

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

Civil
Case No. 24/762 SC/CIVL

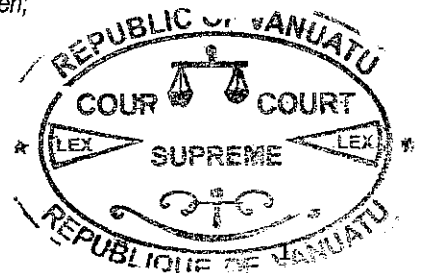
BETWEEN: Patrick Kassou
Applicant

AND: Ruth Yunak Kassou
Respondent

Date: 20 May 2024
Before: Justice V.M. Trief
In Attendance: Applicant – Mrs P. Malites
Respondent – Ms T. Matas
Copy to: Sheriff of the Supreme Court of the Republic of Vanuatu

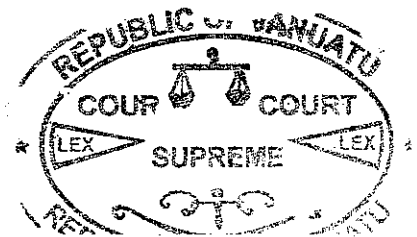
DECISION AS TO APPLICATION FOR CUSTODY OF CHILDREN

1. On 12 March 2024, the Applicant Patrick Kassou filed Application for Custody of his and the Respondent Ruth Yunak Kassou's four children (the 'Application'):
 - a. Marie Patrick Kasso, female, born on 22 June 2006 (17 years old);
 - b. Nauka Kasso, male, born on 6 October 2012 (11 years old);
 - c. Paskaline Kasso, female, born 4 May 2016 (7 years old); and
 - d. Sophine Anita Kasso, born 21 October 2021 (3 years old, attending Class 1 at primary school) according to the Respondent's evidence – the Applicant called this child, "Dinah Kassou" and did not know her date of birth.
2. By the Application, Mr Kassou seeks the following orders:
 1. *That the Applicant be granted the custody over the four children;*
 2. *That the Respondent have access to the children;*



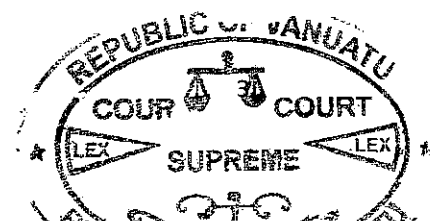
3. *That the Respondent pay maintenance in cash and in kind, depending on her circumstances; and*
 4. *Costs in the cause.*
3. The Application is made pursuant to s. 1(a) and (b) of the *Guardianship of Minors Act (UK), 1971* which provides as follows:
1. *Where in any proceedings before any court (whether or not a court as defined in section 15 of this Act) –*
 - (a) *the custody or upbringing of a minor; or*
 - (b) *the administration of any property belonging to or held on trust for a minor, or the application of the income thereof,*

is in question, the court, in deciding that question, shall regard the welfare of the minor as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.
 4. The Application is made on the grounds that the parties are married but separated in July 2023 at Mrs Kassou's behest, that she is living with her parents at Rentapau and has custody of their three daughters, Mr Kassou is employed as a stockman at Traverso Cattle Plantation at Rentapau and lives there with their son, he earns a salary of VT20,000 per fortnight, Mrs Kassou does not allow Mr Kassou access to the children, that the children hide to come and ask him for money, and that the parties' parents are neighbours but Mrs Kassou stops their daughters from visiting their paternal grandparents. Further, that if granted custody, he will allow access to Mrs Kassou.
 5. The Sworn statement of Patrick Kassou was filed in support.
 6. The Application is opposed: Response to the Application filed on 23 April 2024 and Sworn statement of Ruth Kassou filed on 25 April 2024.
 7. In the Response, it was submitted that Mrs Kassou has looked after the children since birth to the present, and it is in the children's best interest that she be awarded custody.
 8. In her sworn statement, Mrs Kassou deposed that all of the children have been living with her since she and Mr Kassou separated. She deposed that she sells market produce and earns between VT10,000-VT15,000 a week from her sales of food. She has never received financial or other support from Mr Kassou for their children's upbringing but manages the children's welfare from her sales of root crops and vegetables. Only once she received a bag of rice and VT5,000 from Mr Kassou but



