



There was some urgency to hear the matter as the child would attain 18 years the age of majority on 4th August 1986.

Mr. Anthony Smellie, Crown Counsel of the Attorney General's Chambers appeared as amicus curiae. The adopters and child represented by Mr. Peter Polack were present.

The adoptive father is Mr. Reginald Renrick Delapenha, Banker, born 15th November, 1960 (aged 25 years) and the adoptive mother is his wife, Carol Delapenha, nee Khan, Secretary, born 19th December 1957 (aged 28 years). They have been married for 6 years, and are without any children of the marriage.

The child, Daniel Dular Chand Ramphal, was born in Guyana of Mrs. Delapenha's mother and her stepfather, and therefore is Mrs. Delapenha's half brother and Mr. Delapenha's brother-in-law. Both mother and father of the child have given their written consents to the adoption of Daniel.

The mother lives in Grand Cayman but is in poor health and is dependent for support on her other children and the father lives in Guyana is ill with tuberculosis, is unable to maintain the child and is said to suffer from a strong addiction to alcoholism.

Daniel has lived with his sister, Mrs. Delapenha (the adoptive mother) since he came to the Islands on the 19th August 1983. By letter dated September 12, 1983 from the Deputy Chief Immigration Officer to Mrs. Delapenha, Daniel has been given permission to remain in the Cayman Islands for the purpose of study, subject to six months extensions, pursuant to sections 39 and 40 of the Caymanian Protection Law.

It is not in doubt that the applicants are in fact in loco parentis to the child who attended the Cayman Islands High School, and only left the Cayman Islands to go to Dominica in Summer 1985 when schoolchildren went to build a community centre there as part of the Duke of Edinburgh's

award scheme. The adoptive father is Caymanian and the adoptive parents are domiciled in the Cayman Islands and are residing in the the Cayman Islands.

Crown Counsel raised a preliminary point: Because of the fact that the child's stay in the Cayman Islands is 'temporary', pursuant to section 39 of the Caymanian Protection Law, he expressed doubt that, as a consequence he was 'residing' in the Cayman Islands. He referred to In re Adoption Application 52/1951, 1 Ch. 16 (where the applicants lived in Nigeria and during the husband's leave spent in England applied to adopt an infant there).

The relevant provisions of section 39 reads:

"39. (1) Persons other than those referred to in paragraphs (a) and (b) of section 32 and who are not prohibited immigrants, may be granted permission to land and remain or reside in the Cayman Islands as visitors for a period up to six months, subject to extension from time to time and for further periods not exceeding six months on each occasion upon application made to the Chief Immigration Officer in the prescribed manner:

**PROVIDED** that where the effect of such extensions is that the person to whom permission is granted will be permitted to remain in excess of twelve months in total and upon such permission being granted the Chief Immigration Officer shall forthwith notify the Board of such extension.

(2) Any permission granted under subsection (1) or any extension thereof may at any time be revoked either by the Governor or by the Chief Immigration Officer in person."

The permission given to Mrs. Delapenha on behalf of Daniel to remain in the Cayman Islands in my opinion necessarily implies permission to live in/reside in the Cayman Islands, for the purpose of study. It does not matter that the permission has to be renewed or extended and that the period may be of short duration. While in the Cayman Islands he is residing in the Cayman Islands.

This view accords with fact as well as in law, the evidence being that he has been living with Mrs. Delapenha in the Cayman Islands since he arrived here on 19th August, 1983, save when he left for a visit to Dominica for 2 weeks in August 1985 in community activity with other schoolchildren.

Section 39 (1) itself recognises that permission may be granted:

'to land.....as visitors....

'to remain.....as visitors.....

'to reside..... as visitors for a period up  
to six months.....'.

Section 39 (2) provides that the permission granted under section 39 (1) or any extension thereof may be revoked at any time.

Accordingly I find that the applicants and the child reside in the Cayman Islands as required by section 10 (5) of the Adoption of Children Law (Law 42 of 1967) Revised, and that the Court has jurisdiction to make an adoption order.

