

**IN THE HIGH COURT  
OF NIUE  
(CIVIL DIVISION)**

**IN THE MATTER:** Section 5(1)(b), Section  
5(1)(c), Section 12(2) Section  
12(3) and Section 20  
Guardianship Act 1968

**IN THE MATTER OF:** Vincent Saweri, a minor

**AND** Psyariana Saweri, a minor

**BETWEEN** Joyce Faganaoa Maesua

**Applicants**

**AND** Moyai Saweri

**Respondents**

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**DECISION**

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[1] The court has received the following:

- i. An application for custody of Vincent Adolf Maesua Saweri (Vincent) and Psyariana Sauil Wilhelminah Saweri (Psyariana) from Phillip Allan Counsel on behalf of Dr. Joyce Faganaoa Maesua dated 6 March 2015.
- ii. An application to enforce a foreign judgement from Counsel Kahealani Hekau for the same applicant dated 4 March 2015.
- iii. An application to vary a custody order from Counsel Kahelani Hekau for the same applicant dated 4 March 2015.

[2] In essence all the above applications relate to custody of the two children, Vincent and Psyariana being granted solely to the applicant which would alter the existing custody order of the High Court Honiara dated 2 December 2011 which granted custody of Vincent to the respondent and Psyariana to the applicant.

[3] Having considered the applications and documents filed I decline to make the orders sought for these reasons.

[4] Section 5 of the Guardianship Act 1968 provides:

#### 5. Personal Jurisdiction

(1) The Court shall have jurisdiction under this Act –

(a) Where any question of custody, guardianship, or access arises as an ancillary matter in any proceedings in which the Court has jurisdiction; or

(b) Where the child who is the subject of the application or order is present in Niue when the application is made; or

(c) Where the child, or any person against whom an order is sought, or the applicant, is domiciled or resident in Niue when the application is made.

(2) Notwithstanding subsection (1) the court may decline to make an order under this Act neither the person against whom it is sought nor the child is resident in Niue and the Court is of the opinion that no useful purpose would be served by making an order or that in the circumstances the making of an order would be undesirable.

[5] As I understand the situation at the present time the applicant and both children have left Niue and currently reside in the Solomon Islands. Also the respondent is not a resident of Niue but a resident of Papua New Guinea.

[6] It is relevant to note also that the applicant is a Solomon Islander by nationality and that the originating orders were made in the Solomon Islands.



[7] Also although the applicant has indicated a desire to return to Niue with the children this has not been confirmed and has not happened.

[8] Having regard to the above matters I do not consider any useful purpose will be served by making the orders sought and in the circumstances the making of the order in my view is undesirable. It would be more appropriate for the applicant to file her applications with the High Court, Honiara.

[9] Accordingly I decline to make the orders sought.

[10] A copy of this decision is to go to all parties.

Dated at Wellington this 19<sup>th</sup> day of March 2015.

A handwritten signature in black ink, appearing to read 'W W Isaac', written over a horizontal line.

W W Isaac

**JUDGE**