

IN THE SUPREME COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

Criminal Case No 23 of 2020

BETWEEN

REPUBLIC

AND

ERJ

Defendant

Before : Fatiaki CJ.

Date of Hearing : 15, 16, 17, 22, 26 March, 2021

Date of Ruling : 29 April, 2021

CITATION : *Republic v ERJ*

CATCHWORDS: *Voir dire ; Judges Rules ; Interviewing a Child-offender ; best interests of the child ; age and maturity ; child-friendly interview technique ;*

LEGISLATION : s56 Child Protection and Welfare Act 2016 ; s116 Crimes Act 2016 ;

APPEARANCES:

Counsel for the Republic : R.Talasasa (DPP)

Counsel for the Defendant : F.Akubor

RULING

INTRODUCTION

1. On the evening of 16 November 2020 an incident occurred at the disused abandoned Clubhouse at the football Oval at Aiwo district which gave rise to the charge in this case. The accused (**ERJ**) was about 16 years 5 month of age at the time and the victim (**TRA**) was just 3 weeks short of her 16th birthday. (**ERJ**) is charged with intentionally having sexual intercourse with (**TRA**) which is an offence under section 116(1)(a) and (b) of the Crimes Act 2016.
2. The incident was reported to the police and (**ERJ**) and another young man (**MA**) were arrested from (**ERJ**'s) home at Aiwo District shortly after 10.30pm that evening. The victim **TRA** was medically examined and her police statement was recorded. Both young men were taken to the police station and locked in the police cell to await police enquiries.
3. The police FIRST INFORMATION REPORT records the following relevant events :
 - **11:05:37pm** : "*(MA) was release after took his statement*".The next day 17 Nov 2020 :
 - **11.06am** : "*(ERJ) wishes officer to called the mother to bring food. Mother was notified on 5584620.*"
 - **14:49 hours** : "*(ERJ) was taken out of custody to participate in the record of interview with the presence of the mother Jolani Capelle.*"
4. **ERJ**'s caution interview was conducted between 14:49 hours and 15:53 hours (just over 1 hour) by Senior Constable Kitty Biang and witnessed by Senior Constable Derrick Deduna. **ERJ**'s mother was also present throughout and signed the interview record signifying the same.
5. By written Notice dated 18 February 2021 , defence counsel challenged the admissibility of **ERJ**'s police caution interview on the following grounds :
 1. **THAT** the Defendant is a juvenile aged 16 years old when he was questioned by the police and police and that despite his age , his best interest was not taken as the primary consideration pursuant to section 54(1)(a) of the Child Protection and Welfare Act 2016. (the Act)
 2. **THAT** the interviewing police officer did not take into account the child's view in accordance with his age and maturity because during the course of the interview the police asked questions using English terms which the Defendant did not understand nor knew their definition because he does not understand nor speak English at all. These terms were not translated into the Nauruan language when asked of the Defendant. This is in breach of section 54(1)(d) of the Act.

- "3. **THAT** the Defendant was not offered child-friendly interview techniques but was subjected to repetitive questioning by the interviewing police officer contrary to section 54(1)(e) of the Act.
- "4. **THAT** the Defendant admitted to the allegation because the interviewing officer did not apply nor apply the requirements stipulated in section 54(1)(a), (d) and (e) of the Act which ought to have applied pursuant to section 54(2) of the act. The mandatory application of the provision is reflected in the ruling given in Republic v LD where the Court stated that "Section 54(2) provides that all approved procedures applying to the police force when dealing with children must be consistent with the requirements of subsection (1) ; that means that the Judge's Rule relating to children is no longer applicable". As a result of the interviewing officer's failure to apply section 54(1)(a), and (d) and (e) of the Act, the Defendant's confession in the cautionary interview was not obtained voluntarily."
6. In summary , the grounds allege breaches of the provisions of Section 54(1) of the Child Protection and Welfare Act 2016 , in particular paras (a), (d) and (e) , thereby rendering the interview involuntary.

THE LAW

7. The principles governing the admissibility of a confession are well settled and are conveniently summarised in Principle (e) of **the Judges Rules 1964 (UK)** which states :

"...it is a fundamental condition of the admissibility in evidence against any person , equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person , that it shall have been voluntary in the sense that it has not been obtained from him by fear of prejudice or hope of advantage exercised or held out by a person in authority , or by oppression."

Furthermore , even if voluntariness is established , the Court has an over-riding discretion to exclude a voluntary confession on the more general grounds of unfairness or for breach of constitutional right.

