the consent of the biological parents or whether that has been dispensed with. I do have the consent of the birth mother, Samena Koloi. She has signed the appropriate consent on 20 January 2015 in the presence of a Judge from Tonga who has also endorsed the certificate which confirms that the effects of an adoption order have been explained to her. I am satisfied that consent meets the necessary requirements.

[3] I am also satisfied that due to the circumstances of Afah's birth, I do not require consent from the biological father. It is not known who that person is and even if it were known I would be dispensing with his consent in the circumstances of this case.

[4] The next issue is whether this adoption is an adoption that is regulated by the Adoption (Intercountry) Act 1997 or not. That is important because if it is an intercountry adoption then I do not have the jurisdiction to make an adoption order without the involvement of the central authority. Although Afah's mother is Tongan and his family are from Tonga, Afah himself was born at Auckland Hospital. The Adoption (Intercountry) Act implements the provisions of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The provisions of Article 2 of the Convention are relevant, in particular that states that:

The Convention shall apply where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State.

[5] In Afah's circumstances it is not a situation where he has been moved from one country to another in order for the adoption to occur. He was born in

New Zealand and, accordingly, I am satisfied that this is a domestic adoption and I can proceed in that manner.

[6] I must then be satisfied that the requirements of the New Zealand Adoption Act 1955 are met. Section 3 enables Ms Koloï to make this application. There is no question about her place of domicile in New Zealand. Section 4 of the Act is also satisfied. Ms Koloï is 20 years older than Afah and Afah is clearly a child as defined by the Act.

[7] I turn to s 11. I must be satisfied that Ms Koloï is a fit and proper person to have the role of providing the day-to-day care of Afah and has sufficient ability to maintain him and bring him up.

[8] I must also be satisfied that it is in Afah's welfare and best interests for the adoption to proceed with due consideration being given to Afah's wishes, having regard to his age and understanding; s 11(b). I must also be satisfied that if any conditions have been imposed as to religious denomination or practices that those will be complied with and in this case no religious conditions have been imposed by the birth mother.

[9] I have the benefit of a very comprehensive report prepared by Child, Youth and Family. The social worker has been thorough in her enquiries. She has confirmed without hesitation the appropriateness of this adoption. She notes that Ms Koloï is related by blood to Afah, that she has cared for him since birth, she is herself [occupation deleted] and she is appropriately parenting Afah and is supported by the wider family in that role. Afah knows no other mother and his birth mother has returned to Tonga.

[10] There is clear evidence that Ms Koloï is able to properly raise and maintain Afah. She has a clear understanding of the implications of an adoption and is able to provide a loving and warm environment for Afah to be raised. She will perhaps be challenged through his childhood when she has to explain to him the circumstances of his birth and the surrounding adoption issues. However, I am confident that she

has his best interests and welfare at heart and will address that issue with the care that is needed.

[11] Accordingly, I am satisfied that Ms Koloï is a fit and proper person to have the role of providing day-to-day care to Afah and I am wholly satisfied that his welfare and best interests will be met by this adoption proceeding. The adoption order as sought is simply to make Afah's reality legal and I just now need to consider whether the order should be made interim or final. I can only make a final order when there are special circumstances. There are a number of cases where special circumstances have been found, in particular when a child has been placed with the adoptive parent from birth. The purpose of an interim order generally is to test the bonding and the establishment of the relationship of the child with the parent. It seems to me that all the testing has been done already and, accordingly, in my view this is a special circumstance given the length of time that Afah has already been in the care of Ms Koloï.

[12] Accordingly, I make a final order for adoption in the first instance. Ms Koloï does not wish the words "adoptive parent" to be on Afah's newly issued birth certificate. His name will remain unchanged.

B R Pidwell
Family Court Judge