

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Adoption
Case No. 1856 of 2017

IN THE MATTER OF: ANN NATASHA JIMMY
A Child

AND IN THE MATTER OF
ARTICLES 343 TO 359 OF
THE CIVIL CODE:

AND: HUGH F BROWN & JULLEE I BROWN
Applicants

Date of Hearing: 31st October, 2019
Delivered: 6th November, 2019
Before: The Master Cybelle Cenac-Dantes
In Attendance: Marie Noelle Patterson counsel for the
Applicants

JUDGMENT

Headnote

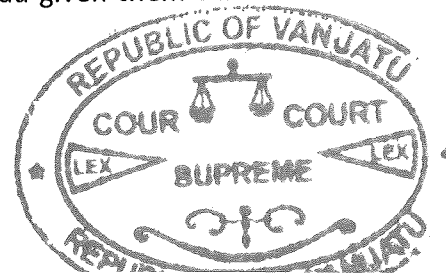
*Application to adopt a child 18 years old – applicability of French Civil Code -
Article 343 -*

INTRODUCTION

1. This hearing is to determine whether a child over the age of 15, but under the age of 18 years can be adopted.

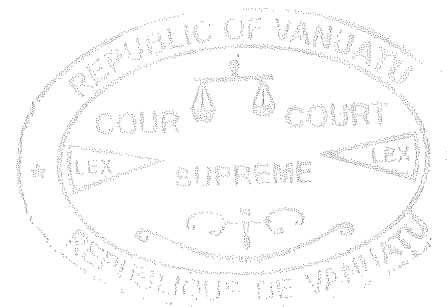
HISTORY OF THE CASE

2. An application for adoption was filed by the applicants on the 19th July, 2017 when the child Ann Natasha Jimmy was 16 years old. She had by then been living with the applicants in Australia. Her father Tom Andrew Nat Naour had given them care and



guardianship of his daughter about February 2016 to allow Ann to further her studies in Australia.

3. Order of the court of the 3rd April, 2018 specified additional information the court required to complete the process:
 - (a) Supplementary sworn statement;
 - (b) Police clearances;
 - (c) Up to date medical report stating how long Applicants have been with current doctor;
 - (d) Psychological assessments;
 - (e) Report from Australia indicating applicants are fit and proper persons to adopt the child;
 - (f) Letter from relevant authority that if order granted it would be recognised in Australia;
 - (g) Financial records;
 - (h) Three references from friends and/or colleagues;
 - (i) Death certificate of biological mother.
4. These were not the statutory requirements as required under the Act or the Code, but further information requested at the discretion of the court to be fully satisfied that the applicants were suitable candidates to adopt. I understand statutory requirements in this context to mean the minimum that must be provided under the law to qualify to present oneself to the court as a suitable person to adopt. Anything beyond this would be based on the court's request on a case by case basis.
5. The law required simply that the applicants be married for 2 or more years, that they lived together, were older than 25 years, were older than the child by 10 years and produced medical clearances.
6. The costs of obtaining the report from Australia proved costs prohibitive for the applicants, and consequently, they chose to apply those monies towards school fees for Ann in Australia. They did not withdraw their application but left it alive before the court with the intention that they might be able to proceed with it before Ann turned 18.
7. The applicants have now re-presented themselves to this court to revive their dormant application, although Ann is now 18, to ask to proceed with the adoption under Article 345 of the French Civil Code.



THE LAW

8. It is now trite law in Vanuatu that since independence both the English and French laws are to be read together as the law of Vanuatu.¹
9. I therefore accept that it is perfectly correct to consider the relevant Articles of the Civil Code applicable to this case, as the English Adoption Act of 1958 is silent on the point.
10. For accuracy I will quote in full, both the French text and its English translation:

L'adoption n'est permise qu'en faveur des enfants âgés de moins de quinze ans, accueillis au foyer du ou des adoptants depuis au moins six mois.

