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

**NO.F.32/2000**

---

**IN THE MATTER OF** the Civil Law Act [Cap.25] and the Children Act [UK] as amended.

**AND**
**IN THE MATTER OF** an application by ***Mr Tevita Sitalingi Naufahu*** and ***Mrs Sandra Fiotelisa Naufahu*** for an Order for Custody and Legal Guardianship.

**AND**
**IN THE MATTER OF** ***Star Nyioka Feauini Naufahu Tu'uhetoka*** a female child, born on 20th December, 1988.

**BEFORE THE HON. JUSTICE FINNIGAN**

**Counsel:** Mr Garrett for applicants,
Mr Tu'utafaiva for respondents,
Ms S Tupou appointed Guardian ad Litem of the child

**Dates of Hearing:** 6 & 9 June 2000

**Date of Judgment:** 9 June 2000

## ORAL JUDGMENT OF FINNIGAN, J

This is an application by the natural father of a female child, and his wife, for orders of custody and legal guardianship of the child. The respondent is the mother of the child, with whom till recently, the child has been living. The child was born in 1988. She recently left her mother's home and took up residence with her father and his wife after she was beaten by her mother.

I agree with Mr Tu'utafaiva, this is not a case for considering legal guardianship of the child. From the evidence and the submissions, the case is clearly an application by the child's father for custody of the child, in competition with the natural and legal claim of the child's mother.

It might be that the English legislation governing custody and guardianship upon which Mr Garrett relies is in force in Tonga. I do not decide whether it is or not. The Court would in any event have inherent jurisdiction as *parens patriae*: in both England and Tonga it is with the Court that the legal responsibility rests for all children about whom there is a question of care.

These are my impressions and my findings:

1. The natural mother has raised the child from birth without any prior complaint by the father so far as the evidence reveals. He has never till now intervened.

2. Not till now has the father alleged that the mother's way of life is detrimental to the child.

3. The father is not the prime mover in this case. The prime mover has been the child herself.

4. It was the child who moved to change the status quo and single-handedly brought it about. The father and his wife have sought only to give effect to her decision, as he said in his evidence.

5. The father has not shown by any evidence that any great natural love and affection for this child have impelled him until now. He asks the Court to presume it. Yet his maintenance payments have been grudging and in arrears, and if his evidence is complete they are still in arrears. He and his wife seem to supply their employees as chaperones to accompany the child to school and elsewhere. They themselves work very hard and seem to have little time available for this.

6. The applicants' home is a family home, which I presume is a place of happiness and affection, though I have only their evidence and that of the photographs that they have chosen. It is clearly a home of comfortable standards, though I am not sure whether they have provided separate sleeping quarters for the child.

7. The mother currently raises the child, but for 5 years left her with her own parents. These were important years for the child. Those years excepted, the mother has cared for her and has provided all her needs, physical and emotional until now, and the father has not intervened. The mother seems competent and self-sufficient. She runs her own shop. The child in interview is a delightful child, a credit to her upbringing.

8. This application has been brought about because the applicants are justifiably alarmed by the events of 26 & 27 April. Clearly the mother beat the child beyond her endurance, with a stick and with a strap. Clearly this beating has been a repeated occurrence during the life of the child.

9. The bruises shown in the photographs, if established by evidence to have been caused by assault, would certainly found a conviction for causing bodily harm and the person responsible would be liable to imprisonment for up to 5 years. Clearly the Court cannot overlook the evidence of the mother about these bruises.

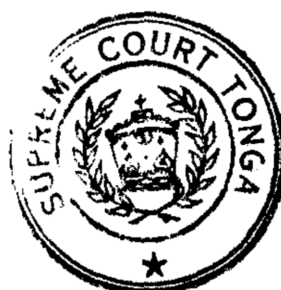
10. For the reason of the child's safety alone, I grant the application by the father and his wife for custody of the child, but I would need more evidence before I was persuaded that this should, in the child's best interests, be permanent.

11. I make the custody order as sought in favour of the father, but it is an interim order only, for 7 months until 9 January 2001. There is to be reasonable access for the mother in that time as agreed or, if necessary, fixed by the Court. The child is mature enough to be consulted and should be.

12. There will be a Directions Hearing on Tuesday 9 January 2001 at 9am. The orders I have made may be extended then if necessary, to a time when a hearing may more conveniently be held. The Court may then, if it is necessary, decide the matter in a final order, i.e. if there are no agreements between the parents about the arrangements after then.

13. An order for costs is not appropriate. I make no order.

**NUKU'ALOFA:** **9th June 2000**




**JUDGE**