

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

A.1300/82

**No Special  
Consideration**

183

IN THE MATTER of the Declaratory  
Judgments Act 1908

A N D

IN THE MATTER of the Status of Children  
Act 1969

BETWEEN S MOALA

Plaintiff

A N D E BROWN as  
administratrix of the  
estate of D  
BROWN, deceased

Defendant

(Names of parties and all other persons  
mentioned in judgment not to be  
published.)

Hearing : 4th July, 1st November 1983

Counsel : W.C. Edwards for Plaintiff  
No Appearance for Defendant  
R.P.G. Haines as Amicus Curiae

Final Judgment : 6 March 1984

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FINAL JUDGMENT OF BARKER, J.

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In my reserved decision delivered on 30th November 1983, I gave the plaintiff leave to file further affidavits covering several aspects of proof which, on the information then before the Court, were deficient. I emphasised that such

leave constituted an indulgence to the plaintiff; the only justification for the indulgence was because no other party would be affected. Further affidavits have now been filed. They have been perused by Mr Haines who was appointed as amicus curiae; he has no further submissions to make.

The first point covered by the affidavits is whether, at the time when the plaintiff was conceived, her natural mother had no sexual association with any man other than the deceased. She has now sworn an affidavit to this effect. She deposes that the deceased was the first man with whom she had had sexual intercourse.

My second requirement was that this lady should inspect the signature allegedly of the deceased, found in the official Register in the village of \_\_\_\_\_ in Tonga. She deposes that she has attended the place where this record is kept; it is the same place as that which she and the deceased attended to register the plaintiff's birth. She deposes that she is familiar with the deceased's handwriting and she confirms that the signature in the Register book appears to be in the deceased's handwriting.

The Tongan Justice Department advises that it was not possible to photostat a copy of the Register of Birth in \_\_\_\_\_ there is no photocopying machine available there. However, the Police Magistrate for \_\_\_\_\_ confirms in an affidavit that the plaintiff did attend at the Registrar's office as she has deposed.

I also called for evidence of Tongan law as to the validity of this register. An affidavit has been filed from the resident Police Magistrate for the district of Ha'apai; before his appointment, he was a practising lawyer before the Privy Council of Tonga and the Supreme Court of Tonga for some 18 years. He is also the Sub-Registrar of Births, Deaths and Marriages for the                      district.

Under the relevant Tongan statute (in force at the relevant time) the name of the father of an illegitimate child cannot be entered on the Register of Births unless he acknowledges that he is the father of the child and a joint application is made by him and the natural mother to register the child. As a matter of practice, the resident Magistrate, who is also the Sub-Registrar of Births, Deaths and Marriages, is required to satisfy himself that the person applying with the mother is in fact the father; only when he is so satisfied is the father allowed to sign the Register. This is the current practice in                      although the deponent cannot speak for his predecessor at the relevant time.

There is no other provision under Tongan law whereby the father's name can be entered upon the birth register unless by order of a Court. The Register of Births is required to be maintained in accordance with the Act. There is no record of any maintenance order ever made in the Magistrates' Court at Ha'apai in respect of the plaintiff.

Enquiries have been made with the British High Commission in Tonga, formerly the British Consulate; the

plaintiff's solicitor was advised by this office that there is no record or evidence available in that office as to a maintenance agreement between the deceased and the plaintiff's mother, or any record of any maintenance order held in that office.

Now that most of the deficiencies in the proof of the plaintiff's claim have been remedied, I consider that there is enough evidence to justify the making of the order sought. As indicated in my earlier judgment, I should consider the onus of proof discharged should such affidavits be filed.

I therefore make an order under Section 10(1) of the Status of Children Act 1969 that the relationship of father and child existed between the plaintiff and Douglas John Brown, now deceased.

Mr Haines is at liberty to apply by memorandum should he seek a further order for costs arising out of his perusal of the further affidavits.

*R. D. Butler, J.*

SOLICITORS:

Clive Edwards & Co., Auckland, for Plaintiff.

Crown Solicitor, Auckland, as Amicus Curiae.