

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 90 OF 2023

STATE

-v-

1. RONEEL KUMAR

2. GASTON KEAN

Counsel : Ms M. Lomaloma for Prosecution

: Accused in Person,

Dates of Hearing : 11 - 20 November 2024

Date of Judgment : 29 November 2024

JUDGMENT

(Recognition of offenders from CCTV footage)

1. Robberies and Burglaries are on the rise in Fiji, limiting the rights of the people to enjoy their freedom and hard-earned property. With the advent of digital technology, Close Circuit Television (CCTV) cameras have become popular amongst dwellers who are frustrated with this menace. The footage obtained by police from private CCTV cameras are increasingly being used to solve crimes in Fiji. This is one such case where the Prosecution solely relies on the footage obtained by CCTV cameras installed at the crime scene to prove its case.

2. The Accused Persons (Accused) were arraigned on the following information filed by the Director of Public Prosecutions:

Count One

Statement of Offence

AGGRAVATED BURGLARY : Contrary to Section 313 (1) (a) of the Crimes Act 2009.

Particulars of Offence

RONEEL KUMAR AND GASTON KEAN on the 27th of March 2020, at Lautoka in the Western Division, entered the dwelling house of DIANA ALI NAND with intention to commit theft.

COUNT TWO

Statement of Offence

THEFT: Contrary to Section 291(1) and 45 (1) of the Crimes Act 2009.

Particulars of Offence

RONEEL KUMAR AND GASTON KEAN on the 27th of March 2020, at Lautoka in the Western Division, dishonestly appropriated 1x mini Dell Laptop, \$5750.00 cash, 1x Rip Curl gold watch, 2 x gold bangles, 1x 22 carat gold chain and 1x gold coin, the properties of DIANA ALI NAND with the intention of permanently depriving DIANA ALI NAND of the said properties.

3. The Accused pleaded not guilty to the charges. At the ensuing trial, the Prosecution presented the evidence of six witnesses. The Accused were unrepresented at the trial. They waived their right to legal representation and legal aid. They were properly explained their rights, including the right to cross-examine the witnesses called by the Prosecution. The case theory of the Prosecution and the salient parts of the evidence against the Accused were explained. The Accused exercised the right to cross-examine effectively.
4. At the close of the case for the Prosecution, the Court, having been satisfied that there was a case for each Accused to answer on each count, put them to their defence. Both Accused elected to give evidence under oath. 1st Accused called one witness. Having considered the

evidence presented at the hearing and the respective written submissions filed by the parties, I pronounce the judgment as follows.

5. The Accused persons are presumed innocent until proven guilty. The onus or the burden of proof rests on the Prosecution throughout the trial, and it never shifts to the Defence. There is no obligation or burden on the Accused to prove their innocence or *alibi* they mounted. The Prosecution must prove each Accused's guilt beyond reasonable doubt. If there is a reasonable doubt so that the Court is not sure of their guilt, the Accused must be acquitted.
6. To establish the offence of Aggravated Burglary, the Prosecution must prove beyond reasonable doubt that the Accused entered or remained in the building as a trespasser with intent to commit theft. Accordingly, the Prosecution must prove in this case that the Accused, Roneel Kumar & Gaston Kean, in the company of each other, entered the dwelling house of Diana Ali Nand on 27 May 2023 as trespassers and when they entered the house, their common intention was to commit theft.
7. A person commits theft if that person dishonestly appropriates the property belonging to another with the intention of permanently depriving the other of that property. Accordingly, the Prosecution must prove that Roneel Kumar & Gaston Kean, on 27 May 2023, in the company of each other, dishonestly appropriated the property mentioned in the charge with intent to permanently deprive Diana Ali Nand of her property.
8. Let me summarise the salient parts of the evidence I believe to be important to resolve the issues in this trial.

PW1 - Yu Hin Chiu (Alan Chiu)

9. Yu Chiu runs an IT business called Skylink Technologies, which he started in 2010. He has a bachelor's degree in information technology and obtained qualifications locally and overseas. He specialises in installing security cameras (CCTV cameras) for commercial and residential clients and attends to requests to review and download footage on their behalf.

10. He installed a CCTV security system with eight cameras at Mr Shelvin Nand's residence at Pickering Place. The system consists of an internal hard drive and a decoder that automatically stores the actual footage until it overwrites itself after two weeks.
11. The Complainant's husband, Mr Shelvin Nand (Shelvin), called at around 11 p.m. on 27 May 2023 and informed him that his residence was broken into. Shelvin requested him to come to his residence and assist him in reviewing the footage. He went to Pickering Place with the software called BIT VISION loaded onto his phone via the Internet. This software was needed for real-time viewing of the CCTV footage(s). No one, except him, could access the software on the phone without the assigned username and password.
12. At Shelvin's Residence, he entered the username and the password and rewound the footage(s) recorded on the decoder from different cameras from 6 or 7 p.m. He then downloaded them to his phone, where he saw the movements of the break-in. When rewinding the footage(s), Sgt Filipe and other police officers were present with the Nand couple. Some of them identified who they were in the footage. Since they had already viewed the footage in real-time at the scene, the police requested him to download it onto the phone. He downloaded the footage onto his phone and sent the footage(s) to the police officers and Ms Nand (the Complainant) on Viber. He was asked to come back the next day.
13. The next day (28 May 2023), he brought a USB and a laptop to Nand's house to have the footage transferred to the USB so it could be given to the police as evidence. He did that in the presence of the police officers and double-checked if whatever he had on the phone had gone into the USB. He gave the USB directly to Sgt Filipe at the crime scene. He recognised the USB in Court and the (several) footage retrieved on it when they were being played on the screen. He confirmed that those were the footage taken from the cameras at Nand's residence recorded on 27 May 2023. He was sure no one could alter the footage, particularly in Fiji, where no technology is available.
14. Under cross-examination by the 2nd Accused, Chiu agreed that he made his statement on 29 May 2023 to the police. He denied stating in his statement that he went to the scene on the 28th for the first time. Having agreed that he is not qualified in digital extraction, he disagreed

that one needs to be qualified to rewind and extract footage. Since he had installed the cameras, he retained the authorisation - the username and password- to assist his clients in reviewing footage. He extracted the footage in the presence and with the authority of the police officers.

