

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**[CRIMINAL APPEAL JURISDICTION]**

**CRIMINAL APPEAL CASE NO: 26 OF 2025**  
*(Nadi Magistrates Court Criminal Case No: CF 1398/24)*

**BETWEEN :** **TEVITA SAUSAU**  
**APPELLANT**

**AND :** **THE STATE**  
**RESPONDENT**

Counsel: Appellant in Person  
Ms R. Uce for Respondent

Date of Hearing: 7 November 2025  
Date of Judgment: 02 December 2025

**JUDGMENT**

1. Tevita Sausau (hereafter referred to as the "Appellant") was convicted of Burglary and Theft contrary to Section 312 (1) and Section 291 (2) respectively of the Crimes Act 2009<sup>1</sup>. He was sentenced on 3 July 2025 to an imprisonment term of 10 months to be served concurrently with the existing terms he was serving.
2. In the charge, it was alleged that on 1 December 2024, the Appellant entered the dwelling house of the complainant (Apisalome Vuadreu) as a trespasser with intent to commit theft. It was also alleged that the Appellant dishonestly appropriated a water pump valued at \$5000.00, a ladder valued at \$1700.00, two glass mirrors valued at \$400.00 and an electric

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<sup>1</sup> In Nadi Magistrates Court criminal case number CF1398/24

oven valued at \$2000.00 all to the total value of \$9100.00 the property of the complainant with intention to permanently deprive the said complainant of that property.

3. The matter proceeded to trial where the prosecution called four (4) witnesses. At the close of the prosecution's case, the Learned Trial Magistrate ruled that there was a case to answer. The Appellant gave sworn evidence and called one witness in his defence.
4. On 19 June 2025, the Learned Trial Magistrate delivered her judgment and convicted the Appellant on both charges.
5. The Appellant filed his timely application for leave to appeal against the conviction. He filed the following grounds of appeal in person (reproduced verbatim):

Ground (1) - That the Trial Magistrate erred in law and in fact in not evaluating the evidence properly for himself and that the verdict is unsafe, unsatisfactory and unsupported by the totality of evidence has given rise to a grave miscarriage of justice.

Ground (2) - That the Trial Magistrate has erred in law and in fact in not directing his mind to refer to in the Judgment the possible defence on sworn evidence of the appellant and as such by his failure, there his mind in respect of substantial a miscarriage of justice.

Ground (3) - The Learned Trial Magistrate erred in law and in fact when he did not properly direct his mind in respect of circumstantial evidence.

6. Both parties filed written submissions and agreed to have the matter disposed of by way of written submissions.

#### Analysis

7. Ground (1) - That the Trial Magistrate erred in law and in fact in not evaluating the evidence properly for himself and that the verdict is unsafe, unsatisfactory and unsupported by the totality of evidence has given rise to a grave miscarriage of justice.

8. It was the prosecution's case that the Appellant had entered the complainant's house with the intention to steal and that he had stolen the items as per the charge.
9. In her Judgment, the Learned Trial Magistrate had summarized the evidence of the prosecution witnesses from paragraphs 5 to 17 and that of the defence from paragraphs 18-24. She analysed and considered the evidence from paragraphs 21-51.
10. Three police officers PC Pawan Singh (PW2), PC Eroni (PW3) and PC Jeremaia (PW4) had testified at the trial. PW2 and PW4 had come to the alleged crime scene on a tip-off from a neighbour. Both PW2 and PW4 had given consistent evidence that the Appellant was within the complainant's premises with the items which the complainant (PW1) later identified to be his property. Both officers had seen the Appellant carrying a water pump to the driveway where other items were stacked. Upon being confronted, the Appellant denied any knowledge or involvement in the break-in. Explaining his presence in the premises, the Appellant said that he was awaiting his friend, one Mesake, who sought his assistance to move the items away. The Appellant was previously known to the police and his identity was confirmed by the officers in Court.
11. The complainant Apisalome Vuadreu (PW1), who is the owner of the house, had arrived shortly afterwards whilst the Appellant and the two arresting officers (PW2 & PW4) were still at the complainant's compound. When PW1 arrived, he saw the items (ladder, mirror, and water pump) stacked on the driveway inside his compound and ready to be moved. The items were not in their original position. He saw the damaged grill, the broken padlock and a crowbar. The police officers (PW2 and PW4) were with the Appellant. He identified and confirmed the properties to be his.
12. PC Eroni (PW3) was the officer who interviewed the Appellant. He tendered the record of caution interview in which the Appellant had recorded a mixed statement containing admissions and his explanation.