8. The burden of proving the voluntariness of a confession is that for the prosecution to establish to the criminal standard of proof beyond a reasonable doubt. In doing so the prosecution must dispel any oppression or unfairness in obtaining the confession.
9. In similar vein the House of Lords said in Lam Chi-ming v R [1991] 3 ALL ER 172 at p 178 :

"Their Lordships are of the view that the more recent English cases established that the rejection of an improperly obtained confession is not dependent only upon possible unreliability but also upon the principle that a man cannot be compelled to incriminate himself and upon the importance that attaches in a civilised society to proper behaviour by the police towards those in their custody."

All three of these factors have combined to produce the rule of law applicable ...in England that a confession is not admissible in evidence unless the prosecution establish

that it was voluntary. This , perhaps the most fundamental rule of the English criminal law , now finds expression in England in ... of the Police and Criminal Evidence Act 1984..."

THE PROSECUTION EVIDENCE

10. To establish the voluntariness of **ERJ's** police caution interview answers. The DPP called 3 police witnesses – Senior Constable Kitty Biang the interviewing officer, Constable Bronski Namaduk who locked ERJ and another young person (**MA**) in the police cell after they were arrested and brought to the Police Station , and Senior Constable Derick Deduna the officer who witnessed **ERJ's** interview.
11. Dealing with the evidence in chronological order Constable Bronski Namaduk testified that he first saw ERJ in a police vehicle which was parked out in front of the Police Station on the night of 16 November 2020. He next saw **ERJ** in the police station cell later that evening when he escorted (**MA**) out from an adjacent cell. He had seen (**MA**) with (**ERJ**) in the police vehicle earlier that night and his surname was "Adeang".
12. Constable Namaduk testified that as he was escorting (**MA**) out of his cell and as they passed **ERJ** in his cell , **ERJ** enquired of him when he would be released and he responded that he didn't know and would need to enquire about it. The Constable said his duty was to mind (**ERJ**) *ie.* watch over him and see to **ERJ's** well-being. That was what he learnt or understood to be "police force protocol". He recalls being part of the arresting party that brought (**ERJ**) and (**MA**) from **ERJ's** home at Aiwo District.
13. In cross-examination Constable Namaduk confirmed being in the police arresting party and also briefly speaking to **ERJ** while escorting (**MA**) out of his cell. More particularly Constable Namaduk when asked :
"**Q** : also tell **ERJ** that (**MA**) has said or told something against him ?
he replied :
A : yes I do recall saying something of the sort."
14. In re-examination , the DPP in an effort to clarify the above answer asked Constable Namaduk :
"**Q** : When you told **ERJ** other child had said something against him , why tell **ERJ** that ?
who told you ?"
and the Constable answered :
A : I cannot remember who or why I said that to **ERJ**."
Notably , Constable Namaduk did not retract or deny making such a statement to **ERJ**.
15. The next prosecution witness was the interviewing officer , Senior Constable Kitty Biang. At her request she gave her evidence with the assistance of a Nauruan language interpreter. She has been in the force for 5 years and has been posted in the Domestic Violence Unit (DVU) for the past 2 years. She said she underwent a year recruit training and learnt about the Crimes Act. She handled case files and learnt about dealing with defendants and victims. Asked about the "Judges Rules" , she replied :
"**A** : What are the Judges Rules ?"

Asked what she learnt about the process for interviewing suspects , she replied :
A : "I forgot."

16. More particularly , when asked about the treatment or handling of child offenders she said :
A : *We inform the parents or Child Protection Unit in case the child wants them to be with them.*"

Asked about her knowledge of Section 54 of the Child Protection and Welfare Act 2016 , she replied :

A : *Child should not be in fear and should have protection or parent present as per request of child.*"

Asked to explain "in fear" she said :

A : *Because they are a child , they should be helped by parent and child protection so they won't be fearful of police.*"

17. SC Biang described the interview as held in the Domestic Violence office which is :
"a very relaxing place , we have couch and toys , computer and table and chairs. It is air-conditioned." During the interview of a child : *"no-one is allowed in or out and only persons present are the child protection unit or parent , myself and witnessing officer."* She has done more than 20 interviews of children mostly for rape and sexual offences.

18. During **ERJ's** interview his mother and Senior Constable Derrick Deduna were present. The interview was conducted in the English language which she translated into Nauruan for **ERJ's** benefit. The interview was recorded on a computer.

