

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)

JUDGMENT

As a result of the ruling of the Full Court consisting of Cooke C.J., Williams J. and Cazendres J., on the 12th December 1984, I heard evidence in Santo on two occasions to ascertain whether the infant Priscilla Vorongo was lawfully adopted by Maria and Jim Waroka.

On the 28th August 1985, I heard the evidence of Susie Wells, the mother of the child. She said she remembered coming to Court before Mr Norris, the Senior Magistrate, Santo, holding the Bible and taking the oath. She said she was not happy to give her child away and alleged she was forced to say 'Yes' in Court. She stated that her brother, Thompson Wells, before coming to Court, had told her to say 'Yes' to everything. She was asked by the Court whether she wanted her daughter, Priscilla, to be adopted by her sister, Maria Waroka and she said 'Yes'. She said she thought adoption meant that her sister could have the child until she married and then she could have the child back. She said she now knew that adoption meant the loss of the child as she had spoken to the Commissioner of Police in Vila on 9th April 1983 and he explained to her what adoption meant. That the Commissioner advised her to write to Mr Norris for the return of the child which she did but never got a reply.

She said the father of the child was Leo Tamata but he had another woman called Serah Amon for which custom payments had been made and that is why she came to live in Santo. After the adoption was completed and the child was taken back to Epi by the adoptive parents, she phoned Leo and told him what happened but he told her he could not do anything in Vila because it had gone through the Court. The general impression I got from hearing this witness was that she was totally afraid of Leo Tamata and was prepared even to commit perjury for him.

I also heard Leo Tamata, the father of the child, who stated that he intended to marry Susie but her family were against the marriage. That he saw his parents and explained the position to them about Susie's parents objecting to the marriage. His parents told him as such was the case, it would be better for him to marry Serah Amon. In Vila, he told Susie of his parents' decision. That he learnt that his family had collected custom gifts and told Susie they were coming to Vila to make arrangements for the marriage to Serah Amon in custom. Susie had to leave the house but he promised to help her financially with the baby. He said <sup>Serah</sup> had a child by him, born before he knew Susie. That Serah came to his house and they lived together for about two weeks when he told her to go back to her family. That he returned some of the custom gifts and used some. Later he learnt from Susie at Santo that she had to agree

to the child being adopted by Maria and was taken to Epi.

In answer to a question by the Court, Leo said he was certain he wanted the child back and that as soon as this case was over, he wanted to marry Susie even if her family do not agree. That he and Susie had another child, Louise, on the 27th May 1985.

Evidence was given by three witnesses, Susan Noel, Ariko Kalto and Benino Wells that Susie gave them letters at Hog Harbour when she, Susie, was staying there, addressed to Leo Tamata. That Susie asked them to hide the letters from her family.

Mr Norris, the Senior Magistrate, Santo, stated that on 6th April 1983 he had an adoption application before him. The applicants were Maria Waroka and her husband who applied to adopt Priscilla, the child of Susie Wells, sister of Maria.

He said that Susie gave evidence on oath and that it seemed to him to be an ordinary case based on the evidence of the mother. She stated the father was Leo Tamata. She stated that Leo Tamata had married Serah Amon.

Mr Norris further stated:-

"I was quite satisfied that Susie Wells knew what the proceedings were and that the child would remain within the family. She did not appear to be under any stress. As far as I was aware there was nothing to stop her saying she objected to all the proceedings. I am quite sure I noticed nothing that would lead me to believe she was intimidated or afraid. She gave her evidence in a rational way. If I had any suspicion I would have adjourned the proceedings. It seemed all the parties were behaving quite normally. The parties left the Court without any disturbance...

In these cases one often finds the natural father has abandoned the child. She did say the father had married some other girl. It seemed to me that Maria could offer much more background for the child, Priscilla. One has in particular, to consider the welfare of the child. I am aware that in custom the father has no rights. She could easily say she did not want to take any part in the proceedings. I cannot remember whether any summons were issued to the parties before the case."

In reply to Mr Rissen, Public Solicitor, he stated he did not recall seeing any letter from Susie Wells. That Susie Wells was aware of the adoption proceedings. That he could not recall precisely what he said but that he was sure he explained to her that she was losing all the rights to the child. That it appeared to him, on the basis of Susie Wells' evidence, that the father had abandoned her.

The evidence of Susie Wells before Mr Norris was as follows:-

"Susie Wells, sworn, states: -  
I am the natural mother of Priscilla Waroka, who was born on the 13th April 1982. I am unmarried. The father is Leo Tamata, who has since married Serah Amon and they previously had a child. I propose that my sister, Maria Waroka should adopt Priscilla. I am a ledger operator at Barclays Bank, Luganville."

