

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**

*(Civil Jurisdiction)*

**Civil**

**Case No. 21/2851 SC/CIVL**

**BETWEEN: Oral Kilman**

Applicant

**AND: Marie-Antoinette Melterongrong**

Respondent

*Date of Hearing:* 7 December 2021

*Before:* Justice V.M. Trief

*In Attendance:* Applicant – Mr R. Tevi

Respondent – Mr H. Garae for Ms M. Tekak, under supervision of Ms T. Matas

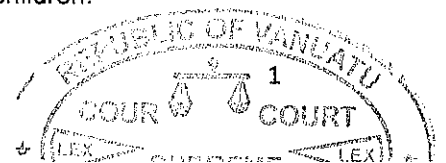
*Date of Decision:* 10 December 2021

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**JUDGMENT**

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1. The Applicant Oral Kilman filed Application for Child Custody on 10 November 2021 (the 'Application') in relation to the parties' two children:
  - a) Jeremiah Kilman, DOB: 1 February 2017; and
  - b) Frozina Jemima Kilman, DOB: 2 September 2019.
2. At the hearing, Mr Tevi withdrew the aspect of the Application seeking custody of Frozina. Custody of Jeremiah only is sought.
3. The grounds for the Application are that Respondent Marie-Antoinette Melterongrong is unemployed, is wholly dependent on her parents for the children's welfare and survival, is in financial difficulties leading her to file an Island Court claim for maintenance and that Ms Melterongrong caused Jeremiah to return to live with her by way of a court order. Further, that Mr Kilman is employed by the Malampa Provincial Government Council, earns a fortnightly salary and has previously had Jeremiah live with him on Malekula and attend day care. The Application is supported by the Sworn statements of Mr Kilman.
4. It is accepted that the parties have never lived together with the children.



5. The Application is opposed. By her Sworn statement, Ms Melterongrong evidenced that she works part time at a Chinese store in Pango, she takes care of the children, they are healthy and well fed every day, they attend church Sunday services, her parents support her and love their grandchildren very much, Jeremiah attends kindergarten at Ecole Publique Pango and that she and her father who is teacher at Sainte Jean d'Arc help Jeremiah with his school work. She evidenced that in August 2021, she obtained a child maintenance order in relation to the son but Mr Kilman has not yet made any payment. She has also claimed child maintenance for Frozina.
6. Ms Melterongrong also evidenced that Mr Kilman left her when she was 6 months' pregnant with Jeremiah. Only Mr Kilman's father sent them food occasionally from Malekula. In 2018, she agreed for Mr Kilman's father to take Jeremiah to Malekula for 3 months. However, they did not allow Jeremiah to return. In the meantime, she and Mr Kilman briefly reconciled which resulted in her pregnancy with Frozina. In December 2020, she went to Malekula with Frozina to get Jeremiah back. After quarrels with Mr Kilman, she was assisted by the Vanuatu Women's Centre to obtain a temporary protection order and removed Jeremiah from Mr Kilman's family residence on 26 February 2021. They moved to Port Vila in May 2021.
7. I accept Ms Melterongrong's uncontradicted evidence as to how Jeremiah was taken to live with Mr Kilman on Malekula and the refusal to return him to Ms Melterongrong until a Court order was obtained.
8. I am satisfied on the evidence that Ms Melterongrong is employed part time, that the children are well cared for and healthy, that Jeremiah is happy to be growing up with his sister, that Ms Melterongrong is supported by her parents and that Jeremiah has attended school since June 2021. I do not consider that Ms Melterongrong's claims for child maintenance show that she is in financial difficulties. On the contrary, she has the right to claim child maintenance hence no adverse inference can be drawn from that. However, an adverse inference is drawn against Mr Kilman for not yet making a payment of child maintenance; this is not consistent with his financial capacity and consideration for Jeremiah's welfare. In the circumstances, there is no question as to Ms Melterongrong's ability to support Jeremiah's welfare and to take care of him.
9. It is in the best interests of Jeremiah that there is continuity in his care and given his and Frozina's tender ages, that they remain with their mother Ms Melterongrong who has the ability and support to care for them and whose stated priority is their welfare. I consider that deciding otherwise would only exacerbate the past hostilities in the parties' relationship which need to be minimised and avoided in the best interests of the children.
10. For the reasons given, the Application is **declined and dismissed** and it is ordered that the Respondent has custody of the parties' son Jeremiah Kilman.

DATED at Port Vila this 10<sup>th</sup> day of December 2021  
BY THE COURT

  
Justice Viran Molisa Trief