PW2- Diana Ali Nand

15. Ms Diana Nand (Dina) is the General Manager at her husband's law firm. In 2023, she was residing at Pickering Place with her husband and daughter until they moved after the incident to Simla. On 27 May 2023, they left home for dinner at around 7.15 p.m. and returned at around 10 p.m. Upon arrival, they noticed the bedroom lights were on, the carport light was off, and the kitchen grilled door was open. As her husband opened the kitchen door, she screamed and asked her husband to move out because she suspected that someone might be inside the house. Her 5-year-old daughter started crying. She ran out and called the police. She was three months pregnant at that time.
16. The police arrived within 10 to 15 minutes and checked inside the house. There was none inside, but the entire house was in a mess. She started searching for the things in her bedroom. Her bangles, gold chain with a gold coin worth \$ 5000, laptop and cash of around \$5,700 and duty-free liquor were found missing. She was in shock. Nothing has been recovered to date.
17. Altogether, ten Closed Circuit Television (CCTV) cameras (9 outside and three inside) were installed at home in Pickering Place. Since they couldn't access them, her husband called the IT person Allen (Yu Chiu) of Skylink, who had installed the cameras. When Allen arrived, he showed them several footage(s) on his phone. The footage(s) were sent to her mobile phone on Viber and those of the police officers. While the footage(s) were being shown in Court, she confirmed those were the ones she had viewed that night at her place.
18. The next day (on 28th), Allen came home again with his laptop. Allen showed the footage(s) to them in the presence of the police officers. Allen then downloaded the footage(s) to a USB in the presence of the police officers and handed the USB over to the police. While the

footage(s) were being played in Court, she confirmed those were the ones she had seen at home.

19. She was surprised to see who had entered her house. She recognised Roneel Kumar (Roneel) in the footage. She recognised Roneel from his face, the tattoo on his hand and how he walked (gait). The tattoo was visible clearly when the screenshot was zoomed in. She took printouts of the same and gave them to the police.
20. She knew Roneel before the break-in. Roneel had visited her place several times, and she used to visit his place for nails. While the footage was being shown in Court, she pointed out Roneel, his tattoo, his gait and his face on the footage. (The tattoo was on the dorsal aspect of his right palm, extending to the little finger). She could not give the description or design of the tattoo. According to her, Roneel's gait is different. His shoulder goes up when he walks.
21. Roneel was seen slightly limping in the footage. Astika had informed her that Roneel had injured his feet. As soon as the recognition was made from the video, she told the police officers that she recognised Roneel Kumar. The police officers took her statement the same night. She pointed to the 1st Accused and made a dock identification. The next day, she saw Roneel again at the police station.
22. Diana described how she knew Roneel. Roneel's partner, Astika Deo is her nail technician. Since 2019, she has known Roneel because she used to visit Astika monthly or every six weeks for nails. There were occasions when Roneel picked up and dropped Astika off at her place. Roneel would come inside the house and carry her suitcase containing the nail stuff. Roneel was her mother's student at kindergarten. She had talked to Roneel and greeted him when she visited his partner for nails. She went to Roneel's house to do her nails two days before the break-in and informed Astika that she had to attend a dinner on Saturday.
23. Sometimes, she had seen Roneel and the 2nd Accused together when Roneel used to come to her place in a cab to drop her partner off. He described a particular occasion where she had seen the 2nd Accused in the company of Roneel when he (Roneel) kept inquiring about a

shortcut. She identified the 2nd Accused when she viewed the footage the very first day, as it showed him cutting the camera light flashing on his face.

24. Under cross-examination by the 1st Accused, Diana said that Roneel had come thrice inside her house, and she had even offered him juice to drink. She denied Roneel had only dropped Astika on top of the roundabout. She agreed that her statement was taken at 2.15 a.m. on 28 May (2023). She said she had seen the tattoo several times when Roneel was talking by lifting his hand.
25. Diana admitted that, when she made her statement to the police, she did not particularly mention this tattoo but only stated that she had identified Roneel through his physical appearance. She was sure it was Roneel Kumar that she had identified in the footage. She agreed that she called Astika on Sunday (28 May 2023) to express her astonishment when she recognised Roneel in the video. She denied having fabricated the allegation for an ulterior motive because the legal documents, which were entrusted to her by a client, had gone missing with her laptop.
26. Under cross-examination by the 2nd Accused, Diana said she could not recall the month she saw the 2nd Accused but recalled it was after 6 p.m. when it was a bit dark, but she had light at her house, and the observation was made at close range when he got out of the car. She admitted that she had not mentioned to police that she had seen the 2nd Accused before the break-in. She denied keeping the legal documents of her clients at home.

PW 3 - Keasi Vakalagalaga

27. Keasi left the Fiji Police Force in the middle of April 2024 after serving 15-16 years. In May 2023, he was attached to Lautoka Police Station. When he reported for work on 28 May 2023, the investigating officer Sgt Filipe, showed him video footage on his phone taken from the Complainant's house. He recognised Roneel Kumar (Roneel) and Gaston Kean (Gaston) in the footage. Later in the day, they went to the Complainant's house at Pickering Place, where he saw the footage again on a larger screen. When the recognition was made, he informed the investigation officer that he recognised both Roneel and Gaston.

28. He had known Roneel since 2009. His job was to escort Roneel and Gaston from the Courthouse to the Remand Centre. Before he saw this footage, he had interacted with Roneel for a long time and Gaston a few times.
29. While viewing the footage, he recognised Roneel from the tattoo on his right hand and his gait. After viewing the footage in Court, he confirmed having seen it twice before and pointed to the man sitting in front of the car with a tattoo on his right hand (the witness showed his right hand to describe where exactly he saw the tattoo in Roneel's right hand, Roneel also raised his right hand and showed the tattoo to Court).
30. He recognised Gaston from his amputated right thumb when he viewed it on both occasions. He had seen his amputated thumb whenever Gaston was being escorted to and from the remand. Gaston's face was also shown in the footage. But it was his amputated thumb that made him sure that it was Gaston Kean.
31. While the footage was being played in Court, he pointed to the person holding the ball cutter and his distinguishing feature (right thumb) that helped him to identify Gaston. He saw Gaston and Roneel again at the police station. The witness identified the 1st Accused as Roneel Kumar and the 2nd Accused as Gaston Kean.
32. He interacted with Roneel before coming to give evidence. He accidentally called Roneel on Sunday (the day before the trial) while trying to call another person whose name was saved on his phone under "Ron". He was in Rakiraki at that time. Roneel, after inquiring where he was, sent him \$45 via M-Paisa, though he never asked for money. He didn't know why Roneel sent money. He used the money to drink grog. It's not the first time Roneel has interacted with him. He also messaged yesterday (the day before his evidence) asking him not to come to Court. A screenshot of the message he received was tendered in evidence (PE3-1), which read: *"Sorry bro, you are not giving evidence because I will raise in Court about the M-Paisa transaction on Sunday"*.
33. Under cross-examination by the 1st Accused, Keasi said he could not recall the exact dates he had escorted Roneel. In his statement, he had told the police that he had known Roneel

for the past 9 years. In the footage, the design of the tattoo was not shown clearly. He only knew that Roneel had a tattoo on his right hand.

34. He denied that the money was sent as bus fare for him to come to Court to give evidence. He admitted talking to the complainant, who was a witness, before coming to give evidence (on Monday). He recorded his statement on the evening of 28 May 2023. The fact that he went to the complainant's house to view the footage is not recorded in his statement, but he is sure he went there on 28 May with his team.
35. Under cross-examination by the 2nd Accused, Keasi said he had no idea if the 2nd Accused was in prison (Maximum Security Complex) from 2007 to 2022, but he saw the 2nd Accused around Lautoka Courthouse. He denied the person whom he saw in the footage did not have a short thumb, but his thumb was only bent.

