

LINA SIMA -v- NICK THOMAS

High Court of Solomon Islands

(Muria, CJ.)

Civil case No. 182 of 1991

Hearing: 26 September 1994

Judgment: 27 October 1995

M. Samuel for the Petitioner

C. Tagaraniana for Respondent

MURIA CJ: The petitioner brought a petition for divorce and was granted a decree nisi on 22 May 1992. The Court ordered the children to remain with the respondent in the interim. The question of custody was then adjourned into Chambers. These proceedings are now for the determination as to which of the parties should have custody of the children of the marriage.

The parties were married on 28 February 1979 in the United Church at Munda, Western Province. The respondent comes from Papua New Guinea and he is a PNG citizen. The petitioner is a Solomon Islander. After their marriage they have lived for sometime in Bougainville (PNG) where the respondent was working. It was not until June 1989 that the petitioner returned to Solomon Islands with the two children following the respondent's behaviour of drinking and assaulting her. The respondent followed them to Solomon Islands in November 1989.

In 1990 the respondent took the children and left them with his PNG friends at Naha. Later he went to live at CDC I with his new wife and he took the children with him.

There was some suggestion that the respondent had been treating the children harshly. Consequently the elder child Lovelyn Loretta who is now 13 years old ran away from the respondent and went to live with her mother. She has not returned to the respondent since then. The younger child Thompson Thomas who is now 10 years old is still with the respondent.

In the course of the proceedings, the parties had been invited to give their views and comments to the Court. The parties had suggested through their counsel that they had already given their story in the Social Welfare Reports and that their respective cases rest on those reports. In addition they suggested that the Court should interview the children themselves to ascertain their views. Following that consensus approach, I had a short

interview with each of the children separately in my chambers. The interviews with the children were indeed very useful.

In a case such as this, the paramount consideration is the interest of the children both individually and together. This connotes a process where the court must take into account all the relevant facts, the claims and wishes of the parents, the risks and choices presented by the facts of the case and other circumstances in order to ascertain, as best as it can, what is in the best interest of the child. There is no hard and fast rule in this process.

In the present case there has been some antagonism between the respondent and the petitioner especially over the children.

Some indication of this can be gathered from the first Social Welfare Report. Consequently, one of the children, Loretta has gone over to the mother but she has now been staying with her grandfather, George Tuke. The other child Thompson, lives with his father and the step mother.

The Court felt that in the circumstances prevailing at the time, it would not be appropriate to make any final order regarding the children then. This is particularly so, since the children then were very much affected by the shock of the separation of their parents and were trying to adjust to the change of circumstances. The Court therefore made the temporary order that the children should remain where they were until the Court makes the final order

As a follow up to see how the children have been adjusting to their change of environment and circumstances, the Court directed a further report to be prepared by the Social Welfare Officer responsible. That has now been done and although the report has been prepared only in respect of one of the children, Loretta, it certainly provides a useful picture as how the children have been able to adjust themselves.

I have no doubt that time has been a "healing" factor for the children in this case and I am sure to disturb them any more would not be in their interest. Their physical, emotional and educational needs would, in my view, be fairly accommodated under their present situation and any order now to be made by the Court must take that into consideration. The last thing I would do now is to make an order that disrupts these two children's settled environment.

Having said that, I must also acknowledge the views and feelings of the parents as expressed in the report. May be they still do have negative feelings towards each other, I do not know. But I do hope that they can come to appreciate that the children are really the ones who become the victims of this case and that they can cooperate, even if they are no longer together, in whatever way they can to ensuring the future of the children do not suffer. In this regard, the Court has been grateful to learn the assistance provided by the children's grandfather George Tuke and his wife.

Weighing up all the factors in this case and doing the best I can in an attempt to maintain the interest of the two children I come to the conclusion that the proper order to make now finally is as follows:

1. Custody of Lovelyn Loretta shall be granted to the mother with reasonable access to the father.
2. Custody of Thompson Thomas shall be granted to the father with reasonable access to the mother.
3. The present arrangement whereby Loretta lives with her Grandfather George Tuke and his family shall remain undisturbed.
4. If and whenever the two children wish to get together either at the father's home, or mother's home or at their grandfather's home, all parties concerned must ensure that the children wishes be facilitated.
5. No order for costs.

(Sir John Muria)
CHIEF JUSTICE