

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

Criminal Case No. HAC 146 of 2023

BETWEEN : **STATE**

AND : **NOELI JACK TAMANIKAISAWA**

Counsel : **Ms A Sovalevu & Ms T Vakaloloma for State**
Mr E Veibataki for Accused

Hearing : **22 & 23 September 2025, 17 October 2025, 18**
November 2025 & 25 November 2025

Submissions : **2 January 2026¹**

Judgment : **24 February 2026**

JUDGMENT

[1] The accused, Mr. Noeli Jack Tamanikaisawa, is charged with one count of aggravated robbery (Count 1) and one count of resisting arrest (Count 2). The accused is alleged to have committed the robbery at Nakasi with another person on 23 April 2023. The State offered no evidence on this count at trial and, as such, the accused is acquitted.

[2] With respect to the count of resisting arrest, the State called two witnesses, both police officers. Their evidence is that the accused was arrested on 26 April 2023 in respect to the events pertaining to alleged robbery. They state that the accused

¹ Written Submissions were filed by both parties in respect to the defence's argument that there was no case to answer. The State filed further written submissions on 2 January 2026, following the accused providing viva voce evidence on 25 November 2025.

resisted his arrest. The accused gave evidence that he did not resist arrest but was, in fact, assaulted by the two police officers.

- [3] If I accept the accused's evidence, then he is not guilty of Count 2. Even if I accept the prosecution's evidence, the defence argue that this evidence falls short of the elements of the offence of resisting arrest.

Resisting arrest – section 277(b) of the Crimes Act 2009

- [4] The accused is alleged to have resisted arrest contrary to section 277(b) of the Crimes Act 2009. The particulars being, that on 26 April 2023 at Nakasi, the accused '*resisted the arrest of PC 6452 Savenaca, in due execution of his duty*'.

- [5] Section 277(b) reads:

A person commits a summary offence if he or she –

(a) ...

(b) assaults, resists or wilfully obstructs any police officer in the due execution of his or her duty, or any person acting in aid of such an officer;

- [6] The elements of the offence that the prosecution must prove beyond a reasonable doubt are:

- i. The accused (identification);
- ii. resisted a police officer;
- iii. in the due execution of his or her duty.

[7] The accused is presumed to be innocent until he is proven to be guilty. As a matter of law, the onus or burden of proof rests on the prosecution throughout the trial, and it never shifts to the accused. There is no obligation or burden on the accused to prove his innocence.

[8] The accused chose to give evidence, but he does not carry any burden to prove or disprove anything. The burden is on the prosecution to prove the charges beyond a reasonable doubt.

[9] Each element of Count 2 must be proved. If there is a reasonable doubt, so that the Court is not sure of the accused's guilt, or if there is any hesitation in my mind on any of the elements, the accused must be found not guilty of the charge and, accordingly, acquitted

Evidence

[10] The prosecution called PC 6452 Savenaca (PW1) and Inspector Moape Tau (PW2). It is PW1's evidence that on the morning of 26 April 2023 he had seen a police viber post indicating that a police task force team were searching for the accused. According to the post the task force team had raided the accused's home but failed to find him. The accused happened to be a cousin of PW1. They were from the same village and PW1 had known the accused from a young age.

[11] PW1 left to work that same morning, after viewing the viber post, dressed in his police uniform. He was on foot. On his way to work, he saw the accused and approached him. It is not disputed that the accused and PW1 met each other that morning and that the accused was carrying a sack (a bag). PW1 informed the accused that the police task force was looking for him and asked whether the accused knew the reason. The accused stated that he did not. PW1 informed the accused that PW1 would call the team to find out. PW1 phoned the task force team and was advised that the accused was sought in respect to a robbery at Nakasi. As PW1 was on the phone,

the accused started to walk away. PW1 told him to stop and grabbed a sack that the accused was carrying.

- [12] There followed a tussle between the accused and PW1 over the sack. PW1 felt something hard, like a crowbar, inside the sack. PW1 was worried that the accused intended to use the object to attack PW1 and, therefore, held onto the sack. It appears that that the accused was trying to pull the sack from PW1's grip. PW1 stated:

...I was trying to make sure not to lose my grip from that sack and then I thought he was going to hit me with it, because it was a heated argument that morning. I was telling him to stop many times but he just kept on resisting, he wanted to free the sack from my hand.

- [13] It is PW1's evidence that he informed the accused that he was arresting him and that the reason for the arrest was in respect to an alleged robbery at Nakasi – the accused denies that he was informed of any arrest. In re-examination, PW1 stated:

Question: Did you tell him [the accused] why you were grabbing the sack?