PW 4 - Inspector Simione Ravouvou

36. In 2023, IP Simione was attached to the Criminal Investigation Department of the Lautoka Police Station. On 28 May 2023, when the CCTV footage was shown on a desktop at the Station by Sgt. Filipe, he positively identified Gaston and recorded his statement to that effect. Gaston is his neighbour. He lives 70 meters away from where Gaston lives on Vomo Street. He had known and interacted with Gaston ever since he came to Lautoka in 1998 and when Gaston was being brought in and out of the Station many times.
37. He identified Gaston by his height, his face, and his movements. He positively recognised Gaston when he looked up in the footage. When the footage was played in Court, IP Simione confirmed that it was the one he viewed on 28 May 2023. He pointed to the person looking at the camera and named him Gaston. Through this footage, he described Gaston's face, his gait (how both of his legs come inside). He pointed to the 2nd Accused and identified him to be Gaston in Court.

PW 5 - DC Mossese

38. In 2023, DC Mossese was attached to the Criminal Investigation Department at the Lautoka Police Station. On 27 May 2023, when he was doing the night shift with Sgt Filipe, they received a call at around 11 p.m. regarding a house break-in at Pickering Place. On the 28th, he was instructed to accompany Sgt. Filipe to attend the crime scene. When they arrived at the burgled house at Pickering Place, he was informed to secure the scene until the CIS team and K9 team arrived. When they entered the house, he noticed it was scattered, items lying on top of the bed and the floor.
39. On the 28th, the IT officer came to extract CCTV footage. He viewed the CCTV footage in the presence of Sgt Filipe in the complainant's house on a large screen the size of a desktop. He saw two men in the footage in which he positively identified one as Roneel Kumar and the other as Gaston Kean.
40. Roneel's face was clearly shown on the CCTV footage. The features of his face and his mannerisms- the way he talks (by always moving his hands), helped him to identify Roneel in the footage. He had known Roneel for almost five years. He used to meet and shake hands with him at the Lautoka Police Station and also when they did routine checks at Roneel's place. He had interacted with Roneel and spoken with him during these times.
41. He had known Gaston Kean for about three years. He used to meet and speak to Gaston when he came to sign his bail at the Lautoka Police Station. He met Gaston more than five times at the cell block at Lautoka, at the courthouse and also when they did routine checks at his house. When he viewed the CCTV footage, he was able to recognise Gaston from his face, as it was clearly shown in the footage when he was looking at the camera, his features, and his mannerisms (he walks with a limp). When the footage (PE2) was played, he confirmed that it was the same footage he had viewed at Pickering Place with Sgt Filipe.
42. He pointed to Roneel and Gaston on the screen and separately identified each of them while describing their mannerism. He informed the investigating officer that he positively identified Roneel and Gaston. The witness pointed to the accused and identified them in Court.

43. Under cross-examination by the 1st Accused, Mossese agreed that he was part of the search team that came to search and arrest Roneel on 28 May 2023, after mid-day. Under cross-examination by the 2nd Accused, the witness said he used to go to Gaston's house at Vomo Street for routine checks at the hours of darkness around 6 p.m. and bring his torchlight. Usually, four to five routine checks were done per month. He denied that he had made a mistaken identification.

PW6 - Sgt Filipe Ratini

44. Detective Sergeant (Sgt) Filipe is the Investigating Officer of this case. On 27 May 2023, he was on duty at the Lautoka Police Station doing the night shift. He received a break-in report at the house of Mr Shelvin Nand at around 23Hrs. He quickly attended to this report with his team comprising Constable Mossese, Constable Rohit and Constable Marika.
45. Upon reaching the complainant's house after 2300hrs, Shelvin Nand and his wife showed them the point of entry and the CCTV cameras installed on his premises. Nand had already requested Yu Chiu, the IT personnel who had installed the security cameras, to come and assist in rewinding the footage. He sought assistance from the K9 team and the CSI team to attend to the crime scene. Yu Chiu had the password to replay the CCTV footage relevant to the time slot of the break-in.
46. Yu Chiu, in his presence, extracted the CCTV footage(s) from the decoder and sent them to their phones on Viber. He viewed this footage with his team and the complainants. In the footage, he saw two male persons entering the premises but could not recognise any of them. PC Mossese recognised the two persons seen in the footage to be Gaston Kean, residing in Vomo Street and Roneel Kumar, residing at Sakuru Place.
47. He went to the complainant's house again on 28 May 2023 at about 1030hrs with DC Mossese, DC Keasi, DC Rohit and DC Marika. Yu Chiu also came and downloaded the footage to a USB and gave it to him. Before handing over the USB, Yu Chiu replayed the footage(s) on a laptop to check if they had been transferred to the USB. DC Mossese identified the two accused when he viewed the footage(s) at the complainant's house. In Court, he recognised the USB given to him at the scene by Yu Chiu and tendered it in

evidence (PE2). When it was being played on the screen in Court, he confirmed that it contained the same footage he had viewed at the Complainant's house.

48. He kept the USB in his locker, and the next day, he played it on a computer for the CID officers. Inspector Simione viewed the footage and recognised Gaston. Keasi recognised both Gaston and Roneel. He told them to record their statements and ordered the arrest of the suspects. Gaston was arrested after 3 p.m. on 28 May 2023.
49. Until the USB was handed over to the interviewing officers to be shown to the suspects in the interview, it was in his control. After the interviews, he received the USB on 29 May 2023 and handed it over to DC Savenaca, the IT officer, who made copies of it on two compact discs (CDs) in his presence. After that, the USB was handed over to DC Solomone, the exhibit writer. He viewed the contents of the CDs to verify if they contained the same footage before being disclosed to the Defence. At no point did anyone else have access to the USB or CDs to alter the footage. He tendered the USB (PE2) and the CDs (PE5) in evidence.
50. Under cross-examination by the 1st Accused, he agreed that Yu Chiu was already present when they arrived at the crime scene. He received no positive feedback from the K9 and CSI teams. Once the identity of the suspects was confirmed, they commenced the enquiry within the vicinity the same night and advised the operation team led by PC Keasi to check on Roneel. The arrests of the accused and search were later ordered upon a search warrant. The arrests were made on 28 May 2023, but he could not recall who the arresting officers were. According to the search lists, two searches had been conducted on the 28th and 30th of May. He agreed that he had made a statement on 28 October 2024, after 18 months for *voir dire* proceedings and not immediately as the IO. He then said his previous statement was misplaced.
51. Under cross-examination by the 2nd Accused, the witness said that he never went to check on Gaston's house on 27 May 2023 after the identification was made, but he sent Constable Keasi and the team. Gaston was residing 150-200 metres away from the crime scene