Documents in support of the application bear dates as far back as 14th January 1985 and the application to the Board is dated 21 January 1985. It is therefore reasonable to assume that the intention to adopt Daniel was formed some time ago, although the matter has only in June of this year come up for adjudication.

By his affidavit sworn 11th April 1986 concern was expressed by Mr. Phillip Boni, an attorney-at-law and member of the Adoption Board, at the particular circumstances of this application:-

(i) The adoptive child is the brother of the proposed adoptive mother;

(ii) That the adoptive child will attain majority in August 1986,

that an inference may be drawn from the circumstances of the application that that the adoption is merely to secure Cayman status for Mrs. Delapenha's brother. To assist the court he referred to the cases:

Re A (an Infant) (1963) 1 All E.R. 531

and Re R (Adoption) 1963 3 All E.R. 613

Crown Counsel drew the attention of the court to a passage from

Cretney's Principles of Family Law, at p. 471.

" The court will not generally be prepared to make an adoption order if the primary object of the application is to achieve British citizenship for the child but if at least part of the motive behind the application is to achieve for the child the emotional, psychological and legal benefits of adoption the court will make the order if it considers that the child's welfare dictates this course. The court will pay great regard to considerations of public policy in relation to immigration and to national security if relevant, and it will be on its guard against the possibility of abuse; nevertheless, it has been held that the child's welfare is the first consideration in this as in other questions before the court in considering an adoption application."

The aspect of public policy in this matter arises in the sense that it is for the court to be satisfied that the real object of the application is not simply for the purpose of conferring Caymanian status, other than under the provisions of the Caymanian Protection Law, but instead, is a bona fide application brought out of a genuine intention on the part of the applicants to stand in loco parentis to the child.

This view of the aspect of public policy must have been the reason why the Hon. Chief Justice advised the Hon. Attorney General and sought assistance of an amicus curiae.

The Hon. Attorney General therefore had notice of the application, and no action has been taken to revoke the permission granted to the child to remain in the Cayman Islands. Such revocation would have a double effect -

- (1) to terminate the child's residence and so effectively prevent the making of an adoption order
- and (2) to give the court reason to consider whether an adoption order would be in accord with public policy in relation to immigration and to national security, if relevant.

No information or objection on any ground has been put forward.

The fact that Caymanians or persons of Caymanian status are free to increase their families by live birth and by the process of adoption must

be a factor in contemplation of those who make the law.

On the other hand the reports of the officers of the adoption Board show that Mrs. Delapenha has blood relatives in the Cayman Islands, her mother, 3 sisters and 4 brothers. One of her sisters is married to a Caymanian. The families of both applicants are close and caring. Mrs. Delapenha provides tuition to the International College of the Cayman Islands for two younger sisters. It is in character that she seeks to provide a settled family and home for her young brother, and fortunately, she has the support and co-operation of her husband in this. One of the best ways to achieve a settled home for Daniel is to adopt him. In circumstances where his parents are both in poor health and are unable to maintain him this is an obvious alternative. In that way she can have him with her where she lives and can guide and help him.

The reports give a very good impression of the maturity of the adoptive parents although young themselves, with few years of difference between them and the child. Both hold responsible, fairly lucrative jobs and own their own home.

I can find no adverse consideration in the application. It is surely for the benefit and welfare of the child that he should have a settled family and a settled home with and near blood relatives. It works out to be an extra bonus that he would have Caymanian status for the time that the law allows, and any benefit which may flow from it, but I do not think that that was the primary object of the application.

I accordingly made the adoption order.

For the benefit of the Adoption Board I would suggest that in future applications for adoption where one of the effects of the adoption order would be to confer Caymanian status on the child, that notice of the application be served on the Attorney General so that the political body of Cayman Islands Government may have an opportunity to be heard, in a proper case.

Dated the 6th day of August, 1986.

  
Judge (Acting).