PW1: I told him that he is under arrest. If he continues to not comply, that is resisting arrest. I informed him that day, I told him many times, just be still, just comply, we wont do anything. I told him many times.

Question: Did you tell him what he was under arrest for?

PW1: Yes. I told him that he's under arrest for the case in Nakasi.

[14] In clarification to the Court, PW1 stated that he informed the accused he was under arrest after he had grabbed the sack. Also, in clarification as to what the accused was informed as to the reason for his arrest, PW1 stated:

...Two boys already got arrested, and he [the accused] was the third one, for, I think, burglary from Nakasi...he was the third accused that they were looking for.

[15] The two remained locked in a struggle over the sack, neither person willing to let go. This continued for several minutes. It was at this time that Inspector Moape (PW2) came onto the scene. He was on foot and in civilian clothes. PW2 saw the commotion between the accused and PW1. He stated that the accused was swearing loudly at PW1 and being aggressive. The accused was demanding that PW1 release him while PW1 was telling the accused that he was under arrest. PW1 informed PW2 that the accused was *'wanted for a case from the CID team from Nausori'*. PW2 states that when he approached the accused, the accused *'questioned me, who are you? Why you want to ask me, and I explained to him in iTaukei that I am also a Police Officer from Nausori and I will also arrest him. So, he continued to swear at me again, so I pulled his t-shirt, so I threw him down on the ground to be arrested'*. PW2 stated that the accused then stated, *'okay, ...I'll comply to what you want'*.

[16] A police vehicle arrived a short time later and transported the accused to the police station.

[17] It was put to both police officers during cross-examination that the accused was complying with their instructions and that PW2 had, in fact, assaulted the accused – that PW2 had punched the accused's back and kicked him when the accused fell to the ground. The officers denied this.

[18] As stated, the accused provided evidence. It is his evidence that when he saw PW1 on 26 April, PW1 offered no explanation as to why the police were looking for him. PW1 simply tackled the accused to the ground. PW2 then arrived and assaulted the accused.

Analysis of the evidence

[19] The first question for the Court to decide is which version of the facts is correct. If I accept that the accused's version is correct, or may be correct, then the accused is not guilty of the charge. Having carefully observed the evidence of the prosecution witnesses and the accused, as well as having read the transcript of the evidence, I am sure that the description of the events from PW1 and PW2 is correct. I am satisfied that PW1 and PW2 were truthful witnesses.

[20] PW1's description of the events on 26 April 2023 has more than a ring of truth. The familial connection between PW1 and the accused will have caused PW1 to initially have been casual when he encountered the accused on 26 April 2023. PW1 informed the accused that the police were looking for him. As PW1 was unaware of the reason, he asked his cousin for an explanation. When the explanation was not forthcoming, PW1 phoned his colleagues to learn more. The accused began to walk away at this point. PW1 immediately grabbed the accused's sack to stop him leaving. The advice from his colleague that the accused was sought for questioning in respect to a burglary by three offenders led PW1 to inform the accused that he was under arrest. This sequence of events is plausible and in keeping with the familial relationship between the accused and PW1.

[21] The accused did not strike PW1 or assault him. He simply tried to pull the sack from PW1's grip. It is clear from the description from PW1 that the accused was trying to pry PW1's grip from the sack so that the accused could leave the scene. The fact that PW1 did not take a more direct physical approach to arresting the accused is

explained by the familial connection. As the two were tussling over possession of the sack, PW2 came onto the scene, forcing the accused to the ground to effect the arrest. PW2's observations of the commotion are consistent with PW1's description.

[22] I am unable to accept the accused's evidence that PW1 suddenly tackled the accused to the ground when they met on 26 April 2023. This is not the behaviour that would be expected from PW1 given they were cousins. PW1 was about ten years older than the accused and they had known each other for many years. More likely, PW1 will have spoken to his relative in the first instance as was the evidence of PW1. I do not accept the accused's description as credible.

[23] The next question is whether PW1's description of the facts satisfies the elements of the offence under section 277(b).

[24] There is no dispute about the identity of the accused. He accepts that he was the person stopped by PW1 on 26 April 2023. The question is whether the accused was resisting PW1 in the due execution of PW1's duty. There are two aspects to consider, firstly, whether PW1 was acting in the due execution of his duty and, secondly, whether the accused was resisting PW1.