Case for Defence

DW1 -Roneel Kumar (the 1st Accused)

52. Roneel testified that he was home on 27 May 2023. At around 6 p.m. his sister had come with the baby. He was looking after the baby after the sister went shopping. He didn't go anywhere because he expected a routine check-up by the police officers. He never left the house at any time in the night in question.
53. The next morning (28th), at around midday, he received a phone call from Diana, the complainant, to be informed that her house had been broken into. Diana informed his wife that the police were saying it was Roneel. After that, an officer spoke and told him to come to the crime scene. He told the police if they were labelling him as a suspect, they could come and see him. Within 10 minutes, the police CSI team arrived with a search warrant and searched his house. They took his jacket, his wife's Apple watch and a clear plastic. He was arrested at around 1.30 p.m. on the 28th. He was locked up in the cell and taken out on the 30th for the interview. The interview was suspended for his alibi check, and another search was conducted with negative results. Alibi statements were taken from his wife Astika Deo and his sister who is now in New Zealand. He was charged on 30 May 2023, and produced in Court on 31 May, after 48 hours of his arrest. He strongly denied that he was in the footage. He knew Gaston before the alleged incident when they were in prison, but he never met him that night. Nothing was found on him.
54. The footage lacks quality, that is not him. The complainant's identification of him is mistaken. She never came to his house two days before the incident. The last time she came to have her nails done was on 11 May 2023, according to his wife's appointments. He does not deny he has a tattoo on his right hand, but compared with the footage, it is different in that he has a complete tattoo on his finger, whereas the tattoo of the person in the footage has a small tattoo in the middle of the palm. Photos were taken of his tattoo by police, but none were produced in Court. On his request, the video was played again in Court for comparison.

55. Under cross-examination by the State, Roneel admitted that his wife would usually go and do nails at the complainant's house, and sometimes he would accompany her to drop her off. But he would drop his wife off at the roundabout where Mr Nand would come to take the bag and things. He has never been inside their house. He agreed that he has had interacted with Mrs Nand on a few occasions. He was in prison until 2022 and was never on bail to report to the police station. He got a cut and tattoos on his face, but none appear in the footage. He agreed that at the time of arrest, he was informed that he was identified in a CCTV footage. He admitted that on 27 May 2023, the police never came to do the routine checkup at his house.
56. Roneel admitted that he received a series of text messages from Keasi before the trial. He admitted to sending the message PE3 at 10.40 a.m. on Monday (first day of the trial) and giving Keasi \$45. According to him, the purpose was for Kesai to come and give evidence because he told him that he had no bus fare to come. He knew that Keasi would be an adverse witness for him and identify him in Court. He saw Keasi in a conversation with the complainant in Court and that's why he sent PE 3.
57. Under cross-examination by the 2nd Accused, Roneel said that he viewed the footage on a laptop on 30 May 2023 during the interview.

DW 2 - Astika Deo

58. Astika has been staying together with Roneel for the past 6 years in a de-facto relationship. She is a nail technician. She was home on 27 May 2023. In the afternoon, her sister-in-law Arti, with her baby, came. They played with the baby, cooked food, had dinner and went to sleep. Roneel never left home that night. Diana never came to her place on 26 May 2023 to have her nails done. She always speaks to Diana on Messenger to have the bookings. The last time she did Diana's nails was on 11 May 2023. She agreed that messages on Messenger could be deleted. Diana never informed her that she was going out on 27 May 2023. Diana called on Sunday (28th) at 12:34 p.m. and yelled that Roneel had robbed her house.
59. Under Cross-examination by the State, Astika admitted that the complainant was one of her clients. She would occasionally go to the complainant's house to do her nails. Sometimes,

Roneel would come and drop her at the complainant's house and take the nail trolley. Then she said Roneel had never taken the trolley to the complainant's home at any time. Her sister-in-law cooked for them. Under cross-examination by the 2nd Accused, Astika said she had never known the 2nd Accused before.

DW3 – Gaston Kean (The 2nd Accused)

60. Gaston was residing at 234 Vomo Street from December 2022, after being released on bail until he was arrested for the current offence. On 27 May 2023, he went to Lautoka Police Station to sign bail and returned home after 5 p.m. He had boils on his back, so he took some pills and laid down. He stayed home with his brother Henry Kean, who went to have grog in the afternoon at his friend's place. He stayed back home until his brother got back around 11 p.m.
61. The next day (28 May 2023), after 3 p.m., police officers came with a search warrant and searched the house that did not belong to him for stolen items. His mobile phone and a bag were taken, but nothing stolen was found in that house. He was taken down to the station, detained, interviewed and charged, and taken to a Magistrate Court after 48 hours. The person in the footage was not him. It's a mistaken identity. He didn't participate in this offence, nor was he with the 1st Accused on that day. Neither did he go with the 1st Accused to the Complainant's house. The police presume that that was his finger, it could have been bent. He is not aware if the police checked on his alibi or if his brother recorded a statement.
62. Under cross-examination by the State, Gaston agreed that no one could confirm that he was home between 6 p.m. and 11 p.m. He denied having known either Mossese or Simione. I have not known him before.
63. He came to Vomo Street only when he was bailed for this offence. The Vomo Street house is his family house where he was raised now belonging to her eldest sister Catherine Swan. He did not deny that IP Simione came to live closer to his family house on Vomo Street. He denied having interacted with IP Simi before the alleged incident. He denied having an amputated right thumb. Showing his right thumb to Court, he described he was born like

that. He denied ever meeting Keasi and PC Mossese in court because he was in prison from 2007 to 2022. He never met the 1st Accused on 27 May 2023.

Evaluation/Analysis

64. The Prosecution alleges that the 1st and the 2nd Accused, in a joint enterprise, entered the Complainant's house on 27 May 2023 and stole her property stated in the information. The only issue for trial is the identity of the Accused. The Prosecution relies exclusively on the footage extracted from the CCTV cameras installed at the Complainant's house to prove the identity of the Accused. The Complainant and three police officers who had viewed the footage testified at the trial to establish the identity of the Accused.
65. The Accused completely deny the allegation. They mounted two-pronged defences- mistaken identity and alibis. The 2nd Accused alleged that the CCTV footage(s) were illegally obtained and tampered with. It was not clear what he meant by 'illegally obtained' Is he saying that he was filmed secretly or without his permission, and the police are trying to use the film as evidence against him to implicate him, or is he saying that the process was flawed because the footage(s) were extracted not by an expert on forensic digital extraction attached to the Fiji Police Force? The former could not have been his concern since he denies he is one of the persons portrayed in the footage.
66. The authenticity of the footage(s) is of course, a trial issue. The quality of the footage(s) was not challenged as a matter of *voir dire*. Nonetheless, a short *voir dire* hearing was run before the trial proper to test the admissibility (quality and authenticity) of the footage.
67. The *voir dire* provided the Court with an opportunity to view the footage(s) before trial to test their quality. Four Prosecution witnesses adduced evidence at the *voir dire* hearing. The accused challenged this evidence in cross-examination. Having heard the evidence of the Prosecution, the Court found the CCTV footage(s) to be admissible at the trial. Before delving into trial issues, I must give reasons, albeit briefly, for the *voir dire* Ruling.
68. The footage(s) had been extracted from the hard drive of the decoder connected to the CCTV cameras set up at the Complainant's house. The camera system had been installed by Yu