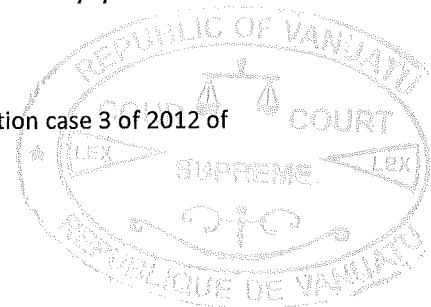
Toutefois, si l'enfant a plus de quinze ans et a été accueilli avant d'avoir atteint cet âge par des personnes qui ne remplissaient pas les conditions légales pour adopter ou s'il a fait l'objet d'une adoption simple avant d'avoir atteint cet âge, l'adoption plénière pourra être demandée, si les conditions en sont remplies, pendant toute la minorité de l'enfant.
S'il a plus de quinze ans, l'adopté doit consentir personnellement à son adoption plénière.

Adoption is allowed only in favour of children under fifteen, who have been received in the home of the adoptive parent or parents for at least six months. Where however the child is older than fifteen and has been received in the home by persons who did not fulfil the statutory requirements for adopting or where he was the subject of a simple adoption before having reached that age, plenary adoption may be applied for if the conditions for it are fulfilled, during the minority of the child. Where he is older than fifteen, an adopted person must personally consent to his plenary adoption.

DISCUSSION

11. Ann was born on the 23rd May, 2001. She has known the applicants since 2009 when she was 8 years old. On account of the death of her mother, and the undesirable circumstances of her living situation, the applicants took a special interest in Ann and started to pay school fees and school supplies for her in Vanuatu. Every year they travelled to Vanuatu to see Ann, and after receiving a report of a brutal beating of Ann at the hands of an uncle, they made arrangements, with the blessing of her father, to obtain a student visa for her to live with them in Australia and attend school. From all accounts, including that of Ann, she is performing extremely well and thriving in her new environment. She acknowledges the applicants as parents whom she has come to love over the 10 years they have been in her life and has consented in writing to the adoption.
12. A student visa was obtained for her on the 15th March, 2016 when Ann was still 14 years and she travelled to Australia shortly thereafter on the 21st March, 2016. Before that, she had travelled to Australia on school holidays with the applicants on the 28th December, 2014 and 21st January, 2015. Prior to taking up permanent residence with the applicants in Australia, Ann lived with them every year at their home when they travelled to Vanuatu to see her.

¹ Considered Article 95 of the Constitution of Vanuatu, *Banga v Waivo, Joli v Joli*, Adoption case 3 of 2012 of MM



13. I am of the considered view that the court is able to allow the adoption of a child who has reached the age of 18 years under the permissive Article of the Civil Code as it remains good law in Vanuatu.
14. The Applicants must satisfy the court that at the time Ann was received into their home they had fulfilled the statutory requirements to qualify for a plenary adoption. At the time of the hearings conducted by this court, and reading the documents produced, save for the report from the Australian adoption authority, the court was satisfied that the applicants were suitable to adopt Ann.
15. Further, and more important to the legislation, is that at the time of receiving Ann into their home, both in Vanuatu and Australia, Ann was not yet 15 years of age and the applicants met the statutory requirements for applying for a plenary adoption.
16. My order therefore is as follows:
1. That the applicants are allowed to proceed with their Application to adopt Ann who is now 18 years old.
 2. That the applicants are to provide the following documents on or before the **6th December, 2019** before a recommendation can be submitted to the Judge:
 - (1) Up to date police clearances;
 - (2) Up to date medical clearances;
 - (3) Financial records;
 - (4) Up to date consent of the birth father;
 - (5) Other suitable evidence of the provisions currently being made for Ann and to be made for Ann up to University level education;
 3. That following review of the said documents, once submitted, the court will write its recommendation to the Judge and obtain a hearing date at the earliest opportunity.
 4. That at the hearing for final adoption order all parties must be present including Ann and her birth father.

BY THE COURT

MASTER