19. In particular , SC Biang described that all English questions were already typed up in the computer as well as the Nauruan translations. They are part of "*the interview format*" , pre-printed on the screen before the interview commences. When the interview starts, she reads both versions to **ERJ** and she then typed out his answer in Nauruan with its English translation , asked why the first 11 numbered questions and answers had type-written numbers whereas the numbers for Qs and As from 12 to 86 are all hand written , she explained :
A : *They are additional questions not part of the interview format. Those are my own questions.*"

20. She clarified further that the last few Qs & As' from 80 to 86 although handwritten numbers , are part of "*the interview format*". She cautioned **ERJ** at "Q & A :10" and she suspended the interview after "Q & A :11" to allow **ERJ** to speak to his lawyer by phone. Asked if she considered **ERJ's** interview was conducted properly consistent with his age, she answered : A : *"Yes , his mother was present"*.

21. She said that she had explained and simplified some questions that **ERJ** asked to have explained in the Nauruan language but none of this was recorded or noted in the interview as it should be. **ERJ's** mother said nothing during **ERJ's** interview or complained about his treatment. The mother willingly signed the interview because she was present throughout. In her final answer in-chief SC Biang said she had translated the interview

questions herself to the best of her understanding. She is 31 years and spoke Nauruan her whole life.

22. At the beginning of her cross-examination, SC Biang admitted that not every incident that happened to **ERJ** during his interview was recorded in his interview record. She professed to have "*mastered section 54*" after doing 20 interviews involving children and she learnt that it required special enquiries dealing with children and to involve child protection and other qualified people. However, she did **not** refer **ERJ's** case to child protection either during or before his interview. She confirmed that **ERJ** had asked for his mother before the interview because, "*he wanted food*".
23. Asked if she asked **ERJ** if he was comfortable with having his mum present in the interview room, she answered: "A: No." Asked if she knew at that stage of the personal details she would be asking **ERJ** about, she answered: "A: Yes." She also agreed that talking about sexual acts of children before their parents, would be an awkward feeling for children.
24. Next SC Biang was asked:
"Q: You knew you would be asking about his penis and the girl's vagina?
A: Yes
Q: These are uncomfortable topics to talk about?
A: Correct
Q: Knowing that you didn't ask **ERJ** if he still wanted his mother in the room during the interview?
A: Yes
Q: So at that point you weren't thinking of **ERJ's** interest?
A: Correct".
25. As for **ERJ's** level of understanding of English, SC Biang said she asked him in the first paragraph of the interview. Asked if she asked **ERJ** if he spoke English, she answered: "A: No." To the question:
Q: "You assumed he can understand English?" she answered:
A: "I was speaking to him (**ERJ**) in Nauruan." Asked about her own level of English, she said:
A: "50% ok."
26. SC Biang was cross-examined extensively on the contents of **ERJ's** interview including the complete omission of the word "no" in the English translation of **ERJ's** answer to Q57 which related back to Q & A :56 as follows:
Q 56: Was she struggling?
A 56: Nauruan version: keo
English version: No
Q 57: Why was she struggling?

Q 57 : Nauruan version : *ya ededowin*

English version : *she was struggling* (as opposed to the correct translation "*she was not struggling.*")

27. According to the Court interpreter the correct English version of ERJ's answer to Q57 is "no struggle" NOT as recorded : *she was struggling*. Not only has ERJ's answer been totally changed by the omissions but , it raises doubts about S.C Biang's translating ability. This lack of ability is further illustrated by the contents of Q73 , 74 75 & 77 where the English terms : "*sexual intercourse*" and "*consent*" are used in both the English and Nauruan versions of Q73 , 74 , and 77 and where the Nauruan translation of the English term "*rape*" includes what appears to be a localised variation of the English word namely : "*rapeiy*".
28. Under cross-examination SC Biang frankly admitted that she had difficulty translating the English terms : "*rape*" , "*consent*" , and "*sexual intercourse*" into Nauruan. The Nauruan Court interpreter however , had no such difficult and was able to use Nauruan words and expressions which she described as : "*...common Nauruan terms used in daily language and understandable to all Nauruans including teenagers and 16 year olds.*"
29. Asked if ERJ's mother had raised any concerns during his interview whether that would amount to interfering with police works , SC Biang said :
"A : Yes".
She then reaffirmed her understanding by answering : "yes" to the question :
"Q : So no point in mother raising any concerns during the interview of ERJ ?
30. Finally , SC Biang answered "yes" to the following four (4) closing questions in cross-examination :
"Q : Put to you in conducting the caution interview your primary consideration was not ERJ's interest ? "
"Q : Put you did not take into account ERJ's views according to his age and maturity ? "
"Q : Put to you in conducting interview (you did) not applied child-friendly interview techniques ? "
"Q : You ask repetitive question kept repeating the same questions ? "
31. In re-examination , in seeking to clarify SC Biang's above damaging concluding answers , the DPP asked her :
"Q : Meaning of "yes" to the first matter put about ERJ's interest ? "
The constable answered even more damagingly :
"A : I did not ask him if he was comfortable with his mother being present."
The DPP repeated his question and this time SC Biang said : "*I am confused*". Then , after clarifying the Senior Constable's understanding of taking into account a person's interest so as not to be fearful of police and to have a parent there to support , DPP asked :
"Q : So when answered 'yes' to not taking into account ERJ's interest what did you mean?