Chiu (PW1), who had the password to access data [the footage(s)]. Yu Chiu testified and explained the whole process of extracting the footage(s). He arrived at the Complainant's house on 27 May 2023, soon after the alleged burglary. He accessed the data with the permission of the Complainant and in the presence of Sgt Filipe (PW 5), the IO of this case. He rewound what was automatically retrieved in the decoder's hard drive and, using the software, he downloaded the same to his smartphone. The downloaded footage(s) were then sent to the phone of the IO and the Complainant, who viewed the same to identify the intruders. The next day (28 May 2023), he went again to the crime scene and downloaded the same footage(s) to a USB under the supervision of Sgt Filipe.

69. The main complaint of the 2nd Accused appears to be that Yu Chiu was not a forensic digital extractor attached to the Fiji Police. Even if Yu Chiu was not a forensic expert attached to the Fiji Police Force, he was qualified to do his job independently. As Yu Chiu correctly said, no expertise is required to do what he did. He simply transferred the data retrieved in the hard drive of the decoder to a USB so that the same could be used for investigation and as evidence at the trial. His presence was required only because he had the username and the password to access data. He had permission from the complainant and the authority of the police to extract the footage(s) from the decoder.
70. Yu Chiu's evidence is consistent with that of the complainant and Sgt Filipe who observed the process. There is no reason to find that the footage(s) formed illegally obtained evidence or that the process was flawed.
71. There was no room for the complainant or the police officers to tamper with the evidence. Yu Chiu extracted the data from the decoder and transparently transferred it to a USB under the supervision of the police officers. Upon data being transferred to the USB, the footage(s) were viewed at the crime scene on a computer screen by Yu Chiu, Sgt Filipe, PC Mossese and Keasi, who testified at the trial. Yu Chiu and Sgt Filipe identified the USB in Court, which was tendered in evidence (PE2).
72. When the USB (PE2) contents were played in Court, they confirmed that what was shown in Court was the same footage(s) they had viewed at the crime scene on 28 May 2023. Yu

Chiu and the police officers who encountered the USB until it reached the Court adduced credible and consistent evidence at the *voir dire* hearing to establish continuity and to satisfy the Court that it was never tampered with. Even in the absence of their evidence, the authenticity of the footage(s) could have been established if the Prosecution adduced the evidence only of Yu Chiu, Sgt Filipe, PC Mossese, and Keasi, who confirmed what was shown in Court was the same footage(s) they had viewed at the crime scene. Therefore, there is no basis for the challenge to the authenticity of the CCTV footage(s) retrieved in the USB (PE2). The quality of the films was not the best. But they were sufficiently clear to test the reliability of the witnesses. Therefore, I allowed them to be played at the trial.

73. Four witnesses who viewed the footage(s) testified that they recognised one or both Accused in the CCTV footage(s). Since the Prosecution relies solely on the visual identification of these witnesses to implicate the Accused, the Court took extra caution because of the dangers associated with poor-quality visual identification, given that even honest witnesses sometimes make mistakes. Although this is a case of recognition rather than identification, it would be appropriate to direct the Court itself to the need for caution. However, a full Turnbull direction would be inappropriate.
74. I must admit the quality of the footage(s) was not the best. Courts have allowed the prosecution to establish the identity of offenders through CCTV footage without them first being tested for quality. Whether it is clear enough to identify the offender is a matter for the Court to decide after considering the evidence of the witnesses. The Court can properly warn itself about the dangers associated with identification/recognition through a video.
75. In ATTORNEY-GENERAL'S REFERENCE NO2 OF 2002,¹ Lord Justices, considering a reference made by the Attorney General under Section 36 of the Criminal Justice Act 1972 of England, did not see any objection to a CCTV footage of which 'quality was not of the best' being shown to the jury where a witness knows the defendant sufficiently well to recognise him as the offender depicted in the photographic image.

¹ <http://www.bailii.org/ew/cases/EWCA/Crim/2002/2373.html> Cite as: [2003] Crim LR 192, [2003] 1 Cr App Rep 21, [2003] 1 Cr App R 21, [2002] EWCA Crim 2373

76. Lord Justices identified the following four circumstances in which, subject to the judicial discretion to exclude, a jury can be invited to conclude that the defendant committed the offence based on a photographic image from the scene of the crime:

(i) where the photographic image is sufficiently clear, the jury can compare it with the defendant sitting in the dock (Dodson & Williams);

(ii) where a witness knows the defendant sufficiently well to recognise him as the offender depicted in the photographic image, he can give evidence of this (Fowden & White [1982] Crim LR 588, Kajalave v Noble 75 Cr App R 149, Grimer [1982] Crim LR 674, Caldwell & Dixon and Blenkinsop 99 Cr App R (S) 73); and this may be so even if the photographic image is no longer available for the jury (Taylor v The Chief Constable of Chester);

(iii) where a witness who does not know the defendant spends substantial time viewing and analysing photographic images from the scene, thereby acquiring special knowledge which the jury does not have, he can give evidence of identification based on a comparison between those images and a reasonably contemporary photograph of the defendant, provided that the images and the photograph are available to the jury (Clare & Peach);

(iv) a suitably qualified expert with facial mapping skills can give opinion evidence of identification based on a comparison between images from the scene, (whether expertly enhanced or not and a reasonably contemporary photograph of the defendant, provided the images and the photograph are available for the jury (Stockwell 97 Cr App R 260, Clarke [1995] 2 Cr App R 425 and Hookway.

76. The first two circumstances apply to the present case. Although the quality was not of the best, the video graphic images were sufficiently clear. Therefore, the Court can compare them with the Accused sitting in the Court to test the reliability of the identification.

77. The Prosecution claims that its witnesses knew the Accused sufficiently well to recognise them from the footage(s). Both Accused dispute that the police witnesses had known or encountered them before.

78. The crucial issues are whether the Prosecution witnesses were sufficiently acquainted with the Accused before and whether they could have correctly recognised the Accused from the footage(s). In the evaluation process, the Court benefits as the footage is available to be viewed in Court, and the Accused get an opportunity to challenge the witnesses' evidence in cross-examination.

