

IN THE SUPREME COURT OF THE )  
TERRITORY OF PAPUA AND NEW GUINEA. )

THE QUEEN v. GARI RAKATANI.

In re DEBAIYA - an infant.

JUDGMENT.

This is an application by way of a Writ of Habeas Corpus in which Writ one GARI RAKATANI of Januabada Village, Port Moresby in the Territory of Papua was commanded to have the body of DEBAIYA being taken and detained under his custody brought before the Court for a determination upon her custody. The Writ was returnable at two o'clock in the afternoon of Monday, the Fifteenth day of May, 1961. On the Fifteenth of May, 1961 at 2 p.m. DEBAIYA was brought up in obedience to the Writ.

The father of the girl DEBAIYA gave evidence that a Medical Patrol, upon a visit to his village, SIPOMA, in the Morobe area, saw his daughter and ordered her to be taken for treatment for tuberculosis. The child was taken to Lae but there was no Medical Officer there at the time possessing the necessary surgical skill to perform an operation upon the girl, which was apparently imperative. The father and mother were then sent with the child to Port Moresby, where a successful operation was performed and the child was sent to GEMO hospital for convalescence and observation. After a month the parents were sent home, there to await the return of their daughter upon release from Hospital. Time went on with no news of the daughter. The parents became anxious because the period of convalescence, so they had been informed before leaving Port Moresby, would be about six months. The operation was performed in 1957.

The father kept making visits to the Morobe Patrol Post seeking news of his daughter, but could get nothing from the officials, who seemed to be reluctant to do anything to help him.

Finally the father came to Port Moresby himself and located his daughter living in the home of GARI RAKATANI at Hanuabada. He wished to take her away, but RAKATANI refused to give her up.

GARI RAKATANI appears to have taken the girl from GEMO hospital through the ill-advised action of a probably benevolent Sister, but it was

thoughtless benevolence leading to the present muddle.

The father GIGIPAIA has in no way offended against the provisions of Section 17 of the Infants Ordinance 1956. His attitude has been proper throughout.

Section 17 of the Infants Ordinance 1956 does not affect the jurisdiction formerly exercised by the Court of Chancery. (The Queen v. Gyngall 1893 A.C. p 232) so that irrespective of Section 17 the Court may look to the welfare of the child in an equitable jurisdiction. By Section 3 Sub-section 8 of the Administration of Justice Ordinance 1927 it is declared that "in questions relating to the custody and education of infants the rules of equity shall prevail."

In the circumstances of this case it is not at all for the welfare of this infant of thirteen years that the father's right to the custody of his daughter should be displaced.

I allow the infant DEBAIYA to leave the Court in the custody of her father GIGIPAIA and to remain in such custody.

The person to whom the Writ was directed, GARI RAKATANI, requires some monetary compensation. There is provision in Section 16 of the Infants Ordinance 1956 giving a discretion to the Court to order the payment by the parent of the whole or portion of the costs of bringing up the infant in the event of the parent being given the custody as against the other person.

The parent in the circumstances of this case can not be made responsible for any payment to GARI RAKATANI for the maintenance of the child DEBAIYA. In fact it is an impertinence to request it from GIGIPAIA the father. I make no Order as to payment.

JUDGE.

11 a.m. 17/5/61