A : *Because I didn't ask him if he knew how to read English and I didn't know if he knew how to read.*"

32. The re-examination continued in similar vein , when the DPP sought an explanation as to why SC Biang agreed ("yes") to the interview being "*conducted in a not child-friendly environment . explain ?* she answered :

A : *The mother was present that's why I agreed it was not a child-friendly environment."*

33. Later SC Biang repeated her answer when her "yes" answer to not caring about ERJ's interest was being clarified by DPP. SC Biang repeated :

A : *I didn't inform ERJ if he wanted mother present during the interview.*

Q : *Why didn't you ask ERJ if he wanted mother present ?*

A : *The reason is the mother needed to be there and to let her know where her child is and to offer support and counsel!*

Q : *Why child need support ?*

A : *So parent be present and child has a guardian during the interview.*

Q : *Is it important for child to have a guardian ?*

A : *Yeah"*

34. SC Biang explained that the absence of the word "not" in A:57 (English Version) was because "*she was more focussed on ERJ's Nauruan answers*" and not on her own English translation of it. She accepted the Nauruan A:57 is the correct one and correctly translates as : "*there was no struggle*".

35. SC Biang also explained that she used the English words "*sexual intercourse*" in the Nauruan Q74... "*without thinking*" but , she claims she explained what the words meant in Nauruan : "*... off the record (of interview)*". She further explained that ERJ's mother could have spoken during the interview if ERJ wanted to go to the toilet or to eat. It would only be "*interference*" if the mother started arguing with them during the "interview" and not otherwise.

36. SC Biang concluded her re-examination by explaining her understanding of the process of conducting an interview with a child as follows :

A : *What I know , I have to inform parents and child protection unit so they are present during the interview.*

Q : *What about the child the accused ?*

A : *Be friendly with child earning their trust so not to be fearful and open with me."*

37. Finally , to the Court's question :

Q : *Whose entitlement or right is it to have a parent present during the interview ? Police, parent or child ?"*

She answered without hesitation :

A : *The police , based on our experience and past practice."*

38. The last prosecution witness to be called was Senior Constable Derrick Deduna the witnessing officer of **ERJ's** interview with SC Biang. He described **ERJ** as appearing "comfortable" throughout the duration of the interview and **ERJ** was given his right to call a lawyer. Asked what word he would use for "sexual intercourse" he said :
 "A : Pump"
 asked , in Nauruan ? , he said :
 "A : "Ewoda"
 asked why **ERJ's** mother was present at the interview , he answered :
 "A : because of the laws , Judges Rules."
39. In cross-examination SC Deduna agreed he needed more training on the Child Protection and Welfare Act 2016 *ie.* more than the 1 week he had had. He remembered **ERJ's** right to seek a lawyer and have a guardian , and when asked :
 "Q : Who decides which , guardian , defendant or you , the police ?
 he answered :
 A : At the time we decided and found him the guardian for him.
 Q : So **ERJ** didn't ask or agree to mum being present ?
 A : No".
 Finally , SC Deduna identified and produced a document **MFI-P(1)** – a FIRST INFORMATION REPORT sheet already referred to earlier in this ruling. So much for the prosecution evidence.