13. The Appellant (DW1) presented evidence and called a witness, Alfereti Saumudu (DW2). Having admitted his presence at the complainant's premises, he denied any knowledge or involvement in the offence. His explanation under oath was that he went to meet a friend at Matintar where he met Talei and Lydia who had sought his assistance to move their belongings from a house at Cawa Road to their house in Legalega. He loaded two mirrors and a gas stove and dropped them off at Legalega. Talei and Lydia asked him to come again in the daytime to help move more items to which he agreed. He went home at Natabua and, at midday, he came back to Legalega from where he picked Talei and Lydia. They all went to the house at Cawa Road where he met Lydia's father Mesake who was already there. Mesake asked him to carry items from the porch to the driveway near the gate. He helped them lift the items. Mesake called a taxi and went with some items to bring a carrier. He was sitting on the driveway when PC Jeremaia (PW4) approached him and asked what he was doing there. PW4 was known to him before. He told PW4 that he came to help his friends shift items. The owner of the house also arrived and he said that no one was looking after his property. He was then arrested by the police with whom he cooperated. At the police station he gave the names of Talei, Lydia and Mesake but the police never investigated them. He was interviewed, but not charged or fingerprinted. He admitted under cross-examination that he moved the items, including a water pump, to the driveway.
14. DW2 testified that on 2 December 2024, he was in detention at the Namaka Police Station with the Appellant and three others. The police officers yelled at the Appellant and said that they would charge the Appellant even though they did not take his fingerprints.
15. The prosecution witnesses had presented consistent and credible evidence. There was no dispute at the trial that the Appellant was within the premises owned by the complainant from where he was arrested by PW2 and PW4 along with part of the stolen items.
16. PW1 had properly locked the doors when he last left the house. No one was allowed inside the house or compound which was gated and fenced. He saw a crowbar at the back of the property. The grill and the padlock had been damaged. The oven cooktop, ladder, mirror,

and water pump had been removed from their original position. There was no dispute that a trespass and a break in occurred at the complainant's property.

17. The Appellant was present within the complainant's premises with the stolen items when the police arrived. He admitted carrying the water pump to the gate where other stolen items were stacked. The admissions were made to the complainant and the police officers and later to the interviewer (PW3) at his caution interview.
18. The Appellant at the time of his arrest and the caution interview had denied committing the offences. The Appellant's denial had been a mixed statement consisting of both admissions and a denial. The Appellant having admitted his presence at the complainant's premises, advanced an explanation why he was there. He said he was there to assist his friend Mesake, whom he believed to be the caretaker of the house, to shift the items to Mesake's house at Legalega.
19. He maintained his denial at the trial under oath. None of the prosecution witnesses had seen the Appellant breaking-into and entering the complainant's house and stealing the items therefrom. The prosecution had relied on circumstantial evidence to prove the charges.
20. The Learned Trial Magistrate had drawn inferences from the following facts proved. The Appellant was found outside the complainant's house carrying some items to the driveway where he had stacked the other items. He was the only person found on the property when the police officers and the complainant arrived. Although, there was no house breaking equipment found on the Appellant, PW1 had seen a crowbar on the side of the property. The metal grill had been forcefully opened and the padlock broken into two pieces. The items found on the driveway were not in their original places inside the house.
21. In light of these pieces of evidence, it was open for the Learned Trial Magistrate to reasonably infer that the Appellant had used the crowbar to break open the padlock and enter the house whereby he then removed the items therein and placed them in the driveway. It

was open for the Learned Trial Magistrate to conclude that the Appellant was the thief. Therefore, there is no merit to the 1<sup>st</sup> ground of appeal.

22. Grounds 2 - That the Trial Magistrate has erred in law and in fact in not directing his mind to refer to in the Judgment the possible defence on sworn evidence of the appellant and as such by his failure, there his mind in respect of substantial a miscarriage of justice.
23. The Learned Trial Magistrate had properly considered and analysed the evidence of the Appellant and his witness. The Appellant's explanation under oath was that he was helping one Lydia, Talei and Mesake to take those items to their house in Legalega. He claimed that they had left in a taxi with some items and were to return to pick him up with the other items. The Learned Trial Magistrate rejected the Appellant's explanation and gave reasons for his decision in paragraphs 36 and 38.
24. Lydia, Talei and Mesake never returned to the house at Cawa Road as the Appellant had expected. If the Appellant was telling the truth, they would have returned in the 20 minutes the police officers said they were waiting there with the complainant. There was no reason for them to leave the Appellant behind with the other items. If they were living in Legalega, there was no plausible reason for them to ask the Appellant to come all the way from Lautoka during daytime. The Appellant contradicted himself when he only mentioned the name Mesake at the arrest. In his evidence, he claimed that he was with Mesake, Lydia and Talei. If the Appellant knew Mesake for more than a year, he would have been able to give Mesake's full contact details to the police. The rejection of the Appellant's explanation is well founded and justified.
25. Although, the Appellant called a witness, this witness (DW2) only gave evidence of what transpired while in police custody. He could not offer any relevant information in respect of the allegation of burglary and theft.

