No 105
M.P. 19 1956

IN THE MATTER of the Adoption of Children Ordinance 1951

and

IN THE MATTER of an Application by KENNETH WILLIAM THEILE and JUANITA THEILE his wife for an Adoption Order in respect of an infant named MIDL.

REASONS FOR JUDGMENT.

This is an Application by way of Motion upon Notice dated 28th August, 1957 for an Order for the Adoption of a child named MIDL.

In order to come within the jurisdiction of the Court conferred by Ordinance No. 23 of 1951 of the Territory of Papua and New Guinea, it must be established by proper evidence that the person in respect of whom theOrder is sought is a "child" within the scope of the definition set out in Section 4. By this definition the meaning of the word "child" is limited to "a person other than a native under the age of twenty-one years."

In this case it appears that the Order is sought in respect of a person who is the illegitimate son of a native woman. According to British law the presumption is that the child derives its status in cases of illegitimacy from its mother, and there may be considerable difficulty in establishing for the purposes of the Ordinance that the illegitimate child of a native can be anything but a native.

Assuming, however, for the purpose of this case that this is an issue of fact which may be established by appropriate evidence, there is nowhere to be found any evidence sufficient to establish the fact. There is a suggestion in the Affidavit of Mr. Kelly that the father of the infant in question may have been a European, but even this suggestion appears in a form in which it could not be received as evidence, and even if admitted, it could certainly have no probative value.

The only course open to me is to refuse the Application, since the applicants have failed to establish that

the Court has jurisdiction in relation to the infant in question.

In case the applicants should desire to make further application in the future, I think that I should point out that in this case there are certain factors of an unusual nature which ought to receive more attention and in relation to which much more substantial evidence would be required. For example, the applicants are Missionaries of American origin, and although their future intentions are not disclosed in the Affidavit, the possibility of their returning to the United States of America is apparent, and in the event of their doing so, entirely different considerations may arise in relation to the welfare of a coloured child. It is the responsibility of the Court to satisfy itself before making an Adoption Order that the Order would be in the best interests of the child, and the Court could not come to such a conclusion on the evidence presented to it on this occasion.

Should any further application be made regarding the adoption of the infant in question, I think that Notice of Motion should be served upon the Crown Law Authorities so that they will have an opportunity, in case they see fit, of investigation the matter fully.

C.J.
2/9/37.

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