

PUBLIC PROSECUTOR

- v -

JOHN RAYMOND

Counsel: Mrs Tabisa Harrison for Public Prosecutor
Mr Francis Tasso for the Defendant

Date of Hearing: 29 October 2014
Date of Decision: 7 November 2014

GUARDIANSHIP ORDER
(Section 13 of Penal Code Act [Cap 135])

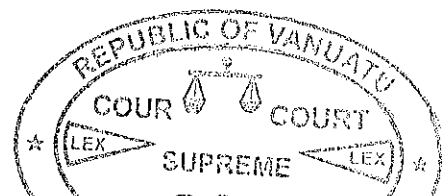
Accused John Raymond is charged with one count of indecency with a young person and one count of indecency without consent, contrary to sections 98A and 98(a) of Penal Code respectively.

The particulars of the offences are:

That, the Accused John Raymond is of 32 years of age at the time of offending; He lives at Saama village, North Efate; On or about 21 July 2014 at Christian Church School Saama, the Accused committed the act of indecency with young persons in that he was naked and masturbated himself and exposed his private parts to the school children of the Christian Church School of Saama village who saw his private parts (penis and testicles).

That, on or about the year 2012 until the month of July 2014 at the Christian Church School Saama, the Accused committed the act of indecency without consent in that he was naked and masturbated himself in front of one Mayleen John who saw his private parts (penis and testicles) without her consent; Section 98A offence carries a maximum penalty of 10 years imprisonment while section 98(a) offence carries a maximum penalty of 7 years imprisonment.

1. Before the pleas and upon application, an inquiry was conducted pursuant to section 91 (1) (2) (3) of the Criminal Procedure Code Act (Cap. 136);
2. The Court, having considered a medical report provided by Dr Richard Leona (Acting Medical Services Manager) and Andorin Aki (ENT Nurse in Charge) that the Accused is deaf mute in the following degree – Long standing deafness since his childhood, hearing test indicates a left dead ear and right severe to profound hearing loss, deafness totally impedes the development of spoken language, no professional sign language interpreter available, the accused is not trained to communicate by sign language nor does he benefit from any hearing aid since his childhood apart from informal lip-read, the Accused suffers physical inability as a form of mental impairment to comprehend the nature of the trial so as to make a proper defence to the charge which is a form of “other mental



disorder" within section 13 of the Penal Code Act [Cap 135]. The Accused is unfit to plead or to stand trial. Section 13 of Penal Code provides:

"13. Unfitness to plead

If any person charged with a criminal offence is by reason of insanity or other mental disorder unfit to plead or to stand trial, the court shall make an order placing him under guardianship in a manner to be prescribed in the order. The condition of the accused shall be established by a medical report ordered by the court."

3. The Court is satisfied, based on the Medical report dated 25 August 2014, of the physical conditions of the Accused, to make a Guardianship order pursuant to s.13 of Penal Code Act;
4. The Court being further satisfied that the Accused's father and Saama village chief are willing to receive the accused into guardianship:

It is ordered that the Accused John Raymond of Saama village, North Efate, be placed under the guardianship of his father, Walter John Bule with the assistance of Saama village Chief, Albert Kolaumara and his village Council.

DATED at Port-Vila this 7th day of November 2014

BY THE COURT

**Vincent LUNABEK
Chief Justice**

