

**IN THE MAGISTRATES' COURT OF FIJI
AT NADI
[CRIMINAL JURISDICTION]**

**Criminal Case no: CF 109/2021
[Extended Jurisdiction HAC no: 20/2021-001/2022]**

**STATE
v.
MALONI NADOI TURUVA**

For Prosecution: PC Solomone

For Accused: Mr. Chang – LAC

Trial: 6th March, 2025

Judgment: 4th April, 2025

JUDGMENT

1. **MALONI NADOI TURUVA** [hereinafter referred to as 'the Accused'] was charged with one count of **Arson** which is read as follows:

Statement of Offence [a]

ARSON: Contrary to Section 362 (a) of the Crimes Act of 2009.

Particulars of Offence [b]

MALONI NADOI TURUVA on the 18th day of January, 2021 at Nadi in the Western Division, wilfully and unlawfully set fire to the dwelling house with household items valued at \$22,270.00 the property of **KALERA RAGEDE**.

2. On 22/1/2021, the matter was transferred from Nadi Magistrates Court to the High Court in Lautoka because the offence is an indictable offence.
3. On 22/12/2021 at Lautoka High Court, the accused pleaded not guilty to the charge. Thereafter DPP made an application to transfer the file back to Nadi MC on extended Jurisdiction and the Application was granted.
4. On 11/5/2022 Ms. Volau advised the court that they will not be filing any Voir Dire grounds. On 22/2/2023 Ms. Shafiq advised court that she was not contesting the accused caution interview. On 11/12/23 Ms. Mocenivaga stated that they would not be challenging the Caution interview.
5. The prosecution on the date of trial called 3 witnesses and they were (**PW-1**) Kelera Ragede, (**PW-2**) D/Cpl 3852 Filipe and, (**PW-3**) DC 4199 Jolame Tuidroto.

6. The prosecutor tendered the following documents as part of the prosecution exhibits namely;
- i. Certificate of marriage [**Prosecution exhibit 1**],
 - ii. Search List [**Prosecution exhibit 2**]
 - iii. Match Box [**Prosecution exhibit 3**],
 - iv. Record of Interview of the Accused [**Prosecution exhibit 4**].
7. At the close of the prosecution case, the defence made an oral application for no case to answer. The court ruled that there was a case to answer as the evidence had touched on the essential elements of the offence of Arson. The prosecution had proved a prima facie case so the accused had a case to answer and he was put to his defence as per section 179 of the Criminal Procedure Act, 2009.
8. The accused was explained his rights: he exercised his right to remain silent, he chose not to call any witness and defence closed their case.
9. Today is for Judgment.

Innocent until proven guilty

10. The right of an accused person to be presumed innocent until proven guilty according to law is a right guaranteed under Section 14(2) (a) of the Constitution. (*Qio v State* [2015] FJCA 68; AAU140.2014 (28 May 2015))

Burden and Standard of Proof

11. The burden of proof lies with the prosecution as stipulated in section 57 of the Crimes Act 2009 which states as follows:
- '57 (1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.'***
- (2) The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.'***
12. The standard of proof lies with the prosecution as stipulated in section 58 of the Crimes Act 2009 which states as follows:
- '58 (1) A legal burden of proof on the prosecution must be discharged beyond reasonable doubt.'***
13. The burden of proof of a case against an accused rests fairly and squarely always on the prosecution, that is the State-the complainant. The prosecution is never relieved of that responsibility and it does not shift to the accused at all. If the evidence creates any doubt, should be given to the accused.
14. Each and every element of the offence should be proved beyond reasonable doubt by the prosecution.

EVIDENCE

PROSECUTION CASE

15. PW1 was Kelera Ragede, she lived her husband's family, they had two children. She informed court that she was the legal wife of the accused, Malono Nadoi Turuva. They had been married for 21 years and got married in 1999. She had tendered their marriage certificate as PEX1. The house which they lived in was built 20 years ago in the year 2000. Prior to living in the family house, she lived with Maloni's family. When the house was being built she was working at Sheraton Fiji as a food and beverage attendant and the accused was a soldier. She was working for 15 years before they planned to build their house. Whilst her husband was overseas working she called him to advise him that she wanted to build the house. She told him the plans and the process. She used her money from her FNPF to build the house. She was assisted by her cousin brother, namely Ponipate Turuva who helped to plan the house and its structure. He was a carpenter and made plans on how the structure of the house was to be built. Once the plans were approved, she withdrew her FNPF savings to build the house, and immediately started building. Once the building was complete, Maloni heard about it and sent \$7000 to help with the finance of the house. She had kept him updated on the building of the house. Even if he liked it or not she was building the house for their son. They would communicate via the internet. She explained that the house was for the family and children. The house was complete after 2 years. Despite the house not having any form of electricity she told her children that it would be best if they lived together in this house that was just built. When they moved into this house, her husband had yet to return. When he did come back he went to live his parents. She told him to come and live with them as a family. When he returned he had received invitations to go drinking and their relationship as a couple suffered as a result. The house was not yet completely built. After that the accused moved into the house everything was alright until July, 2020 when he changed. He would tell the family off and hassle them. He was very aggressive, swearing and started threatening them. She saw changes and thought he would change but he didn't. She would call the police and tell them about him at Sabeto police station. She complained about him and reported the matter to the police at least once in a month. Apart from the police she told the turaga ni koro. (village headman).