THE DEFENCE EVIDENCE

40. Defence counsel in opening the defence case submitted that the defendant's caution interview was not recorded in compliance with Section 54 of the Child Protection and Welfare Act 2016 and compelled "the defendant to incriminate himself unfairly".
41. In this latter regard the House of Lords relevantly said in Lai Chi-ming (*op.cit*) at p 179 :
 "The privilege against self-incrimination is deep rooted in English law and it would make a grave inroad upon it if the police were to believe that if they improperly extracted admissions from an accused which were subsequently shown to be true they could use those admissions against the accused for the purpose of obtaining a conviction. It is better by far to allow a few guilty men to escape conviction than to compromise the standards of a free society".
42. The defendant speaking through the Court interpreter was then called as the first defence witness. He confirmed his date of birth as : **7 June , 2004**. He attended Nauru College up to Form 2.
43. **ERJ** recalls before the interview , asking the police to call his mother to bring him some food as he was feeling hungry and had not slept well during the night. His mother came to the station but she brought no food. He was unaware that his mother would be sitting-in on his interview nor had the police asked him if he wanted his mother in the interview room

with him. **During the interview he said :** “...was feeling not good at all because my mum was sitting next to me.”

44. **ERJ** recalls being picked up at night with **MA** from his home at Aiwo District by the police and being taken and locked up in the Station cell. Then an unidentified policeman came to the cell and unlocked **MA** and he asked the policeman :
- “**Q** : when will I be released ?”
- and the policeman replied :
- “**A** : You are not going anywhere cos you are the one in trouble”
45. The release of his cellmate (**MA**) who had been picked up with him coupled with the policeman’s statement caused him to feel afraid where before that he did not feel pressured. He was kept in the police cell all night until the early evening of the following day without a blanket , pillow , and without any food or drinks. He was unable to ask for food although he was hungry as no-one came to see him in the cell. During the interview he spoke in Nauruan and only understood the Nauruan questions. He identified his signature on his police interview record.
46. In-chief **ERJ** said to him : “sexual intercourse” meant like having or going on a date where a boy and girl meet up. He understood the word “rape” meant that he and the girl “we did it”. Neither term was explained to him nor was the term “consent” explained to him. He thought it meant “love bites” and things like that. Asked about the contents of the interview including the mention of sexual parts of the body , **ERJ** said
- “**A** : I wasn’t feeling good cos she (my mother) was right there in the room”
- “**Q** : Would talking about those personal details be common in front of your mother ?”
- A** : No
- Q** : Why sign the interview ?
- A** : I wanted it to be over quickly. I thought if I signed it I would be released quickly. I was just rushing for it to be over.
- As to answering the interview questions against his lawyer’s advice , **ERJ**
- “**A** : My mind was far away. I wasn’t thinking straight after police told me I wouldn’t be released.”
47. In cross-examination **ERJ** maintained he could not understand or read English and that he had merely followed the clerk when reciting the oath in English. He agreed that his interview was conducted in Nauruan and he answered in Nauruan. He maintained that he was unhappy with his mother being present during his interview because of the sexual nature and personal details in the interview and also his mother hearing the allegations against him about what he did to the girl.
48. In re-examination **ERJ** related that the policeman had threatened him in the cell and made him feel that he would be locked up as he was “the one whose to be blamed.”
49. The second and last defence witness was **Jolaini Capelle** the defendant’s mother. She recalls going to the police station when the police came and got her from her home at Aiwo District. They told her it was about her son’s case at the Station she was taken straight to

the interview room. Asked if the police who picked her up had asked her to bring food for her son , she replied

"A : No"

50. This was the first ever interview she attended and she didn't know why she attended it. She didn't recall much about the interview although she understood the Nauruan questions. Asked **"Q : Remember question to your son if he was interested in the victim ? "** She replied :
"A : I recall police asked. Why you did this to her ? and my son said no".
51. In cross-examination she denied that her mobile number in November 2020 was 5584620. It was 5565523. **ERJ's** mother denied in cross-examination that the police had told her to bring some food for **ERJ**. She confirmed attending **ERJ's** interview and being seated on a couch. She forcefully denied that SC Biang had explained things in Nauruan during **ERJ's** interview and she herself volunteered the word : "*kamekor*" when asked about : "*sexual intercourse*". She understood **ERJ** was being interviewed about "*...doing something to a girl.*" She understood the Nauruan questions in **ERJ's** interview and she didn't raise any concerns during **ERJ's** interview. So much for the defence evidence.