79. Let me begin with the Complainant's (PW2's) evidence. In evaluating the credibility and reliability of the Complainant's evidence, I suggest referring to the evidence of the Defence on contested issues in concluding whose evidence should be relied upon. The Complainant (PW2) had viewed the footage(s) soon after the break-in. She informed the police officers that she recognised the 1st Accused. She recorded a statement at 2.15 a.m. on 28 May 2023 detailing how she recognised the 1st Accused and how he had known this person before. She even phoned the 1st Accused's wife, Astika (DW2), to inform her about the 1st Accused's involvement in the break-in. She wouldn't have called Astika, her nail technician unless she was sure of her recognition.
80. The 1st Accused does not deny that the Complainant knew him before. The Complainant has come to know the 1st Accused during her visits to Astika for nails. This fact is undisputed. The 1st Accused even admits that the last time the Complainant came to have her nails done was on 11 May 2023. However, he disputed the Complainant's claim that Astika did her nails two days before the alleged burglary and that, in that meeting, Astika was informed about the dinner the Complainant was to attend on the day of the burglary.
81. According to the Complainant, during those visits, the 1st Accused would come inside her house carrying Astika's suitcase containing nail stuff. She had even talked to the 1st Accused, shook his hands and offered him juice. The 1st Accused denies these claims. By denying these claims, he appears to assert that the Complainant has had no such close contact with him for her to be able to describe him to the extent she described him in Court (the tattoo), and therefore, she was mistaken in her recognition. In an apparent bid to establish this claim, he denied ever going inside the Complainant's house and claimed that he would drop his wife off at a roundabout, letting the Complainant's husband collect and carry the nail stuff.
82. There is no plausible reason for the 1st Accused to drop Astika at a roundabout, allowing Mr Nand to come and carry Astika's nail trolley. Astika, in her evidence, first admitted that the 1st Accused would sometimes drop Astika off at the Complainant's house and take the nail trolley. She then changed her evidence and said the 1st Accused had never taken the trolley to the Complainant's house. Astika is not consistent in her evidence. She no doubt has an

interest in protecting her partner, who has been with her for the past six years. To me, she is not a credible witness.

83. I find the Complainant to be credible in her evidence. Her demeanour is consistent with her honesty. I accept that she knew the 1st Accused sufficiently well to recognise him as the offender depicted in the videographic image.
84. The next issue is whether the Complainant is reliable and unmistakable. Even honest witnesses sometimes make mistakes. She said she recognised the 1st Accused from his face, the tattoo on his hand and his gait. According to her, the 1st Accused's gait is different, as his shoulder goes up as he walks. She had seen the tattoo several times when he was talking by throwing his hand. He was seen slightly limping in the footage. For this, she attributed what she had heard from Astika-that Roneel got his feet injured. The tattoo, she said, was visible clearly when the screenshot was zoomed in. She took printouts of the same and gave them to the police.
85. The 1st Accused does not deny he has a tattoo on his right hand. He agrees that the man depicted in the footage also has a tattoo on his right hand. His dispute is that, compared with the man in the footage, his tattoo is complete, different and large in that it extends to the little finger, whereas the tattoo of the person in the footage is small and in the middle of the palm. He demonstrated his tattoo to the Court to prove his point.
86. While the footage was being shown in Court, the Complainant pointed out the man, whom she described as Roneel Kumar, his tattoo, gait and face. The tattoo is in a conspicuous and eye-catching place (dorsal aspect of the hand), though it is not a place commonly used for tattoos. I closely observed the 1st Accused in Court, his face, gait, build, and the tattoo on his right hand. In one footage, the tattoo was visible on the dorsal aspect of his right palm, extending towards the little finger.
87. Although the Complainant could not give a fine description or design of the tattoo, there is no visible difference between the tattoo seen in the footage and the tattoo the 1st Accused says he has. I am satisfied that that tattoo matches that of the 1st Accused. Although his face was not so clear to me and, with his movements, I could only have a fleeting glance, other

descriptions the Complainant gave are manifest in the footage and match that of the 1st Accused. I have no reason to reject the Complainant's recognition evidence based on her previous knowledge of the 1st Accused. I am satisfied that the Complainant recognised the 1st Accused unmistakably in the footage.

88. The Complainant said she recognised the 2nd Accused too. Her evidence that she had known the 2nd Accused before the burglary is not appealing to me. She had seen this person only once when he came with the 1st Accused to drop Astika off at her (Complainant's) place. It was dark after 6 p.m., and she was not sure when this meeting happened. The observation was made while this man was in her compound with the 1st Accused inquiring about a shortcut. Although she said she recognised the 2nd Accused when she first viewed the footage, there is nothing to that effect in her statement to police. Because of these, it would be dangerous to rely on the Complainant's recognition evidence regarding the 2nd Accused. I would reject the Complainant's evidence in respect of the 2nd Accused.
89. Except for the Complainant, other witnesses who viewed the footage(s) were police officers at the time. Keasi was one of them. He left the Fiji Police Force in the middle of April 2024. No distinction could be drawn between police officers and civilian witnesses when it comes to the recognition of suspects.
90. Keasi viewed the footage on 28 May 2023 early in the morning when the investigating officer, Sgt Filipe, showed him on his phone at the Station. In the footage, he recognised Roneel Kumar (Roneel) and Gaston Kean (Gaston). Later in the day, he went to the Complainant's house, viewed the footage again on a larger screen, and confirmed his identification. He informed the investigation officer that he recognised both Roneel and Gaston and made a statement to that effect.
91. He had known Roneel since 2009. If his job were to escort the suspects from the Courthouse to the Remand Centre, it would not have been difficult for him to be acquainted with the suspects and the distinguishing features on their hands, such as tattoos and amputated thumbs. In his previous statement, he stated that Roneel had been well-known to him for the past nine years and not fourteen years, as opposed to what he said in his evidence. The

inconsistency highlighted by the Defence is not material. What is material is the repetition of the description he had given in his previous statement in his evidence.

92. While viewing the footage, he pointed out Roneel's tattoo on his right hand and his gait. He confirmed having seen the footage twice before under the supervision of Sgt Filipe. I have no reason to reject Keasi's evidence that he had sufficiently known the 1st Accused before. Having viewed the footage and observed the 1st Accused sitting in Court, I have no doubt Keasi recognised the 1st Accused unmistakably from the footage.
93. He recognised Gaston from his amputated right thumb when he viewed the footage on both occasions. He had seen Gaston's amputated thumb whenever Gaston was being escorted to and from the remand. Gaston's face was also shown in the footage. But it was his amputated thumb that made him sure that it was Gaston. While viewing the footage in Court, he pointed to the person holding the ball cutter and his distinguishing features (right thumb) that helped him to recognise Gaston. I had the benefit of seeing the footage. The face, his right thumb and the other features described by Keasi could be seen in the footage, and they matched those of the 2nd Accused. I have no doubt Keasi recognised the 2nd Accused unmistakably from the footage.
94. DC Mossese (PW 4) also recognised both Accused when he viewed the footage on a large screen at the Complainant's house on 28 May 2023 under the supervision of Sgt Filipe. He recognized Roneel from his face and his mannerisms. He informed Sgt Filipe and recorded a statement to that effect. He had known Roneel for almost five years. He used to meet and shake hands with him at the Lautoka Police Station and when they did routine checks at Roneel's place. He had interacted with Roneel and spoken with him during these times. Although the 1st Accused disputed that Mossese had known him, he did not deny that his house was visited by routing police patrol teams. Mossese's evidence is consistent with that of Sgt Filipe. I accept the evidence of Mossese as a credible and reliable witness.
95. DC Mossese also recognised Gaston Kean from the footage. He had known Gaston for about three years. He explained how he had come to know Gaston. He used to meet and speak to Gaston when he came to sign his bail at the Lautoka Police Station. He met Gaston more