On 18/1/2021 he burnt the house. She had come to court in the morning to have her case heard. She had gone to the police to report the matter and her case was heard in MC 3, in Nadi. She went to court as his behavior towards the family was angry and he had warned her leave the house. After her case she went to get advice from the registry and with regard to a piece of paper that was given to her from court. The advice given was for her to speak to her husband and advise him that he was not allowed to threaten, swear or chase her out of the house. Thereafter she went

home and did what was told. When she approached him and whilst they were sat down, he started shouting and asked her what she was doing there and what she wanted. After he asked her, she showed him the document she got from court. He came and sat inside the house and she explained to him, how she came back from court and explained the contents of the document to him. She told him that he was not allowed to swear, chase her out of the house or cause any alarm to her. She then gave him a copy of the document. The accused then tore the document and went to the kitchen. He brought a (yellow) gallon of kerosene and started pouring it inside the house. He poured the kerosene all over the kitchen, bedroom, mattress and house. She was the only one in the house with the accused. After he did this she went outside. She didn't stop her husband because he was a very rough man and she was afraid to he would throw her inside the house. She clearly saw what the accused was doing. Just as she left the house and not too far away she saw black smoke. She had run to Joeli house, downhill. She went and told him that Maloni had burnt the house. The estimate of the house was \$19,000 to \$20,0000 and items inside the house cost about \$5000. Everything in the house was destroyed in the fire. The accused was positively identified.

In cross examination, she stated that the land with which the house was on belonged to the village. In her statement she didn't mention that he had gone to get the yellow gallon. She said that he went into the kitchen to get a gallon of kerosene and she saw him pour it inside the house. She agreed that items like the kerosene lamp and the stove were household items that could cause a fire. She disagreed with defence statement that she didn't see who caused the fire, she said that she saw who caused the fire and it has started from the kitchen. She saw the accused start the fire.

16. PW2 was Ratu Joeli Rokobasa and he stated in examination in chief that on the date of incident (18/1/2021) he was at home with his wife when PW1 ran down to his house to tell him that her house had caught fire. He then wanted to go to the house. Kelera is the wife of his cousin brother namely Maloni Turuva. When PW1 came to his house, she was in a state of shock and panic. He stood at the neighbor's house and watched the flames. It took a while but not long before the house fully caught on fire.

In cross examination he didn't see anyone start the fire. He doesn't know how the fire started.

17. PW3 was Ponipate Turuva, he stated in examination in chief he built the house for PW1. He built the house in 2021. Kelera (Pw1) is the owner of the house. She had gone to FNPF to help finance the house and her husband and her got in touch with him to build the house. Estimate of the house was \$25,000.

In cross examination, he didn't bring any documents to confirm his agreement with Kelera as it was a just a family conversation.

18. PW4 was Sgnt Filipe Raitini. On 18/1/2021 he was based at the Border police Sabeto. Whilst on standby on that date he received a report at 6.20hours about a house in Sabeto engulfed in flames. He left with a few police officers in the fleet to attend to the report. The scene was cordoned off. He was the officer in charge of this investigation. He tried to meet Mr. Maloni Turuva via the headman of Sabeto village. He was able to do so at Mr. Maloni's parents house. Mr. Maloni then sat down with him and told him what he did and what caused the fire. Mr. Maloni told him that he was served with a DVRO from his wife Kelera. He saw the DVRO, its contents and got angry. While talking to Kelera he went into the kitchen to uplift a gallon of kerosene, took out a match box, which had match sticks, he lit two match sticks and burned the DVRO documents. Then he showed him the match box which was in his pocket with the left over match sticks. He said he used this to light the fire and burn the DVRO documents and burn his house. Mr. Maloni was thereafter arrested after his rights were given to him and he was escorted to Sabeto police station. There was no force, threat or assault done to him. He knows Mr. Maloni and also positively identified him in court. He had tendered the search list as **PEX2** and the match box as **PEX3**.

In cross examination, he had put the accused constitutional rights to the accused. He has cautioned Mr. Maloni while having the conversation and at the moment he confessed.

19. PW5 was 4199 Jolame Tui. He received a report whilst on standby. The report was in regard to a house at Sabeto village which was on fire. He left with PW4 in the fleet to attend to the report. Upon arriving at the scene the house was engulfed in flames and NFA was there. He took statements. He also interviewed Mr. Maloni in the English language later after he was arrested. The accused and himself acknowledged by signing the record of interview. The accused was given his constitutional rights and a right to contact his lawyer or Legal aid for a lawyer and other rights. He understood his rights. There were admissions in his record of interview. He admitted that he and his wife has a heated argument, which resulted in him taking a gallon of kerosene and pouring it in the kitchen and lighting the match. The interview was conducted on 19/1/2021 and signed by him and Mr. Maloni. There were 10 pages and his rights were given as per the questions. Admissions are in question 39,40,42,43,44,45 and 46. There was no force, threat, pressure or inducement towards the Mr. Maloni to make any admissions. He tendered the record of interview of the accused as **PEX4**.