Ground (3) - The Learned Trial Magistrate erred in law and in fact when he did not properly direct his mind in respect of circumstantial evidence.

26. The Learned Trial Magistrate had properly considered circumstantial evidence in her judgment. This is reflected in paragraphs 39 to 41 of the judgment. In these paragraphs, the Learned Trial Magistrate had discussed the law in respect of circumstantial evidence and properly applied the law to the facts in her analysis in paragraphs 42 to 46 of the Judgment.
27. In *Rokodreu v State*<sup>2</sup> the Supreme Court, comprehensively discussed the common law principle of recent possession of stolen property as follows:

In common law jurisdictions there is a presumption that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. In order to apply this presumption, the prosecution is required to establish several requirements.

- i. Stolen property
- ii. Recent possession
- iii. Exclusive and conscious possession

When the above factors are established, the possessor has to give an account as to how he came to possess. In other words, he should give a reasonable or plausible explanation.

28. In *Wainiqolo v State*<sup>3</sup>, the Court of Appeal discussed the doctrine of recent possession as follows:

The principal ground relates to the so-called doctrine of recent possession which is that where property has been stolen and is found in the possession of the Accused shortly after the theft, it is open to the Court to convict the person in whose possession the property is found of theft or receiving. It is no more than a matter of common sense and a Court can expect assessors properly directed to look at all the surrounding circumstances shown on the evidence in reaching their decision. Clearly the type of circumstances which will be relevant are the length of time between the taking and the finding of the property with the Accused, the nature of the property and the lack of any reasonable or credible explanation for the Accused's possession of the property. What is recent in these terms is also to be measured against the surrounding evidence.

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<sup>2</sup> [2022] FJSC 36; (25 August 2022),

<sup>3</sup> [2006] FJCA 49; AAU0061.2005 [28 July 2006]

29. The Appellant was seen by both PW2 and PW4 carrying a water pump to the gate. Under cross-examination, the Appellant admitted that he was carrying the water pump to the driveway. The complainant confirmed that it was his water pump that had been removed from its original position. No doubt the water pump was found in the Appellant's possession soon after the alleged theft.
30. Under these circumstances, the Appellant was required to give a reasonable or credible explanation for his possession of the stolen property. He in fact advanced an explanation, but it lacked consistency and credibility. Under oath he said that he was helping Lydia, Talei and Mesake to take those items to their house in Legalega. PW2 and PW4 confirmed that when the Appellant first confronted them at the crime scene, he had only mentioned the name Mesake who he claimed had gone to bring a carrier to take the other items. This contradicts the Appellant's evidence that Mesake, Lydia and Talei went in a taxi with some items and were to return to pick him up with the other items.
31. Although, the Appellant claimed that he was there to assist Lydia, Talei and Mesake to move the items to their home in Legalega, he failed to provide their contact details despite he had known Mesake for more than a year. The police had checked on them but were only able to record a statement of Talei who had denied being with the Appellant on the day of the alleged break-in. Talei was not available to testify as a prosecution witness, because she had been released from prison.
32. The Appellant had told the police officers that Mesake had gone to pick a carrier to transport the items. The complainant and the two officers had waited there for about 20 minutes, but no one came with a carrier.
33. There was no reasonable basis for the Appellant to believe that Mesake was the caretaker of that house in a context when there was ample evidence to suggest that there had been a break-in. The grill door had been forced open and a crowbar was sitting outside with a broken padlock. The explanation of the Appellant was entitled to be rejected. This ground has no merit.

34. The Learned Trial Magistrate correctly found the prosecution witnesses to be truthful and credible. She considered the Appellant's evidence and his explanation in defence. She correctly rejected the Appellant's explanation of why he was at the complainant's premises.
35. The conviction is evidence based and it should stand. There is no merit to the ground of appeal. The appeal should be dismissed.
36. The following Orders are made:
- i. The appeal against conviction is dismissed.
  - ii. The conviction recorded by the Learned Trial Magistrate at Nadi is affirmed.



Aruna Aluthge

Judge

02 December 2025

At Lautoka

Solicitors:

- Office of the Director of Public Prosecution for State