CLOSING ADDRESSES

In her closing address , defence counsel firstly highlighted Constable Namaduk's threat or accusation that **ERJ** would not be released because he "*was to be blamed for the allegation*" , which caused **ERJ** to become fearful and emotionally pressured. Counsel also submitted that there were clear admitted breaches of paras (a) ; (d) and (e) of Section 54(1) of the Child Protection and welfare Act 2016 which reads :

"54 Special requirements applying to investigations and inquiries involving children

(1) Despite the provision of any other law to the contrary, the following matters apply whenever an investigation or inquiry is undertaken in relation to a child by a police officer, an authorised officer, or any other person lawfully exercising powers of investigation or inquiry in relation to a child under any law:

(a) at all stages of the investigation or inquiry , the best interests of the child must be the primary consideration ;

(b) the investigation of or inquiry into the child must recognise and protect the rights and interests of the child at all stages of the justice process, and must reduce trauma and secondary traumatisation of the child;

(c) the matter must be promptly notified and referred to other relevant agencies to promote the protection and welfare of the child, and his or her rights;

(d) any action taken must permit the child to fully state his or her views , and the relevant officer must take into account the child's views in accordance with their age and maturity , and must respect the child's right to privacy ;

(e) child-friendly interview environments and interview techniques must be implemented and applied ;

(f) special procedures must be applied to reduce the number and length of interviews which children are subjected to ;

(g) special facilities and appropriate processes must be provided and applied where the child has a disability to ensure the effective application of the requirements of this section;

(h) children are entitled to have a parent, guardian, legal representative or other appropriate support person agreed to by the child, present with them at all stages of the investigation and trial proceedings;

(i) measures must be implemented to ensure children are protected from direct confrontation with persons accused of violating their rights, and must not be subjected to hostile, insensitive or repetitive questioning or interrogation;

(j) investigations must be conducted expeditiously, and must be followed by expedited court proceedings; (my highlighting)

(2) All orders or approved procedures applying to members of the Police Force when dealing they deal with children must be consistent with the requirements stated in subsection (1).

52. Several features are plain from a close reading of the above provisions including the following :

- (1) The section refers to "a child" who is defined as being below 18 years of age ;
- (2) The section applies to "a police officer" undertaking an investigation or inquiry in relation to a child ;
- (3) The section is paramount and supercedes "...the provision of any other law to the contrary" ;
- (4) The overriding and primary consideration is the : "best interest of the child" and may supercede other matters referred to in the succeeding paras (b) to (j) ;
- (5) Depending on the child's "age and maturity" , his/her views must be elicited and considered when taking any action and furthermore such action must respect the child's personal *right to privacy* ;

(6) "a child" (**not** the police , the parent or a child protection officer) is entitled to have a parent or legal representative present at all stages of an investigation ;

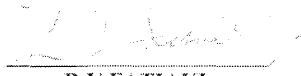
(7) Existing police protocols , orders , processes and procedures must be construed so as to be consistent with the over-riding provisions of section 54(1).

53. As to paras (a) and (d) , defence counsel highlighted the lack of food , the lateness of **ERJ's** arrest and the "*Spartan*" conditions in which he slept in the police cell and , all the while , worrying about his fate and haunted by the words of Constable Namaduk that he would not be released because he would be blamed and was in trouble or words to that effect.
54. More particularly , SC Biang the interviewing officer said to the court's question , that the entitlement to have a parent present was that of : "*the police*" and this was later confirmed by SC Deduna the witnessing officer , who said : "*we (meaning the police) decided to find him the guardian*" , without any need to ask or inform **ERJ** that his mother would be present during his police interview.

DISCUSSION and DECISION

55. If I may say so , after hearing all three (3) police officers including the interviewing and witnessing officers . I was left with the distinctly unfavourable impression that the special requirements for the treatment of young offenders under Section 54 of the Child Protection and Welfare Act 2016 was viewed as a matter of formality , "*process*" and "*police protocol*" for which there was little understanding or appreciation of why such precautions were required and for whose benefit they were. In other words , it was something that lip-service was paid to.
56. The DPP for his part submitted , that this case was distinguishable from Republic v LD and MBS per Khan J in Criminal Case No 5 of 2019 in that **ERJ's** mother was present during the interview. Whilst the fact are different the principles remain the same and in the present case the interviewing officer herself accepted and repeated several time that she had not considered **ERJ's** interest or wishes by having his mother present during his interview.
57. Mindful that it is the prosecution's duty to establish the voluntariness of **ERJ's** caution interview beyond a reasonable doubt and given the interviewing officers own frank admission of breaches of section 54 of the Child Protection and Welfare Act 2016 and **ERJ's** sworn evidence that there was no explanation or clarification of several important English words used during the course of the interview and asked of him , I am not satisfied that **ERJ's** inculpatory caution interview – was voluntary and accordingly his caution interview **Ex-VD(1)** is ruled inadmissible.

Dated the 29th day of April 2021



D.V.FATIAKI
CHIEF JUSTICE