In cross examination, he stated that he did give the accused his constitutional rights as per the original record of interview. There was a witnessing officer present. There was no other witnessing officer during the break, only one. There was no need to take the accused to another high ranking officer after the admissions as the witnessing officer was present and he ensures that the processes are done. The witnessing officer was also senior at that time.

LAW

20. Section 362 (a) of the Crimes Act 2009 states

Arson

362. A person commits an indictable offence if he or she wilfully and unlawfully sets fire to —

(a) any building or structure (whether completed or not);

Penalty — Imprisonment for life.

ANALYSIS

21. The prosecution must prove beyond reasonable doubt the following elements of **Arson** which are as follows:

- (i) ***the accused***
- (ii) ***wilfully and unlawfully set fire***
- (iii) ***to the building and structure***

22. The accused chose to remain silent at the trial. The right to remain silent is a right guaranteed under the 2013 Constitution of Fiji. The fact that he has not given evidence proves nothing. I draw no adverse inference against the Accused for exercising his right to remain silent. The burden and the standard of proof still rests with the prosecution and it never shifts to the accused during the trial.

23. There is no dispute to the Identification of the accused as the accused is known to the complainant, and she is his wife. The other witnesses also positively identified the accused in court. There was no dispute that he was also at the scene on the date of incident and with PW1. This was not a contentious issue at trial. The court finds that this element has been established and proven.

24. From the evidence it is clear that there was direct evidence and from his wife Kelera. She saw him go to the kitchen and get the gallon of kerosene and pour it in the house, while there is a question if she saw him light the fire or start it, the accused record of interview as per question and answer 42 to 46 depicts how he lit or rather started the fire.

25. I accept that the caution interview of the accused is the truthful set of events of what the accused did and how he did it. His rights were given to him and neither did defence raise fabrication at trial. His answers were not challenged and the court accepts this as given freely and voluntarily.

26. As per his record of interview at question and answer 85 onwards there was no threat, inducement or promise during the interview, it was a true record of their conversation, he gave the interview on his own free will and he signed thereafter.

The signature of the witnessing officer is also present on the relevant pages after the accused and interviewing officer had signed.

27. In terms of motive, his wife stated that he got angry after she served him a copy of the DVRO orders and he didn't like it. As per his record of interview at QNA 39 he was agitated. Additionally, with reference to the question and answers below:

Q40: what did you say when you got so agitated?

A: I told her that she has guts to serve the DVRO as I am the member of the Yavusa and originally from Sabeto.

Q41: What did you do when got agitated?

A: I got up and went to the kitchen.

Q42: Why did you go to the kitchen?

A: To pick up the gallon of kerosene.

Q43: Where did you took the gallon of kerosene?

A: I picked the gallon open the lid and started pouring kerosene inside the house.

Q45: Then what did you do after pouring the kerosene?

A: I then took a box of matches and lit it.

Q46: Where did you throw the lit match stick?

A: I then took a copy of the DVRO and lit it and I threw the burning DVRO I poured the kerosene.

His wife as per her evidence did mention how he was angry and she was scared of him hence why she took out a DVRO in the first place. The accused actions on the day show he got the gallon kerosene and lit the fire which only illustrates that the conduct was deliberate and intentional.

28. I accept the evidence of PW4 who stated that the matches were given to him by the accused. This is reflected as well in QNA 49 of the accused record of interview. I also accept his evidence that the accused had confessed to him right after the incident and his admissions to him are in line with his answers in his own record of interview.

29. I accept the prosecution witnesses to be credible and truthful witnesses and see no reason why they would or should make up the admissions or facts of the case.

30. Furthermore, Kelera told the court that there was no one else in the house when she was with the accused and when she then left home to go to PW2 house, after a

short while the house was on fire. PW2 confirms this version of events in terms of Kelera coming to his house and then walking towards her house where he then saw flames being engulfed from the house. PW3 confirms PW1 version in terms of building the house and getting FNPF finance to help build the house.

31. Defence did try to raise the issue of the fire starting from a kerosene lamp or stove catching fire but PW1 stated that it is possible but on that date it was the accused who started the fire as she saw him go into the kitchen to get the gallon of kerosene. Whilst the court notes there isn't a fire report to establish or support defence claim, there is sufficient evidence before the court and on hand for the court to come to its conclusion.
32. Considering the evidence in totality, and the facts and circumstance, this court is of the view that the accused namely Maloni Nadoi Turuva had unlawfully burnt his house by willingly pouring kerosene in the house and lighting it with matches which caused a fire to burn the house and building structure.
33. I find that the prosecution has proved beyond reasonable doubt the offence against the accused.
34. I find the accused is guilty as charged and I convict him accordingly.

ORDER

1. Accordingly, **MALONI NADOI TURUVA**, you are found guilty as charged on a count of Arson and convicted accordingly.
2. Defence to file mitigation and prosecution to advise if the accused has any previous convictions and if so file the same.

28 days to appeal.



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Talei Kean
[Resident Magistrate]

4th April, 2025, Nadi MC

