

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

Adoption Case No. 22/1523 SC/ADPT

IN THE MATTER OF: LUO JESSE

AND IN THE MATTER OF: ADOPTION ACT OF 1958

BY: NIAI NAKOU

AND: NAUKA ELISABETH

Applicants

Coram: Justice Oliver A. Saksak

Counsel: Leon Malantugun for the Applicants

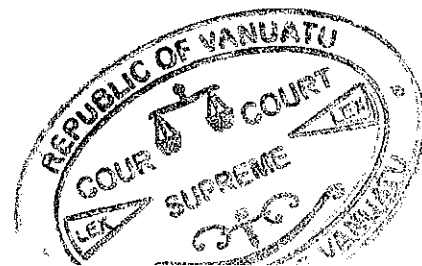
Date of Hearing: 23rd August 2022

Date of Judgment: 12th October 2022

JUDGMENT

Introduction And Background

1. This is a joint application for adoption by Nial Nakou and Nauka Elisabeth for the adoption of an adult male person by name of Luo Jesse of Chinese origin, born on 23rd March 1975.
2. The applicants are husband and wife legally married on 4 December 1999 in Ohlen, Port Vila but who now reside at Iquanamanu Village on Tanna Island.
3. Luo Jesse is the son of Luo Yiyin and Jiang Suqun who originate from the Republic of China.
4. Luo Jesse has been known to the applicants who assert they received him into their home since 2018 and is ordinarily resident in Port Vila, Efate.



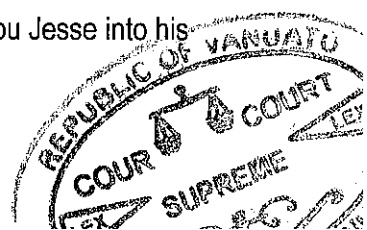
5. Luo Xingjian was granted Vanuatu citizenship on 18th March 2019.

Basis of Application

6. The application was made under the Adoption Act 1958 UK, the Constitution, the Common Law and Custom.
7. The application is supported by the joint sworn statements of the applicants dated 23 May 2022, but filed only on 23 June 2022 with a further sworn statement dated 6 June 2022.
8. The sworn statement annexes (a) the Marriage Certificate of the applicants, (b) the Registration of the Birth of Luo Jesse, (c) the medical certificates of the applicants, (d) the certificate of citizenship of Xingjian Luo, (e) the Registration of births of the applicants, and (f) a copy of USB containing photographs and videos of a custom ceremony as evidence of the custom adoption of Luo Jesse.
9. Finally, the parents of Luo Jesse jointly signed a Consent dated 25 May 2022 but which is unsealed and unregistered by the Court.
10. In the course of argument and submissions Mr Malantugun relied on the case of Sul v. Molsakel [2021] VUCA 43. CAC 1454 of 2021 as the common law authority for recognising the customary adoption of Leo Jesse and to finally grant adoption orders in favour of the joint applicants.

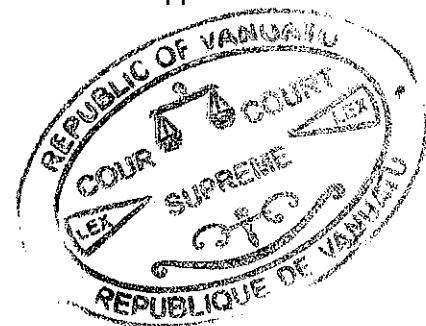
Discussion

11. The Court took time to consider the application as I considered it important to do so.
12. On 7 October 2022 at or about 4.45pm I had the opportunity to view the USB 16 GB KIOXIA 3.2 Gen 1.
13. The scene is a local village. There is no introduction of what was about to happen or happened. There was no crowd of people around. The photograph shows an elderly man with a crutch whom I believe to be Niai Nakou's father. There was the applicant Niai Nakou, Elisabeth Nauka, Wendy Himford, Lou Jesse and another elderly woman whom I believe to be the elderly man's wife. The elderly man spoke some words in Bislama to the effect that he was receiving Lou Jesse into his



family and was pronouncing his family name as VEI SABA. After that there was a gift of a pandanus mat and a live pig (small black) given to Lou Jesse followed by hugs and hand-shakes. Lou Jesse thereafter made a short speech in Bislama basically thanking the family for accepting him into their family.

14. For that small and short family ceremony to have any effect in custom it needed to involve the Tanna Council of Chiefs, the Nikolatan and the TAFEA Provincial Council. Sworn statements should have been filed by the Heads of the Council of Chiefs and the Provincial Council to confirm adoption was done in accordance with Tannese custom and that the Local Provincial Government was consenting to have the family adopting a foreign national who would reside in their province for the rest of his lifetime. That was not the case. Section 28 of the Adoption of the Adoption Act 1958 (UK) requires the involvement of Local Authorities in adoption of children.
15. There is no Vanuatu law providing for the adoption of adults. The Adoption Act 1958 (U.K) has application in Vanuatu by virtue of Article 95 of the Constitution of Vanuatu but, it is only an Act allowing for infant or child adoption, not adults.
16. The USB Memory stick by itself is not evidence unless it was properly deposed to. That is not the case here.
17. The applicants relied on the case of Sul v. Molsakel but that case is distinguished from this case and does not assist the applicants. In Molsakel's case, Mathias was raised by adoptive mother Rachel from the age of 7 years. He grew up with Rachel since that age until 1992 and 1994 when his position was formally recognised in custom. He was 54 years old by then. He is a local ni-Vanuatu person. The purpose of his adoption was that the Molsakels had no children. Presumably the purpose of adoption was succession and inheritance of property.
18. In the present case the adoptee is a foreigner. He was only received into the family since 2018. The purpose of the adoption is not clarified. The chiefs and Province were not involved in any arrangements. That is the problem and difficulty with this case.
19. The adoptee has been granted citizenship of Vanuatu but that does not qualify him to be adopted by the applicants. And the name in the certificate is not consistent with the name in the application for adoption.



20. What the family of the applicants captured on USB video is undated. It may have been done with all good intentions, but unless it was confirmed by the Council of Chiefs of Tanna Island and the Provincial Council, it falls short of an adoption ceremony to be recognised and given effect to by this Court.
21. For those reasons this application for adoption fails and is hereby dismissed. There is no Order as to costs.

DATED at Port Vila this 12th day of October, 2022.

BY THE COURT


OLIVER A. SAKSAK

Judge