On the 9th January 1986 again at Luganville, I heard further evidence. Maria Waroka, adoptive mother of the child and sister of Susie Wells, said she was living at Lamén Bay, Epi, with her husband, Jim, who was the Headmaster of the school there. She said when they came to Court for the adoption, Leo Tamata was already married to Serah. That he beat up Susie and threw her and all her belongings out of his house. That Susie

told her this. That Susie phoned her in Vila and told her about her problems. That Susie brought the child to Lamén Bay and told her and her husband that she should adopt the child. She said her husband mentioned that they would look after the child for the time being but Susie insisted that they adopt the child due to the fact that she wanted the child to have a father and mother. That they kept the child at Lamén Bay and one day, without notice, Leo and Susie arrived at Lamén Bay and although the child was ill, Leo grabbed the child from its bed and took it to the plane and went off to Santo where Leo left Susie and the child. Some weeks later she said she came to Santo with the child's clothes. She denied that during the time she was in Santo she and her family tried to persuade Susie to let her have the child. She said Susie was free and happy to give the child to them. That she was absolutely satisfied that Susie wanted her to adopt the child in a conversation she had with Susie. "I am certain, she said, that Leo Tamata had put her up to complaining." Further, she said about ten of the family were present when she and Susie spoke about adoption. She agreed that Susie was taken to her father's home and kept there for her own protection and so that Leo could get familiar with his wife, Serah Amon. This was a very good witness - she gave her answer frankly and she impressed me that she was telling the truth.

Evidence was also given by Jim Waroka, husband of the last witness. He confirmed what his wife had said and I was deeply impressed in the manner he gave his evidence. To me he was a witness of the truth.

Thompson Wells, brother of Susie, said he was the eldest brother in the family. That all the family agreed to the adoption of Susie's child by Maria and Jim Waroka, the reason being because the child had no father. He stated that Susie joined the family last Christmas, 1985, and was very happy that Jim and Maria Waroka were also there with the child.

Molita Cetama, chief of Araki Island, South Santo, also gave evidence that Leo Tamata was a member of his family. That Leo had a wife named Serah. That he made the arrangements for that marriage. In his custom, if a woman gives birth to a child and the bride price has not been paid, the mother's family have a right to the child. He said Leo's father paid the bride price for Serah and Leo agreed and that after the bride price is paid, the girl belongs to the man in custom.

Mrs Agnes Wells, sister in law to Susie, said she remembered a family conference regarding Susie's child. That Susie came in good feeling and talked to the family. At the meeting, Susie agreed that someone should adopt the child. She agreed the Warokas should adopt the child. It was Susie's idea that the child should be adopted.

The last witness was Corporal Wilson Garae of the police department. He was stationed in Vila and remembered Leo and Susie keeping company. That Leo at the same time had another love affair with another woman. That Susie came to the police station on a number of occasions to complain about Leo assaulting her. That Susie mentioned to him that she had agreed to give her daughter to Jim and Maria Waroka.

Having heard all the evidence, I am completely satisfied that the child, Priscilla was lawfully adopted by Jim and Maria Waroka without any pressure being used to force the adoption. Mr Norris, the Senior Magistrate, was completely satisfied that Susie was a consenting party to the adoption and she never gave him any indication that she was being forced to allow her child to be adopted.

The paramount importance in custody cases is the welfare of the child.

I consider that Priscilla was legally adopted and would be well cared for by the Warokas.

I have heard the submissions of Mr Rissen, the Public Solicitor, but do not consider that they in any way alter my view that the child was legally adopted and that Susie Wells voluntarily and freely consented to the adoption of the child by Jim and Maria Waroka. (Submissions attached).

Extended jurisdiction was given by me to the Senior Magistrate to hear all adoption cases in his district under section 19 (3) of the Courts Regulation 1980.

I accordingly dismiss the application ~~and award costs to the Warokas against Leo Tamata because I am satisfied that he urged Susie Wells to contest this matter in Court.~~

*J. Williams*  
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Dated at Vila this 3<sup>rd</sup> day of *huvael*, 1986.

*Frederick G. Cooke*  
Frederick G. Cooke  
CHIEF JUSTICE

Après avoir pris connaissance des résultats de l'enquête, et des témoignages recueillis, des requêtes et des soumissions, je suis d'accord avec le jugement rendu par le Chief Justice

*J. Williams*  
Mr Justice Williams

*L. Cazendres*  
Mr Justice Cazendres