IN THE COURT OF APPEAL OF

THE REPUBLIC OF VANUATU

CIVIL CASE NO. 85/84

(Full Court)

IN THE MATTER OF: The Constitution of the Republic of Vanuatu

AND

IN THE MATTER OF: The Infant Priscilla Vorongo and her natural mother Susie Wells (Petition by Susie Wells)

Coram:

Mr Justice F.G. Cooke
Mr Justice J. Williams
Mr Justice L. Cazendres

JUDGMENT

The petitioners are Susie Wells and her illegitimate female child, Priscilla Vorongo, born on 13th April 1982.

LEO TAMATA is the father of the child.

On the 6th April 1983 the child, who was then almost one year old, was adopted by Maria Waroka and her husband Jim Waroka.

Adoption proceedings had been conducted in the Court of Mr G. Norris, Senior Magistrate at Santo before whom the petitioner Susie Wells and the adoptive mother Maria Waroka gave evidence upon oath. Susie Wells's evidence indicated her willingness to part with her child.

It was not until June 1984 that a petition opposing the adoption was filed in the Supreme Court of Vanuatu, supported by affidavits of the petitioning mother and the natural father LEO TAMATA.

The affidavit of Susie Wells, the petitioner, states that she is a bank clerk, employed by Barclays Bank and that her employers transferred her to Santo in February 1983. She took the child Priscilla with her and her sister, Maria, began to look after the child. Her affidavit alleges that she was persuaded to appear in the Magistrate's Court so that Maria could care for the child. The inference from paragraph 7 of her affidavit is that she did not realise she was abandoning all her legal rights to the child, at the same time she says she was threatened with violence should she not co-operate in the adoption proceedings.

After speaking on the phone to the child's natural father who was in Port-Vila she became concerned and complained to friends. At this time she was still working in the bank but a month after the adoption order, her brothers who had heard of her complaints,

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kidnapped her in Santo and removed her to the family village at Hog Harbour. This would be about May 1983. She was restricted to the village and not allowed to move until September. During that time, letters which she tried to despatch were intercepted. Her brothers informed Barclays' Bank that she had resigned and they paid off VT107,000 which she owed to the bank.

She complained in Port Vila to no lesser authorities than the Commissioner of Police and the Attorney General but for reasons not apparent to her they took no action. This was after she had escaped from her brothers in September 1983. Since she could not persuade the authorities to act she and LEO TAMATA engaged a lawyer.

We regard it as necessary to set out her allegations in detail because they are so serious.

At the hearing, Mr McKeague, the petitioner's advocate, handed up copies of his very well prepared submissions.

In reply to questions from the Court Mr McKeague revealed that Susie Wells has regained her job at the bank and earns VT35,000 to VT40,000 per month whilst the natural father earns VT120,000 per month as a licensed aircraft engineer. They are living together in spit of the objections of her family and she is again pregnant.

It appears that the learned Magistrate followed the English Adoption Acts and Mr McKeague argued that if that were so then the correct procedure had not been followed.

It was also argued by Mr McKeague that even local custom may not have been followed.

In reply to the Court, Mr McKeague stated that the adoptive parents had refused to come to the Supreme Court and give evidence; they also refused to give up the child.

Following Mr McKeague's submissions we proposed that oral evidence be given by Susie Wells and LEO TAMATA, and that persons who may be able to give evidence be served with subpoenas to give evidence and that the adoptive parents be ordered to appear and defend the petition.

Mr McKeague was agreeable but Mr Kattan for the Attorney General submitted that the petitioner should have appealed in the ordinary way from the Magistrate's Court. He argued that the affidavits could have been used to obtain leave to appeal out of time, and his arguments have much to commend them if we were especially concerned with court procedure.

However, we are concerned by the nature of allegations, namely forcible adoption or adoption proceedings acceded to by threats of force; false imprisonment for a period of almost 6 months only terminated by the petitioner's escape; interference with her employment to the extent of tendering a false resignation purporting to come from her. They represent, if supported by acceptable evidence a gross interference with the fundamental rights of a citizen as detailed in the Constitution, chapter 2, part 1.

