

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(LAND DIVISION)**

APPLICATION NO: 84/2015

IN THE MATTER

**of an application for Adoption
by Jealana Maria Tapuanoa
Astrid Heather-Lotomau and
Logova Lotomau**

Hearing Date: 27 April 2015

Counsel: Ms Marie Francis for the Applicants
Mr Wilkie Rasmussen for the Objectors

Decision: 4 May 2015

DECISION OF THE HONOURABLE MR JUSTICE WILSON ISAAC J

[1] This is an application for the adoption of Tristan Rereao – Dennis Matoka Matau (Tristan) born 17 January 2013 by Mr Logova Lotomau and Mrs Jealana Maria Tapuanoa Astrid Heather – Lotomau (Logova and Jealana).

[2] The application was heard by me in Rarotonga on 27 April 2015.

[3] The application was accompanied by consent of the natural parents. The natural mother who is related to the applicant Jealana was present in Court supporting this application.

[4] Also present at the hearing were members of Jealana's mothers and fathers families who raised objections to the adoption.

[5] In discussing the objections with the parties, it became apparent that the position was as follows:

- i. There was no objection to the adoption of Tristan by Logova and Jealana.
- ii. There were no objections to Tristan succeeding to the land interests of his natural mother Krystel.

iii. The family of Jealana's mother objected to Tristan succeeding to land interests from Jealana's mothers side.

iv. The family of Jealana's father objected to Tristan succeeding to land interests from Jealana's fathers side.

[6] Following the hearing I requested submissions from Counsel for the applicant and the objectors as to the interpretation of S. 465 Cook Islands Act 1915.

[7] I also requested submissions from Counsel on the Court of Appeal decision in *Short v Whittaker* [CA 3/2003] (29/9/2003) where the Cook Islands Court of Appeal considered an adopted child's right to succeed to land interests, based on Native custom.

[8] Submissions were received from both counsel as requested and I now set out my decision.

Decision

[9] First and foremost I wish to confirm my decision as stated at the hearing that I am satisfied that the application and supporting documentation comply with the conditions as to adoption as set out in the Cook Islands Act 1915.

I therefore make an Order of adoption in respect of the child to be known as Rereao – Dennis Logova Heather – Lotomau,

Born 17/1/2013. be adopted by Mr Logova Lotomau and Mrs Jealana Heather – Lotomau.

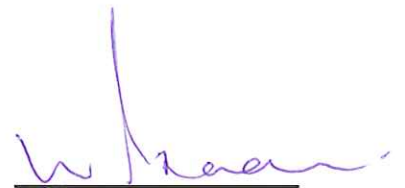
[10] In relation to the effect of this adoption in terms of s.465 Cook Islands Act 1915 and in particular what land interests Tristan is entitled to succeed to in terms of native custom the case of *Short v. Whittaker* dealt with this issue and found that to be entitled to land rights, the adopted child must have a blood connection to the source of the land.

[11] In this case, Tristan has a blood connection to his natural mother and to Jealana's father. There is no blood connection to Jealana's mother.

[12] Therefore based on *Short v. Whittaker* Tristan would be entitled to succeed to:

- i. The land interests of his birth mother, Krystel.
- ii. The land interests that Jealana receives from her father.
- iii. At life interests in Occupation Rights interests that Jealana receives from her mother.

[13] A copy of this decision is to go to all parties.

A handwritten signature in purple ink, appearing to read 'W. Isaac J.', is written above a solid horizontal line.

W, Isaac J