

IN THE SUPREME COURT OF TONGA
APPELLATE JURISDICTION
VAVAU REGISTRY

Civil Appeal No.15 of 1990

B E T W E E N :

MANU TONGA

- Appellant

A N D :

SALESI TONGA

- Respondent

HEARD BEFORE HIS JUDGMENT BY JUSTICE ROBERT W. NEJAFU ON 19TH APRIL, 1991.

TRANSCRIPT OF ORAL DECISION

This is an appeal from the decision of the learned Magistrate at Neiafu awarding the custody of 2 children to their father Salesi Tonga, to be taken from their mother.

The Magistrate's order purported to settle the question of custody by awarding it permanently to the father in the U.S.A, but the learned Magistrate did not allow the mother a chance to obtain legal representation or put her case to him.

The law which a Magistrate must apply in custody cases is that the first and main consideration is what is best for the child. The learned Magistrate's decision shows no indication that he considered that question, but it is essential that he should have done so.

It appears that the decision was based on the mother giving birth to a child out of wedlock and registering it as legitimate, but that is not central to the welfare of the children.

The learned Magistrate therefore erred in law and the appeal succeeds.

As to what should be done by this court, the mother made a separate application for custody to the Supreme Court here last year and the Supreme Court awarded interim custody to her. I shall therefore reverse the decision of the learned Magistrate and continue interim custody in terms of the Supreme Court order of 25th October 1990.

Dated 19th April 1991

Counsel - Appellant: Mrs Vaihu

Respondent: did not appear