Article 6 (i) states:-

"6 (i) Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is

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likely to be infringed may, independently of any other possible legal remedy, apply to the Supreme Court to enforce that right."

Article 6 (i) is extremely wide and in our view the petitioner, even if she could proceed by way of appeal is not bound to do so. We consider that we are bound to hear the petition.

Under Article 6 (2) the Supreme Court may, make such orders, issue such writs and give such directions including the payment of compensation as it considers appropriate to enforce the right."

It appears from Article 6 (2) that the Supreme Court may not be able, to remit the case to the Magistrate's Court. It is only the Supreme Court which issues the writs and orders compensation if need be. Those powers do not appear to be capable of delegation to any subordinate court but we do not consider it necessary to decide that issue of law for the purposes of this petition. We have decided that we will proceed with the hearing of the petition which necessarily requires the aducing of considerable oral testimony.

The expense of bringing witnesses from Santo to Port Vila including Susie Well's brothers at the end of the Court of Appeal hearings in Port Vila would be most costly. Likewise the alternative of the Full Court sitting in Santo is somewhat impracticable as it would necessitate the return of the visiting judges at a future date in order to deal with a solitary matter in Santo. The expense would be great.

Our solution is to direct one member of the Full Court to sit in Santo and receive oral evidence from witnesses under examination and cross-examination and to hear the reply to the petition presented by and on behalf of Maria and Jim Waroka and the brothers of Susie Wells namely Thompson and Jackie Wells. Obviously, the learned President of the Full Court, being the resident judge is the proper person to conduct the proceedings in Santo. We leave it to his discretion to appoint a suitable date as early as is convenient.

Under Article 6 (2) of the Constitution we make the following Orders:-

1. The following persons are ordered to appear on the appointed hearing date at Santo and to testify on the issues and allegations arising from the petition AND failure to appear on the appointed date without reasonable excuse shall be a contempt of the Supreme Court and punishable as such by the learned Chief Justice:-

Susie Wells - petitioner; Leo Tamata.

The person or persons whom Susie Wells alleges received letters from her for posting whose name or names shall be filed in the Supreme Court registry for issue of sub-poenas.

The employee of Barclays Bank at Santo who allegedly received from the petitioner's brother payment of her debt to the bank and notice of her purported resignation.

Jim Rovo, District Commissioner, who allegedly accompanied

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Susie Wells and Leo Tamata to Lamenu Bay to recover custody of the child, Priscilla, from Maria and Jim Waroka about February 1983.

Those persons whom Mr McKeague wishes to call on behalf of the petitioners.

Maria and Jim Waroka, Thompson and Jackie Wells, brothers of Susie Wells and those witnesses whom they wish to call in reply to the petitioners' allegations.

Such further witnesses as the Chief Justice considers likely to give useful evidence.

It is further ORDERED that the Police Department and the Attorney General shall within fifteen days of the date hereof supply details in writing of the time (s) and date (s) of complaints made by Susie Wells or Leo Tamata, the substance of the complaints and the action, if any, taken by the respective departments. This is not a request, it is an ORDER.

The Registrar is directed to ensure that copies of the petition, supporting documents and affidavits and the written submissions of Mr McKeague and this judgment be personally served upon Thompson Wells, Jackie Wells, and Maria and Jim Waroka on or before the 27th January 1985.

Counsel shall after the hearing in Santo file their written submissions upon the evidence and the petitioners' prayers for compensation and other reliefs with the Registrar, followed by their replies, if any, to the submissions within such time as the Chief Justice shall direct.

The Registrar is directed to supply Judges Cazendres and Williams with legible copies of the proceedings and evidence adduced before the Chief Justice and Counsels' submissions with all due expedition.

The Full Court Judges will by correspondence supply each other with their opinions and conclusions with a view to achieving unanimity failing which the opinions of the majority shall be final.

The judgment of the Supreme Court may be delivered by the Chief Justice and shall include any dissenting judgment.

Frederick J. Cooke

J. WILLIAMS F. COOKE L. CAZENDRES

Dated at Port-Vila this 12th day of December, 1984.