than five times at the cell block at Lautoka, at the Courthouse and when they did routine checks at his house. Mossese had viewed the CCTV footage on 28 May 2023 where he was able to recognise Gaston from his face, which was seen in the footage when he was looking at the camera, his features, and his mannerisms (he walks with a limp). When the footage (PE2) was played, he confirmed it was the same footage he had viewed at Pickering Place with Sgt Filipe. He informed the investigating officer that he positively identified Roneel and Gaston. Having viewed the footage and observed the Accused in Court, I am satisfied that DC Mossese correctly identified both Accused.

96. IP Simione recognised only Gaston. He viewed the footage on 28 May 2023 on a desktop under the supervision of Sgt. Filipe. He recognised Gaston and recorded his statement to that effect, saying what features triggered the recognition. He knew Gaston as his neighbour and interacted with him ever since he came to Lautoka in 1998. He has had many opportunities to observe Gaston when he was being brought in and out of the Station. He described how he recognised Gaston in the footage and pointed out the person looking at the camera. Through this footage, he described Gaston's face and his gait (how both his legs come inside). I accept the evidence of IP Simione and that the recognition he made is reliable.
97. Not only one, not only two, but three witnesses recognised the Accused when they viewed the footage. These witnesses recognised the Accused in the presence of the investigating officer Sgt Filipe, either at the crime scene or the police station and recorded statements contemporaneously. In the statements of the officers who gave recognition evidence, a record was made as to what features of the image triggered the recognition, as to the words of recognition, as to the officer's recollection at the time of viewing as to what he recalled about seeing the appellant on earlier occasions. They have had the opportunity of zooming in, replaying and stilling the images for close observation. Sgt Filipe, under whose supervision the other witnesses recognised the Accused, testified and confirmed the circumstances under which the recognition was made. All these bolstered the reliability of the recognition and the credibility of the version of events of the Prosecution's case.
98. In England, under Section 78 Police and Criminal Evidence Act 1984, a Code (Code D) has been developed indicating the kind of procedural safeguards that should be applied in cases

where a police officer is called upon to identify/recognize an offender from a CCTV footage. The Court of Appeal (England) in *R v Smith and Others* [2008] EWCA Crim 1342(2009) 1 Cr App R 36 in accepting that Code D PACE applied in the circumstances of that case observed:

67. A police officer asked to view a CCTV is not in the same shoes as a witness asked to identify someone, he has seen committing a crime. But, as the prosecution accepted, safeguards which the code is designed to put in place are equally important in cases where a police officer is asked to see whether he can recognise anyone in a CCTV recording. The mischief is that a police officer may merely assert that he recognised someone without any objective means of testing the accuracy of such an assertion. Whether or not Code D applies, there must be in place some record which assists in gauging the reliability of the assertion. In cases such as these, there is no possibility of comparing the initial observation of a witness, as recorded in a contemporaneous note of description or absence of description, who purports to make a subsequent identification. The police officer can hardly be asked to record his recollection of a description of a particular suspect before he has picked that suspect out from the CCTV recording.

99. In the present case, police witnesses were not merely asserting that they recognised someone without any objective means of testing the accuracy of such an assertion. There were records (contemporaneous statements) which assisted in gauging the reliability of their assertion.

100. In *R v Lariba and others* [2015] EWCA Crim 478, it was held that although there had been breaches of Code D as regards recognition evidence by police officers viewing CCTV footage (such as the absence of a contemporaneous recording of the reason for the identification, the words used, any expressions of doubt and the features of the suspect and the appellant on which the witness relied), the officers described the basis for their recognition (such as hairline, skin tone, build and clothing); the images and the witnesses were available to the jury; the witnesses could be expertly cross-examined; the appellant was able to demonstrate that not all the officers who knew him were able to recognise him from the images; the judge was able to describe the breach of the Code and the need for caution; and there was supporting evidence against the appellant. Given the issues in the present case, it is helpful to set out one part of the judgment in full:

“39. We emphasise that in the present case **the jury were not being invited to form their own judgment as to identity by comparison between the images of the suspect and the defendant in court.** The images were of

insufficient quality to permit such a comparison and a good deal of time had elapsed since the CCTV images had been captured. The danger in such a case is that the jury will simply take on trust a convincing assurance from the witnesses when they are unable to make the judgment themselves; hence, the importance of directions to the jury as to the caution with which they must approach their task. **Once the judge concluded that the images were of sufficient quality to permit the evidence to be given, it remained the task of the jury to assess whether they could be sure that the recognition based upon it was reliable. The advantage that a jury has in a case of recognition from a scene of crime image is that they can see exactly what the witness saw and the image is permanent. That is not the position when there is no photographic record and the jury is considering only the quality of identification evidence given by an eye-witness to an ephemeral scene. In our judgment, these images were of sufficient quality to enable the jury to assess whether a recognition made from them was one on which they could rely even though they were not of sufficient quality to permit an identification of their own.** [Emphasis added]

101. It was contended that, as the investigating officer, Sgt Filipe failed to disclose a statement he made contemporaneously with the viewing of the footage. Sgt Filipe said his statement had gone missing. The absence of his statement, in my opinion, does not materially affect the credibility of the version of events of the Prosecution's case, as all the witnesses who gave recognition evidence had recorded contemporaneous statements and disclosed them to the Defence.
102. In *R v Henry McGrath* [2009] EWCA Crim 1758, the English Court of Appeal upheld a conviction based substantially on an officer's recognition of the accused from CCTV footage when there was no contemporaneous record of the procedure during which the officer made her recognition (no notes were made at the time) and the officer had prior knowledge of the appellant as a suspect. The judge had given a clear and full direction to the jury on the issue.
103. In *R v Moss* [2011] EWCA Crim 252 the officer who viewed the CCTV in a relatively informal setting made only the most cursory record of his identification at the time in his pocketbook, simply stating he was sure that the perpetrator was the accused. 6 months later he made a statement setting out in somewhat greater detail the basis of his recognition. The English Court of Appeal stated as follows:

“23. In the present case, PC Osmond was in a position to describe the circumstances in which he saw the CCTV film and recognised the appellant.

