

IN THE MATTER of the Adoption of
Children Ordinance 1951-1956

- and -

IN THE MATTER of an Application by
CESTMIR JANECKA and HEDWARAHI LOHIA
for an Adoption Order in respect of
four infants, NORRIS, BEATRICE, BERNARD
and LAURENCE NAIME.

1. This is an Application by a husband and wife jointly for the adoption of four infants. The wife (a Papuan native) is the mother of the children born ex nuptially and it appears that the female child NORRIS was fathered by Frank Griffin and the female child BEATRICE and the male children BERNARD and LAURENCE NAIME were fathered by Bernard McMahon Ritchie.
2. The principal question to be decided first is whether these children are natives within the meaning of the Adoption of Children Ordinance 1951-1956 or not. If they are, on a proper construction of that Ordinance, "natives," then they are beyond the ambit of the Ordinance, Section 4 reading as follows:-
"Child' means a person other than a native under the age of twenty-one years."
3. Section 6 of the Ordinances Interpretation Ordinance 1949-1957 defined "native" (in an Ordinance unless the contrary intention appears) as meaning "An aboriginal inhabitant of the Territory and includes a person who follows, adheres to, or adopts the customs or who lives after the manner of the aboriginal inhabitants of the Territory."
4. The evidence in this matter satisfies me that the children in question do not follow, adhere to or adopt the customs or live after the manner of the aboriginal inhabitants of the Territory.
5. These children are part native as the mother is an aboriginal native of the Territory. They are in fact what is known locally as mixed blood people. In my view mixed blood people, unless they follow, adhere to or adopt the customs or live after the manner of the aboriginal inhabitants of the Territory, are not for the purposes of the Adoption of Children Ordinance 1951-1956 natives and are therefore qualified for adoption.

6. I am fortified in my view by the fact that if the Ordinance now being construed were an Ordinance of the Territory of Papua only or one of the Territory of New Guinea only or of the Territory of Papua-New Guinea the interpretation applicable would quite clearly exclude part native children from the ambit of the Adoption of Children Ordinance 1951-1956.

7. Interestingly enough on the definition referred to it would appear that a person having the ordinary Australian parentage could come within the definition of the term "native" by the manner of his living.

8. I do not think that consent is required from the ex nuptial fathers of the children the subject of the Application but for more abundant caution I dispense with their consent.

9. I make a joint Adoption Order in favour of the Applicants in respect of the three children BEATRICE, BERNARD and LAURENCE NAIME. Unfortunately I cannot make an Order in respect of the eldest child as her age is too great having regard to the age of the father.

10. As regards the surname of the children adopted pursuant to this Order I feel a lively doubt as to whether the provisions of the Ordinance enable me to make an Order since the Ordinance refers to the alteration of the surname of the adopted child to that of the adopting parent and therefore reluctantly refuse this part of the request by Mr. White.