

**IN THE HIGH COURT OF THE COOK ISLANDS**  
**HELD AT RAROTONGA**  
**(Civil Division)**

**In the matter** of Sections 523A  
and 538 of the Cook  
Islands Act 1915.

**Between** **TIPOKI MARSTERS**  
of Rarotonga, Public  
Servant.  
**APPLICANT**

**and** **GEORGE MARSTERS**  
of Rarotonga Public  
Servant.  
**RESPONDENT**

Mrs Browne for the Applicant  
Mr George for the Respondent  
Date of Hearing: 24th April 1995  
Date of Judgement: 25th April 1995

**JUDGEMENT OF DILLON J.**

On the 15th February 1995 orders were made by consent issuing a separation order; and granting a custody order of the twin children of the marriage to the Applicant with reasonable access to the Respondent. The twins are only 3 years old.

The applicant now applies to the Court for variation of the original order granted on the 15th February 1995 to enable her and the twins to travel to New Zealand for the purpose of furthering her education in the nursing field, and to achieve a nursing diploma and certification in Midwifery. She has already had considerable nursing experience.

The Respondent objects, not to the applicant going to New Zealand, but rather to the twins travelling with her. The grounds of his objection are as follows:-

1. There is no or insufficient evidence before the Court as to how the children are going to be looked after; by whom; and in what circumstances.
2. The only evidence of income while in New Zealand is a possible benefit for which the applicant intends to apply for but does not know whether she will receive or is entitled to receive. She also speaks of part time employment but of which she has no details.

3. The Respondent would not have reasonable or regular access to his children.
4. The applicants parents have been looking after the children and they should remain with them.
5. The applicant wants to look after the twins and have custody of them. He nominated his sister Moetoa Simiona who would look after the twins while he was at work. She has 5 children.

The applicant on the other hand provided the following information to the Court in Support of her application:-

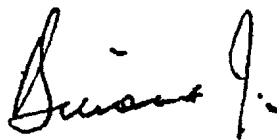
1. The two young children require the parental control of their mother the applicant because of the background which caused the separation. She alleged the separation was solely due to the Respondents cruelty and infidelity.
2. She plans to further her nursing experience so that she can better able to provide for her two children in the future. She already has considerable nursing experience which she wishes to extend further.
3. She explained that she has accommodation secured - she would be in the family home in New Zealand. Her brother is also in that family home and has the niece of his wife - a 22 year old girl - who cares for his children and would, it is planned, care for her twins also. Such care, she explained, would only be required for 2 or 3 hours at a time during days when she would be attending lectures.
4. The applicant also explained that she has in the vicinity of the New Zealand family home her uncle and aunty who are not working and would be available to look after the twins and/or support the applicant and her family.
5. The applicant indicated that she was prepared and in fact intended to seek part time employment that would allow her to attend lectures; would ensure that she attended to the childrens needs; while at the same time provide funds for the childrens maintenance and upkeep.
6. The applicant referred to the Respondent drawing out of the childrens own bank account the sum of \$500.00 to buy groceries when he had them for a week. The Respondent said he only drew out \$200.00 Such action is beyond description and can only be satisfied by paying back that money forthwith. His own family does not have a very high regard of him. If they knew that he had used money taken from his childrens bank account they would have even less regard for him.

The Probation Report is detailed and favourable to the applicant. It is interesting to note that enquiries from the Respondents aunts viz. Mrs Teremoana Sam; Mrs Tutai Parker; and Mrs Moeroa Simiona all feel that it would be best for the children to be with their natural mother. It is obvious that the respondent has not approached Mrs Simiona who he said would look after the children. But Mrs Simiona has said the children should be with the applicant.

I believe the Respondent is in no position to object to this application. It is he who caused the separation by his cruelty and infidelity. He admits that in the 4 months of this year he has paid only \$50.00 towards his childrens maintenance - he has in effect abandoned them and left the applicant to work and maintain, on her own, his children.

The original order will be varied as follows:-

- a) The applicant is entitled to custody of the two children and to remove them from this jurisdiction and take them to New Zealand;
- b) The childrens passports held by the Registrar are to be delivered to the applicant.
- c) Reasonable access to the children in New Zealand will be available to the Respondent.
- d) The Respondent is entitled to further access by having the children back in Rarotonga at times and for such periods as the parties agree to and at the expense of the Respondent at all times.
- e) Either party is granted leave to apply to the Court on any matters concerning custody and access.
- f) Costs reserved.



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Dillon. J.