He was also in a position to explain how he had come to know him, when he had last seen him and which of his features he particularly relied on to identify him. Of course he could have been telling a lie or could have been mistaken when he said he recognised the appellant, but it is impossible to exclude that possibility however carefully the process is recorded otherwise than by examining the basis upon which the recognition is said to have been made and judging the credibility of the officer in cross-examination.

24. In our view in a case of this kind it is important not to lose sight of the essential principles. PC Osmond reported the recognition to his superior, he made a note of it when he returned to work, he gave a description of his previous contact with the appellant, and thus an explanation of his ability to recognise him, all of which provided a basis on which the jury could judge the reliability of his evidence.
25. The judge had a discretion to exclude the evidence of PC Osmond but declined to do so. In his summing-up he gave the jury a clear warning of the dangers inherent in recognition evidence and of the risk that an honest witness who says that he recognised someone known to him may nonetheless be mistaken. He also gave them a clear warning of the need for special caution and of the danger of a witness digging his heels in when challenged. In our view, the judge was right to allow the evidence to be given. He directed the jury correctly in relation to it and this ground of appeal fails.”

104. The Accused contended that no positive results were forthcoming from the fingerprint analysis or operations of the K9 team, nothing stolen was recovered from their possession, and no identification parades implicating them were held and, therefore, the Prosecution’s case created a reasonable doubt pointing to their innocence. I do not think any of them is important in a case in which plausible evidence is available by way of CCTV footage indicating that the Accused were present at the crime scene at the time of the offence. In a scenario like this, I do not expect an unsophisticated police force of the calibre of the Fiji Police Force to take pain in collecting so many pieces of other evidence when the intruders have been recognised not by one but by four witnesses from the footage. The fact that searches and arrests were ordered soon after the identification suggests that the police were confident of the involvement of the Accused in the offence. There were no eyewitnesses at the crime scene, and therefore, holding an ID parade is out of the question. According to the 1st Accused’s own evidence, when he received a call from the Complainant implicating him in the break-in, he invited the police to come and see him at home. No sensible thief will retain stolen property at home when he is aware the police are coming sooner rather than later.

105. Let me analyse the evidence of the Accused persons to see if it creates any reasonable doubt in my mind as to the identification evidence of the Prosecution. Each Accused advanced an alibi as a defence. In analysing the alibis, I bear in mind that the Accused have no burden to prove their alibis or anything at all. The 1st Accused, apart from giving his evidence, called his *de-facto* partner Astika to substantiate his claim that he was home and not gone out at any time the night in question.
106. The 1st Accused has a natural tendency to save his skin. As I said before, Astika also has an interest in saving her partner. Therefore, she tends to lie under oath. She showed her smartphone to convince this Court that she had had no appointment for nails with the Complainant two days prior to the burglary. That would prove nothing. The messages on FB Messenger could be deleted at any time. FB Messenger is not the only mode of digital communication in the modern era. Further, this message was not put to the Complainant for her comment. However, since this alleged communication is not reflected in the previous statement of the Complainant and thus came as a surprise in her evidence, the failure to put Defence's position to the Complainant should be disregarded. However, there is nothing in Defence's evidence that leaves me in doubt to discredit the version of events of the Prosecution's case. I reject the evidence of the 1st Accused and that of his partner.
107. The Burglary had taken place between 8 and 10 p.m. This is not a fitting time for a sensible thief to engage in a burglary unless he is so sure that the house is not occupied. It can be inferred that the 1st Accused came to know from his partner that the Complainant's family was attending a dinner that night.
108. The 1st Accused's position that this allegation was made up by the Complainant for an ulterior motive has no logic at all. The Complainant denied keeping the legal documents of her clients at home. Even if she did, why would she want to implicate the Accused even if she wanted to account for the lost legal documents of her client?
109. A strong inference could be drawn against the 1st Accused from his post-offence conduct. He admitted messaging, talking over the phone, and even sending \$ 45 on M-Paisa to Keasi, one of the crucial witnesses for the Prosecution, just before Keasi's evidence. Since the 1st

Accused was served with the witness statement of Keasi in advance, he could not say that he did not know what Keasi would say in his evidence. He in fact admitted knowing that Keasi was coming to give evidence adverse to him. He said he sent money to encourage Keasi to come and give evidence at the trial because Keasi had no bus fare. His explanation for messaging and sending money is highly implausible. Why would an Accused encourage a witness whom he knew to be an adverse witness to him at the trial?

110. Keasi, admitted receiving \$45 via M-Paisa, though he never asked for money. He didn't know why Roneel sent him money. He denied asking for bus fare. He used the money to drink grog. The 1st Accused even asked Keasi not to come to Court and asked *are you still coming?* A screenshot of the message Keasi last received (PE3-1), speaks for itself. It read: *"Sorry bro, you are not giving evidence because I will raise in Court about the M-Paisa transaction on Sunday"*. Having realised that Keasi is still coming to give evidence, the 1st Accused appears to have used a subtle tactic to prevent Keasi from coming to give evidence. The reasonable inference I can draw from this conduct of the 1st Accused is that he tried to prevent Keasi from giving evidence because he was guilty.
111. Gaston's *alibi* is not convincing at all. He said he was home right throughout that night, suffering from boils on his back. He failed to call his brother Henry, his *alibi* witness. Even if Henry were called, his evidence would not have lent any support for the 2nd Accused's *alibi* as Henry, according to Gaston, had gone out to have grog that night and returned home after 11 p.m. Under cross-examination, Gaston agreed that no one could confirm that he was home between 6 p.m. and 11 p.m.
112. Gaston denied having known either PC Mossese or IP Simione. He said he was in prison from 2007 to 2022 and came to Vomo Street only when he was bailed for this offence. However, he was never bailed for this matter. There is no plausible evidence that he was in prison for more than 15 years. Even if he were in prison, he was in the habit of filing Constitutional Redress Applications in this Court. Therefore, the possibility of him having interactions with police officers on Court premises could not be ruled out. He admitted that he was raised in a Vomo Street house. He did not deny that IP Simione came to live closer to his family house on Vomo Street. The face and right thumb could be seen in the footage.


Gaston does not deny that. His position was that the man seen in the footage was wearing a hat, rendering his recognition impossible. Even with the hat, it is not difficult to say by comparison with the footage that the man portrayed in it is the 2nd Accused. He said he was born without a right thumb. It does not matter if his right thumb was amputated or if he was born like that. The fact remains that the man in the footage has no right thumb, it was not bent.

113. I am sure the 2nd Accused concocted his evidence to save his skin. I reject his evidence and his *alibi*. His evidence failed to create any doubt in the version of events of the Prosecution's case.

Conclusion

114. The Prosecution proved the identity of each Accused and proved its case beyond reasonable doubt. I find each Accused guilty on each count. A conviction is recorded accordingly.




Aruna Aluthge
Judge

29 November 2024

Solicitors

Officer of Director of Public Prosecutions for State