[25] Section 18 of the Criminal Procedure Act 2009 provides that a police officer may, without an order of the magistrate and without a warrant, arrest any person, '*whom the officer suspects on reasonable grounds of having committed an indictable offence (whether or not the offence is triable summarily)*'. Pursuant to section 10, a police officer authorised to make an arrest may do so by touching or confining the body of the person to be arrested. The officer may use '*all means necessary to effect the arrest*' if the person forcibly resists or attempts to evade the arrest. The police officer must not use '*any greater force than is reasonable in the particular circumstances of the arrest, or is necessary for the apprehension of the offender*'.

- [26] I am satisfied that PW1 was entitled to arrest the accused. On the basis of the information contained in the police force viber post, and PW1's discussion on the phone with his colleagues when he saw the accused, PW1 was aware that the accused was sought in respect to a burglary or robbery at Nakasi. PW1 had a reasonable basis to suspect that the accused was involved in committing an indictable offence, being aggravated robbery/burglary. PW1 informed the accused that he was under arrest and the reasons for his arrest. PW1 was acting in the due execution of his duties when he sought to arrest the accused.
- [27] The key issue is whether the accused resisted arrest.
- [28] It is the defence case that, in order for the accused to satisfy the element of resisting, there must be some active physical force by the accused against the police officer. The defence rely on the decisions by the High Court in *State v Turuva* [2019] FJHC 639 (20 June 2019) and *Bobo v State* [2017] FJHC 743 (29 September 2017).
- [29] In *Bobo v State* (supra), the High Court held that '*the mere act of running away from the police where no force is used against a police officer cannot be construed as resisting under that section*'. In *State v Turuva* (supra), the High Court noted that the evidence for the prosecution was that the suspect pushed the police officer when they tried to arrest him and that the police ultimately managed to overpower the accused. The pushing was identified by the prosecution as being the element of resisting under section 277(b). The High Court held that the evidence of pushing was too vague and insufficient to permit the High Court to find that suspect resisted arrest.
- [30] The issue here then is what constitutes resisting under section 277(b). As stated, the defence argue that it must involve an active physical force.

[31] The term ‘resists’ is not defined in the Crimes Act. Resist is defined in the dictionary as meaning, ‘to act in opposition; oppose; withstand’.² Oppose is defined in the same dictionary as including ‘to hinder’. ‘Withstand’ is defined as including, ‘to stand or hold out against’. On an ordinary reading of the term ‘resists’, and having regard to its use at section 277(b), in my view the term does not require a person to use physical force against the police officer. Resistance may be passive or non-physical. A person who is uncooperative with a police officer who is discharging their duty may be construed as resisting. Whether a person’s conduct constitutes resisting will turn on the particular facts of the case. This interpretation is consistent with the construction of the same term in the equivalent provision in New Zealand.³ The High Court determined in *Cross v New Zealand Police* [2023] NZHC 2868, at [68]:⁴

...Ms Cross was twisting and struggling when being escorted to the glass wall and pulling her hands away and refusing to be handcuffed. It is clear, on this evidence, which is supported by independent witnesses, that the “resisting” element of resisting arrest is made out.

[32] In the present case, PW1 could have been under no illusion that PW1 was acting in his capacity as a police officer. PW1 was in police uniform. He informed the accused that he was under arrest and explained the reason for his arrest. PW1 grabbed the accused’s sack to prevent him from leaving. Despite this, the accused tried to pull the sack from PW1’s grip. It is clear that the accused intended to leave the scene but was not prepared to abandon his sack. The accused was uncooperative and aggressive toward PW1. He was not succumbing to PW1’s instructions but instead attempting to hinder his arrest. I am satisfied on these facts that the accused was resisting PW1 in the due execution of his duty.

Conclusion

² The Little Macquarie Dictionary.

³ Pursuant to section 23(a) of the Summary Offences Act 1981, it an offence where a person ‘resists or intentionally obstructs, or incites or encourages another person to resist or obstruct...any...officer, acting in the execution of his duty’.

⁴ See also *Smith v Police* [1988] 3 CRNZ 262 (HC) at 266 & 267.

[33] I am sure that PW1 and PW2 were telling the truth as to the events that occurred on the morning of 26 April 2023. The accused refused to cooperate with PW1 when advised that he was under arrest and aggressively sought to pry his sack from PW1's grip in order to leave the scene. It was only the intervention of PW2 that brought the accused under control.

[34] I find the accused guilty of resisting arrest contrary to section 277(b) of the Crimes Act 2009 and he is, accordingly, convicted.



D. K. L. Tuiqereqere
JUDGE



HIGH COURT OF FIJI
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Solicitors:

Office of the Director of Public Prosecutions for the State

Office of the Legal Aid Commission for the Accused