IN THE SUPREME COURT OF TONGA RG. 131/99

REGISTRAR GENERAL JURISDICTION

NUKU'ALOFA REGISTRY

IN THE MATTER OF	:	the Maintenance of Illegitimate Children Act [Cap. 30]
AND IN THE MATTER OF	:	***Meivisi 'Ana Finau 'Ofa ki Mataura 'Aholelei***, a female child born on 21 June 1995
AND IN THE MATTER OF	:	an Application by ***Ms Maria Grazia Croci*** for Costs.

BEFORE HON JUSTICE FINNIGAN

Counsel: Applicant (Respondent) in person
Ms Tonga for Respondent (Applicant for costs)

Written submissions: 27 May and 11 June 1999
Date of Ruling: 24 June 1999

RULING OF FINNIGAN, J

This is an application for costs.

On 4 February 1999 Ms Croci applied for Letters of Adoption of a child. On 8 February she applied ex parte for interim orders to dispense with the consent of the natural mother and for custody of the child. On 12 February 1999 orders were made by the Court, it seems ex parte, granting Ms Croci immediate possession and custody of the child, and directing the natural parents (the Respondents named above) to surrender the child to her. The natural parents were prohibited and restrained from attempting to take or remove the child.

On 16 February the natural parents filed an application to vary, but in effect to set aside, the orders of 12 February. On 19 February counsel for Ms Croci wrote to the Court advising that she did not want to enforce the order for custody, as the natural parents had refused to comply and for her to stand back was, on the advice of counsel, in the best interests of the child. She wished to proceed with the application for adoption, and sought the appointment of a Guardian ad Litem.

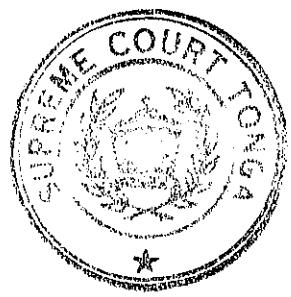
On 22 February counsel attended in chambers before me without Ms Croci and the natural parents attended with their lawyer. The order of 12 February was set aside by consent. Counsel for the natural parents sought costs on the application to set aside, and that issue was reserved. Notice was given that the application for adoption would be fully defended. An order was made appointing a Guardian ad Litem.

On 3 March 1999, on the application of counsel for Ms Croci, the adoption application was withdrawn by leave of the Court. Counsel also sought leave to withdraw as counsel for Ms Croci. Counsel for the natural parents applied for costs, and attended with them in chambers on 6 April. Counsel for Ms Croci also attended on that occasion, and the leave he sought was granted. The application for costs was adjourned for submissions.

On 25 May Ms Croci attended in chambers with counsel for the natural parents. Written submissions were agreed upon. Ms Croci filed hers on 27 May, and Counsel for the natural parents on 11 June. At the chambers hearing on 25 May I said that there would be a further directions hearing after the submissions were filed in order to settle the issue. However, such a hearing will add further to the expense, and the court timetable will not permit such a hearing until late July, and the submissions I have received are more than sufficient for a decision.

Here then is my ruling. I have reached my conclusion after reading the submissions of the parties, and on the basis of what has been submitted. Counsel for the natural parents makes the point that costs normally follow the event, and asks the Court to treat the withdrawal by Ms Croci of both her applications as being equivalent to a decision in favour of her clients. She stresses the emotional weight of the defence imposed upon her clients by both applications. Ms Croci likewise. It is that factor which in my view outweighs all others. In applications involving conflicting allegations within the family, that factor may push aside the normal consideration of which party succeeded and to what extent. That is particularly so in the present application, it was the airing of very private matters in court that offered the child the best chance of an outcome that advanced her interests. That outcome may or may not have occurred. There was no winner or loser, but a conflict has been laid to rest. It was a conflict in the context of family relationships, though not all the people involved are of the one family. Where the Court has jurisdiction in family conflicts, the court is available to the parties because that is in the public interest. A party in such a matter will be directed to pay only if the particular facts of the case warrant an order that one party should contribute to the expenses of the other. The present is not such a case.

For these reasons, I decline the application for costs.



NUKU'ALOFA, 24 June 1999

JUDGE