refused to take the cash because Mr Kassou was very drunk at the time. She deposed that she never denied Mr Kassou access to the children but for their safety, does not let the children visit him when he is drunk. He is a frequent heavy drinker which has made the children afraid of him. If granted custody, she will give Mr Kassou access. She does not trust Mr Kassou as a suitable parent to be granted custody because he is a habitual drunk and has never provided support in cash or kind for their children.

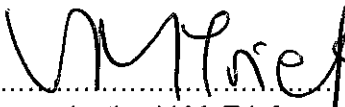
9. In his Further Sworn statement filed on 14 May 2024, Mr Kassou deposed that he has custody of their son, who moved with him to live with his parents at Rentapau (next to Mrs Kassou's parents) after his father became seriously ill. He believes Mrs Kassou gets her income from elsewhere besides her food sales, most likely from Tom Nanua Jacob who they were guardian to and paid for his customary wedding but then Mr Jacob commenced an affair with Mrs Kassou and is currently on seasonal work in Australia. He confirmed that he became a heavy drinker after he discovered her affair with Mr Jacob but after their attendances at the Magistrates' Court for Domestic Violence Case No. 23/3500, he has stopped consuming alcohol. He only drinks kava occasionally. He deposed that Mrs Kassou now consumes alcohol almost every weekend. She has not allowed him access to their daughters, although he allows her access to their son. He is not opposed to joint custody as no one is intending to return to Tanna island and they are neighbours so the children will be free to come and go between them.
10. Mr Kassou also deposed in that sworn statement that in July 2023, he gave Mrs Kassou VT100,000 cash to help with her and the children's day-to-day expenses. She refused to accept any other money so he has had to give it directly to the children. Last year, they borrowed VT80,000 for the children's outstanding school fees and he is currently refunding that money without any assistance from Mrs Kassou. Only on Friday 10 May 2024 has she finally agreed that he should financially support her in the upbringing of their children. His mother owns a shop and so he pays for groceries in advance and the children come to the shop at times to get food.
11. Vanuatu is a signatory to the *Convention on the Rights of the Child* ('CRC'). The Court is obligated under the CRC to consider the best interests of the children in reaching its decision on the Application.
12. I am satisfied on the evidence that both parties are employed and earn a cash income, and that when they separated, all the children resided with Mrs Kassou. Their son has only resided with Mr Kassou since he moved to live with his parents at Rentapau after his father became seriously ill. There is no question as to Mrs Kassou's ability to support the children's welfare, and also of Mr Kassou's ability to do so if allowed. Mr Kassou's initial evidence was that Mrs Kassou did not allow him any access to the children then in his further evidence, he deposed that now since they are neighbours, the children are free to come and go and have breakfast,



lunch and dinner with them. Mrs Kassou's evidence was that she has never received financial or other support from Mr Kassou for their children's upbringing but then in the same statement, deposed that she once received rice and cash from him although she refused to accept the cash as he was very drunk.

13. It is in the best interests of the children that there is continuity in their care however that would be disrupted if the Court were to grant sole custody to Mr Kassou. Given that both parents are now contributing financially and in kind to the children's upbringing, I consider that in the best interest of the children to order joint custody of the children and order that if any child is residing with one parent, that the other parent have reasonable access to the child.
14. For the reasons given, the Application is **granted** however there is no order that the Application have the sole custody of the parties' four children as it is in the best interest of the children that their parents have joint custody of them. It is so ordered. It is also ordered that that if any child is residing with one parent, that the other parent have reasonable access to the child.
15. The costs are in the cause.
16. The Sheriff is requested to serve this Decision on both parties and file proof of service.

DATED at Port Vila this 20th day of May 2024
BY THE COURT


Justice V.M. Trief

